Effective March 16, 2020, Governor Greg Abbott authorized the temporary suspension of certain statutory provisions of the Texas Open Meetings Act. This meeting of the City Council of the City of Midland is being held pursuant to such authorization and will limit face-to-face interactions for the purpose of slowing the spread of the coronavirus (COVID-19).

CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
August 11, 2020 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall

Videoconference Information

Please click this URL to join.
https://zoom.us/j/91784621778?pwd=MGR5NXVxcXhsSHNITGZKQVJGUkhzdz09
Password: 618158
Or join by phone:
Dial(for higher quality, dial a number based on your current location):
US: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 646 558 8656 or +1 301 715 8592 or +1 312 626 6799
Webinar ID: 934 0063 4613
International numbers available:https://zoom.us/u/acC9itv0sP
The City Council may discuss, consider, and take action on any item listed on this agenda.

OPENING ITEMS

1. Invocation – Pastor Phil Allman, Grace Lutheran Church

2. Pledge of Allegiance

PRESENTATIONS

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

    a. Presentation of retirement of proclamation to Leroy Montez

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

    a. REGULAR CITY COUNCIL MEETING OF JULY 28, 2020

5. 2020-134 – RESOLUTION APPROVING AND RATIFYING THE PROCUREMENT OF SERVICES FROM WILLIS ELECTRIC CO., LP OF ABILENE, TEXAS, TO FACILITATE THE EMERGENCY REPAIR OF THE TRAFFIC SIGNAL LOCATED AT THE INTERSECTION OF FLORIDA AVENUE AND LAMESA ROAD; AND AUTHORIZING PAYMENT FOR SAID SERVICES IN AN AMOUNT NOT TO EXCEED $166,026.50 (GENERAL SERVICES)

6. 2020-135 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR PROFESSIONAL SERVICES TO ASSIST THE ENGINEERING SERVICES DEPARTMENT WITH THE DEVELOPMENT OF A MANUAL FOR THE PLANNING AND DEVELOPMENT OF INFRASTRUCTURE; TRANSFERRING FUNDS; AND AUTHORIZING PAYMENT IN AN AMOUNT NOT TO EXCEED $318,400.00 (GENERAL SERVICES)

7. 2020-136 – RESOLUTION AWARDING A FIVE YEAR CONTRACT FOR THE INSTALLATION AND MAINTENANCE OF A CITY OWNED FIBER OPTIC NETWORK TO HOHENBERGER, INC., DBA CSI: LUBBOCK, FOR A TOTAL COST NOT TO EXCEED $267,456.00; AND APPROVING $44,877.00 IN CONTINGENCIES (GENERAL SERVICES)

8. 2020-137 – RESOLUTION RATIFYING AND APPROVING THE EMERGENCY REPLACEMENT OF A SEWER LINE ON ANETTA DRIVE BY RED DEER CONSTRUCTION, LLC, FOR A TOTAL COST OF $186,391.14 (GENERAL SERVICES)

9. 086-2020 – MOTION AUTHORIZING THE APPROPRIATION OF $70,000.00 FROM THE AIRPORT OPERATING FUND (500) UNAPPROPRIATED FUND BALANCE (35650) TO THE DEVELOPMENT PARK PROGRAMMATIC ENVIRONMENTAL PROJECT (900111)

10. 087-2020 – MOTION AUTHORIZING THE APPROPRIATION OF $76,250.00 FROM THE ANIMAL SERVICES DIVISION FY2020 OPERATING BUDGET TO THE ANIMAL CREMATORY PROJECT (900327) (COMMUNITY SERVICES)

11. 088-2020 – MOTION AUTHORIZING THE ACCEPTANCE OF CERTAIN FUNDS AWARDED BY THE OFFICE OF THE GOVERNOR OF TEXAS CRIMINAL JUSTICE DIVISION THROUGH THE FY2020 CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING (CESF) GRANT PROGRAM; AND AUTHORIZING THE ALLOCATION OF SAID FUNDS TO THE POLICE COVID GRANT PROJECT (700282) (POLICE)

SECOND READINGS

12. 10093 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,508-SQUARE FOOT PORTION OF LOT 2B, BLOCK 52, BELMONT ADDITION, SECTION 21, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST LONGVIEW AVENUE, APPROXIMATELY 290 FEET EAST OF BELMONT STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL

DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 28, 2020)

13. 10094 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOTS 7 AND 8, BLOCK 11A, HIGHLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST PARKER AVENUE AND NORTH MAIN STREET), WHICH IS PRESENTLY ZONED SF-2, SINGLE-FAMILY DWELLING DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR A CHILD CARE: DAY CARE CENTER; 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 (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 28, 2020)

14. 10095 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 26, BLOCK 5, NORTH PARK ADDITION, SECTION 18, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF WHITMAN DRIVE, APPROXIMATELY 165 FEET NORTH OF WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 28, 2020)

15. 10096 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 5, GREENWOOD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH CLAY STREET, APPROXIMATELY 110 FEET SOUTH OF EAST INDIANA 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 (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 28, 2020)

16. 10097 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 10, BLOCK 23, GREENWOOD ADDITION, THIRD, FOURTH, AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH CLAY STREET, APPROXIMATELY 110 FEET SOUTH OF EAST WASHINGTON 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 (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 28, 2020)

PUBLIC HEARINGS

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

17. 10098 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 43, SOUTH PARK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF EAST HICKS AVENUE AND SOUTH DALLAS STREET), BY PERMITTING A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM SF-3, SINGLE-FAMILY DWELLING DISTRICT TO 2F, TWO-FAMILY DWELLING (DUPLEX) DISTRICT ; 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 (DEVELOPMENT SERVICES)

18. 10099 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 43, SOUTH PARK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-3, SINGLE-FAMILY DWELLING DISTRICT TO 2F, TWO-FAMILY DWELLING (DUPLEX) DISTRICT (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF EAST HICKS AVENUE AND SOUTH DALLAS STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

19. 10100 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOTS 1 AND 2, BLOCK 3, HINES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST FLORIDA AVENUE AND SOUTH GARFIELD STREET), WHICH IS PRESENTLY ZONED C, COMMERCIAL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AUTOMOBILE OR OTHER MOTORIZED VEHICLE SALES AND SERVICE; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A

SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

20. 10101 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 6,811-SQUARE FOOT PORTION OF LOTS 3 THROUGH 9, BLOCK 138, REPLAT OF BLOCKS 137 AND 138, WILSHIRE PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST ILLINOIS AVENUE, APPROXIMATELY 160 FEET WEST OF NORTH MIDLAND DRIVE), WHICH IS PRESENTLY ZONED LR, LOCAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

21. 10102 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 4A, BLOCK 17, 349 RANCH ESTATES, SECTION 18, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT, IN PART, AND PD, PLANNED DEVELOPMENT DISTRICT FOR AN INDUSTRIAL DISTRICT, IN PART, TO SF-1, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF ARAPAHOE ROAD, APPROXIMATELY 830 FEET EAST OF NORTH STATE HIGHWAY 349); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

22. 10103 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1A AND 5, BLOCK 1, ROLLING GREEN ACRES ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A TRANSITION DISTRICT TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A TRANSITION DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF BUSINESS INTERSTATE 20, APPROXIMATELY 245 FEET WEST OF TODD DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

23. 10104 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 1,700-SQUARE FOOT PORTION OF LOT 18, BLOCK 1, PROVIDENCE PARK ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 150 FEET NORTH OF WEST WADLEY AVENUE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL

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

24. 10105 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,233-SQUARE FOOT PORTION OF LOT 23B, BLOCK 40, FAIRMONT PARK ADDITION, SECTION 39, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND TREMONT AVENUE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

MISCELLANEOUS

25. 088-2020 – MOTION ON A REQUEST BY NEWTON ENGINEERING, TO DEFER WATER, WASTEWATER, PAVING AND SIDEWALK IMPROVEMENTS FOR SKYWAY ADDITION, AND TO WAIVE THE CORRESPONDING FINANCIAL SECURITY GUARANTEE VALUED AT $437,247.30, AN AMOUNT EQUAL TO THE ESTIMATED COST OF CONSTRUCTION. THE SUBJECT PROPERTY IS GENERALLY LOCATED NORTHWEST OF THE INTERSECTION OF SH 349 (FM 1788) AND SH 191 AND IS LOCATED OUTSIDE THE CORPORATE LIMITS OF THE CITY OF MIDLAND, BUT IS SURROUNDED ON ALL SIDES BY THE CORPORATE LIMITS OF THE CITY. (ENGINEERING SERVICES)

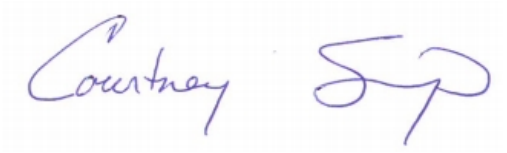
26. 10106 – DISCUSSION AND CONSIDERATION OF ALL MATTERS INCIDENT AND RELATED TO THE ISSUANCE AND SALE OF “CITY OF MIDLAND, TEXAS GENERAL OBLIGATION REFUNDING BONDS, TAXABLE SERIES 2020,” INCLUDING THE ADOPTION OF AN ORDINANCE AUTHORIZING THE ISSUANCE OF SUCH BONDS, ESTABLISHING PARAMETERS FOR THE SALE AND ISSUANCE OF SUCH BONDS AND DELEGATING CERTAIN MATTERS TO AN AUTHORIZED OFFICIAL OF THE CITY. (FINANCE)

27. 2020-138 – RESOLUTION APPROVING A CONTRACT WITH MUSCO SPORTS LIGHTING, LLC, THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF LED FIELD LIGHTING AT THE SCHARBAUER SPORTS COMPLEX AT A TOTAL COST OF $844,750.00; APPROVING $84,475.00 FOR CONTINGENCIES; AND APPROPRIATING $929,225.00 FOR SAID PROJECT (GENERAL SERVICES)

28. 089-2020 – MOTION REGARDING THE SPORTS AGREEMENT BETWEEN THE CITY OF MIDLAND AND THE GREATER MIDLAND FOOTBALL LEAGUE (GMFL), THE USE AND OPERATION OF THE SCHARBAUER SPORTS COMPLEX AUXILIARY ATHLETIC FIELDS, AND MATTERS RELATED THERETO (CITY ATTORNEY'S OFFICE)

29. MOTION MAKING APPOINTMENTS TO VARIOUS BOARDS AND COMMISSION (CITY SECRETARY'S OFFICE)

Respectfully Submitted,



Courtney B. Sharp
City Manager

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

MIDLAND CITY COUNCIL
MINUTES
July 28, 2020

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., July 28, 2020.

Council Members present:	Scott Dufford, Spencer Robnett, Michael Trost, Jack Ladd, Patrick Payton, John Norman, Lori Blong
Council Members absent:	None
Staff members present:	City Manager Courtney Sharp, City Attorney John Ohnemiller, Assistant City Manager Robert Patrick, Assistant City Manager Morris WIlliams

The meeting was called to order at 10:00 a.m.

OPENING ITEMS

Mayor Payton read a letter received from Savannah Minor thanking Solid Waste for their help with a recent issue.

1. Invocation – Pastor Phil Allman, Grace Lutheran Church

2. Pledge of Allegiance

CONSENT AGENDA

Spencer Robnett moved to approve Consent Agenda item 3-13, excluding items 6, 7, and 13; seconded by Jack Ladd.

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

3. MOTION APPROVING THE FOLLOWING MINUTES:

   a. REGULAR CITY COUNCIL MINUTES OF JULY 7, 2020

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b. REGULAR CITY COUNCIL MINUTES OF JULY 14, 2020

4. 2020-124 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH MAXWELL ASPHALT, INC., IN THE AMOUNT OF $1,275,240.00 FOR THE MAF AIRFIELD PAVEMENT MARKING IMPROVEMENTS PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; AND APPROPRIATING FUNDS FOR SAID PROJECT (AIRPORTS)

5. 2020-125 – RESOLUTION APPROVING AN AMENDMENT TO THAT CERTAIN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND SUSIE'S SOUTH FORTY CONFECTIONS, INC., AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE (CITY MANAGER'S OFFICE)

8. 2020-128 – RESOLUTION GRANTING A VARIANCE FOR LOT 6, BLOCK 2, LOST MOUNTAIN ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 1,800 FEET EAST OF NORTH MIDKIFF ROAD AND APPROXIMATELY 960 FEET NORTH OF PASSAGE WAY), BY PERMITTING CONSTRUCTION OF A RESIDENCE AND ACCESSORY STRUCTURES WHERE NO PORTION OF ANY STRUCTURE IS CLOSER THAN 135 FEET OF AN OIL AND GAS WELL; AND AUTHORIZING ISSUANCE OF BUILDING PERMITS (DEVELOPMENT SERVICES)

9. 2020-129 – RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY A 0.0503-ACRE TRACT OF LAND AND A 0.0525-ACRE TRACT OF LAND OUT OF SECTION 25, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (THE "CONVEYED TRACTS"), TO THE OWNER OF PROPERTY ABUTTING THE CONVEYED TRACTS IN EXCHANGE FOR SAID ABUTTING PROPERTY OWNER CONVEYING TO THE CITY A 0.204-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 21, GRASSLAND ESTATES, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS (THE "ACQUIRED TRACT"); AUTHORIZING THE CITY MANAGER TO ACCEPT THE ACQUIRED TRACT; AUTHORIZING THE CITY MANAGER TO NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY TO CONVEY THE CONVEYED TRACTS AND ACCEPT THE ACQUIRED TRACT, PURCHASE TITLE INSURANCE POLICIES AND HOLD THE CLOSINGS; ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, THE INSTRUMENT CONVEYING TO THE CITY THE ACQUIRED TRACT (ENGINEERING SERVICES)

10. 081-2020 – MOTION ACCEPTING A 11.653-ACRE RIGHT OF WAY DEDICATION OUT OF SECTIONS 11 & 12, BLOCK 40, T-2-S, T & P RR. CO SURVEY, MIDLAND COUNTY, TEXAS, FROM THE KENNETH HUSEMAN FAMILY PARTNERSHIP, L.P; A COPY OF THE RIGHT OF WAY DEDICATION DEED BEING ON FILE IN THE CITY SECRETARY'S OFFICE REFERENCED BY THE DATE AND NUMBER OF THIS MOTION; AND ORDERING THE CITY SECRETARY TO RECORD SAID INSTRUMENT IN THE OFFICIAL REAL PROPERTY RECORDS OF MIDLAND COUNTY, TEXAS (ENGINEERING SERVICES)

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11. 2020-130 – RESOLUTION SUPPORTING THE 2021 UNIFIED TRANSPORTATION PLAN (ENGINEERING SERVICES)

12. 2020-131 – RESOLUTION ACCEPTING A GRANT AWARD FROM THE TEXAS "J" REGIONAL ADVISORY COUNCIL IN THE AMOUNT OF $13,559.00; SAID FUNDS TO BE USED BY THE MIDLAND FIRE DEPARTMENT FOR TRAINING, EQUIPMENT, AND SUPPLIES (FIRE)

The following items were pulled from consent agenda and considered individually.

6. 2020-126 – RESOLUTION APPROVING AND ADOPTING THE CITY OF MIDLAND'S ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE FOR FISCAL YEARS 2020 THROUGH 2024 (DEVELOPMENT SERVICES)

Council Member Trost reported the theme seems to be attainable housing and had concern about discrimination noting that HUD has not received any reports. CDBG Manager Isaac Garnett agreed that homelessness and affordable housing were issues that have been exacerbated by a growing population. They have encouraged local non-profits to pursue tax credits for that purpose but the issue cannot be resolved overnight. He noted they are moving in the right direction but have limited resources. He briefly discussed Emergency Shelter Grants noting that is not something he has staff to pursue. Council Member Trost asked if discrimination was an issue. Mr. Garnett noted it is a problem they are working on and working with legal aid to address particular issues, but they have a ways to go. Right now their greatest challenge is infrastructure. The number of housing units has not increased in the last two decades, but the population has doubled. They need to work on finding resources and partnering with non-profits and the private sector to increase their capacity.

Spencer Robnett moved to approve Resolution No. 2020-126 ; seconded by John Norman.

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

7. 2020-127 – RESOLUTION ADOPTING THE CITY OF MIDLAND CONSOLIDATED PLAN FOR COMMUNITY DEVELOPMENT AND HOUSING FUNDS FOR FISCAL YEARS 2020 THROUGH 2024 (OCTOBER 2020 TO SEPTEMBER 2024) AND THE 2020-2021 ACTION PLAN TO SAID CONSOLIDATED PLAN; AND AUTHORIZING THE EXECUTION OF AN APPLICATION FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS (DEVELOPMENT SERVICES)

Council Member Robnett asked about moving the paving project scheduled in this plan to another fund and wondered if that would be beneficial. CDBG Manager Isaac Garnett reported it was much easier to leave it in this project and allow HUD to approve the funds,

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otherwise they will miss their application deadline. He added that street projects help to spur housing development.

Lori Blong moved to approve Resolution No. 2020-127; seconded by Spencer Robnett.

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

Mayor Payton asked Mr. Garnett to let him know what the target number was for affordable housing. That way he has a realisitic number when he is advocating for affordable housing.

13. 082-2020 – MOTION AUTHORIZING THE EXECUTION OF A FIRST AMENDMENT TO NON-POTABLE WATER SUPPLY AGREEMENT BETWEEN THE CITY OF MIDLAND AND MABEE WATER RESOURCES, LLC. (UTILITIES)

Council Member Robnett asked for an update and wondered how the contract and pricing are working. Utilities Manager Carl Craigo reported on the changes in the contract noting they lowered the numbers required. The water source is for emergency purposes and this contract allows the wells to be used and maintained so that they are in working order if the City needs to use the water. Council Member Robnett asked if the rates are at the right price. Mr. Craigo reported that the rates are half of what is charged for their treated water clarifying the water they are purchasing is untreated water. He added that the contract provides money which allows them to do updates which keeps all of the wells serviceable and provides money for other water plant improvements.

Council Member Ladd inquired if the water is replenishable. Staff responded that it is not but that 20 years ago they said there was about 20 years of water left. They expect there is about 50 years of life left and added that we will be the last one to have water in the aquifer.

Michael Trost moved to approve Motion No. 082-2020 ; seconded by Scott Dufford.

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

SECOND READINGS

14. 10090 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 8, EASTOVER ADDITION, THIRD EXTENSION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE SOUTH SIDE OF EAST TEXAS AVENUE, APPROXIMATELY 50 FEET WEST OF NORTH TILDEN STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A

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MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 14, 2020)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10090.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10090; seconded by Lori Blong.

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

15. 10092 – AN ORDINANCE VACATING AND ABANDONING 0.097 ACRES OF RIGHT-OF-WAY, BEING A PORTION OF PARKER STREET RIGHT-OF-WAY AND AN ADJACENT PORTION OF RIGHT-OF-WAY OUT OF LOT 6, BLOCK 28, COWDEN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF WEST PARKER STREET AND NORTH PECOS STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $8,451.00; AND ORDERING RECORDATION BY THE CITY SECRETARY (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 14, 2020)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10092.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10092; seconded by Jack Ladd.

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

PUBLIC HEARINGS

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

16. 10093 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,508-SQUARE FOOT PORTION OF LOT 2B, BLOCK 52, BELMONT ADDITION, SECTION 21, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST LONGVIEW AVENUE, APPROXIMATELY 290 FEET EAST OF BELMONT STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE;

DRAFT

CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10093.

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

Melisha Mills, 4700 Polo Parkway, was present. She was asked if she would be okay with changing the alcohol service hours on Sunday to 11:00 a.m. She indicated she was okay with that change.

There being no one else wishing to speak, the public hearing was closed at 10:34 a.m.

Spencer Robnett moved to approve the first of two readings of Ordinance No. 10093 with the amendment to change the beginning of alcohol service hours on Sundays from 10:00 a.m. to 11:00 a.m.; seconded by John Norman.

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

17. 10094 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOTS 7 AND 8, BLOCK 11A, HIGHLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST PARKER AVENUE AND NORTH MAIN STREET), WHICH IS PRESENTLY ZONED SF-2, SINGLE-FAMILY DWELLING DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR A CHILD CARE: DAY CARE CENTER; 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 (DEVELOPMENT SERVICES)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10094.

Development Services Director Chuck Harrington gave a brief overview of the item noting the applicant is proposing to convert an old church into a day care center. The item has been reviewed by staff and their only issue is that the kids cannot be discharged on the street. Council Member Ladd asked if it was typical to have this type of business in a residential area. Mr. Harrington noted it was not out of character noting daycare centers prefer to be closer to residential areas. Mayor Payton asked if they would be taking over the entire property. Mr. Harrington confirmed they were and that no letters of objection have been received.

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Mayor Payton opened the public hearing at 10:37 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

John Norman moved to approve the first of two readings of Ordinance No. 10094; seconded by Lori Blong.

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

18. 10095 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 26, BLOCK 5, NORTH PARK ADDITION, SECTION 18, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF WHITMAN DRIVE, APPROXIMATELY 165 FEET NORTH OF WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10095.

Mayor Payton opened the public hearing at 10:38 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Lori Blong moved to approve the first of two readings of Ordinance No. 10095; seconded by Jack Ladd.

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

19. 10096 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 5, GREENWOOD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH CLAY STREET, APPROXIMATELY 110 FEET SOUTH OF EAST INDIANA 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 (DEVELOPMENT SERVICES)

DRAFT

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10096.

Mayor Payton opened the public hearing at 10:39 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

John Norman moved to approve the first of two readings of Ordinance No. 10096; seconded by Lori Blong.

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

20. 10097 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 10, BLOCK 23, GREENWOOD ADDITION, THIRD, FOURTH, AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH CLAY STREET, APPROXIMATELY 110 FEET SOUTH OF EAST WASHINGTON 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 (DEVELOPMENT SERVICES)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10097.

Mayor Payton opened the public hearing at 10:40 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

John Norman moved to approve the first of two readings of Ordinance No. 10097; seconded by Lori Blong.

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

MISCELLANEOUS

21. 2020-132 – RESOLUTION RECORDING A VOTE ON A PROPOSAL TO CONSIDER AN AD VALOREM TAX RATE FOR THE FISCAL YEAR 2020-2021 AND TO ESTABLISH A DATE TO HOLD A PUBLIC HEARING ON THE PROPOSED TAX RATE; ESTABLISHING DATES WHEN THERE WILL BE A RECORD VOTE ON THE TAX RATE; AND AUTHORIZING AND DIRECTING THE CITY MANAGER TO POST ALL APPROPRIATE NOTICES (FINANCE)

DRAFT

Budget Manager Jamie Radcliff provided a PowerPoint presentation noting that based on values received last week, the assessed valuation that would bring in the same amount of money as the previous year is $.343988 per $100 of valuation. Staff is proposing a rate of $.364027 which is a 3.5% increase above the M&O rate and adding in debt service. Council Member Dufford noted that historically the City has adopted a 3% increase each year. Ms. Radcliff clarified that this is not the final rate, but it will be the maximum rate that Council can adopt. August 25th will be the public hearing for the tax rate followed by the first reading of the Ordinances for the budget and for the tax rate. The second reading of both ordinances will be held on September 8th.

Spencer Robnett moved to approve Resolution No. 2020-132 with a proposed tax rate of .364027 per $100.00 of valuation; seconded by Jack Ladd.

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

22. 083-2020 – MOTION REGARDING THE ESTABLISHMENT, ADMINISTRATION, AND FUNDING OF THE MIDLAND DEVELOPMENT CORPORATION'S SMALL BUSINESS ASSISTANCE PROGRAM (CITY ATTORNEY'S OFFICE)

Council Member Robnett reported he was in opposition to the Midland Development Corporation's small business assistance program for the following reasons: it is not in the scope of what the MDC was established to do; there was over $100 billion in payroll protection available to be loaned from the federal government; the money is coming from a promotional account over which the Council has no oversight; the program was instituted with no discussion with the Council; and oil and gas loans are excluded from the program. He noted he would rather partner with Midland College BEDC to help applicants apply for funds from the federal government instead of taking $1 million out of the MDC budget.

Council Member Blong reported she is the liaison to the MDC board and agrees that Council should have more oversight over the promotional budget and that $1 million was probably too much, but there are businesses such as salon and boutique owners that are ineligible for PPP (Paycheck Protection Program) funding and therefore advocates for this program.

Council Member Ladd agreed that Council should have more oversight and clarified that if someone has already received a loan from the federal government, they will not qualify for this program.

John Trischitti reported on the vetting process noting they are working with CMD Bank to process the applications. They have received to date 23 applications with 2 pending approval. About 2/3 of the applicants are ineligible because they are outside of the ETJ or have already received a loan from the PPP. Discussion ensued noting that the PPP process is too onerous for some small businesses. Staff added that some of these funds could be recouped from the federal government from funds made available to the

DRAFT

City through the CARES Act. Council Member Ladd added that there are some businesses who took the PPP loans but are still hurting and thought this type of program could help them as well. Mr. Trischitti noted he would look into that.

City Attorney John Ohnemiller reported that Council set a threshold of any agreement over $300,000 has to come before Council for their approval. All of the promotional agreements will be capped at $25,000 and therefore are not required to come to Council for approval.

Council Member Trost asked what the bank was charging for administering the program. Mr. Trischitti reported the bank gets 5% per transaction. Mayor Payton asked for an update prior to the next meeting on how the program is going.

No action was taken on this item.

23. 2020-133 – RESOLUTION APPROVING THE FISCAL YEAR 2020-2021 BUDGET OF THE MIDLAND DEVELOPMENT CORPORATION, A TYPE A CORPORATION AS AUTHORIZED BY CHAPTER 504 OF THE TEXAS LOCAL GOVERNMENT CODE (CITY MANAGER'S OFFICE)

John Trischitti gave a brief overview of the the MDC budget for the next fiscal year highlighting some of their programs and noting changes to their requested budget.

Jack Ladd moved to approve Resolution No. 2020-133; seconded by Scott Dufford.

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

24. 084-2020 – MOTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE A DEVELOPMENT AGREEMENT REGARDING THE VAUGHN BUILDING (CITY ATTORNEY'S OFFICE)

Council Member Trost reported that in February a discussion was held with the principals and they are still interested. He reviewed what they needed to make the project work. Brief discussion ensued about cash incentives and tax abatements.

Spencer Robnett moved to approve Motion No. 084-2020; seconded by John Norman.

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

25. 085-2020 – MOTION SETTING A DATE FOR A CITY COUNCIL RETREAT TO BE HELD IN AUGUST 2020 (CITY ATTORNEY'S OFFICE)

DRAFT

Council Member Trost understands the reason for canceling the retreat but felt it was still important especially to help new Council Members understand the needs of each department. Mayor Payton clarified that the retreat was not canceled, but postponed. Council Member Dufford added that it might be better to wait until next March stating he felt the window of opportunity to set priorities has already been missed for the next fiscal year.

Council Member Trost moved to approve Motion No. 085-2020. The motion died for the lack of a second.

Mayor Payton noted that before we adjourn Council Member Norman wanted to make a few comments.

Council Member Norman noted that although we do not have authority over the school board and school systems, he wanted it to be known that he was in full support and thanked the board members who agreed to changing the name of Lee High School. He thinks it is the right thing and it makes a huge statement for MISD and the City of Midland. It says we are moving forward with inclusiveness and quality for all citizens. He is proud to say that he was born and raised in Midland, Texas.

Mayor Payton echoed that support of MISD, noting that even though everyone does not agree, we can disagree well. He added that Council Member Norman shared with him that the Mayor had no idea what it felt like to go to battle on the school football field under a flag that represented people who went to battle to keep his ancestors enslaved.

All the business at hand having been completed, the meeting adjourned at 11:36 a.m.

PASSED AND APPROVED August 11, 2020.

_____

Patrick Payton, Mayor

ATTEST:

_____

Amy M. Turner, City Secretary

DRAFT

City Council Meeting

Item Number: 5

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Regina Stephenson, Director

Subject: **RESOLUTION APPROVING AND RATIFYING THE PROCUREMENT OF SERVICES FROM WILLIS ELECTRIC CO., LP OF ABILENE, TEXAS, TO FACILITATE THE EMERGENCY REPAIR OF THE TRAFFIC SIGNAL LOCATED AT THE INTERSECTION OF FLORIDA AVENUE AND LAMESA ROAD; AND AUTHORIZING PAYMENT FOR SAID SERVICES IN AN AMOUNT NOT TO EXCEED $166,026.50 (GENERAL SERVICES)**

Purpose:

Approval of a resolution approving and ratifying the procurement of services from Willis Electric Co., LP of Abilene, Texas, to facilitate the emergency repair of the traffic signal located at the intersection of Florida Avenue and Lamesa Road; and authorizing payment for said services in an amount not to exceed $166,026.50

Recommended City Council Action:

Approve

Fiscal Impact:

$166,026.50 from Project 900275

Discussion:

A City traffic signal was damaged when an Oncor utility pole at the intersection of Florida Street and Lamesa Road was knocked down when a vehicle crashed into it on September 7, 2018. Resolution 2018-382 appropriated the sum of $250,000.00 to repair the utility pole. The repairs have been completed but it was discovered that Resolution 2018-382 did not authorize the funds to be paid to Willis Electric Company. Therefore, staff is requesting the ratification of the payment to Willis Electric Company in the amount of $166,026.50. Please see the attached memo from Michael Pacelli, City Traffic Engineer, for additional information.

Therefore, please consider a resolution approving and ratifying the procurement of services from Willis Electric Co., LP of Abilene, Texas, to facilitate the emergency repair of the traffic signal located at the intersection of Florida Avenue and Lamesa Road; and authorizing payment for said services in an amount not to exceed $166,026.50.

Morris Williams Jr.

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Regina Stephenson, General Services Director

FROM: Michael Pacelli, P.E., PTOE, City Traffic Engineer

SUBJECT: Ratification of Emergency Expenditure – Florida / Lamesa Traffic Signal

DATE: July 22, 2020

On September 7, 2018, a vehicle crash resulted in the knockdown of an Oncor utility pole at Florida Ave and Lamesa Rd. The falling overhead electric wires sent primary voltage into the traffic signal, apparently for an extended time.

Nearly all of the electronics related to the signal were damaged or destroyed by the electrical surge. The part that was unusual and more severe than with typical electrical incidents such as lightning strikes is that the high voltage was sustained for several minutes, so the signal cables caught fire in the cabinet, as well as in poles and pull boxes around the intersection. So even those items that are normally not seriously affected by electrical surges sustained significant fire damage.

A two-phase approach was taken in restoring signal operations.

Initially, City and Contractor staff completely replaced the cabinet, electronics, and cabling in the week after the crash, and put the signal back in limited operation within 8-10 days.

Longer term, complete reconstruction of the traffic signal was needed. Three of the signal poles had clear damage to the steel walls, including complete penetrations where the electricity arcing cut holes through the steel from the inside. All four poles also had varying degrees of fire damage.

Staff sought emergency funding of $250,000 from City Council on September 25, 2018, which was approved by Resolution 2018-382. New traffic signal poles were ordered soon after, but due to a string of vendor issues and manufacturing delays, the poles were not received until April 2020.

Based on the Council authorization of the funding for this specific emergency repair in 2018, Staff immediately proceeded with retaining, on an emergency basis, the only traffic signal contractor that consistently works in this region. In late April 2020, Willis Electric Co. of Abilene, Texas, was asked to complete the remaining reconstruction as soon as their schedule allowed. Work was performed in May and June, and the new signal was put into operation on June 18, 2020.

Although it had been believed that the 2018 Council action fully authorized this repair, it was subsequently discovered that funding had been allocated for this work, but not specifically authorized to be paid to the contractor. Therefore, this current item is a formal ratification of the expenditure that has already been made based on the intent of the previous Council action.

No additional funding is being requested.

Therefore, Staff recommends ratification of the emergency expenditure to Willis Electric Co. for a total amount of $166,026.50.

RESOLUTION NO. _____

RESOLUTION APPROVING AND RATIFYING THE PROCUREMENT OF SERVICES FROM WILLIS ELECTRIC CO., LP OF ABILENE, TEXAS, TO FACILITATE THE EMERGENCY REPAIR OF THE TRAFFIC SIGNAL LOCATED AT THE INTERSECTION OF FLORIDA AVENUE AND LAMESA ROAD; AND AUTHORIZING PAYMENT FOR SAID SERVICES IN AN AMOUNT NOT TO EXCEED $166,026.50

WHEREAS, a motor vehicle crash caused the traffic signal located at the intersection of Florida Avenue and Lamesa Road to be damaged; and

WHEREAS, the City's Engineering Services Department determined that repairing the traffic signal was necessary due to unforeseen damage to public property and was of an emergency nature to preserve and protect the health and safety of the residents of the City of Midland; and

WHEREAS, the Engineering Services Department procured from Willis Electric Co., LP of Abilene, Texas ("Contractor") the services necessary to repair the traffic signal (the "Emergency Services") at a total cost of $166,026.50; and

WHEREAS, the City Council finds that the expenditure for the Emergency Services was exempt from competitive bidding requirements because it was a procurement that was necessary due to unforeseen damage to public property and that was necessary to preserve and protect the public health and safety of the residents of the City of Midland; and

WHEREAS, the City Council finds it necessary to approve and ratify the procurement of the Emergency Services at a total cost not to exceed $166,026.50 and to authorize payment therefor;

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

SECTION ONE. That the recitals stated above are hereby adopted and approved for all purposes.

SECTION TWO. That the procurement of the Emergency Services and the

execution of all contracts and documents necessary to effect said procurement are hereby approved and ratified.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Contractor for said Emergency Services in a total amount not to exceed $166,026.50 from funds appropriated in accordance with Resolution No. 2018-382 and from funds available in the operating budget of the Engineering Services Department upon receipt of proper invoices or statements approved by the City Manager. To the extent that such payment was previously made, the payment is hereby ratified and approved.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

WILLIS ELECTRIC CO., LP

P.O. Box 7109, Abilene, Tx 79608-7109
PH. 325-698-3444 / Fax 325-698-3446

Project Lamesa & Florida signals
Job #: 220-20 City of Midland

Date: 6/30/2020
Estimate/invoice: 220-20-2

To: City of Midland

Item #	Description	UN	Est qty	Work done on contract	Contract price	Extended amount
500	MOBILIZATION	LS	1	1	$ 16,000.00	$ 16,000.00
502	BARRICADES, SIGNS & Trf Hndl option	MO	2	2	$ 5,000.00	$ 10,000.00
531	CONCRETE WORK	SF	100	100	$ 135.00	$ 13,500.00
618-1	CONDT (PVC) (SCH 40) (2")	LF	80	0	$ 60.00	$ -
618-2	CONDT (PVC) (SCH 40) (3")	LF	100	100	$ 65.00	$ 6,500.00
618-3	CONDT (PVC) (SCH 40) (3") (BORE)	LF	100	100	$ 80.00	$ 8,000.00
620	ELEC CONDR (NO.6) BARE	LF	500	682	$ 1.75	$ 1,193.50
624-1	GROUND BOX C - W-APRON (CITY SUPPLIED)	EA	4	5	$ 1,150.00	$ 5,750.00
624-2	GROUND BOX D - W-APRON (CITY SUPPLIED)	EA	1	0	$ 1,250.00	$ -
637-1	INSTALL MAST ARM SIGNS (CITY SUPPLIED)	EA	4	4	$ 150.00	$ 600.00
656-1	DRILL SHAFT (TRF SIG POLE) (48 IN)	LF	24	24	$ 750.00	$ 18,000.00
656-2	DRILL SHAFT (TRF SIG POLE) (36 IN)	LF	45	45	$ 550.00	$ 24,750.00
680	INSTALL CONTROLLER (ISOLATED)	EA	1	1	$ 2,000.00	$ 2,000.00
682-1	SIGNAL HEAD ASSM - 3 SECTION (CITY SUPPLIED)	EA	12	12	$ 500.00	$ 6,000.00
682-2	SIGNAL HEAD ASSM - 5 SECTION (CITY SUPPLIED)	EA	4	4	$ 800.00	$ 3,200.00
682-3	PEDESTRIAN SIGNAL HEAD (CITY SUPPLIED)	EA	6	6	$ 500.00	$ 3,000.00
684-1	20 COND - 14 AWG	LF	400	792	$ 10.00	$ 7,920.00
686-1	40' SIGNAL POLE (CITY SUPPLIED)	EA	1	1	$ 3,750.00	$ 3,750.00
686-2	48' SIGNAL POLE (CITY SUPPLIED)	EA	2	2	$ 4,500.00	$ 9,000.00
686-3	65' SIGNAL POLE (CITY SUPPLIED)	EA	1	1	$ 6,500.00	$ 6,500.00
686-4	REMOVE TRAFFIC SIGNAL POLES & WIRE	EA	4	4	$ 2,000.00	$ 8,000.00
6004	COMM CABLE (CITY SUPPLIED)	LF	75	109	$ 5.00	$ 545.00
6062	COMM RADIO (CITY SUPPLIED)	EA	1	0	$ 250.00	$ -
6083-1	PROCESSOR SYSTEM -WAVETRONIX (CITY SUPPLI	EA	1	0	$ 550.00	$ -
6083-2	WAVETRONIX RADAR ASSEM (CITY SUPPLIED)	EA	4	0	$ 550.00	$ -
6083-3	WAVETRONIX CABLE (CITY SUPPLIED)	LF	500	908	$ 4.00	$ 3,632.00
6089	CAT5 ETHERNET (CITY SUPPLIED)	LF	50	109	$ 4.00	$ 436.00
688	PUSH BUTTON PED DETECTOR (CITY SUPPLIED)	EA	6	6	$ 250.00	$ 1,500.00
690	SERVICE POLE REPLACEMENT SP(O)	EA	1	1	$ 6,250.00	$ 6,250.00
			Total this Estimate			$ 166,026.50
			Less Previous Payments			$ -
			May 2020, est #1			$ 51,615.25
			June 2020, est #2			$ 114,411.25
			Total amount due			$ 166,026.50

paymen	ck	$ -
		$ -
		$ -
	Total	$ -

OK to pay
6/29/20

71,027.75 - proj. 900275-005 - emergency
43,383.50 - 001083-55210 - emergency

RESOLUTION NO. 2018-382

RESOLUTION APPROPRIATING THE SUM OF $250,000.00 FROM THE GENERAL FUND (001) UNAPPROPRIATED FUND BALANCE ACCOUNT (35650) TO THE FLORIDA AND LAMESA SIGNAL PROJECT (900275)

WHEREAS, the City Council finds it to be in the public interest to appropriate the sum of $250,000.00 from the General Fund (001) unappropriated fund balance account (35650) to the Florida and Lamesa Signal Project (900275);

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

THAT the sum of $250,000.00 is hereby appropriated from the General Fund (001) unappropriated fund balance account (35650) to the Florida and Lamesa Signal Project (900275).

On motion of Council member Lacy, seconded by Council member Robnett, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the 25th day of September, A.D., 2018, by the following vote:

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

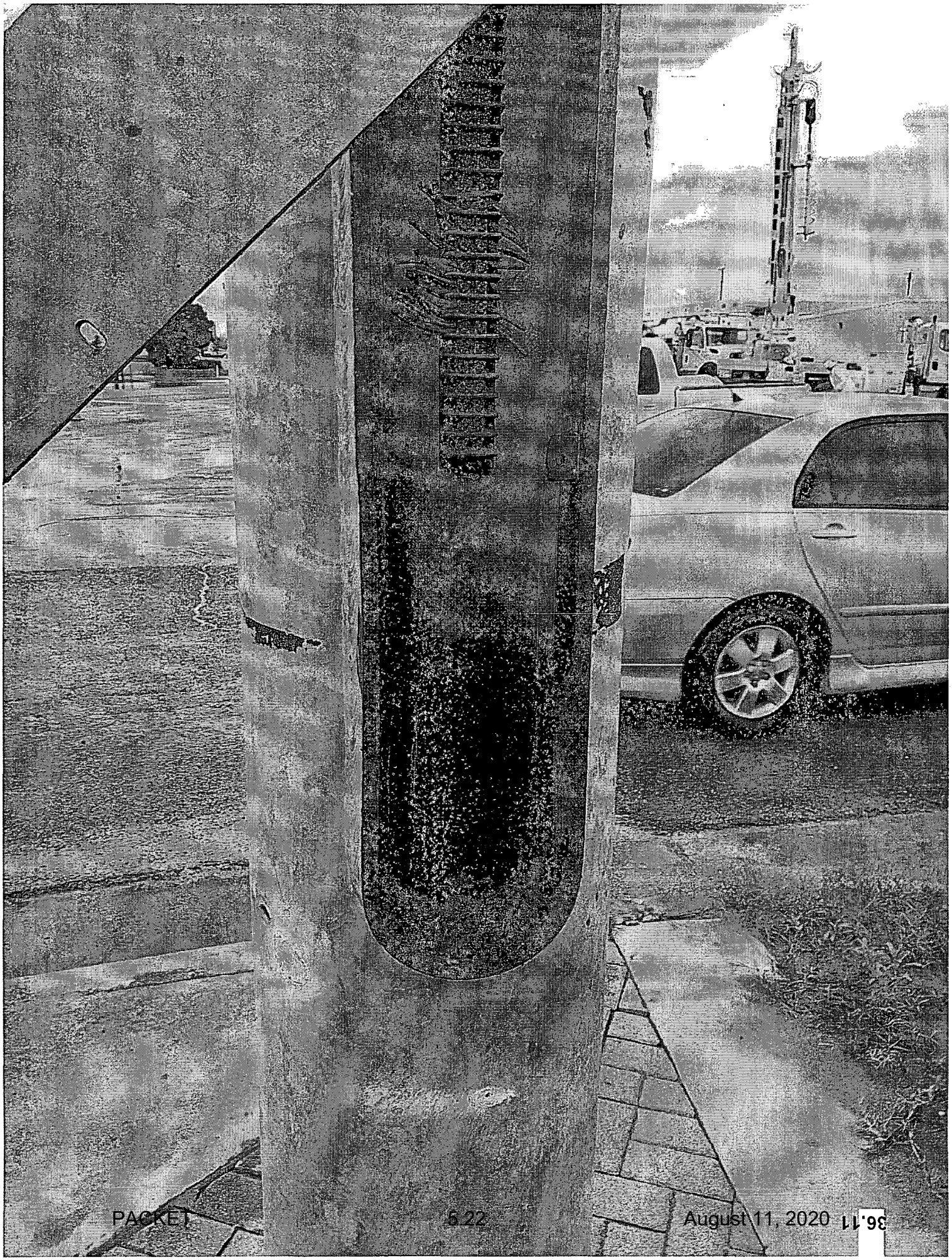
Council members voting "NAY": None

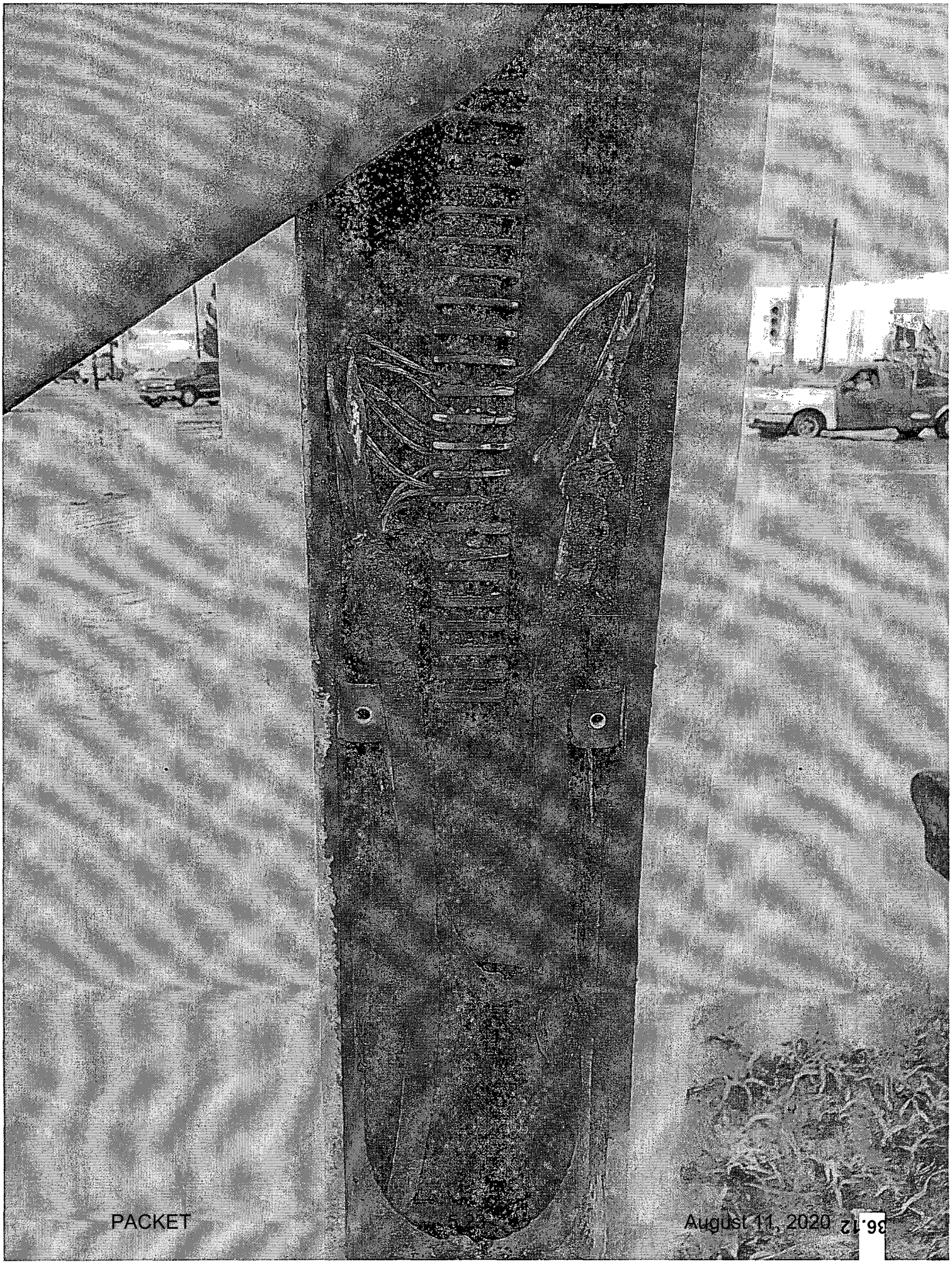
Jerry F. Morales, Mayor

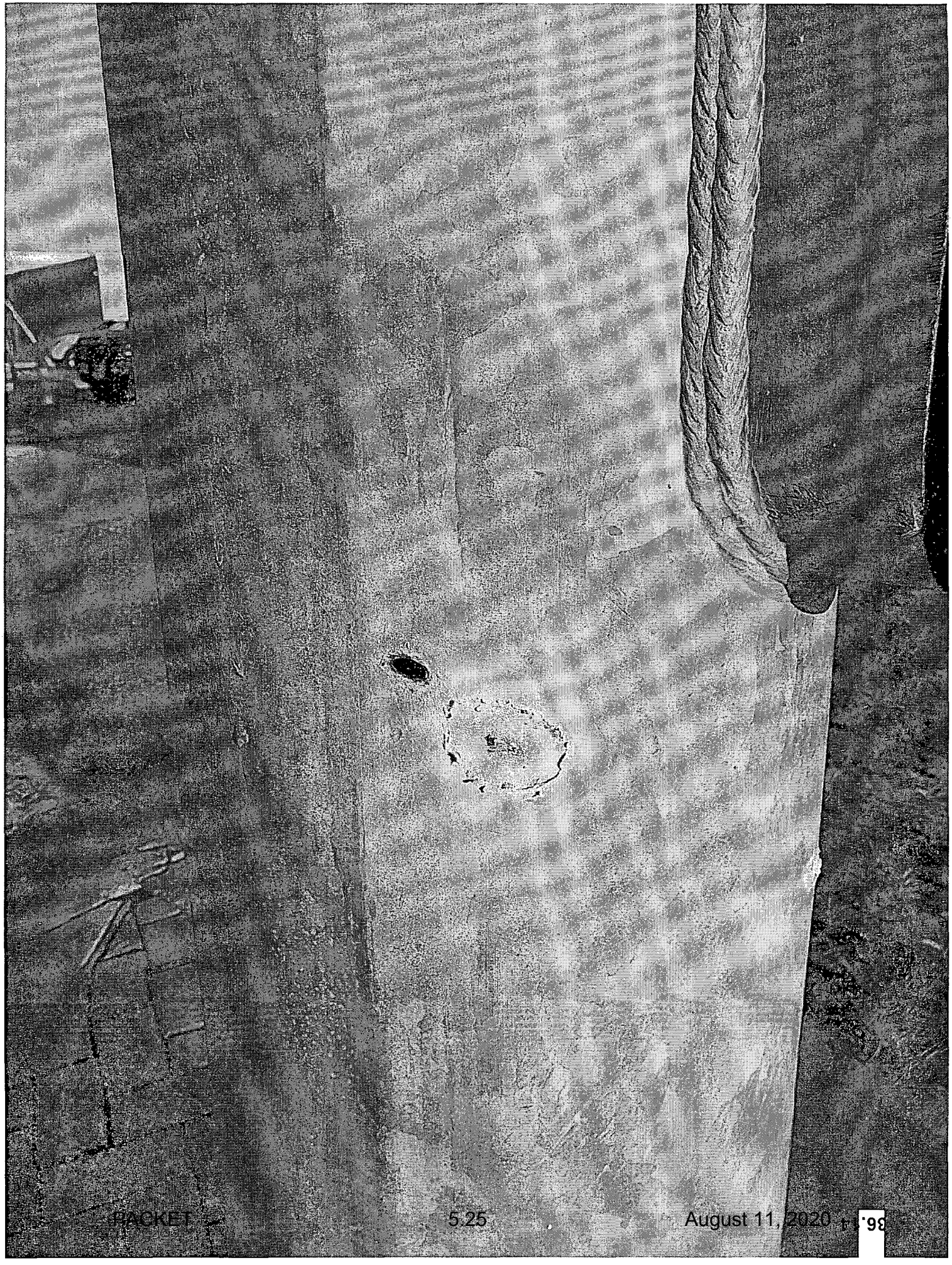
ATTEST:

Amy M. Turner, City Secretary









RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Frank Salvato, Assistant City Manager

Jose Ortiz, Engineering Services Director

Pam Simecka, Director of Finance

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

City Council Agenda

MIDLAND
Feel the Energy!

Approved for Agenda:
fsalvato
City Manager's Office

MEETING DATE: 9/25/2018

APPROVED

TO: City Council / City Manager

FROM: Michael Pacelli, City Traffic Engineer

SUBJECT: Consider a resolution to appropriate $250,000 from the General Fund (001) unappropriated fund balance account (35650) to the Florida and Lamesa Signal Project (900275).

Purpose:

Consider a resolution to appropriate $250,000 from the General Fund (001) unappropriated fund balance account (35650) to the Florida and Lamesa Signal Project (900275).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The sum of $250,000 shall be appropriated from the General Fund (001) unappropriated fund balance account (35650) to the Florida and Lamesa Signal Project (900275).

Discussion:

At approximately 3 PM on Friday, September 7, 2018, a vehicle crash resulted in the knockdown of an Oncor utility pole on the northwest corner of E. Florida Ave and S. Lamesa Rd. The falling overhead electric wires along Florida Ave sent primary voltage into the traffic signal at that intersection, apparently for an extended time. A few pictures are attached.

Nearly all of the electronics related to the traffic signal were damaged or destroyed by the electrical surge. The part that is unusual and more severe than with typical electrical incidents such as lightning strikes is that the high voltage was sustained for several minutes, so the signal cables caught fire in the cabinet, as well as in poles and pull boxes around the intersection. So even those items that are normally not seriously affected by electrical surges sustained fire damage.

A two-phase approach was taken in restoring signal operations.

Initially, City and Contractor staff completely replaced the cabinet, electronics, and cabling in the week after the crash, and put the signal back in limited operation (no detection, pre-emption, battery backup, etc.) within 8-10 days.

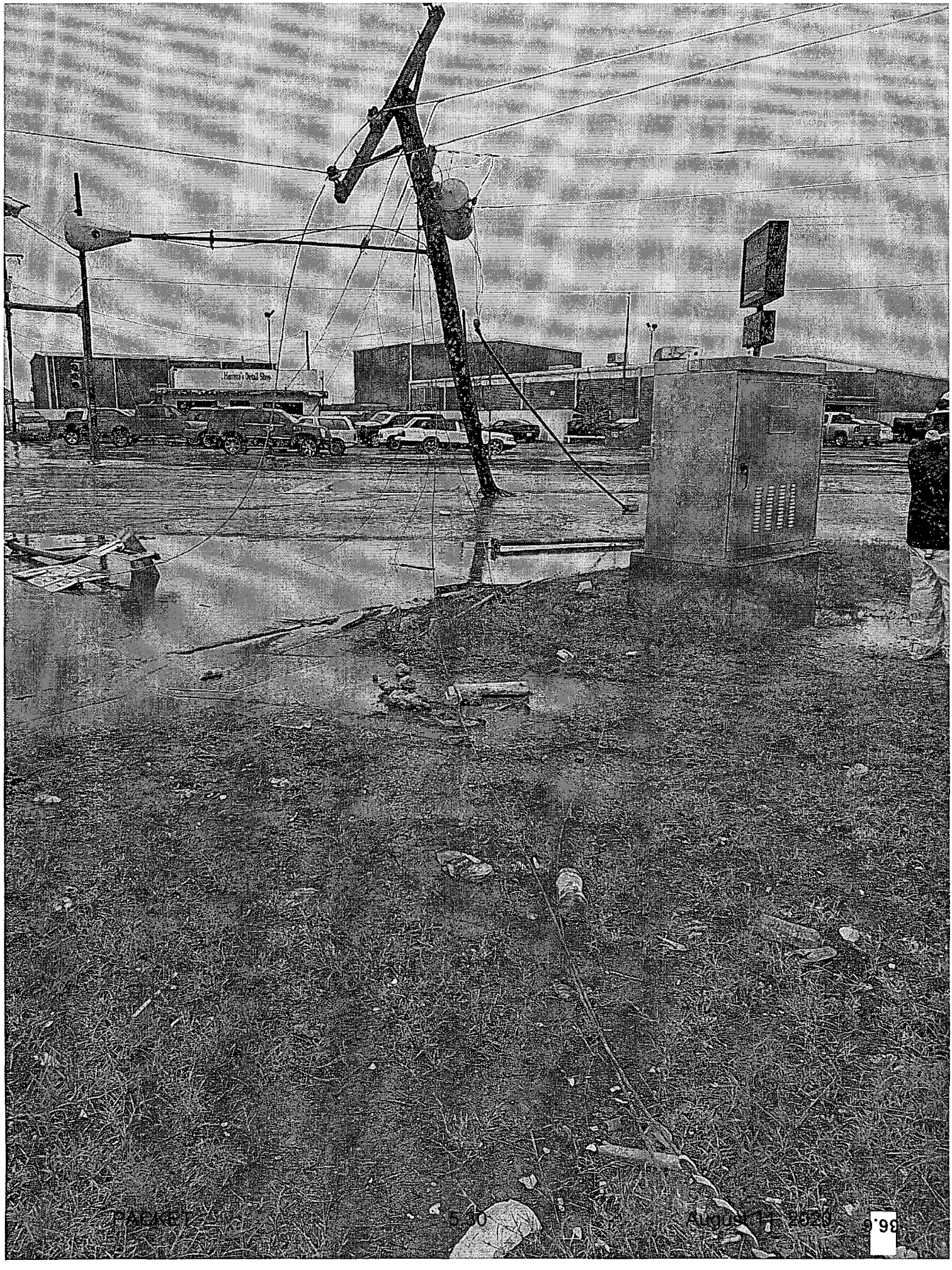
Longer term, three of the four existing poles have clear damage to the steel walls, including complete penetrations where the electricity arcing cut holes through the steel from the inside. All four poles also have varying degrees of fire damage. Staff believes that the poles need to be replaced to protect against a reduction in their structural integrity in the long term, although there is no imminent risk to leaving them standing for an interim period.

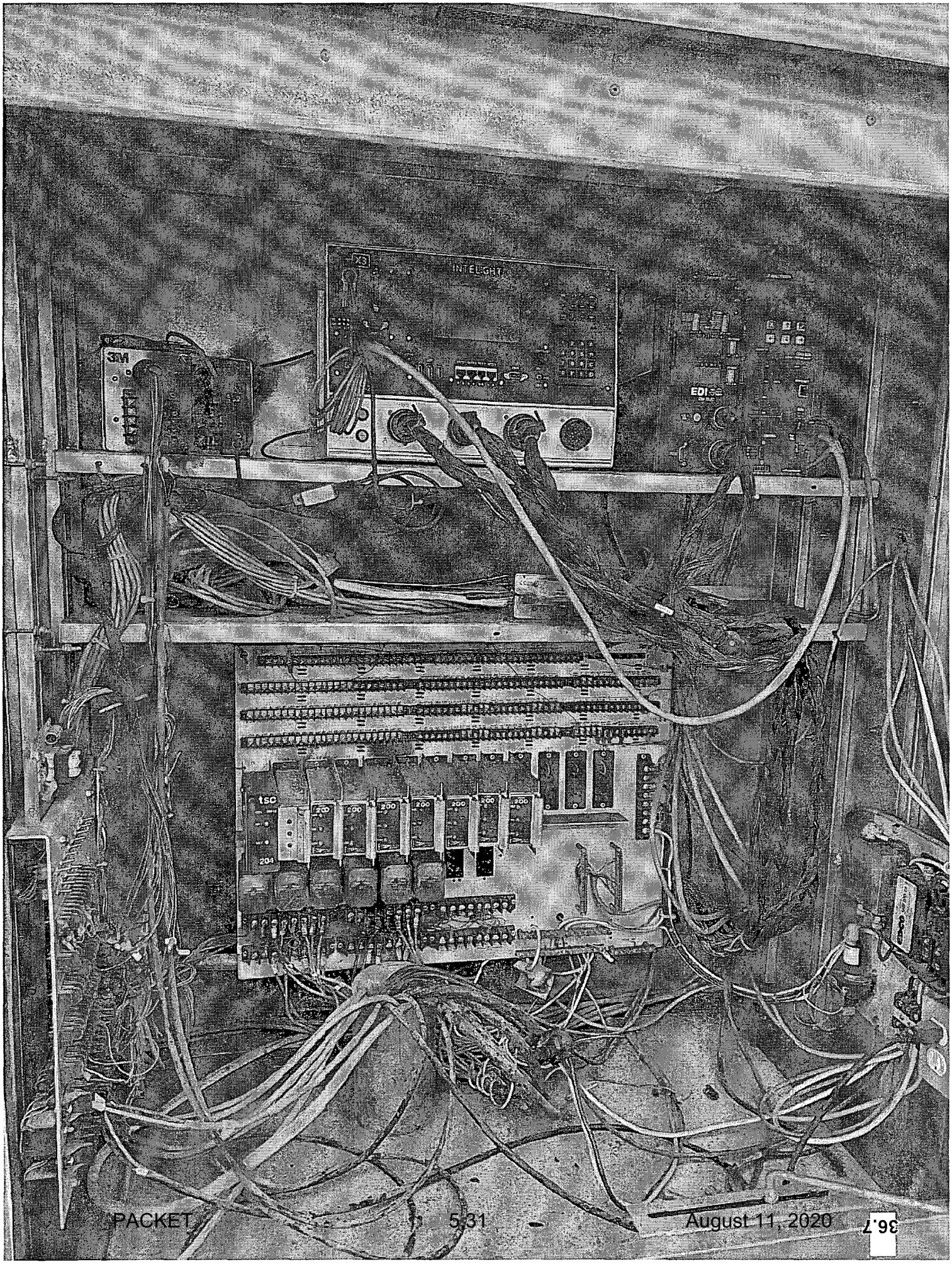
The lead time for ordering new poles is a minimum of 20-22 weeks, so Staff is keeping the existing poles in place and running the signal in limited operation until we get the new poles. Then we'll have a second phase of construction to install new foundations, poles, displays, etc.

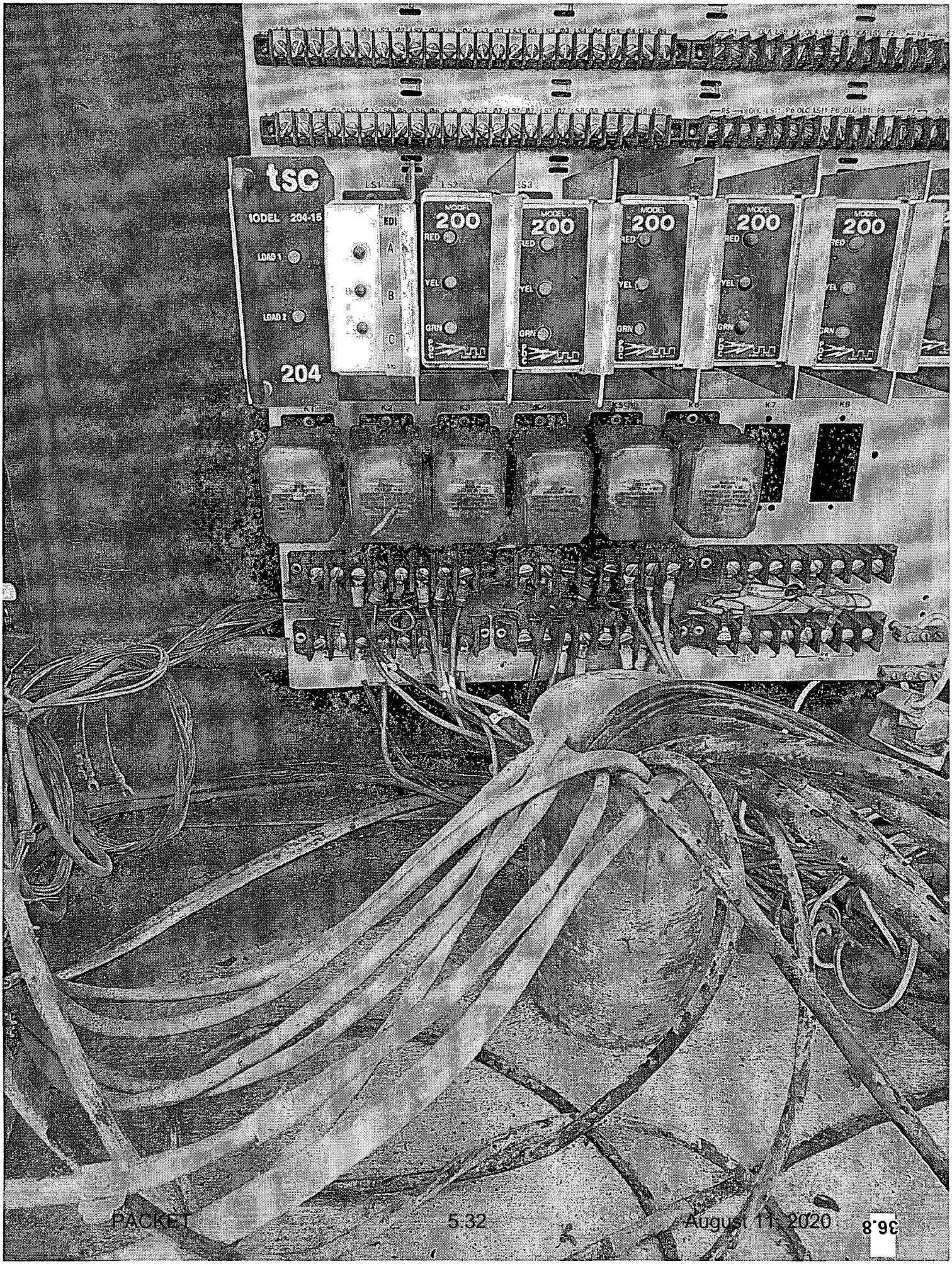
Including the cost of constructing the new signal in accordance with current design standards, and including contingency funds for potential unseen damage that may be encountered, Staff is requesting a budget of $250,000 be allocated to the project account.

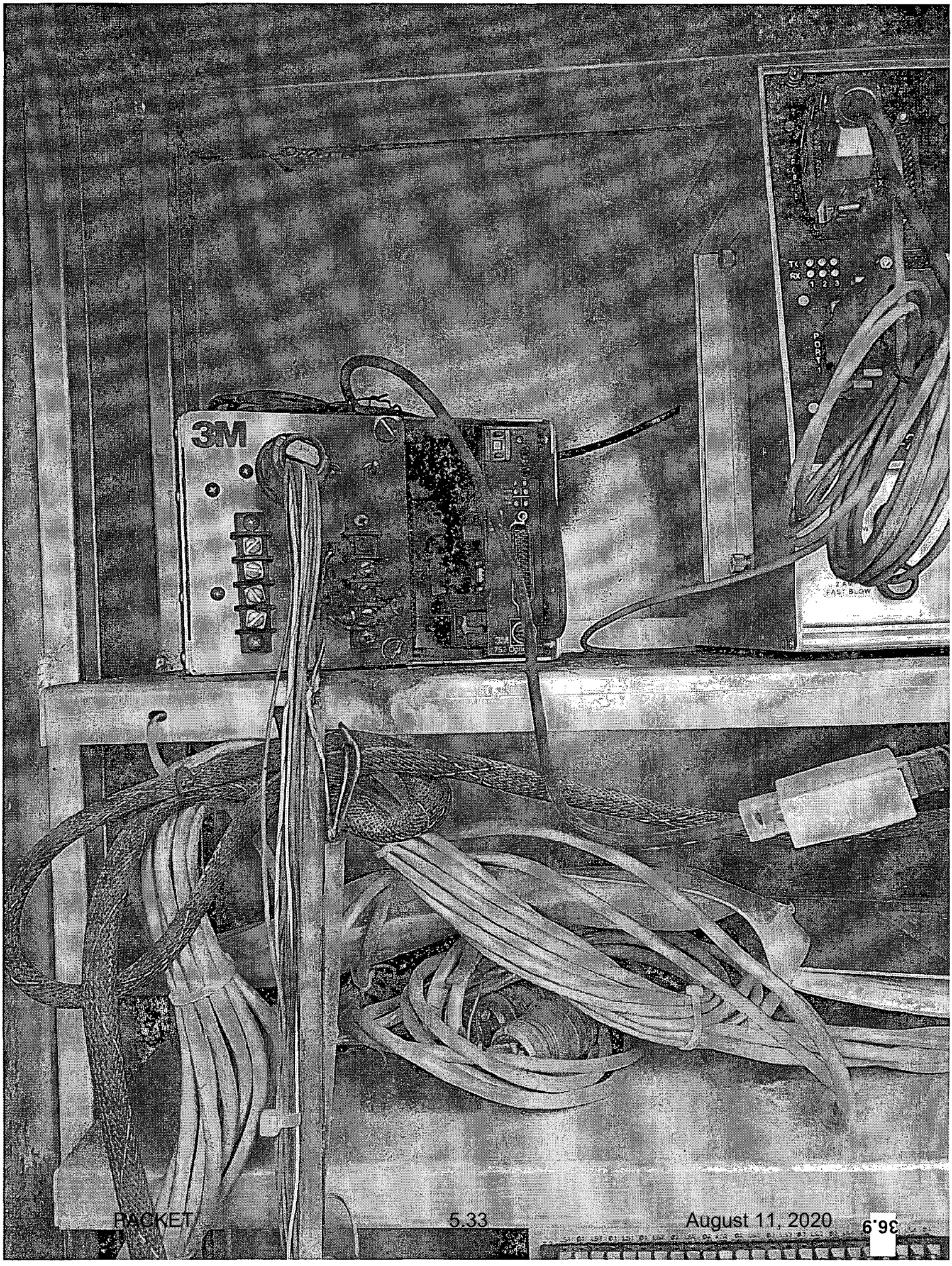
Staff recommends approval.


MIDLAND FIRE


Harrod's Dental Shop


INTELLIGHT
3M
EDI
tsc


tsc
MODEL 204-15
LOAD 1
LOAD 2
204
MODEL 200
RED
YEL
GRN


3M
Tx
Rx
1 2 3
PORT
2A
FAST BLOW

City Council Meeting

Item Number: 6

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Regina Stephenson, Director

Subject: **RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR PROFESSIONAL SERVICES TO ASSIST THE ENGINEERING SERVICES DEPARTMENT WITH THE DEVELOPMENT OF A MANUAL FOR THE PLANNING AND DEVELOPMENT OF INFRASTRUCTURE; TRANSFERRING FUNDS; AND AUTHORIZING PAYMENT IN AN AMOUNT NOT TO EXCEED $318,400.00 (GENERAL SERVICES)**

Purpose:

Approval of a resolution awarding a professional services agreement to Kimley-Horn and Associates Inc. for the design and development of an Engineering Design Manual for the Engineering Services Department.

Recommended City Council Action:

Approve

Fiscal Impact:

$318,400.00 from the General Fund

Discussion:

Resolution 2019-373 authorized the City Manager to advertise a request for qualifications for professional services to assist the Engineering Services Department with the development of an Engineering design manual for the planning and development of infrastructure. One hundred thirty-three (133) request for qualifications were issued. Three (3) firms submitted statements of qualifications. Staff recommends awarding a professional services agreement for the design and development of an Engineering Design manual to Kimley-Horn and Associates, Inc. Please see the attached memo from Matt Carr, City Engineer, for additional information.

Therefore, please consider a resolution awarding a professional services agreement for the design and development of an Engineering Design manual to Kimley-Horn and Associates, Inc. of Lubbock, Texas for a cost of $318,400.00 for the Engineering Services Department.

Morris Williams Jr.

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Regina Stephenson, General Services Director

FROM: Matt Carr, City Engineer

SUBJECT: Professional Services Agreement for Development of an Engineering /Development Manual

COUNCIL MEETING DATE: August 11, 2020

Please carry a council agenda item to gain approval for us to enter into Professional Service Agreement (PSA) with Kimley Horn and Associates, Inc. to perform work to assist the City's Engineering Services Department with project development activities for the planning and design of an Engineering Design Manual. The contract amount has been negotiated for $318,400.00.

As you are aware, a Request for Qualifications (RFQ) was advertised in December 2019. Three firms provided Statements of Qualifications (SOQ) and the SOQs were evaluated by a team of four staff members; two (2) from Engineering Services and two (2) from Development Services.

The length of the contract will be two (2) years. Please let me know if you have any questions.

cc: Jose Ortiz
Erika Munoz

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR PROFESSIONAL SERVICES TO ASSIST THE ENGINEERING SERVICES DEPARTMENT WITH THE DEVELOPMENT OF A MANUAL FOR THE PLANNING AND DEVELOPMENT OF INFRASTRUCTURE; TRANSFERRING FUNDS; AND AUTHORIZING PAYMENT IN AN AMOUNT NOT TO EXCEED $318,400.00

WHEREAS, the City of Midland previously advertised a Request for Qualifications for a firm to provide professional services to assist the Engineering Services Department with the development of a manual for the planning and development of infrastructure; and

WHEREAS, the Engineering Services Department has selected Kimley-Horn and Associates, Inc. to perform said professional services; and

WHEREAS, Kimley-Horn and Associates, Inc. has agreed to perform said professional services for an amount not to exceed $318,400.00; and

WHEREAS, the City Council finds that Kimley-Horn and Associates, Inc. is qualified to perform said professional services; and

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

WHEREAS, the City Council finds that Kimley-Horn and Associates, Inc. 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 Kimley-Horn and Associates, Inc. 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 Kimley-Horn and Associates, Inc. for said professional services, said professional services agreement to be in a form substantially similar to that attached hereto and incorporated herein for all legal purposes as Exhibit "A".

SECTION TWO. That the sum of $318,400.00 is hereby transferred from the General Fund Engineering Operating to a project in the Capital Projects Fund.

SECTION THREE. That the City Comptroller is hereby authorized and directed to make payment to Kimley-Horn and Associates, Inc. pursuant to the terms of said agreement in an amount not to exceed $318,400.00 from funds transferred in accordance with this resolution upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

PROFESSIONAL SERVICES AGREEMENT
20001555

THIS AGREEMENT is made and effective the 12th day of August 2020, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Kimley-Horn and Associates, Inc. hereinafter referred to as "COMPANY."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform work to assist with project development activities for the planning and design of an Engineering Design Manual for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. COMPANY shall provide those services described in Exhibit "A".

2. COMPANY shall perform the services described in Exhibit "A" (1) with the professional skill and care ordinarily provided by competent architects practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A".

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY in an amount not to exceed $ 318,400.00 for the professional services described in Exhibit "A." CITY agrees to pay COMPANY according to the schedule set forth in Exhibit "A", which is attached hereto and incorporated herein for all purposes, 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" incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 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 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

EXHIBIT "A"

ARTICLE IV. TERM

The term of this Agreement shall be from August 12, 2020 until August 11, 2022, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

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 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.

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

All reports, information and other data ("instruments of service"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all instruments of service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of CITY; that COMPANY shall have exclusive control of and the exclusive right to control the details

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

ARTICLE IX. INSURANCE

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

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 Agreement. 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 Agreement. The Workers' Compensation shall waive all rights of subrogation in favor of CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, 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 Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

The parties agree that, prior to the execution of the Agreement, 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 Agreement.

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.

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'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE 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'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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 BENEFICIARIES

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

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, COMPANY HEREBY RELEASES,

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

ARTICLE XIV. GENERAL PROVISIONS

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

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

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

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

If to COMPANY: Kimley-Horn and Associates, Inc.
4411 98th Street, Suite 300
Lubbock, TX 79424

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

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

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

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

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

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 his legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred fifty

(150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. CITY reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

J. **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.

K. 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.

L. To the extent that Tex. Gov't Code section 2270.002 applies to this Agreement, Company hereby verifies that Company does not boycott Israel and will not boycott Israel during the term of this Agreement. If Tex. Gov't Code section 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 Section 552.371 of the Texas Government Code, Company shall (1) preserve all contracting information related to the Agreement as provided by the records retention

requirements applicable to City for the duration of the contract, (2) promptly provide to City any contracting information related to the Agreement that is in the custody or possession of Company on request of City, and (3) on completion of the Agreement, either (i) provide at no cost to City all contracting information related to the Agreement that is in the custody or possession of Company or (ii) 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 Section 552.371 of the Texas Government Code, Company agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

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 Exhibit A, 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 Exhibit A.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Courtney B. Sharp, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: L. Nathan Ante

Title: Vice President

STATE OF Texas §
§
COUNTY OF Dallas §

BEFORE ME, the undersigned authority, on this 30th day of July, 2020 personally appeared, L. Nathan Ante, an officer of Kimley-Horn and Associates, Inc., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 30th day of July, 2020.

_____
Notary Public, State of Texas

EXHIBIT "A"
SCOPE OF SERVICES

Agreement between the City of Midland, Texas ("City")
and Kimley-Horn ("Consultant")
For the following project:

Development Design Manual

PROJECT DESCRIPTION

The Consultant will provide Professional Services to assist the City's Engineering Services Department with the development of a design manual for the planning and development of infrastructure within the City of Midland.

The Professional Services include engineering-related activities associated with the development of design requirements and may include activities such as: coordination with City staff and outside engineering firms/developers through email communications and public meetings and preparation of a draft and final Development Design Manual ("Manual") to be reviewed and approved by City staff and City Council prior to adoption. Construction-related requirements were previously developed by City staff and therefore not being developed under this Agreement.

The approach to developing the Manual includes the following major phases, and deliverables will be provided at every phase:

- **Data Collection/Evaluation**: Collect and evaluate existing relevant documentation such as codes, other manuals, policies, standards specifications and standard details used to develop/design public infrastructure, subdivisions, and commercial developments within the City.
- **Recommendation**: This phase will include planning sessions and stakeholder meetings to identify existing criteria to keep or revise, and to determine what new criteria will be developed. A task list will be developed and prioritized in conjunction with the City as part of this phase for concurrence, prior to developing the Manual, and be used for the basis of the Development phase.
- **Development**: This phase will focus on developing the criteria (and Manual) based on the outcome of the Recommendation phase. This phase will also include outreach to an Advisory Committee (to include City-selected representatives from the development, engineering, County, and construction community and City representatives) at key milestones to seek input and concurrence prior to finalizing the draft Manual for broader outreach efforts.
- **Concurrence**: The purpose of this phase will be to provide broader outreach to the development, engineering, and construction communities to introduce the new, draft Manual, requesting their review and comment. This phase will include addressing and incorporating comments received prior to adoption by City Council, and finalizing the Manual for adoption.
- **Implementation**: After the Manual has been evaluated and review comments addressed, the City may begin the Implementation phase which includes adoption and formal introduction of the new Manual.

The Data Collection/Evaluation phase will be a time intensive, short duration task at the beginning of the project where Consultant and City staff will evaluate existing relevant documentation. Consultant will then partner with City staff to compare evaluations and jointly develop a complete

list of recommendations for what new standards and criteria will be required. Consultant will break-up the list of recommendations by technical discipline and focus on completing the new, draft criteria in incremental steps (or sections), seeking input from the Advisory Committee along the way. Throughout each step of the Development phase, City staff will be reviewing and approving each section, considering input from the Advisory Committee. Once each section is approved, Consultant will begin the Concurrence phase of the project and the City will facilitate an "end-user" broader outreach program and solicit additional feedback on the complete Manual. The comments received will be reviewed and addressed to provide a user-friendly Manual that meet both the City's needs and the development, engineering, and construction communities' needs. Finally, Consultant will facilitate the adoption and implementation of the new Manual.

Consultant will perform the following Professional Services on a reimbursable basis as labor (hourly) and direct expenses are incurred. We will not proceed with performance of services beyond the hours budgeted, without authorization by the City.

TASK SUMMARY

1. Data Collection/Evaluation Phase – 2 months

The budgeted fee for this task is based upon approximately 80 hours of labor.

- 1.1 Project Management
  - 1.1.1 Project Communication
    - 1.1.1.1 Conduct up to two (2) meetings with City staff, starting with the project's kick-off meeting to gather City input and existing City mark-ups on the existing standards
    - 1.1.1.2 Conduct weekly project status calls
    - 1.1.1.3 Prepare and e-mail progress reports to the project team (City and Consultant)
    - 1.1.1.4 Prepare monthly progress reports to be provided with each invoice, including a breakdown of hours
    - 1.1.1.5 Project correspondence
    - 1.1.1.6 Preparation of meeting notes after each meeting
  - 1.1.2 Develop project workplan; this includes the project schedule and interim milestones
  - 1.1.3 Identify stakeholders, including establishing Advisory Committee
  - 1.1.4 Administration (accounting, correspondence, filing)
- 1.2 Data Collection (to be provided by the City)
  - 1.2.1 Catalogue all data and provide to City for review and comment
    - 1.2.1.1 Policy Statement – City Standards & Development Requirements
    - 1.2.1.2 Ordinances addressing engineering-related criteria
    - 1.2.1.3 Storm Drainage Design Manual
    - 1.2.1.4 Comprehensive Plan
    - 1.2.1.5 Zoning Ordinance
    - 1.2.1.6 Standard Details
    - 1.2.1.7 Standard Specifications
    - 1.2.1.8 General Construction Notes
    - 1.2.1.9 Construction Contract Documents
    - 1.2.1.10 Geotechnical Information
    - 1.2.1.11 Traffic Mitigation Requirements
    - 1.2.1.12 Other engineering-related design standards being developed by City staff

1.3 Evaluate Data Collection items in preparation for the Recommendation phase. Tasks include:
- 1.3.1 Compare existing criteria to industry/local standards and practices
- 1.3.2 Identify discrepancies, ambiguities, and missing or unclear criteria
- 1.3.3 Identify any missing engineering-related criteria that may be required by City Charter, ordinances, state, and/or federal law
- 1.3.4 Identify any existing engineering-related criteria that may exist in existing ordinances
- 1.3.5 Identify rules/guidelines/criteria to be applied in the City's ETJ and County.

2. Recommendation Phase – 3 months

The budgeted fee for this task is based upon approximately 205 hours of labor.

2.1 Project Management
- 2.1.1 Project Communication
  - 2.1.1.1 Conduct up to four (4) meetings with City staff, two (2) by conference call
  - 2.1.1.2 Conduct weekly project status calls
  - 2.1.1.3 Prepare and e-mail progress reports to the project team (City and Consultant)
  - 2.1.1.4 Assist the City with Advisory Committee coordination efforts, including up to one (1) meeting with the Advisory Committee prior to the Development phase
  - 2.1.1.5 Prepare monthly progress reports to be provided with each invoice, including a breakdown of hours
  - 2.1.1.6 Project correspondence
  - 2.1.1.7 Preparation of meeting notes after each meeting
- 2.1.2 Update project workplan; this includes the project schedule and interim milestones
- 2.1.3 Administration (accounting, correspondence, filing)

2.2 Compile City comments/mark-ups on Data Collection items.

2.3 Provide recommendations for City staff consideration for each of the following:
- 2.3.1 Policy Statement – City Standards & Development Requirements
- 2.3.2 Ordinances addressing engineering-related criteria
- 2.3.3 Storm Drainage Design Manual (cursory review only)
- 2.3.4 Comprehensive Plan (cursory review only)
- 2.3.5 Zoning Ordinance (cursory review only)
- 2.3.6 Standard Details (cursory review only)
- 2.3.7 Standard Specifications (cursory review only)
- 2.3.8 General Construction Notes (cursory review only)
- 2.3.9 Construction Contract Documents (cursory review only)
- 2.3.10 Geotechnical Information
- 2.3.11 Traffic Mitigation Requirements
- 2.3.12 Other engineering-related design standards being developed by City staff
- 2.3.13 City Code, or other manuals, that may require modification

2.4 Develop outline/table of contents for Manual. Anticipated sections include:
- 2.4.1 General Design Requirements
- 2.4.2 Roadway Design Requirements (including pavement design)
- 2.4.3 Traffic Design Requirements
- 2.4.4 Drainage Design Requirements
- 2.4.5 Utility Design Requirements (Water and Wastewater)
- 2.4.6 Miscellaneous Design Requirements (i.e. Erosion Control)

2.4.7 Other engineering-related design standards being developed by City Staff

2.5 Provide markups of Data Collection items for City staff consideration and consensus

2.6 A task list will be developed and prioritized in conjunction with the City staff as part of this phase for concurrence, prior to the Development phase

3. Development Phase – 8 months

The budgeted fee for this task is based upon approximately 910 hours of labor.

3.1 Project Management

3.1.1 Project Communication

3.1.1.1 Conduct up to five (5) meetings with City staff

3.1.1.2 Conduct weekly project status calls

3.1.1.3 Prepare and e-mail progress reports to the project team (City and Consultant)

3.1.1.4 Assist the City with Advisory Committee coordination efforts, including up six (6) meetings with the Advisory Committee

3.1.1.5 Prepare monthly progress reports to be provided with each invoice, including a breakdown of hours

3.1.1.6 Project correspondence

3.1.1.7 Preparation of meeting notes after each meeting

3.1.2 Update project workplan; this includes the project schedule and interim milestones

3.1.3 Administration (accounting, correspondence, filing)

3.2 Develop Manual using outline and recommendations developed in the previous phases. Each section will identify special cases and exceptions (i.e. projects in ETJ). Anticipated sections include:

3.2.1 General Design Requirements

3.2.2 Roadway Design Requirements (including pavement design)

3.2.3 Traffic Design Requirements

3.2.4 Utility Design Requirements (Water and Wastewater)

3.2.5 Miscellaneous Design Requirements (i.e. Erosion Control)

3.2.6 Incorporate Other Design Requirements being developed by City Staff

3.2.7 Annotated City Code showing sections/paragraphs/sentences/tables to be removed and references to new Manual added

3.3 Submittal (all electronic) - Sections

3.3.1 Submit DRAFT sections to City for review and approval

3.3.2 Address City review comments

3.3.3 Resubmit DRAFT sections to City for Advisory Committee meetings

3.3.4 Address Advisory Committee comments

3.3.5 Annotated City Code

3.4 Submittal (all electronic) - Manual

3.4.1 Submit DRAFT Manual to City for review and approval

3.4.2 Address City review comments

3.4.3 Submit REVISED DRAFT Manual City

3.4.4 Annotated City Code

3.5 REVISED DRAFT Manual will be used for broader outreach efforts during the Concurrence phase

3.6 Consultant will perform an internal review prior to submittal in accordance with quality assurance standards established for this project. QA/QC comments will be collected from the reviewer(s), documented, and comments addressed prior to each plan submittal to the City.

4. Concurrence Phase – TBD

The budgeted fee for this task is based upon approximately 145 hours of labor.

4.1 Project Management
- 4.1.1 Project Communication
  - 4.1.1.1 Conduct up to two (2) meetings with City staff
  - 4.1.1.2 Conduct weekly project status calls
  - 4.1.1.3 Prepare and e-mail progress reports to the project team (City and Consultant)
  - 4.1.1.4 Attend up to two (2) City Council Briefing and Meeting
  - 4.1.1.5 Prepare monthly progress reports to be provided with each invoice, including a breakdown of hours
  - 4.1.1.6 Project correspondence
  - 4.1.1.7 Preparation of meeting notes after each meeting
- 4.1.2 Update project workplan; this includes the project schedule and interim milestones
- 4.1.3 Administration (accounting, correspondence, filing)

4.2 Hold planning session with City staff to establish broader consensus building program
- 4.2.1 City to provide Consultant input gathered during Concurrence phase
- 4.2.2 Consultant to assist City staff in responding input gathered during Concurrence phase
- 4.2.3 Incorporating stakeholder input, update REVISED DRAFT Manual to develop a FINAL DRAFT Manual.

4.3 Submittal (all electronic)
- 4.3.1 Submit FINAL DRAFT Manual to City for review and approval
- 4.3.2 Address City review comments
- 4.3.3 Submit FINAL Manual to CITY (.pdf and .doc format)

4.4 Consultant will perform an internal review prior to submittal in accordance with quality assurance standards established for this project. QA/QC comments will be collected from the reviewer(s), documented, and comments addressed prior to each plan submittal to the City.

5. Implementation Phase – TBD

The budgeted fee for this task is based upon approximately 30 hours of labor.

5.1 Attend up to one (1) meeting with City staff
5.2 Assist the City in adopting the FINAL Manual
5.3 Assist the City in publishing the FINAL Manual

6. Additional Services - TBD

The budgeted fee for this task is based upon approximately 25 hours of labor.

City and Consultant agree that the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant because of any material change to the Scope of Services shall be agreed upon in writing by both parties before the services are performed. These Additional Services include, but are not limited to, the following:

- Development of Access Management, Traffic Calming, Drainage, Survey, Landscape, and Irrigation Design Requirements

- Development of any Construction-related standards, including Standard Details and Special Specifications (previously developed by City staff)
- Geotechnical Investigations, including soils and/or materials testing
- Preparation for and attendance at meetings beyond meetings identified above
- Rework to reflect project scope changes required to address changed conditions or mandated by changing governmental laws
- Any services not listed in the Scope of Services

SCHEDULE

Upon receipt of the Notice to Proceed (NTP), Consultant will prepare a project schedule with specific delivery dates. Evaluation, Recommendation, and Development are anticipated to be complete within twelve (12) months of NTP. Concurrence and Implementation timelines are dependent on City Council adoption of the manual and implementation desires of the City.

- End of Scope of Services –

EXHIBIT "A"
FEE BREAKDOWN

The Consultant will perform the services in Tasks 1 – 6 on a labor fee plus expense (reimbursable) basis with the maximum fees shown below. The fees listed below include expense costs.

OVERALL FEE BY TASK

Task	Task Name	Fee Budget
1	Data Collection/Evaluation Phase	$19,700
2	Recommendation Phase	$49,100
3	Development Phase	$203,000
4	Concurrence Phase	$34,100
5	Implementation Phase	$7,500
6	Additional Services	$5,000
Total Fee		**$318,400**

The Consultant will not exceed the total maximum fee shown without authorization from the City. Individual task amounts are provided for budgeting purposes only.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, rental cars, and other direct expenses will be billed at cost. A percentage of labor fee (4.6%) will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, and project related computer time. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the City.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number, Consultant project number, and City project/account number.

Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rate)

Clerical/Administrative Support	$80 - $120
Technical Support	$90 - $105
Senior Technical Support	$120 - $195
Analyst	$110 - $180
Professional	$165 - $215
Senior Professional I	$185 - $255
Senior Professional II	$245 - $270

Effective July 1, 2020

Subject to annual adjustment thereafter

PROFESSIONAL SERVICES AGREEMENT
20001555

THIS AGREEMENT is made and effective the 12th day of August 2020, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Kimley-Horn and Associates, Inc. hereinafter referred to as "COMPANY."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform work to assist with project development activities for the planning and design of an Engineering Design Manual for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. COMPANY shall provide those services described in Exhibit "A".

2. COMPANY shall perform the services described in Exhibit "A" (1) with the professional skill and care ordinarily provided by competent architects practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A".

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY in an amount not to exceed $ 318,400.00 for the professional services described in Exhibit "A." CITY agrees to pay COMPANY according to the schedule set forth in Exhibit "A", which is attached hereto and incorporated herein for all purposes, 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" incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 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 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY in any event 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 August 12, 2020 until August 11, 2022, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

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 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.

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

All reports, information and other data ("instruments of service"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all instruments of service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of CITY; that COMPANY shall have exclusive control of and the exclusive right to control the details

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

ARTICLE IX. INSURANCE

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

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 Agreement. 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 Agreement. The Workers' Compensation shall waive all rights of subrogation in favor of CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, 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 Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

The parties agree that, prior to the execution of the Agreement, 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 Agreement.

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.

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'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE 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'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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 BENEFICIARIES

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

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, COMPANY HEREBY RELEASES,

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

ARTICLE XIV. GENERAL PROVISIONS

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

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

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

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

If to COMPANY: Kimley-Horn and Associates, Inc.
4411 98th Street, Suite 300
Lubbock, TX 79424

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

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

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

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

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

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 his legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred fifty

(150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. CITY reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

J. **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.

K. 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.

L. To the extent that Tex. Gov't Code section 2270.002 applies to this Agreement, Company hereby verifies that Company does not boycott Israel and will not boycott Israel during the term of this Agreement. If Tex. Gov't Code section 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 Section 552.371 of the Texas Government Code, Company shall (1) preserve all contracting information related to the Agreement as provided by the records retention

requirements applicable to City for the duration of the contract, (2) promptly provide to City any contracting information related to the Agreement that is in the custody or possession of Company on request of City, and (3) on completion of the Agreement, either (i) provide at no cost to City all contracting information related to the Agreement that is in the custody or possession of Company or (ii) 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 Section 552.371 of the Texas Government Code, Company agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

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 Exhibit A, 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 Exhibit A.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Courtney B. Sharp, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: L. Nathan Ante

Name: L. Nathan Ante

Title: Vice President

STATE OF Texas §
§
COUNTY OF Dallas §

BEFORE ME, the undersigned authority, on this 30th day of July, 2020 personally appeared, L. Nathan Ante, an officer of Kimley-Horn and Associates, Inc., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 30th day of July, 2020.

MIRIAM CASTILLEJA
Notary Public, State of Texas
Comm. Expires 03-13-2021
Notary ID 131041344

_____
Notary Public, State of Texas

EXHIBIT "A"
SCOPE OF SERVICES

Agreement between the City of Midland, Texas ("City")
and Kimley-Horn ("Consultant")
For the following project:

Development Design Manual

PROJECT DESCRIPTION

The Consultant will provide Professional Services to assist the City's Engineering Services Department with the development of a design manual for the planning and development of infrastructure within the City of Midland.

The Professional Services include engineering-related activities associated with the development of design requirements and may include activities such as: coordination with City staff and outside engineering firms/developers through email communications and public meetings and preparation of a draft and final Development Design Manual ("Manual") to be reviewed and approved by City staff and City Council prior to adoption. Construction-related requirements were previously developed by City staff and therefore not being developed under this Agreement.

The approach to developing the Manual includes the following major phases, and deliverables will be provided at every phase:

- **Data Collection/Evaluation**: Collect and evaluate existing relevant documentation such as codes, other manuals, policies, standards specifications and standard details used to develop/design public infrastructure, subdivisions, and commercial developments within the City.
- **Recommendation**: This phase will include planning sessions and stakeholder meetings to identify existing criteria to keep or revise, and to determine what new criteria will be developed. A task list will be developed and prioritized in conjunction with the City as part of this phase for concurrence, prior to developing the Manual, and be used for the basis of the Development phase.
- **Development**: This phase will focus on developing the criteria (and Manual) based on the outcome of the Recommendation phase. This phase will also include outreach to an Advisory Committee (to include City-selected representatives from the development, engineering, County, and construction community and City representatives) at key milestones to seek input and concurrence prior to finalizing the draft Manual for broader outreach efforts.
- **Concurrence**: The purpose of this phase will be to provide broader outreach to the development, engineering, and construction communities to introduce the new, draft Manual, requesting their review and comment. This phase will include addressing and incorporating comments received prior to adoption by City Council, and finalizing the Manual for adoption.
- **Implementation**: After the Manual has been evaluated and review comments addressed, the City may begin the Implementation phase which includes adoption and formal introduction of the new Manual.

The Data Collection/Evaluation phase will be a time intensive, short duration task at the beginning of the project where Consultant and City staff will evaluate existing relevant documentation. Consultant will then partner with City staff to compare evaluations and jointly develop a complete

list of recommendations for what new standards and criteria will be required. Consultant will break-up the list of recommendations by technical discipline and focus on completing the new, draft criteria in incremental steps (or sections), seeking input from the Advisory Committee along the way. Throughout each step of the Development phase, City staff will be reviewing and approving each section, considering input from the Advisory Committee. Once each section is approved, Consultant will begin the Concurrence phase of the project and the City will facilitate an "end-user" broader outreach program and solicit additional feedback on the complete Manual. The comments received will be reviewed and addressed to provide a user-friendly Manual that meet both the City's needs and the development, engineering, and construction communities' needs. Finally, Consultant will facilitate the adoption and implementation of the new Manual.

Consultant will perform the following Professional Services on a reimbursable basis as labor (hourly) and direct expenses are incurred. We will not proceed with performance of services beyond the hours budgeted, without authorization by the City.

TASK SUMMARY

1. Data Collection/Evaluation Phase – 2 months

The budgeted fee for this task is based upon approximately 80 hours of labor.

- 1.1 Project Management
  - 1.1.1 Project Communication
    - 1.1.1.1 Conduct up to two (2) meetings with City staff, starting with the project's kick-off meeting to gather City input and existing City mark-ups on the existing standards
    - 1.1.1.2 Conduct weekly project status calls
    - 1.1.1.3 Prepare and e-mail progress reports to the project team (City and Consultant)
    - 1.1.1.4 Prepare monthly progress reports to be provided with each invoice, including a breakdown of hours
    - 1.1.1.5 Project correspondence
    - 1.1.1.6 Preparation of meeting notes after each meeting
  - 1.1.2 Develop project workplan; this includes the project schedule and interim milestones
  - 1.1.3 Identify stakeholders, including establishing Advisory Committee
  - 1.1.4 Administration (accounting, correspondence, filing)
- 1.2 Data Collection (to be provided by the City)
  - 1.2.1 Catalogue all data and provide to City for review and comment
    - 1.2.1.1 Policy Statement – City Standards & Development Requirements
    - 1.2.1.2 Ordinances addressing engineering-related criteria
    - 1.2.1.3 Storm Drainage Design Manual
    - 1.2.1.4 Comprehensive Plan
    - 1.2.1.5 Zoning Ordinance
    - 1.2.1.6 Standard Details
    - 1.2.1.7 Standard Specifications
    - 1.2.1.8 General Construction Notes
    - 1.2.1.9 Construction Contract Documents
    - 1.2.1.10 Geotechnical Information
    - 1.2.1.11 Traffic Mitigation Requirements
    - 1.2.1.12 Other engineering-related design standards being developed by City staff

1.3 Evaluate Data Collection items in preparation for the Recommendation phase. Tasks include:
- 1.3.1 Compare existing criteria to industry/local standards and practices
- 1.3.2 Identify discrepancies, ambiguities, and missing or unclear criteria
- 1.3.3 Identify any missing engineering-related criteria that may be required by City Charter, ordinances, state, and/or federal law
- 1.3.4 Identify any existing engineering-related criteria that may exist in existing ordinances
- 1.3.5 Identify rules/guidelines/criteria to be applied in the City's ETJ and County.

2. Recommendation Phase – 3 months

The budgeted fee for this task is based upon approximately 205 hours of labor.

2.1 Project Management
- 2.1.1 Project Communication
  - 2.1.1.1 Conduct up to four (4) meetings with City staff, two (2) by conference call
  - 2.1.1.2 Conduct weekly project status calls
  - 2.1.1.3 Prepare and e-mail progress reports to the project team (City and Consultant)
  - 2.1.1.4 Assist the City with Advisory Committee coordination efforts, including up to one (1) meeting with the Advisory Committee prior to the Development phase
  - 2.1.1.5 Prepare monthly progress reports to be provided with each invoice, including a breakdown of hours
  - 2.1.1.6 Project correspondence
  - 2.1.1.7 Preparation of meeting notes after each meeting
- 2.1.2 Update project workplan; this includes the project schedule and interim milestones
- 2.1.3 Administration (accounting, correspondence, filing)

2.2 Compile City comments/mark-ups on Data Collection items.

2.3 Provide recommendations for City staff consideration for each of the following:
- 2.3.1 Policy Statement – City Standards & Development Requirements
- 2.3.2 Ordinances addressing engineering-related criteria
- 2.3.3 Storm Drainage Design Manual (cursory review only)
- 2.3.4 Comprehensive Plan (cursory review only)
- 2.3.5 Zoning Ordinance (cursory review only)
- 2.3.6 Standard Details (cursory review only)
- 2.3.7 Standard Specifications (cursory review only)
- 2.3.8 General Construction Notes (cursory review only)
- 2.3.9 Construction Contract Documents (cursory review only)
- 2.3.10 Geotechnical Information
- 2.3.11 Traffic Mitigation Requirements
- 2.3.12 Other engineering-related design standards being developed by City staff
- 2.3.13 City Code, or other manuals, that may require modification

2.4 Develop outline/table of contents for Manual. Anticipated sections include:
- 2.4.1 General Design Requirements
- 2.4.2 Roadway Design Requirements (including pavement design)
- 2.4.3 Traffic Design Requirements
- 2.4.4 Drainage Design Requirements
- 2.4.5 Utility Design Requirements (Water and Wastewater)
- 2.4.6 Miscellaneous Design Requirements (i.e. Erosion Control)

2.4.7 Other engineering-related design standards being developed by City Staff

2.5 Provide markups of Data Collection items for City staff consideration and consensus

2.6 A task list will be developed and prioritized in conjunction with the City staff as part of this phase for concurrence, prior to the Development phase

3. Development Phase – 8 months

The budgeted fee for this task is based upon approximately 910 hours of labor.

3.1 Project Management

3.1.1 Project Communication

3.1.1.1 Conduct up to five (5) meetings with City staff

3.1.1.2 Conduct weekly project status calls

3.1.1.3 Prepare and e-mail progress reports to the project team (City and Consultant)

3.1.1.4 Assist the City with Advisory Committee coordination efforts, including up six (6) meetings with the Advisory Committee

3.1.1.5 Prepare monthly progress reports to be provided with each invoice, including a breakdown of hours

3.1.1.6 Project correspondence

3.1.1.7 Preparation of meeting notes after each meeting

3.1.2 Update project workplan; this includes the project schedule and interim milestones

3.1.3 Administration (accounting, correspondence, filing)

3.2 Develop Manual using outline and recommendations developed in the previous phases. Each section will identify special cases and exceptions (i.e. projects in ETJ). Anticipated sections include:

3.2.1 General Design Requirements

3.2.2 Roadway Design Requirements (including pavement design)

3.2.3 Traffic Design Requirements

3.2.4 Utility Design Requirements (Water and Wastewater)

3.2.5 Miscellaneous Design Requirements (i.e. Erosion Control)

3.2.6 Incorporate Other Design Requirements being developed by City Staff

3.2.7 Annotated City Code showing sections/paragraphs/sentences/tables to be removed and references to new Manual added

3.3 Submittal (all electronic) - Sections

3.3.1 Submit DRAFT sections to City for review and approval

3.3.2 Address City review comments

3.3.3 Resubmit DRAFT sections to City for Advisory Committee meetings

3.3.4 Address Advisory Committee comments

3.3.5 Annotated City Code

3.4 Submittal (all electronic) - Manual

3.4.1 Submit DRAFT Manual to City for review and approval

3.4.2 Address City review comments

3.4.3 Submit REVISED DRAFT Manual City

3.4.4 Annotated City Code

3.5 REVISED DRAFT Manual will be used for broader outreach efforts during the Concurrence phase

3.6 Consultant will perform an internal review prior to submittal in accordance with quality assurance standards established for this project. QA/QC comments will be collected from the reviewer(s), documented, and comments addressed prior to each plan submittal to the City.

4. Concurrence Phase – TBD

The budgeted fee for this task is based upon approximately 145 hours of labor.

4.1 Project Management
- 4.1.1 Project Communication
  - 4.1.1.1 Conduct up to two (2) meetings with City staff
  - 4.1.1.2 Conduct weekly project status calls
  - 4.1.1.3 Prepare and e-mail progress reports to the project team (City and Consultant)
  - 4.1.1.4 Attend up to two (2) City Council Briefing and Meeting
  - 4.1.1.5 Prepare monthly progress reports to be provided with each invoice, including a breakdown of hours
  - 4.1.1.6 Project correspondence
  - 4.1.1.7 Preparation of meeting notes after each meeting
- 4.1.2 Update project workplan; this includes the project schedule and interim milestones
- 4.1.3 Administration (accounting, correspondence, filing)

4.2 Hold planning session with City staff to establish broader consensus building program
- 4.2.1 City to provide Consultant input gathered during Concurrence phase
- 4.2.2 Consultant to assist City staff in responding input gathered during Concurrence phase
- 4.2.3 Incorporating stakeholder input, update REVISED DRAFT Manual to develop a FINAL DRAFT Manual.

4.3 Submittal (all electronic)
- 4.3.1 Submit FINAL DRAFT Manual to City for review and approval
- 4.3.2 Address City review comments
- 4.3.3 Submit FINAL Manual to CITY (.pdf and .doc format)

4.4 Consultant will perform an internal review prior to submittal in accordance with quality assurance standards established for this project. QA/QC comments will be collected from the reviewer(s), documented, and comments addressed prior to each plan submittal to the City.

5. Implementation Phase – TBD

The budgeted fee for this task is based upon approximately 30 hours of labor.

5.1 Attend up to one (1) meeting with City staff
5.2 Assist the City in adopting the FINAL Manual
5.3 Assist the City in publishing the FINAL Manual

6. Additional Services - TBD

The budgeted fee for this task is based upon approximately 25 hours of labor.

City and Consultant agree that the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant because of any material change to the Scope of Services shall be agreed upon in writing by both parties before the services are performed. These Additional Services include, but are not limited to, the following:

- Development of Access Management, Traffic Calming, Drainage, Survey, Landscape, and Irrigation Design Requirements

- Development of any Construction-related standards, including Standard Details and Special Specifications (previously developed by City staff)
- Geotechnical Investigations, including soils and/or materials testing
- Preparation for and attendance at meetings beyond meetings identified above
- Rework to reflect project scope changes required to address changed conditions or mandated by changing governmental laws
- Any services not listed in the Scope of Services

SCHEDULE

Upon receipt of the Notice to Proceed (NTP), Consultant will prepare a project schedule with specific delivery dates. Evaluation, Recommendation, and Development are anticipated to be complete within twelve (12) months of NTP. Concurrence and Implementation timelines are dependent on City Council adoption of the manual and implementation desires of the City.

- End of Scope of Services –

EXHIBIT "A"
FEE BREAKDOWN

The Consultant will perform the services in Tasks 1 – 6 on a labor fee plus expense (reimbursable) basis with the maximum fees shown below. The fees listed below include expense costs.

OVERALL FEE BY TASK

Task	Task Name	Fee Budget
1	Data Collection/Evaluation Phase	$19,700
2	Recommendation Phase	$49,100
3	Development Phase	$203,000
4	Concurrence Phase	$34,100
5	Implementation Phase	$7,500
6	Additional Services	$5,000
Total Fee		**$318,400**

The Consultant will not exceed the total maximum fee shown without authorization from the City. Individual task amounts are provided for budgeting purposes only.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, rental cars, and other direct expenses will be billed at cost. A percentage of labor fee (4.6%) will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, and project related computer time. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the City.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number, Consultant project number, and City project/account number.

Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rate)

Clerical/Administrative Support	$80 - $120
Technical Support	$90 - $105
Senior Technical Support	$120 - $195
Analyst	$110 - $180
Professional	$165 - $215
Senior Professional I	$185 - $255
Senior Professional II	$245 - $270

Effective July 1, 2020

Subject to annual adjustment thereafter

City Council Meeting

Item Number: 7

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Regina Stephenson, Director

Subject: RESOLUTION AWARDING A FIVE YEAR CONTRACT FOR THE INSTALLATION AND MAINTENANCE OF A CITY OWNED FIBER OPTIC NETWORK TO HOHENBERGER, INC., DBA CSI: LUBBOCK, FOR A TOTAL COST NOT TO EXCEED $267,456.00; AND APPROVING $44,877.00 IN CONTINGENCIES (GENERAL SERVICES)

Purpose:

Approval of a resolution awarding a contract for City-owned Fiber Optic Network installation from the City of Midland Data Center to the new Midland Animal Services building.

Recommended City Council Action:

Approve

Fiscal Impact:

$224,385 from Project 900245-777, $44,877.00 in contingencies from Project 900208-777 and $43,071.00 for the annual maintenance cost from the General Fund Account 001032 for a total project cost of $312,333.00.

Discussion:

The City Manager approved the issuance of a request for proposals for City owned fiber optic network installation from the City of Midland Data Center to the new Midland Animal Services building. Forty-two (42) request for proposals were issued and we received two (2) proposals. Staff recommends awarding the contract to Hohenberger, Inc. dba CSI: Lubbock for option one (1). Please see the attached memo from Jennifer Frescaz, Chief Information Officer, for additional information.

Therefore, please consider a resolution awarding a contract for City-owned Fiber Optic Network

installation from the City of Midland Data Center to the new Midland Animal Services building to Hohenberger, Inc. dba CSI: Lubbock of Lubbock, Texas for a cost of $224,385.00 for option one (1) plus $44,877.00 in contingencies and $43,071.00 for maintenance services for sixty (60) months for a total project cost of $312,333.00.

Morris Williams Jr.

City Manager's Office

DATE: July 28, 2020

TO: Regina Stephenson, General Services Director

FROM: Jennifer Frescaz, Chief Information Officer

SUBJECT: Request to enter into an agreement with Hohenberger, Inc. dba CSI: Lubbock for a fiber optics installation

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We request to enter into an agreement with a qualified Individual, Firm or Corporation, to provide installation and maintenance services for a City-owned fiber optic cabling to the new Animal Services Center. City staff proposes awarding bid 20003614 to Hohenberger, Inc. dba CSI: Lubbock from Lubbock, TX.

Two proposals were received, Hohenberger, Inc. dba CSI: Lubbock and TDC2, LLC from Wylie, TX. Both proposals include a one-time project cost as well as a monthly maintenance cost over five years in the event of a fiber cut. Staff recommends the five-year maintenance term over a longer period because at the end of the term we would like the option to re-bid the maintenance.

Hohenberger, Inc./CSI provided the best pricing, quality references and has experience installing fiber in Midland.

The total proposal from TDC2, LLC is $690,437.18 with an up-front cost of $426,437.18, and a maintenance cost of $264,000 over five years. The proposal from Hohenberger, Inc. dba CSI: Lubbock was $267,456 with an up-front cost of $224,385. The maintenance cost is $43,071 over five years.

The proposed funding is as follows:
The installation of $224,385 will be funded from the Network Infrastructure Project (900245-777). A contingency of $44,877 will be funded from the Fiber Optics Project (900208-777). The annual maintenance cost of $43,071 is budgeted in the general fund (001032).

RESOLUTION NO. _____

RESOLUTION AWARDING A FIVE YEAR CONTRACT FOR THE INSTALLATION AND MAINTENANCE OF A CITY OWNED FIBER OPTIC NETWORK TO HOHENBERGER, INC., DBA CSI: LUBBOCK, FOR A TOTAL COST NOT TO EXCEED $267,456.00; AND APPROVING $44,877.00 IN CONTINGENCIES

WHEREAS, the City Manager approved the issuance of a request for proposals for he installation and maintenance of a city owned fiber optic network from the City of Midland Data Center to the City of Midland Animal Shelter; and

WHEREAS, Bid No. 20003614 was opened on July 9, 2020, with the most advantageous bid being submitted by Hohenberger, Inc., dba CSI: Lubbock, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the City Council finds the $224,385.00 for installation and $43,071.00 for five years of maintenance of said fiber optic network proposed by Hohenberger, Inc., dba CSI: Lubbock to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a five year contract to Hohenberger, Inc., dba CSI: Lubbock, for said data network installation and maintenance; and

WHEREAS, the City Council finds it to be in the public interest to approve $44,877.00 for contingencies;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Hohenberger, Inc., dba CSI: Lubbock for said installation and maintenance of a fiber optic network for a total cost not exceed $267,456.00. Said contract to be kept on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the sum of $44,877.00 for contingencies is hereby approved for said contract.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Hohenberger, Inc., dba CSI: Lubbock, pursuant to the terms of said contract from $44,877.00 available in the Fiber Connectivity Project pursuant to Resolution 2019-127, $224,385.00 available in the Fiber Optics Project pursuant to resolution 2017-216 and $43,071.00 available in the 2020 General Fund operating budget upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

City of Midland - Bid Tabulation

BID # 20003614 City-Owned Fiber Optic Network Installation OPENED July 9, 2020			Hohenberger, Inc. dba CSI: Lubbock 2317 114th St Lubbock, TX 79423 Joel Hohenberger 806-794-6304		TDC2, LLC 634 N Ballard Ave Wylie, TX 75098 Scott Mackinaw 972-423-9080	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
		OPTION 1				
1	1	Turnkey Project Cost (Labor, Materials, Equipment, Supervision & Installation)		$224,385.00		$426,437.18
2	60	Maintenance/Service Cost per month for 60 months	$717.85	$43,071.00	$4,400.00	$264,000.00
		Delivery:	60 calendar days		60 calendar days	
		TOTAL:		$267,456.00		
		OPTION 2				
1	1	Turnkey Project Cost (Labor, Materials, Equipment, Supervision & Installation)		$349,303.00		
2	60	Maintenance/Service Cost per month for 60 months	$1,169.00	$70,140.00		
		Delivery:	90 calendar days			
		TOTALS:		$419,443.00		$690,437.18

Bidding Summary:

42 **Bid requests were issued.**

2 **Bids listed above**

4 **NO BIDS were received.**

36 **Bidders did not respond.**

City of Midland - Bid Tabulation

BID # 20003614 City-Owned Fiber Optic Network Installation OPENED July 9, 2020			Hohenberger, Inc. dba CSI: Lubbock 2317 114th St Lubbock, TX 79423 Joel Hohenberger 806-794-6304		TDC2, LLC 634 N Ballard Ave Wylie, TX 75098 Scott Mackinaw 972-423-9080	
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2 **Bids listed above**

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THE CITY OF MIDLAND

CONTRACT

20003614

THIS CONTRACT, effective the 12th day of August, 2020, by and between the City of Midland, hereinafter referred to as "City", and Hohenberger, Inc. dba CSI: Lubbock, hereinafter referred to as "Company", is made for the following considerations:

1. **Cost:** Total Proposal: $ 267, 456.00 DOLLARS

2. **Scope of Work:** Company shall perform all work described for City-Owned Fiber Optic Network Installation for Animal Shelter, attached hereto and incorporated herein by reference for all legal purposes.

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

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

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

5. **Company:** Unless otherwise stipulated, Company shall provide and pay for all materials,

supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. Company shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

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

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

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

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

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

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

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

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

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

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

9. **Start of Work:** Company shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 60 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

13. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are

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

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

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

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

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

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

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

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

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

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

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

20. **Insurance:**

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

Commercial General Liability (including Contractual liability):

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

$1,000,000.00 per occurrence

-Property Damage:	$500,000.00 per occurrence
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 PROVISIONS, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE**.

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

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

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

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

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

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

27. **Termination At Will:** City may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to Company. The parties to this Contract understand and agree that it is in City's sole discretion to cancel the Contract during the term of the Contract without

penalty to City. Company has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

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

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

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

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

32. **Conflict of Terms.** If a conflict of terms or language exists between (i) any of the provisions of this Contract and (ii) any of the provisions contained in Exhibit A, precedence shall be given to the provisions of this Contract. For the avoidance of any doubt, the provisions contained in this Contract shall supersede any and all conflicting provisions contained in Exhibit A.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Courtney B. Sharp, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §
§
COUNTY OF_____ §

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

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

_____
Notary Public, State of Texas

EXHIBIT A

CSI: Lubbock

Communication Services & Installation

2317 114th ST. Lubbock, TX 79423

Joel Hohenberger

joel@csi-lubbock.com

(806) 794-6304

City-Owned Fiber Optic Network Installation

RFP Number: 20003614

Due: July 9th, 2020 at 2:00 p.m.

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Request for Proposals

RFP 20003614

For

City-Owned Fiber Optic Network Installation

Proposals for this requirement will be accepted until 2:00 P.M. on July 17, 2020

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

See Section 1.9 for Pre-proposal Meeting Information

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SCHEDULE OF EVENTS

RFP 20003614

For

Fiber Optic Network

Event	Date*
RFP Released	June 15, 2020
Pre-proposal Conference	June 29, 2020
Cutoff Date for inquiries and clarification	July 10, 2020
Proposal Due Date	July 17, 2020
Notification of Vendor Interviews / Product Demonstrations	NONE
Present Recommendation to Council for Consideration (if BFO is NOT required)	August 11, 2020
Call for Best and Final Offers (if required)	July 27, 2020
Final Offer Due Date (if required)	July 31, 2020
Present Recommendation to Council for Consideration (if BFO is required)	August 25, 2020
Intended Date for Contract Award	August 11, 2020

*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 and the selection is announced, offerors should not communicate with any City staff or officials regarding this procurement, other than during interviews and demonstrations, and site visits, except at the direction of Regina Stephenson, the designated representative of the City 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 (COMMUNICATIONS AND INFORMATION SYSTEMS, CISD) (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for a **City-Owned Fiber Optic Network** 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. The City may award a contract or purchase order to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the City.

1.5.2. The City will be solely responsible for the determination of what constitutes best value in accordance with the applicable Section 252.043 of the 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. 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 at **601 N. Loraine_RM 101, Midland, TX 79701, or via phone by calling 866-528-2256 (passcode 4450719) on June 29, 2020 at 10am CST.** 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		FAX: (432) 685-0523
Office of the Purchasing Agent	OR	
P.O. Box 115		e-mail: purchasing@midlandtexas.gov
Midland, TX 79702		

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.

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. A mailing label is included in the RFP. Please be sure to use it on the outermost package of the RFP whether it is an envelope, box or overnight package, 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

See Exhibit C

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 Exhibit B

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

1.24.2.1. Contract Type

The resulting contract from this procurement shall be a not-to-exceed based contract. The initial contract price will be based upon prices submitted by the selected vendor, subject to contract negotiations with the City, and shall be firm for the total number of years of the contract.

1.24.2.2. Contract Term

The Agreement shall be effective upon the date the Agreement is signed by both the City and the Contractor and expire upon completion of the services covered by the Agreement. This Agreement may be terminated by the City or the Contractor upon thirty (30) days written notice of such termination. In the event of termination of the Agreement, there shall be no further obligation on the part of the City to the Contractor save and except for payment of sums due and owing for City-approved expenses and work incurred by the Contractor prior to the date of termination.

1.24.2.3. Payment and Retainage Expectations

The City understands that there will be potentially three types of costs associated with the addition of a fiber optics network: materials, installation and maintenance. The City expects all payment and retainage to be a topic during contract negotiations with the Preferred Vendor. In the following subsections, each type of cost is defined and the City's expectations for payments and retainage associated with these costs are described.

To the extent possible, the proposer shall show any applicable discounts separately from the prices for products and services. The City requests that the proposer provide separate prices for each functional area/module in the proposed solution.

Costs for the proposed solution should be submitted on a Cost Summary. It is important to note the following:

- The City will not consider time and materials pricing. Proposers shall provide firm and fixed pricing based on the functionality described. For each item, indicate if the cost is one-time, annual, or other;
- The proposer shall provide price information for each separate component of the proposed solution, as well as the costs of any modifications; In the event the product or service is provided at no additional cost, the item should be noted as "no charge;"
- In the event the product or service is not being included in the proposal, the item should be noted as "No Bid;" and,
- Proposer shall make clear the basis of calculation for all fees.

- Please include cost for freight and shipping charges. These charges will not be paid if not included in the original proposal.

All travel expense costs must be included in the proposer's Cost Summary. The City will not make a separate payment for reimbursable expenses. The City shall not be liable for additional travel costs incurred due for any reason outside the City's control.

3. Annual Maintenance Cost

Annual maintenance costs include the annual maintenance, support fees, upgrades for the application environment. The City does not expect to pay maintenance fees on functional areas until City sign-off has been provided. In addition, the City does not desire to pay maintenance fees operation for one year after accepted go live.

Vendors shall provide their typical payment schedule for annual maintenance costs including their willingness to meet the City's expectations.

1.24.2.4. Contract Terms

The following contract terms, or similar, are expected to be included in any eventual contract. These terms are not considered negotiable:

The Contractor (separately and collectively the "Indemnitee") shall indemnify, hold harmless, and defend the City, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work done by the Contractor under this Contract. Such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the negligence of the City, any other party indemnified hereunder, the Contractor, or any third party.

The Contractor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with the Contractor's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City, any other party released hereunder, the Contractor, or any third party

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.

2. PROPOSAL WAIVERS:

2.1. WAIVER OF ATTORNEY FEES:

BY SUBMITTING A PROPOSAL, EACH OFFEROR AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM THE OFFEROR HAS OR MAY HAVE AGAINST THE CITY OF MIDLAND, TEXAS, AND THE CITY'S RESPECTIVE EMPLOYEES AND REPRESENTATIVES FOR THE AWARD OF

ATTORNEY'S FEES, ARISING OUT OF OR IN CONNECTION WITH THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY PROPOSAL; WAIVER OF ANY REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS; OR THE CONTRACT DOCUMENTS; ACCEPTANCE OR REJECTION OF ANY PROPOSALS; AND AWARD OF THE CONTRACT. BY SUBMITTING A PROPOSAL, THE OFFEROR SPECIFICALLY WAIVE ANY RIGHT TO RECOVER OR BE PAID ATTORNEY'S FEES FROM THE CITY OF MIDLAND, TEXAS, OR ANY OF THE CITY'S EMPLOYEES AND REPRESENTATIVE'S UNDER ANY PROVISIONS OF THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGEMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, SECTION 37.001 ET. SEQ., AS AMENDED).

The offeror agrees that this is the intentional relinquishment of a presently existing known right.

By Execution and submission of this proposal, the offeror hereby represents and warrants to the City of Midland that the offeror has read and understands the Proposal Documents and the Contract Documents and this proposal is made in accordance with the Proposal Documents.

Offeror acknowledges that it understands all terms within the proposal Documents that include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

2.2. WAIVER:

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

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

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

3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; AND

4. AWARD OF THE CONTRACT.

By submitting the 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 the above listed rights.

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.

3. SCOPE OF PROJECT

The City of Midland, seeks to enter into an agreement with a qualified Individual, Firm or Corporation, to provide (1) installation and (2) maintenance services for a City-Owned fiber optic cable system, herein after "System" which the City intends to own.

Services shall be turn-key and include but not be limited to the design, trenching, installation, testing, troubleshooting, documentation, and on-going maintenance and restoration of System. Respondents shall describe in their proposal their approach and firm, fixed-price bid for constructing the fiber optic networks as described in this RFP and its associated attachments and appendices. And separately describe the maintenance services to maintain the fiber optic cable system.

Background:

The City of Midland seeks improved functionality in its network bandwidth to multiple City facilities. With this interest, the City seeks a qualified Individual, Firm or Corporation to purchase and install fiber optic cabling between municipal building locations at minimum capacity of 10 gigabit. The goal is to provide for a robust networking solution and to ensure a resilient network that is readily expandable if required in the long-term. It is the City's goal to ensure that the contractor will incorporate smart design techniques for future uses.

Respondents are responsible for taking measurements of required cable and conduit to submit proposal.

REQUIREMENTS: PLEASE SEE APPENDIX A FOR REQUIREMENTS

NOTE: WHERE THE TERM "REQUIRED FIELD" APPEARS IN THE REQUIREMENTS, THE INTENT IS THAT THE USER MAY NOT LEAVE THAT FIELD BLANK AND LEAVE THE CURRENT RECORD. THE BLANK REQUIRED FIELDS SHALL BE FLAGGED FOR EASY IDENTIFICATION OF THE FIELDS LEFT BLANK.

*INCLUDED MEANS THAT IF THE FEATURE OR REQUIREMENT IS NOT NORMALLY INCLUDED, BUT 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 Vendor Qualifications

3.1. 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.

3.2. 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.

CSI: Lubbock, understands and will comply

3.3. 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):

3.3.1. References

3.3.1.1. Offeror shall provide a minimum of **5** references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.

3.3.1.2. These references should include City government and universities where the offeror, preferably within the last **7** years, has successfully provided fiber optic installation and materials.

3.3.1.3. These references should include municipalities, colleges and universities or state-funded organizations.

3.3.2. Vendor Stability

3.3.2.1. Offerors shall demonstrate their financial stability to supply, install and support the services specified.

3.3.2.2. Provide financial statements, preferably audited, for the **2** consecutive years immediately preceding the issuance of this RFP.

3.3.2.3. Offerors shall specify how long the company submitting the proposal has been in business **providing applications for Fiber optic installation and materials**.

4. EVALUATION PROCESS

4.1. EVALUATION PROCEDURE

4.1.1. Committee Actions

4.1.1.1. The evaluation committee will separate proposals into "responsive" and "non-responsive" proposals. Non-responsive proposals will be eliminated from further consideration.

4.1.1.2. 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.

4.1.1.3. 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.

4.2. EVALUATION CRITERIA

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

4.2.1. Functionality – Ability of the proposed fiber optic network to meet the functional and technical requirements: 30%

4.2.2. Technical - Ability of the proposed fiber optic network to align with the City's preferred technical specifications: 20%

4.2.3. Implementation Approach – This criterion considers the proposer's understanding of the scope of work and the quality and clarity of the proposer's written methodology and description of the proposed approach to accomplish the work: 15%

4.2.4. Vendor Experience – This criterion considers the proposer's past performance on any City contracts, the results of reference checks, and the proposer's experience in providing the services solicited by this RFP as set forth in the proposer's response: 15%

4.2.5. Pricing 20%

If any proposal earns less than 70% of any single evaluation criteria, the proposal will be disqualified. The City reserves the right to award a contract by total cost or by item.

The City may award a contract or purchase order to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the City. The City will be solely responsible for the determination of what constitutes best value in accordance with the applicable Section 252.043 of the Local Government Code.

5. PROPOSAL CONTENTS

This needs to be structured to coincide with the requirements set forth in the RFP

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

5.1. THE RFP

5.2. THE COST SUMMARY OR PROPOSAL FORM

5.3. REQUESTED ATTACHMENTS

5.3.1. References

5.3.2. Resumes

5.3.3. Business Plan

5.3.4. Financial Information

5.3.5. Signed Execution of Offer

6. 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.

CITY OF MIDLAND

ADDENDUM #1

RFP #20003614

TO ALL PROPOSERS ON THE SUBJECT RFP:

ADDENDUM # 1

DATE: June 22, 2020

The following is provided as a matter of clarification for all proposers as follows:

The bid date has been changed to be opening July 9, 2020 at 2:00PM. The bid opening will take place in the Council Chambers.

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

All other terms and conditions shall remain the same.

_____
Company Name

_____ _____
Authorized Signature Date

_____ _____
Please Print Above Name Phone

CITY OF MIDLAND

ADDENDUM #2

RFP #20003614

TO ALL PROPOSERS ON THE SUBJECT RFP:

ADDENDUM # 2

DATE: June 22, 2020

The following is provided as a matter of clarification for all proposers as follows:

The bid opening will take place in the 3rd Floor Conference Room.

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

All other terms and conditions shall remain the same.

_____
Company Name

_____ _____
Authorized Signature Date

_____ _____
Please Print Above Name Phone

CITY OF MIDLAND

ADDENDUM #3

RFP #20003614

TO ALL PROPOSERS ON THE SUBJECT RFP:

ADDENDUM # 3

DATE: June 23, 2020

The following is provided as a matter of clarification for all proposers as follows:

The cutoff date for inquiries and clarification will be Tuesday, July 7th.

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

All other terms and conditions shall remain the same.

_____
Company Name

_____ _____
Authorized Signature Date

_____ _____
Please Print Above Name Phone

CITY OF MIDLAND

ADDENDUM #4

RFP #20003614

TO ALL PROPOSERS ON THE SUBJECT RFP:

ADDENDUM # 4

DATE: July 6, 2020

The following is provided as a matter of clarification for all proposers as follows:

Please see the following page to view more information on where to send in bids and regarding the bid opening.

Q1. On the Scope of work, the RFP calls for Service requirement for Fiber optic cable Installation and maintenance. How many fiber strands would the City require between 601 N Loraine and 1200 N Fairgrounds Rd?

A1. 12 pairs for 24 total strands

Q2. On the Appendix A - M.1. Fiber should be a minimum of 10Gb Capacity. Does City of Midland require Grande to install and maintain the 10Gb Switching equipment?

A2. the City will install and maintain the switching equipment at the demarc

Q3. Does the City expect to own this fiber or would the City consider a 10 year Dark Fiber Lease/IRU?

A3. It is the City's preference to own the fiber. In prior agreements the City has entered into a multi-year maintenance agreement, but will ultimately own the fiber at the end of the term.

Q4. Based on Appendix A: Requirements, we want to make sure this RFP is to provide dark fiber. In other words, the City of Midland will be providing the hardware to send the signals through the fiber. Is this correct?

A4. Yes we require the fiber and the fiber panel only. We will then connect the fiber to our equipment.

Q5. Can we provide multiple options for the City to choose from that meets the RFPs requirements?

A5. Yes multiple options are encouraged.

Q6. How many total fibers strands are required?

A6. The City prefers 12 pairs for 24 strands.

Q7. Does the City own all of the existing fiber in their network? If not, which segments do they own? How many available used strands are available?

A7. Yes the current fiber network is owned by the City.

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

All other terms and conditions shall remain the same.

_____
Company Name

_____ _____
Authorized Signature Date

_____ _____
Please Print Above Name Phone

MIDLAND
Purchasing Division

ATTENTION: Due to the Coronavirus (COVID-19) pandemic, the City of Midland's City Hall is closed to the Public. All bidders are encouraged to mail bid packets to one of the addresses below rather than delivering them in person in the interests of maintaining social distancing:

USPS Mailing Address:		***Physical Address for mail carriers other than USPS:***
City of Midland, Texas Attn: City Secretary's Office P O Box 1152 Midland, TX 79702	OR	City of Midland, Texas Attn: City Secretary's Office 300 North Loraine St, Suite 330 Midland, TX 79701

If bid packets are delivered in person then bidders must make arrangements in advance to drop the bid packets off at the north doors of City Hall before the bid opening deadline, and social distancing measures will be maintained for the health of all parties involved.

ATTENTION: The public bid opening will be shown via the City Council Meeting live feed in order to maintain social distancing due to COVID-19. This can be accessed from the following web address at the time of the bid opening:

http://www.midlandtexas.gov/600/Watch-Council-Meetings

Appendix A: Requirements

Response Indicators: When providing responses to the requirements in Appendix A, proposers shall use the following response indicators:

S: Feature/Function is included **N**: Feature/Function cannot be provided.

Fiber Communications Installation				
Req #	**Description of Requirement**	**Priority**	**Response**	**Comments**
Materials				
M.1	The fiber should be a minimum 10GB capacity.	**High**	S	
M.2	The awarded respondent shall have sufficient resources to complete the Project within the allotted time frame.	**High**	S	
M.3	All fibers will consist of an FC/PC termination including termination boxes at each location;	**High**	S	
M.4	Network or “Backbone” fiber and lateral fiber shall be:	**High**	S	
M.4.1	Loose tube cable design	**High**	S	
M.4.2	Dielectric central strength member	**High**	S	
M.4.3	SMF 28 single mode or better	**High**	S	
M.4.5	A minimum of 12 fibers per buffer tube	**High**	S	
M.4.6	Maximum Attenuation: 0.4 dB/km / 0.4dB/km / 0.3 dB/km; 4.3.6. Wavelengths: 1310 nm / 1383 nm / 1550 nm.	**High**		
Installation				
			S	
I.1	The awarded respondent shall provide project management or coordination throughout the project.	**High**	S	
I.2	The installation should meet or exceed the Telecommunications Industry Association (TIA) and Electronic Industries Alliance (EIA) specifications and International Telecommunication Union (ITU) requirements;	**High**	S	
I.3	Installation shall be coordinated with and approved by the City of Midland's Technology representative. Any required traffic control during installation shall be the responsibility of successful respondent.	**High**	S	
I.4	Furnish, install, and terminate all fiber strands at each location according to the Product and Services Specifications.	**High**	S	
I.5	Install all fiber optic cable in accordance with the Product and Services Specifications and/or manufacturer’s recommendations and best industry practices.	**High**	S	
I.6	Develop and submit for approval a labeling system for the cable installation. At a minimum, the labeling system shall clearly identify all components of the system. Sample labels must be approved by the City.	**High**	S	
I.7	The awarded respondent shall:	**High**	S	
I.7.1	Pull any and all permits if needed.	**High**	S	
I.7.2	Comply with all local and state building codes.	**High**	S	
I.7.3	Abide by, and be responsible adhering to, for all electrical and fire code regulations.	**High**	S	
I.7.4	Plan fiber path which must be approved by the City.	**High**	S	
I.7.5	Provide as-built diagram showing all jack numbers, pull boxes, cable paths, etc.	**High**	S	
I.8	The vendor shall penetrate each building and include a conduit or innerduct system from the building entrance point to network rooms where the incoming fiber is to land.	**High**	S	

I.9	The respondent shall furnish all labor, supervision, tooling, and miscellaneous mounting hardware and consumables for the fiber optic cabling system installed at all City Facilities.	**High**	S	
		Testing		
T.1	Once installed, successful respondent shall test System and provide report to City.	**High**	S	
T.2	City shall have thirty (30) days to test System and shall notify successful respondent of non-working area.	**High**	S	
T.3	Test (100%) all cables and termination hardware for defects in installation and to verify cable performance under installed conditions. Testing procedures should be included in proposal documentation.	**High**	S	
T.4	Documentation of testing and footage of each cabling run in proposal documentation.	**High**	S	
T.5	Successful respondent shall provide as-built drawings of System as part of the delivery of final project upon City acceptance of System.	**High**	S	
		Maintenance Services		
S.1	During the term of the resulting agreement, successful respondent shall provide all maintenance and support services to ensure the operation of the fiber system, including, without limitation, routine and ordinary maintenance and support services, emergency restoration services and all other maintenance services.	**High**	S	During the term, all maintenance will be provided for all new fiber installed under this contract. For any maintenance needed for existing fiber, a quote can be provided.
S.2	The City seeks restorative services of fiber system within eight (8) hours of outage notification from City.	**High**	S	The 8 hour window will be met, unless a catastrophic event occurs within that 8 hour window preventing us from restoring services.

3. SCOPE OF PROJECT

Fiber Optic Ring Design 2020



(1) Installation Options

Below are two options for the City to consider that will both meet the requirements of the RFP.

Base Bid Option 1

The basis for CSI proposed design and build out of the fiber path to connect the Animal Services Building back to the CISD building is to utilize the existing fiber optic network and to make sure any new fiber optic facilities build into a master fiber network plan that will create a robust survivable network while maximizing the City's capital. First, CSI looked at the City's current infrastructure and long-range network goals. Please see the Fiber Optic Network Ring Solution diagrams. This design once implemented would give the City a high bandwidth network and survivability of data communications if one of the segments on the ring was cut or damaged. There are multiple manufactures of the network electronics that could be used by the City to transmit and receive communication for the fiber optic ring configuration. Only the few single pathway segments would be at risk of a cut on their connection.

Base Bid Option 1: New Fiber Optics from Orchard/ Tower to Animal Services with connecting into existing fiber optics.



Base Bid Option 2

This bid consists of a standard point to point configuration. The pathway connects the CISD to the Animal Shelter over the installation of a completely new fiber optic segment.

Base Bid Option 2: New Fiber Optics from CISD to Animal Services



(2) Annual Maintenance Services

Annual maintenance costs include the annual maintenance, support fees, upgrades for the application environment. The City does not expect to pay maintenance fees on functional areas until City sign-off has been provided. In addition, the City does not desire to pay maintenance fees operation for one year after accepted go live.

Vendors shall provide their typical payment schedule for annual maintenance costs including their willingness to meet the City's expectations.

3.3. 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):

3.3.1. References

3.3.1.1. Offeror shall provide a minimum of **5** references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.

3.3.1.2. These references should include City government and universities where the offeror, preferably within the last **7** years, has successfully provided fiber optic installation and materials.

3.3.1.3. These references should include municipalities, colleges and universities or state-funded organizations.

3.3.2. Vendor Stability

3.3.2.1. Offerors shall demonstrate their financial stability to supply, install and support the services specified. CSI: Lubbock, understands and will comply.

3.3.2.2. Provide financial statements, preferably audited, for the **2** consecutive years immediately preceding the issuance of this RFP.

Financials will be provided prior to contract being awarded.

3.3.2.3. Offerors shall specify how long the company submitting the proposal has been in business **providing applications for Fiber optic installation and materials**.

Primary Contractor CSI: Lubbock since 2005

Sub-Contractor FiberTex since 2010

MIDLAND
Purchasing Division

Hohenberger Inc., dba CSI: Lubbock
Contractor's Name

Option 1

PROPOSAL
20003614

To: Purchasing Manager
City of Midland
Midland, Texas

Gentlemen: The undersigned bidder, having examined the plans, specifications and contract documents, the location of the proposed work and being fully advised as to the extent and character of the work proposes to furnish all materials, equipment and to perform all labor and work necessary for the complete work described by and in accordance with the attached plans, specifications and contract for the sum of:

Turnkey Project Cost (Labor, Materials, Equipment, Supervision & Installation) $224,385.00 DOLLARS

Maintenance/Service Cost per month for 60 months $ 717.85 X 60 = $43,071.00 DOLLARS

Total Cost for Turnkey Project and Maintenance/Service Costs: $267,456.00 DOLLARS

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid and he further agrees to commence work within ten (10) days after the date of written notice to do so and to substantially complete same within 60 calendar days.

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

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

OR

FAX: (432) 685-0523

E-mail: purchasing@midlandtexas.gov

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

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

BID WAIVERS:

A. WAIVER OF ATTORNEY FEES: BY SIGNING THIS PROPOSAL, BIDDER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE CONTRACT. THE BIDDER SPECIFICALLY AGREES THAT IF THE BIDDER BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT,

INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE BIDDER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH BIDDER MIGHT OTHERWISE BE ENTITLED.

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

THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

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

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

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

C. Notice of Alleged Breach; Statutory Prerequisites: As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, Bidder or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the

apparent extent thereof, the amount of damages sustained, the amount for which the Bidder will settle, the physical and mailing addresses of Bidder at the time and date the claim was presented and the physical and mailing addresses of Bidder for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Bidder relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Bidder that Bidder's notice is insufficient. The City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

By Signing below, your company agrees to the above waiver(s). If this form is not signed and included with your bid documents your bid will be considered non-responsive and will be rejected.

SOVEREIGN IMMUNITY: By Executing this contract the City is not waiving its right of Sovereign immunity. the City is retaining its IMMUNITY from suit. the City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

Hohenberger, Inc. dba CSI: Lubbock	J Hohenberger	(806) 794-6304
Bidder	Authorized Signature	Telephone
2317 114th St, Lubbock, TX	Joel Hohenberger	(806) 368-9257
Address, City and State	Please Print above Name	Fax

Bidder's Enclosure Check List: (Bidder - Please review the following list and check to ensure that you have included the documents with your bid.)

☑ PROOF OF AUTOMOBILE, WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. (**Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision) including a waiver of subrogation as stated in the contract)**

☑ 5% BID BOND FOR CONTRACTS IN AMOUNTS OF $50,000 OR MORE. (ONLY WHEN EXHIBIT "C" IS INCLUDED IN THE CONTRACT).* **THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PROVIDE A PAYMENT BOND AND PERFORMANCE BOND FOR BIDS OF $50,000 OR MORE. IF BOND FORMS WERE NOT INCLUDED, THEY MAY BE OBTAINED FROM THE OFFICE OF THE PURCHASING MANAGER. Call (432) 685-7234 for information.**

PLEASE NOTE:

FAILURE TO INCLUDE ANY OF THE REQUIRED DOCUMENTS ON THE CHECK LIST, MAY CAUSE REJECTION OF YOUR BID.

***FAILURE TO PROVIDE LIABILITY OR WORKER'S COMPENSATION INSURANCE AND SUBSEQUENT CERTIFICATES; OR, PAYMENT AND/OR PERFORMANCE BONDS AS REQUIRED BY THE CONTRACT MAY CAUSE FORFEITURE OF YOUR BID BOND OR CHECK/SURETY (I.E.- CASH OR CASHIERS CHECK)**

MIDLAND
Purchasing Division

Hohenberger Inc., dba CSI: Lubbock
Contractor's Name

Option 2

PROPOSAL
20003614

To: Purchasing Manager
City of Midland
Midland, Texas

Gentlemen: The undersigned bidder, having examined the plans, specifications and contract documents, the location of the proposed work and being fully advised as to the extent and character of the work proposes to furnish all materials, equipment and to perform all labor and work necessary for the complete work described by and in accordance with the attached plans, specifications and contract for the sum of:

Turnkey Project Cost (Labor, Materials, Equipment, Supervision & Installation) $349,303.00 DOLLARS

Maintenance/Service Cost per month for 60 months $ 1,169.00 X 60 = $70,140.00 DOLLARS

Total Cost for Turnkey Project and Maintenance/Service Costs: $419,443.00 DOLLARS

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid and he further agrees to commence work within ten (10) days after the date of written notice to do so and to substantially complete same within 90 calendar days.

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

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Office of the Purchasing Manager
P.O. Box 1152
Midland, TX 79702

OR

FAX: (432) 685-0523

E-mail: purchasing@midlandtexas.gov

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apparent extent thereof, the amount of damages sustained, the amount for which the Bidder will settle, the physical and mailing addresses of Bidder at the time and date the claim was presented and the physical and mailing addresses of Bidder for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Bidder relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Bidder that Bidder's notice is insufficient. The City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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By Signing below, your company agrees to the above waiver(s). If this form is not signed and included with your bid documents your bid will be considered non-responsive and will be rejected.

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THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

Hohenberger, Inc. dba CSI: Lubbock	J Hohenberger	(806) 794-6304
Bidder	Authorized Signature	Telephone
2317 114th St, Lubbock, TX	Joel Hohenberger	(806) 368-9257
Address, City and State	Please Print above Name	Fax

Bidder's Enclosure Check List: (Bidder - Please review the following list and check to ensure that you have included the documents with your bid.)

☑ PROOF OF AUTOMOBILE, WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. **(Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision) including a waiver of subrogation as stated in the contract)**

☑ 5% BID BOND FOR CONTRACTS IN AMOUNTS OF $50,000 OR MORE. (ONLY WHEN EXHIBIT "C" IS INCLUDED IN THE CONTRACT).* **THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PROVIDE A PAYMENT BOND AND PERFORMANCE BOND FOR BIDS OF $50,000 OR MORE. IF BOND FORMS WERE NOT INCLUDED, THEY MAY BE OBTAINED FROM THE OFFICE OF THE PURCHASING MANAGER. Call (432) 685-7234 for information.**

PLEASE NOTE:

FAILURE TO INCLUDE ANY OF THE REQUIRED DOCUMENTS ON THE CHECK LIST, MAY CAUSE REJECTION OF YOUR BID.

***FAILURE TO PROVIDE LIABILITY OR WORKER'S COMPENSATION INSURANCE AND SUBSEQUENT CERTIFICATES; OR, PAYMENT AND/OR PERFORMANCE BONDS AS REQUIRED BY THE CONTRACT MAY CAUSE FORFEITURE OF YOUR BID BOND OR OTHER SURETY (I.E.- CASH OR CASHIERS CHECK).**

FiberTex, LLC References

Irving Independent School District, *2018-2019*
Irving, Texas
Audelia Guerrero, Network Manager
469-644-7825
aguerrero@irvingisd.net

University Medical Center, *2016-present*
Lubbock, TX
Matt Mills, Enterprise Network Manager
806-786-4774
matt.mills@umchealthsystem.com

Lubbock Independent School District, *2017-present*
Lubbock, TX
Matt Turner, Network Administrator
806-544-0498
matt.turner@lubbockisd.org

City of Lubbock, *2010-present*
Lubbock, TX
Diane Condren, Assistant ROW Agent
806-775-2352
diane.condren@gmail.com

City of Denton, *2018-present*
Denton, TX
Alice Province
940-268-7285
alice.province@cityofdenton.com

FiberTex, LLC Resume

FiberTex, LLC has built private fiber networks for the following entities over the past several years. FiberTex, LLC has built these networks using underground boring, aerial construction on city and power utility poles and even brought the fiber into the buildings through building entries and spliced all fiber to connect multiple facilities. FiberTex, LLC has over 50 employees and counting.

Locations of installed Fiber Rings

Independent School Districts:
- Highland Park ISD
- Killeen ISD
- Duncanville ISD
- Lubbock ISD
- San Antonio ISD (Ongoing)
- Irving ISD

Commercial Businesses:
- UMC
- Alliance Federal Union (Ongoing)
- AT&T small cell sites (Over 75 towers)
- Pier One Corporate Building in Fort Worth, TX
- Vexus OverBuild in Abilene (Ongoing)
- FiberLight long haul projects
- Conterra region 14 long haul builds
- Verizon long haul projects

Offices/Yards in the following Cities:
- Abilene
- San Antonio
- 2 in the DFW area
- Lubbock

Business Plan

CSI: Lubbock

Executive Summary

Mission Statement

We are committed to providing professional communication, accurate estimation and quality installation services for your next project.

Goals/Mission

Whether it's for a small or large business or your home it is our goal to provide you with the services to get your next project done right. CSI: Lubbock will supply you with the service and expertise you're looking for in a communication service & installation company.

Our mission is to provide reliable, high quality, and cost-effective products to our customers. Whether you're moving locations, expanding your business, or growing your network, we can provide you with the services that meet your specifications. We strive to preserve the reputation that we have built in west Texas.

Location

CSI: Lubbock started in Lubbock, TX in 2005. Since then, CSI has steadily grown and expanded our services across the Lubbock area. CSI has worked with over 70 public schools and over 40 medical facilities supplying them with updated cabling and new technologies. CSI's service area has grown to cover most of Texas and New Mexico.

Services

CSI: Lubbock offers a variety of services to our customers including Telecommunications, Structured Cabling, VoIP Phones systems, and Nurse Call Systems. We also install audio equipment, video equipment, residential security systems, and business security systems. We work with our trusted partners to provide our customers with the best products on the market.

Financial Information

CSI: Lubbock's Financial Information is not provided in this proposal. CSI: Lubbock will provide any required financial information if selected as the contractor for this RFP.

EXECUTION OF OFFER

Date: July 8, 2020

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: Hohenberger, Inc. dba CSI:Lubbock

SIGNATURE (INK): JHohenberger

NAME: (TYPED/PRINTED) Joel Hohenberger

TITLE: Vice President

STREET: 2317 114th Street

CITY/STATE/ZIP: Lubbock, Texas 79423

TELEPHONE: 806-794-6304 FAX: 806-368-9257

E-MAIL ADDRESS: joel@csi-lubbock.com

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 7/7/2020

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

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

PRODUCER Marsh & McLennan Agency LLC 4411 98th Street Suite 200 Lubbock TX 79424	**CONTACT NAME:** **PHONE (A/C, No, Ext):** 806-798-9050 **FAX (A/C, No):** **E-MAIL ADDRESS:**
INSURED HOHENINC Hohenberger Inc DBA CSI Lubbock 2317 114th Street Lubbock TX 79423-7216	**INSURER(S) AFFORDING COVERAGE** — **NAIC #** **INSURER A :** United Fire Lloyds — 43559 **INSURER B :** Texas Mutual Insurance Company — 22945 **INSURER C :** **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 601020457 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [X] OCCUR X 250 GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [X] LOC [ ] OTHER:			85316067	3/3/2020	3/3/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
A	**AUTOMOBILE LIABILITY** [ ] ANY AUTO [ ] OWNED AUTOS ONLY [X] SCHEDULED AUTOS [X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY			85316067	3/3/2020	3/3/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$ 1,000,000 $ $ $ $
A	X **UMBRELLA LIAB** [X] OCCUR **EXCESS LIAB** [ ] CLAIMS-MADE DED [X] RETENTION $ 0			85316067	3/3/2020	3/3/2021	EACH OCCURRENCE AGGREGATE $	$ 5,000,000 $ 5,000,000 $
B	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		0001202341	6/19/2020	6/19/2021	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

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

Additional Insured form #CG7208 edition 07/17 applies to the General Liability policy.
Waiver of subrogation form #CG7208 edition 07/17 applies to the General Liability policy.
Primary & Non-Contributory General Liability form #CG2001 edition 04/13.
Blanket Additional Insured forms CG2010 & CG2037 edition 04/01/13 applies to the General Liability policy.
30 Day Notice of Cancellation, 10 Day Notice for Non-Payment of Premium form CG0205 edition 12/04 applies to the General Liability policy.
Per Location Aggregate Limit form CG2504 edition 3/97 applies to the General Liability policy. (Will be added to policy if Insured is awarded project.)

Additional Insured form #CA7109 edition 01/17 applies to the Automobile Liability policy.
See Attached...

CERTIFICATE HOLDER

FOR BIDDING PURPOSES ONLY

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03) **The ACORD name and logo are registered marks of ACORD**

AGENCY CUSTOMER ID: HOHENINC

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY Marsh & McLennan Agency LLC	**NAMED INSURED** Hohenberger Inc DBA CSI Lubbock 2317 114th Street Lubbock TX 79423-7216
POLICY NUMBER	
CARRIER / **NAIC CODE**	**EFFECTIVE DATE:**

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Waiver of subrogation form CA7109 edition 01/17 applies to the Automobile Liability policy.
Primary & Non-Contributory form #CA7334 edition 09/15 applies to the Automobile Liability policy.
30 Day Notice of Cancellation, 10 Day Notice for Non-Payment of Premium form CA7133 edition 12/10 applies to the Automobile Liability policy.

Waiver of subrogation form #WC430304B applies to the Workers Compensation policy.
30 Day Notice of Cancellation, 10 Day Notice for Non-Payment of Premium applies to the Workers Compensation policy. (Will be added to policy is Insured is awarded project.)

The General Liability policy includes a blanket additional insured endorsement to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

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

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

The General Liability policy contains 30 Day Notice of Cancellation, 10 Days for Non-Payment, and applies only where Certificate Holder is on file with the company.

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

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

The Automobile Liability policy contains an endorsement with “Primary and Non-Contributory” wording that may apply only when there is a written contract between the named insured and the certificate holder that requires such wording.

The Automobile Liability policy contains 30 Day Notice of Cancellation, 10 Days for Non-Payment, and applies only where Certificate Holder is on file with the company.

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

ACORD 101 (2008/01) **© 2008 ACORD CORPORATION. All rights reserved.**

The ACORD name and logo are registered marks of ACORD

BID BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO. N/A

KNOW ALL MEN BY THESE PRESENTS, THAT Hohenberger, Inc. dba CSI: Lubbock

(hereinafter called the Principal), as Principal, and Merchants National Bonding, Inc.

(hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of ** Five Percent of Greatest Amount Bid ** DOLLARS ($ 5% of GAB), for the payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid or Proposal to enter into a certain written Contract with the obligee to perform work for City-Owned Fiber Optic Network Installation, RFP 20003614.

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

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

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

IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this 9th day of July, 20 20.

Hohenberger, Inc. dba CSI: Lubbock
Principal

By J Hohenberger
Joel Hohenberger

Address 2317 114th Street
Lubbock, TX 79423

Merchants National Bonding, Inc.
Surety

By Christen Tyner
Christen Tyner, Attorney-in-Fact

Address 9500 Arboretum Blvd., Suite 100
Austin, TX 78759

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

MERCHANTS BONDING COMPANY

MERCHANTS BONDING COMPANY (MUTUAL) • MERCHANTS NATIONAL BONDING, INC.
P.O. BOX 14498 • DES MOINES, IOWA 50306-3498 • (800) 678-8171 • (515) 243-3854 FAX

IMPORTANT NOTICE

Have a complaint or need help?

If you have a problem with a claim or your premium, call your insurance company first. If you can't work out the issue, the Texas Department of Insurance may be able to help.

Even if you file a complaint with the Texas Department of Insurance, you should also file a complaint or appeal through your insurance company. If you don't, you may lose your right to appeal.

Merchants National Bonding, Inc.

To get information or file a complaint with your insurance company:

Call: Compliance Officer at 800-678-8171

Toll-free: 1-800-678-8171

Email: regulatory@merchantsbonding.com

Mail: P.O. Box 14498, Des Moines, IA 50306-3498

To get insurance information you may also contact your agent:

Marsh & McLennan Agency LLC company

Call: 972-770-1600

Mail:

The Texas Department of Insurance

To get help with an insurance question or file a complaint with the state:

Call with a question: 1-800-252-3439

File a complaint: www.tdi.texas.gov

Email: ConsumerProtection@tdi.texas.gov

Mail: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

MERCHANTS BONDING COMPANY

POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Bea Williams; Christen Tyner; Dawn Davis; Donnie Doan; Kae Perdue; Kristi Meek; LaCrisha Wynne; Ryan Bowles; Walter J De La Rosa

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and *undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.*"

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and aut hority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 11th day of February , 2020 .

MERCHANTS NATIONAL BONDING, INC. INCORPORATED -o- 2003

MERCHANTS BONDING COMPANY (MUTUAL) INCORPORATED -o- 1933

MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By Larry Taylor
President

STATE OF IOWA
COUNTY OF DALLAS ss.
On this 11th day of February 2020 , before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

NOTARIAL SEAL IOWA

POLLY MASON
Commission Number 750576
My Commission Expires
January 07, 2023

Polly Mason
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 9th day of July , 2020 .

MERCHANTS NATIONAL BONDING, INC. INCORPORATED -o- 2003

MERCHANTS BONDING COMPANY (MUTUAL) INCORPORATED -o- 1933

William Warner Jr.
Secretary

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.**

Hohenberger, Inc. dba CSI:Lubbock

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.**

NA

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.**

NA

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 Hohenberger 07/08/2020

Signature of vendor doing business with the governmental entity Date

PACKET 7:140 August 11, 2020

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.

EXHIBIT C

Bonding Requirements

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

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

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

BID BOND

THE STATE OF TEXAS §

SURETY NO. _____

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT _____

_____

_____

(hereinafter called the Principal), as Principal, 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 submitted a Bid or Proposal to enter into a certain written Contract with the obligee to_____

_____.

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

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

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

IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this _____ day of _____, 20____.

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

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

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

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

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

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

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

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

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

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

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

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

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

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

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

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

General Decision Number: TX180311 09/14/2018 TX311

Superseded General Decision Number: TX20170311

State: Texas

Construction Type: Building

County: Midland County in Texas.

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

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

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

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER	$ 28.00	22.35

ENGI0178-005 06/01/2014

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

* IRON0084-011 06/01/2018

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 23.77	7.12

PLUM0404-001 07/01/2016

	Rates	Fringes
PLUMBER	$ 25.91	9.40

SUTX2014-037 07/21/2014

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

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

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

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

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

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

==========

END OF GENERAL DECISION

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

_____

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7 _____ _____

Signature of vendor doing business with the governmental entity Date

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:

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(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.

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

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

Seller and Buyer agree as follows:

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

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

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

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

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

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

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

8. WARRANTY - PRICE -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. **INSURANCE –**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTICE TO BIDDERS

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

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

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

COMPLIANCE: Company agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Company agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended. For further instructions on how to comply with Texas Government Code Section 2252.908 and Texas Local Government Code Section 176.006,

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

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

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: _____

No-Bid
Response
For
Request #: 20003614

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

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

or

Fax to: (432) 685-0523

Email: purchasing@midlandtexas.gov

Please Check all reasons below that apply:

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

_____

_____

Company Name: _____

Authorized Officer or Agent Signature: _____

Telephone Number: _____ Fax: _____

Email Address: _____

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

City Council Meeting

Item Number: 8

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Regina Stephenson, Director

Subject: RESOLUTION RATIFYING AND APPROVING THE EMERGENCY REPLACEMENT OF A SEWER LINE ON ANETTA DRIVE BY RED DEER CONSTRUCTION, LLC, FOR A TOTAL COST OF $186,391.14 (GENERAL SERVICES)

Purpose:

Approval of a resolution approving and ratifying the procurement of services from Red Deer Construction LLC of Midland, Texas for the emergency repair of a 10” sewer line on Anetta Drive and authorizing payment for said services in an amount not to exceed $186,391.14.

Recommended City Council Action:

Approve

Fiscal Impact:

$186,391.14 from the Water & Sewer Fund

Discussion:

Red Deer Construction LLC was called to repair a small section of 10” sewer pipe along Anetta Drive under the current Taps contract. When the project was started it was discovered that the damage was more extensive than expected. City staff did not have the manpower to finish the project so staff determined it was in the best interest of the residents to allow Red Deer to complete the repairs. Please see the attached memo from Carl Craigo, Utilities Director, for additional information.

Therefore, please consider a resolution approving and ratifying the procurement of services from Red Deer Construction LLC of Midland, Texas for the emergency repair of a 10” sewer line on Anetta Drive and authorizing payment for said services in an amount not to exceed $186,391.14.

Morris Williams Jr.

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Regina Stephenson, General Services Director

FROM: Carl Craigo, PE, Utilities Director

SUBJECT: Consider a Resolution Ratifying the Emergency Repair of a 10" sewer line replacement on Anetta Drive.

DATE: April 14, 2020

Red Deer, an oncall contractor for the City of Midland, was called on to rehab a small section of a 10" sewer main along Anetta Drive from Midland Dr to Burchill Dr. The project was to be paid for out of Red Deer's Taps Contract 133 approved by council in resolution 2019-114. Once the project was started City of Midland personnel realized that the sewer line was in much worse shape than anticipated and a large portion of the sewer line had to be replaced. This included 520' of 10" sewer line, 20' of 8" sewer line, bypass pumping, 2 manholes, 14 sewer laterals (taps), and associated parts and materials. The City of Midland Utilities department crews did not have the manpower to have Red Deer leave the construction project and allow us to complete, so Red Deer was instructed to complete the project to a point where all residents still had sewer connection and the situation was left safe.

The cost for Red Deer to replace the sewer main and laterals was $186,391.14 This will be paid for out of W&WW Operations budget (300335 54110).

RESOLUTION NO. _____

RESOLUTION RATIFYING AND APPROVING THE EMERGENCY REPLACEMENT OF A SEWER LINE ON ANETTA DRIVE BY RED DEER CONSTRUCTION, LLC, FOR A TOTAL COST OF $186,391.14

WHEREAS, it was discovered that a (10) inch sewer line on Anetta Drive needed to be replaced; and

WHEREAS, Red Deer Construction, LLC., was chosen to provide the emergency replacement of said sewer line; and

WHEREAS, Red Deer Construction, LLC, agreed to provide the emergency replacement services for a total cost of $186,391.14, as shown on the invoice attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the City Council finds and determines that said unforeseen damage to said sewer line constitutes unforeseen damage to public machinery, equipment, or other property as contemplated by TEX. LOC. GOV'T CODE § 252.022(a)(3); and

WHEREAS, the City Council finds it to be in the public interest to ratify and approve the emergency services provided by Red Deer Construction, LLC, for the replacement of said sewer line for a total cost of $186,391.14;

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

SECTION ONE. That the emergency replacement of said sewer line by Red Deer Construction, LLC, at a total cost of $186,391.14 is hereby ratified and approved.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Red Deer Construction, LLC, an amount not to exceed $186,391.14 from funds available in the operating budget of the Water & Sewer Fund upon proper receipt of invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by

the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller City Attorney

Red Deer Construction, LLC
PO Box 51473
Midland, TX 79710-1473 US
432-695-4420

INVOICE

BILL TO
Midland City Office
300 N Loraine St
Midland, TX 79701
United States

INVOICE # 808
DATE 07/21/2020
DUE DATE 07/29/2020

ACTIVITY	QTY	RATE	AMOUNT
02 Site Work 10" SDR 26 D2241PVC Pipe	520	90.00	46,800.00
02 Site Work 8" SDR 26 D2241PVC Pipe	20	80.00	1,600.00
02 Site Work 48" Fiberglass Manhole (0' - 5')	2	5,000.00	10,000.00
02 Site Work 48" Fiberglass Manhole additional depth <5'	9	1,000.00	9,000.00
02 Site Work Manhole Drop Structure (external)	1	2,250.00	2,250.00
02 Site Work 4" Waste Water Service Connection	14	2,160.00	30,240.00
02 Site Work 4" Waste Water Service Lateral	124	48.00	5,952.00
02 Site Work Waste Water Connection (0'-24')	133	200.00	26,600.00
02 Site Work Waste Water Trench	540	15.00	8,100.00
02 Site Work Concrete Utility Cut and Repair (6")	12	125.00	1,500.00
02 Site Work Asphalt Utility Cut and Repair (2")	223	90.00	20,070.00
02 Site Work Flowable Fill - 2 Sack (20")	124	100.00	12,400.00
02 Site Work Material Mark Up 15% $386.11	4	444.0275	1,776.11
02 Site Work Material Mark Up 15%	9	433.7688889	3,903.92

Payment due upon receipt of invoice
No retainage will be withheld

Exhibit A

ACTIVITY	QTY	RATE	AMOUNT
$377.19			
Material Cost 10" Clay to PVC CT Adapter $51.43	1	59.14	59.14
Material Cost 10" Plug CL 160/DWV $95.00	1	109.25	109.25
Material Cost 4" Clay to PVC CT Adapter $10.41	5	11.972	59.86
Material Cost 4" Grade Rings $62.00	3	71.30	213.90
Material Cost 4" PVC x 4" Clay CT Adapter $10.41	10	11.972	119.72
Material Cost 8 ft x 48" Manhole $1455.00	1	1,673.25	1,673.25
Material Cost Cast Iron Ring and Cover $315.00	1	362.25	362.25
Material Cost ISP SDR26 10" Pipe $8.07	320	9.2805	2,969.76
Material Cost ISP SDR21 4" Pipe $1.00	120	1.15	138.00
Material Cost SDR26 10" Pipe $8.07	28	9.2805	259.85
Material Cost SDR26 8" Pipe $5.09	40	5.8535	234.14

BALANCE DUE **$186,391.15**

Payment due upon receipt of invoice

No retainage will be withheld

Red Deer Construction, LLC
PO Box 51473
Midland, TX 79710-1473 US
432-695-4420

INVOICE

BILL TO
Midland City Office
300 N Loraine St
Midland, TX 79701
United States

INVOICE # 808
DATE 07/21/2020
DUE DATE 07/29/2020

ACTIVITY	QTY	RATE	AMOUNT
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02 Site Work 8" SDR 26 D2241PVC Pipe	20	80.00	1,600.00
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02 Site Work 48" Fiberglass Manhole additional depth <5’	9	1,000.00	9,000.00
02 Site Work Manhole Drop Structure (external)	1	2,250.00	2,250.00
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Material Cost SDR26 10" Pipe $8.07	28	9.2805	259.85
Material Cost SDR26 8" Pipe $5.09	40	5.8535	234.14

BALANCE DUE **$186,391.15**

Payment due upon receipt of invoice

No retainage will be withheld

City Council Meeting

Item Number: 9

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Justine Ruff, Director

Subject: MOTION AUTHORIZING THE APPROPRIATION OF $70,000.00 FROM THE AIRPORT OPERATING FUND (500) UNAPPROPRIATED FUND BALANCE (35650) TO THE DEVELOPMENT PARK PROGRAMMATIC ENVIRONMENTAL PROJECT (900111)

Purpose:

Consider a motion authorizing the appropriation of additional funding to the Spaceport Business Park Environmental Project (9111) for Midland International Air & Space Port.

Recommended City Council Action:

Approve

Fiscal Impact:

City/Airport Share (100%) – not to exceed $70,000.00

Breakout of Expenses:

Sub-Consultant Services (Terracon)	$ 60,000.00
Parkhill, Smith & Cooper for surveying, review of Terracon Reports, TCEQ response letters	$ 10,000.00
Total	$ 70,000.00

Appropriation Language:

That the sum of $70,000.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (35650) to the Development Park Programmatic Environmental Project (900111).

Discussion:

The Department of Airports has been in negotiations with FedEx for a land lease south of the Terminal Building for a new FedEx facility. FedEx's Environmental Department discovered some exceedances in the soil and water testing that are a concern for the lease. The Department of Airports has had some testing done at the site and the results indicate that further testing is necessary. The additional appropriation of funding to this project will allow further testing to take place (the installation of additional monitoring wells and soil testing of the area) so that lease negotiations with FedEx can continue.

City Manager's Office

City Council Meeting

Item Number: **10**

Meeting Date: **August 11, 2020**

To: **City Council / City Manager**

From: **Tina Jauz, Director**

Subject: MOTION AUTHORIZING THE APPROPRIATION OF $76,250.00 FROM THE ANIMAL SERVICES DIVISION FY2020 OPERATING BUDGET TO THE ANIMAL CREMATORY PROJECT (900327) (COMMUNITY SERVICES)

Purpose:

Consider a motion authorizing the allocation of approved funds, in the amount of $76,250.00, from the Animal Services Division FY20 operating budget to project number 900327 Animal Crematory Project.

Recommended City Council Action:

Approve

Fiscal Impact:

$76,250.00 to project number 900327.

Discussion:

On November 15, 2019, the City of Midland closed a Request for Bids (Bid NO: 20000299R) for labor, material, equipment, and supervision necessary for the turnkey replacement of the crematorium for Animal Services. The City received one proposal from B&L Cremation Systems, Inc. of Largo, Florida in the amount of $123,650.00.

The Proposal NO: 191104 from B&L Cremation Systems, Inc., indicates the City will provide a crane for off-loading the unit and erecting the stack; all labor and equipment costs during installation; gas and electrical hook-up costs; sufficient fresh air supply to the unit as specified; equipment rentals incurred during off-loading and/or installation; any and all permit fees and related costs; any applicable sales and use tax; and all bank and wire transfer fees. A total of $200,000.00 was budgeted to cover all associated expenses for this project.

$200,000.00
- $123,650.00 proposal
- $100.00 permit fee
$76,250.00

Currently, $76,250.00 is remaining in the Animal Services 001091 57003 capital equipment line item. Although the new unit will be delivered in September 2020, the anticipated installation and activation of the unit is December 2020. Since all the funds will not be expended in fiscal year 2020, we are requesting the remaining $76,250.00 be transferred to the Animal Shelter Project to cover additional costs associated with the delivery and installation of the new crematory unit.

$76,250.00 will be allocated from the 2020 Capital Asset Budget of the Animal Services Division of the General Fund to the Animal Crematory Project 900327.

Robert Patrick

City Manager's Office

City Council Meeting

Item Number: 11

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Kayci LaDuke,

Subject: **MOTION AUTHORIZING THE ACCEPTANCE OF CERTAIN FUNDS AWARDED BY THE OFFICE OF THE GOVERNOR OF TEXAS CRIMINAL JUSTICE DIVISION THROUGH THE FY2020 CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING (CESF) GRANT PROGRAM; AND AUTHORIZING THE ALLOCATION OF SAID FUNDS TO THE POLICE COVID GRANT PROJECT (700282) (POLICE)**

Purpose:

Consider a motion to accept and appropriate funds awarded through the FY2020 Coronavirus Emergency Supplemental Funding (CESF) Grant Program by the Office of the Governor of Texas Criminal Justice Division

Recommended City Council Action:

Approve

Fiscal Impact:

That the Office of the Governor of Texas Criminal Justice Division's FY2020 Coronavirus Emergency Supplemental Funding (CESF) Grant in the amount of $72,005.00 is hereby accepted and directed to be deposited into the General Fund (001) of the City, and;

That the sum of $72,005.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (35650) to the Coronavirus Supplemental Funding Grant - Police (700282).

Discussion:

The Midland Police will use grant funding to obtain commercial-grade disinfecting foggers for training facilities, offices and patrol vehicles. Additionally, two fever warning systems will be

purchased and installed at the entries to both the Police Department and the Permian Basin Law Enforcement Academy.

City Manager's Office

City Council Meeting

Item Number: 12

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Elizabeth Shaughnessy, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,508-SQUARE FOOT PORTION OF LOT 2B, BLOCK 52, BELMONT ADDITION, SECTION 21, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST LONGVIEW AVENUE, APPROXIMATELY 290 FEET EAST OF BELMONT STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, James Tynes Jr., is requesting a Specific Use Designation, with term, for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, at 210 West Longview Avenue, Suite G.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Surrounding Zoning and Land Use:

The properties located to the north are zoned O-1, Office District and SF-1, Single-Family Dwelling District and are the locations of single family residences and a church. The property to the east is zoned PD, Planned Development District for a Shopping Center and is the location of a hotel. The property to the south is zone PD, Planned Development District for a Shopping Center and is the location of a Wal-Mart. The properties to the west are zoned PD, Planned Development District for a Shopping Center and RR, Regional Retail District and are the locations of a credit union, retail store, and tire shop, respectively.

Discussion:

Jemes Tynes Jr. is requesting a Specific Use Designation for the property located at 210 West Longview Avenue, Suite G, to sell all alcoholic beverages for on premise consumption, within a restaurant. The property is zoned RR, Regional Retail District, which allows the consumption of alcoholic beverages with the approval of a Specific Use Designation.

Sweet Pot is currently not in operation. The site plan and floor plan attached hereto as “Exhibit A” illustrates that the establishment will have one dining area and a bar. The total square footage of the establishment is 2,508 square feet with an alcohol serviceable area of 1,472 square feet.

The proposed hours of operation and alcohol serviceable hours of Sweet Pot Restaurant are as stated:

Sunday through Thursday from 10:00 AM to 10:00 PM
Friday and Saturday from 10:00 AM to 12:00 AM (Midnight)

There is one active Specific Use Designation with Term for the sale of alcoholic beverages in the same shopping center for Wing-stop. (Ordinance No. 9450)

Per Midland City Code 5.4.4. –Prohibited place of business

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches, private schools, public schools, public school grounds, athletic stadium, public hospital within 300 feet measurement along the property lines of the street fronts, and from the front door in a direct line across intersection where they occur within this site.

This request has been circulated to and reviewed by respective City departments and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No objections.

Engineering: (Approved)

No objection to zone change.

Transportation: (Approved)

No objection to zone change.

Planning:

This request is in compliance with the Tall City Tomorrow Comprehensive plan, Chapter 6 Character Plan - Goal 4, “Encourage the development of places where Midland residents can gather and socialize to build connections” (Tall City tomorrow, page 137). Sweet Pot Restaurant is proposing a local restaurant that will give the citizens of Midland a new location to socialize.

This request was recommended for approval at the April 6, 2020 Planning and Zoning Commission Meeting and was approved at the July 28, 2020 City Council meeting with the amendment that alcohol services hours be changed to start at 11:00 a.m. on Sundays.

This request meets all requirements; therefore, staff recommends approval of the Specific Use Designation with Term for the sale of alcoholic beverages, for on-premises consumption, in a restaurant, subject to Conditions A through F.

Conditions:

A. That the serviceable area of the restaurant shall be limited to approximately 1,472 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:

Sunday from 11:00 AM to 10:00 PM
Monday through Thursday from 10:00 AM to 10:00 PM
Friday through Saturday from 10:00 AM to 12:00 AM (Midnight)

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 in accordance with Section 9.07.E.3 of the Zoning Code, the establishment shall receive a certificate of occupancy within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of July 22, 2020, staff has not received any letters of objection.

Attachments:

Site Plan and Floor Plan (Exhibit A)
Application
Maps
Ordinance No. 9450

Robert Patrick

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 2,508-SQUARE FOOT PORTION OF LOT 2B, BLOCK 52, BELMONT ADDITION, SECTION 21, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST LONGVIEW AVENUE, APPROXIMATELY 290 FEET EAST OF BELMONT STREET), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 2,508-square foot portion of Lot 2B, Block 52, Belmont Addition, Section 21, 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 for on-premises consumption in a restaurant (the "Establishment"), together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 1,472 contiguous 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:

Sunday from 11:00 a.m. to 10:00 p.m.;
Monday through Thursday from 10:00 a.m. to 10:00 p.m.; and
Friday and Saturday from 10:00 a.m. to 12:00 a.m. (midnight).

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That 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., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

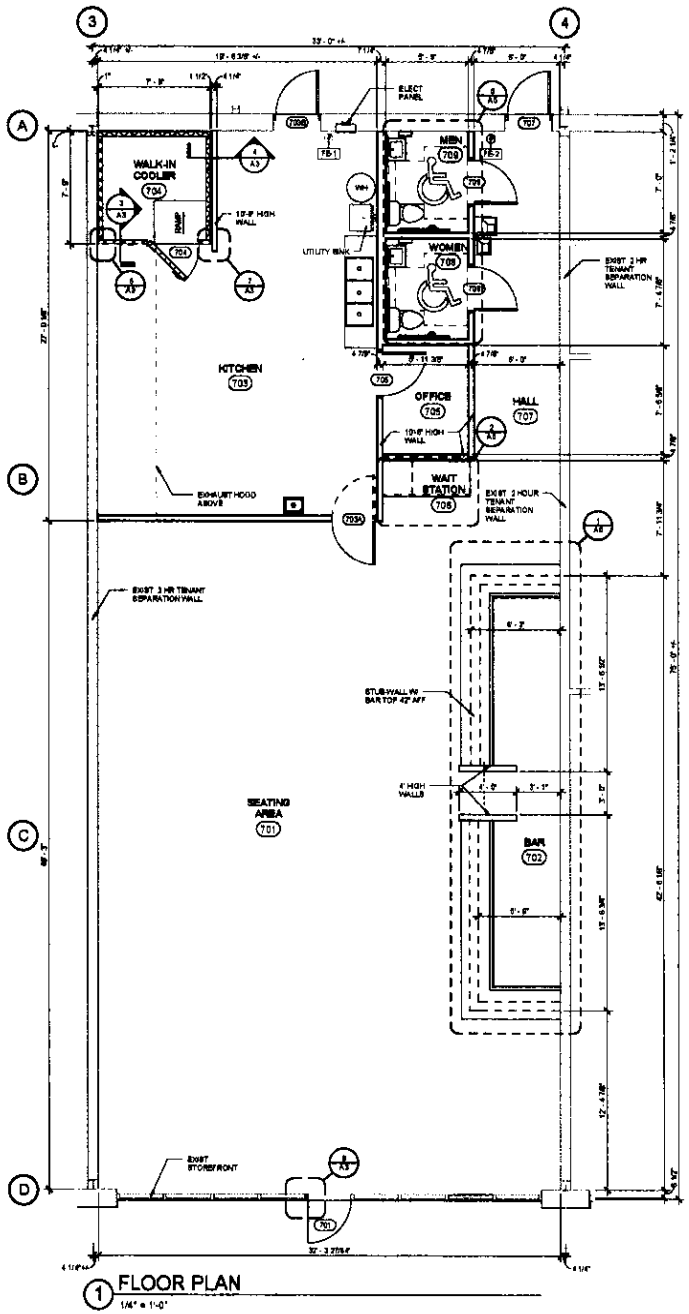
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, Assistant City Manager

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney



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

BUSHIDO ROOM FINISH SCHEDULE

Room Number	Room Name	Floor Finish	Base Finish	Wall Finish	Ceiling Finish	Ceiling Height	Remarks
701	SEATING AREA	STAINED CONC.	RB	PT	PAINT BLACK	EXPOSED STRUCTURE	
702	BAR	STAINED CONC.	RB	PT	PAINT BLACK	EXPOSED STRUCTURE	
703	KITCHEN	STAINED CONC.	RB	FRP	CG-1	10'-0"	
704	WALK-IN COOLER	SHELL FLOOR PANEL	NONE	INSUL. WALL	INSUL. PANEL	7'-0"	PRE-FAB WALK-IN COOLER
705	OFFICE	STAINED CONC.	RB	PT	CG-2	9'-0"	
706	WAIT STATION	STAINED CONC.	RB	PT	CG-2	10'-0"	
707	HALL	STAINED CONC.	RB	PT	CG-2	10'-0"	
708	WOMEN	VCT	RB	FRP	GYP BD. PAINTED	9'-0"	
709	MEN	VCT	RB	FRP	GYP BD. PAINTED	9'-0"	

NOTES

1. NEW GYP. BD. WALLS TO BE TAPED, TEXTURED, PRIMED & PAINTED
2. ALL FINISH COLOR SELECTIONS SHALL BE MADE BY THE TENANT FROM MANUFACTURER'S STANDARD COLORS.
3. INSTALL ALL FINISHES PER MANUFACTURER'S STANDARD INSTRUCTIONS.
4. FE-1 LARSEN MO.- 6L 2A K FIRE EXTINGUISHER WITH 6B4 WALL BRACKET
   FE-2 LARSEN M-5, 2A-10B:C FIRE EXTINGUISHER WITH 6B4 WALL BRACKET
5. WALLS SHALL EXTEND FLOOR TO UNDERSIDE OF ROOM DECK UNLESS NOTED OTHERWISE
   WALLS SHALL BE 3 5/8" METAL STUDS WITH 5/8" GYP. BD. EACH SIDE WITH 2" SOUND BATT INSULATION.

FINISHES

CONCRETE STAIN - PENETRATING CHEMICAL STAIN WHICH CHEMICALLY REACTS WITH CONCRETE H&C SEMI TRANSPARENT DECORATIVE STAIN OR EQUAL

VCT - 12" X 12" X 1/8" VINYL COMPOSITION TILE, ARMSTRONG EXCELON OR EQUAL

RB - RUBBER BASE ROPPE OR EQUAL, 4" HIGH

PT - MEDIUM DRAG TEXTURE - 1 COAT PRIMER, 2 FINISH COATS SEMI-GLOSS LATEX KITCHEN WALLS, SATIN GLOSS LATEX DOORS AND TRIM, FLAT WHITE CEILINGS. ALL OTHER SURFACES EGGSHELL

FRP - FIBERGLASS REINFORCED PLASTIC WALL PANELS, KEMLITE OR EQUAL

CG-1 2'X 4' LAY-IN ARMSTRONG CERAMAGUARD CEILING TILE IN 15/16" PRELUDE WHITE CEILING GRID.

CG-2 2'X 4' LAY-IN ARMSTRONG ULTIMA 6SMOOTH TEXTURED CEILING TILES IN 15/16" PRELUDE WHITE CEILING GRID

DOOR SCHEDULE

WT	Width	Height	Thickness	Description
701	3'-0"	7'-0"	0'-1 3/4"	ALUM. & GLASS ENTRY DOOR, EXISTING DOOR & HARDWARE
703A	5'-0"	7'-0"		DOUBLE ACTING IMPACT DOOR ELIASON LWR-5 LAMINATED FACE W/ 15" X 20" ACRYLIC WINDOW & 12" HIGH 8G BASE PLATE (BOTH SIDES)
703B	5'-0"	7'-0"	0'-1 3/4"	EXISTING HOLLOW METAL DOOR, METAL FRAME AND HARDWARE
704	2'-2"	6'-8"	0'-4"	INSULATED COOLER DOOR, FURNISHED W/ WALK-IN COOLER
705	3'-0"	7'-0"	0'-1 3/4"	HALF GLASS 6C WOOD DOOR PAINTED, IN PAINTED HOLLOW METAL FRAME WITH OFFICE LOCKSET, HINGES, DOOR STOP, KICK PLATE & SILENCERS
707	3'-0"	7'-0"	0'-1 3/4"	EXISTING HOLLOW METAL DOOR, METAL FRAME AND HARDWARE
708	3'-0"	7'-0"	0'-1 3/4"	6C WOOD DOOR PAINTED, IN PAINTED HOLLOW METAL FRAME WITH PRIVACY LOCKSET, HINGES, CLOSER/ STOP, KICK PLATE AND SILENCERS.
709	3'-0"	7'-0"	0'-1 3/4"	6C WOOD DOOR PAINTED, IN PAINTED HOLLOW METAL FRAME WITH PRIVACY LOCKSET, HINGES, CLOSER/ STOP, KICK PLATE AND SILENCERS.

william b. ferguson, architect

August 11, 2021

12.9

Revision Schedule		
Number	Date	Description

PERMIT SET

TENANT BUILD-OUT FOR LORI'S CA
MIDLAND CROSSING

MIDLAND, TX

I'S CAFE

FLOOR PLAN

Drawn	Checked	Project Number
CMM	MB	15004
Date		Sheet No.
11/05/2015		A2

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PACKET

EXHIBIT A

EXHIBIT A
MIDLAND CROSSING SHOPPING CENTER

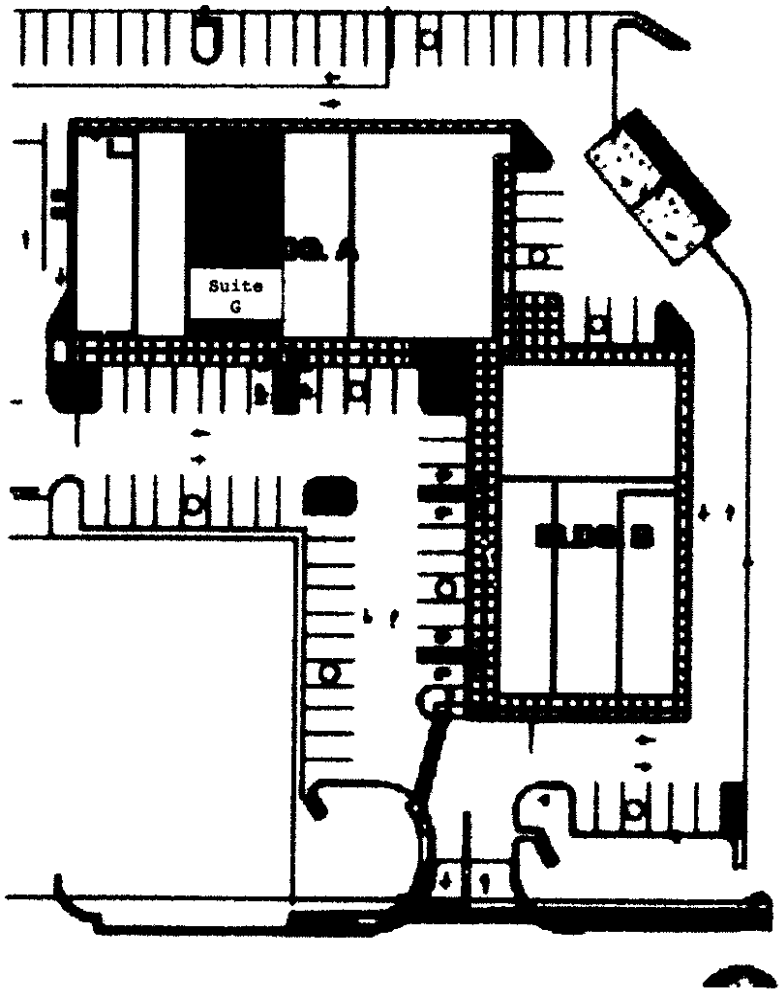
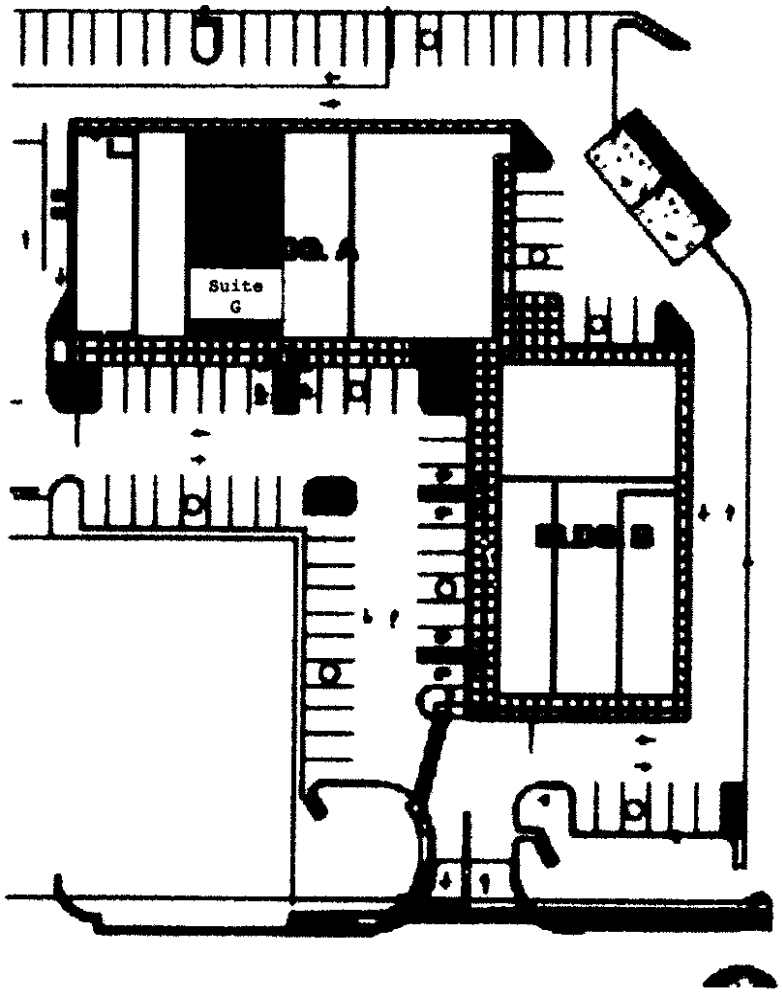
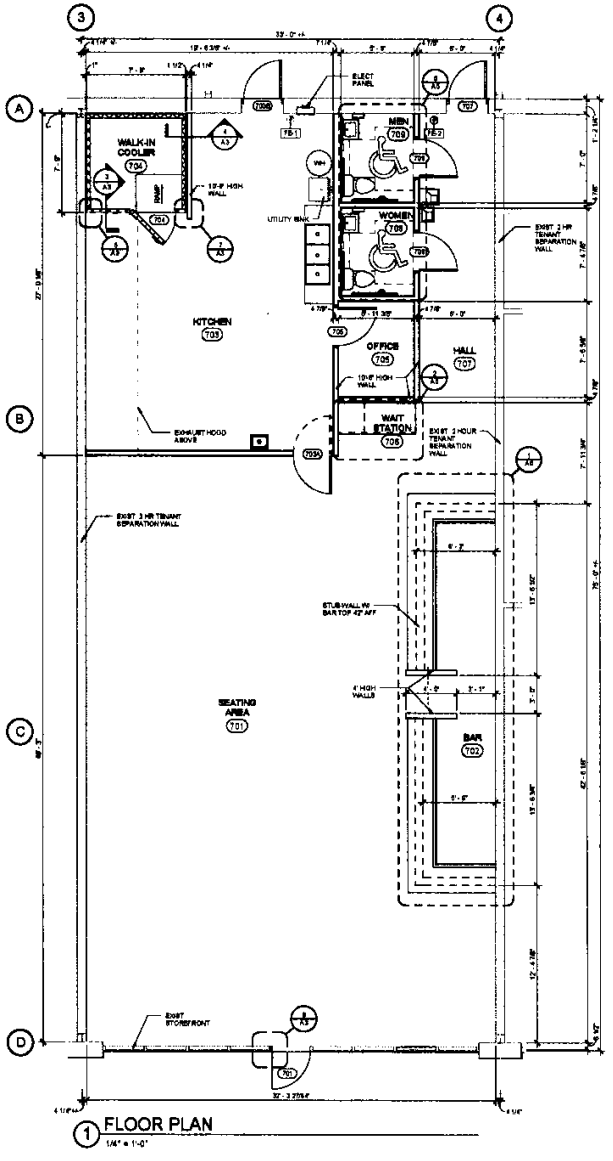


EXHIBIT A
MIDLAND CROSSING SHOPPING CENTER





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

BUSHIDO ROOM FINISH SCHEDULE

Room Number	Room Name	Floor Finish	Base Finish	Wall Finish	Ceiling Finish	Ceiling Height	Remarks
701	SEATING AREA	STAINED CONC	RB	PT	PAINT BLACK	EXPOSED STRUCTURE	
702	BAR	STAINED CONC	RB	PT	PAINT BLACK	EXPOSED STRUCTURE	
703	KITCHEN	STAINED CONC	RB	FRP	CG-1	10'-0"	
704	WALK-IN COOLER	SHELL FLOOR PANEL	NONE	INSUL. WALL	INSUL PANEL	7'-0"	PRE-FAB WALK-IN COOLER
705	OFFICE	STAINED CONC	RB	PT	CG-2	9'-0"	
706	WAIT STATION	STAINED CONC	RB	PT	CG-2	10'-0"	
707	HALL	STAINED CONC	RB	PT	CG-2	10'-0"	
708	WOMEN	VCT	RB	FRP	GYP BD. PAINTED	9'- 0"	
709	MEN	VCT	RB	FRP	GYP BD. PAINTED	9'- 0"	

NOTES

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3. INSTALL ALL FINISHES PER MANUFACTURER'S STANDARD INSTRUCTIONS.
4. FE-1 LARSEN MOD. 6L 2A K FIRE EXTINGUISHER WITH 6BS WALL BRACKET.
   FE-2 LARSEN M.F.G. 2A-10B:C FIRE EXTINGUISHER WITH 6BS WALL BRACKET
5. WALLS SHALL EXTEND FLOOR TO UNDERSIDE OF ROOM DECK UNLESS NOTED OTHERWISE.
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PT - MEDIUM GRAIN TEXTURE - 1 COAT PRIMER, 2 FINISH COATS SEMI-GLOSS LATEX KITCHEN WALLS, SATIN GLOSS LATEX DOORS AND TRIM, FLAT WHITE CEILINGS.
ALL OTHER SURFACES EGGSHELL

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CG-2 2'X 4' LAY-IN ARMSTRONG ULTIMA #3603TH TEXTURED CEILING TILES IN 15/16" PRELUDE WHITE CEILING GRID

DOOR SCHEDULE

MT	Width	Height	Thickness	Description
701	3' - 0"	7' - 0"	0' - 1 3/4"	ALUM. & GLASS ENTRY DOOR, EXISTING DOOR & HARDWARE
703A	5' - 0"	7' - 0"		DOUBLE ACTING IMPACT DOOR ELIASON LWP-E LAMINATED FACE W/ 15" X 20" ACRYLIC WINDOW & 12" HIGH SS BASE PLATE (BOTH SIDES)
703B	5' - 0"	7' - 0"	0' - 1 3/4"	EXISTING HOLLOW METAL DOOR, METAL FRAME AND HARDWARE
704	2' - 2"	6' - 8"	0' - 4"	INSULATED COOLER DOOR, FURNISHED W/ WALK-IN COOLER
705	3' - 0"	7' - 0"	0' - 1 3/4"	HALF GLASS SC WOOD DOOR PAINTED, IN PAINTED HOLLOW METAL FRAME WITH OFFICE LOCKSET, HINGES, DOOR STOP, KICK PLATE & SILENCERS
707	3' - 0"	7' - 0"	0' - 1 3/4"	EXISTING HOLLOW METAL DOOR, METAL FRAME AND HARDWARE
708	3' - 0"	7' - 0"	0' - 1 3/4"	SC WOOD DOOR PAINTED, IN PAINTED HOLLOW METAL FRAME WITH PRIVACY LOCKSET, HINGES, CLOSER/ STOP, KICK PLATE AND SILENCERS.
709	3' - 0"	7' - 0"	0' - 1 3/4"	SC WOOD DOOR PAINTED, IN PAINTED HOLLOW METAL FRAME WITH PRIVACY LOCKSET, HINGES, CLOSER/ STOP, KICK PLATE AND SILENCERS.

william b. ferguson, architect
Architecture Planning Interior Design
1539 Union Avenue, Memphis, TN 38104
Tel. 901-278-6468
www.wbfa.com

Revision Schedule		
Number	Date	Description

PERMIT SET

TENANT BUILD-OUT FOR LORI'S CA
MIDLAND CROSSING

MIDLAND, TX

FLOOR PLAN

DRAWN	CHECKED	PROJECT NUMBER
CMM	MB	15004
DATE		SHEET NO.
11/05/2015		A2

© 2015 WBF ARCHITECT

I'S CAFE

MIDLAND
Planning Division

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

Project Number: SUD-200716

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: JAMES TYNES JR		Phone (701) 3397151 Email JAMESTYNES2624@GMAIL.COM	
Address 4700 POLO PARKWAY APT 147	City MIDLAND	State TX	Zip 79705
Property Owner Printed Name: JAMES TYNES JR		Phone ( ) Email	
Address 210 W. LONGVIEW AVE SUITE G	City MIDLAND	State TEXAS	Zip 79701
Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 210 W. LONGVIEW AVE

Business Name: SWEET POT LLC

Legal Description
Lot: G Block: Subdivision:

Current Zoning:

Reason for Request: LIQUOR PERMIT

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: RESTAURANT

Proposed/Current Days and Hours of Operation: MONDAY - SUNDAY 10 AM - 10PM

Proposed Days and Hours of Alcohol Service: MONDAY - SUNDAY 10 AM - 2 AM

Total Square Footage of Business:

Square Footage of Alcohol Serviceable Area:

Restroom Fixtures:	*Men*	**Toilets/Urinals:** 1	**Bathroom Sinks:** 1
	Women	**Toilets:** 1	**Bathroom Sinks:** 1

RECEIVED
JUN 04 2020
BY:

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)

RECEIVED
JUN 0 4 2020

Signatures	BY: .....
Applicant (signature):	Date: 5/29/2020
Applicant (printed): James T Yates Jr	
Property Owner (signature):	Date: 5/29/2020
Property Owner (printed): James T Yates Jr	

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

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

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

STATE OF TEXAS
COUNTY OF MIDLAND

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

_____
Authorized Agent (*signature*)

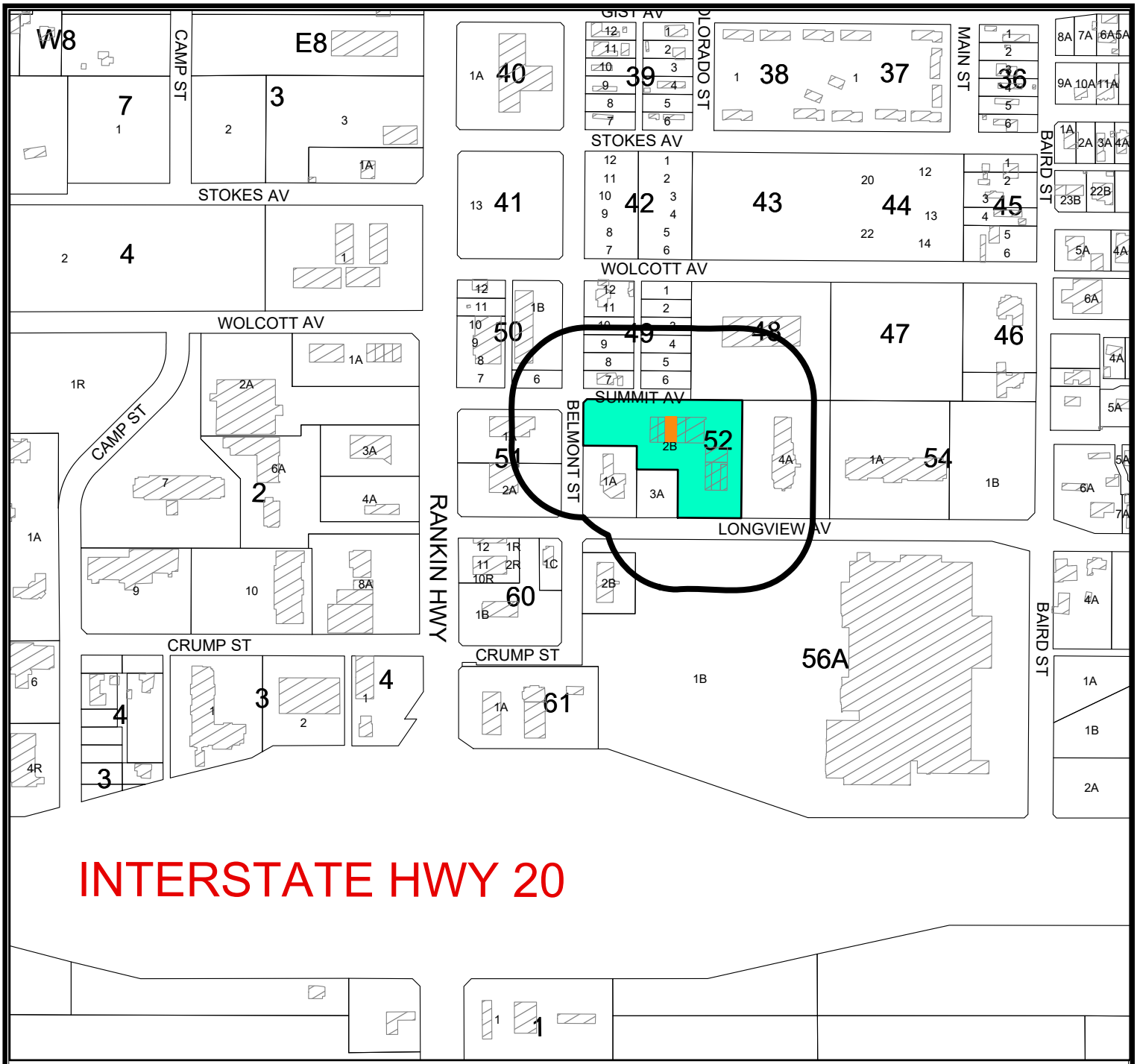
Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

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

FOR OFFICE USE ONLY		
☒ Property Owner Authorization	☒ Dimensioned Floor Plan	
☒ Application Fee	☒ Site Plan	RECEIVED JUN 04 2020
Check # CC	☐ Plans in Digital Format (PDF/JPEG)	
Received By: DR	Date:	BY:

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



LOCATION MAP

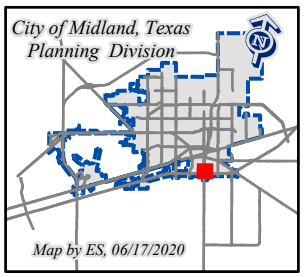
SUD-20-0076 **Scale: 1" = 400'**

Consider a request by James Tynes Jr. for a Specific Use Designation with Term for the Sale of all Alcoholic Beverages, for on premises consumption in a restaurant, on a 2,508 square foot portion of Lot 2B, Block 52, Belmont Addition, Section 21, City and County of Midland, Texas.

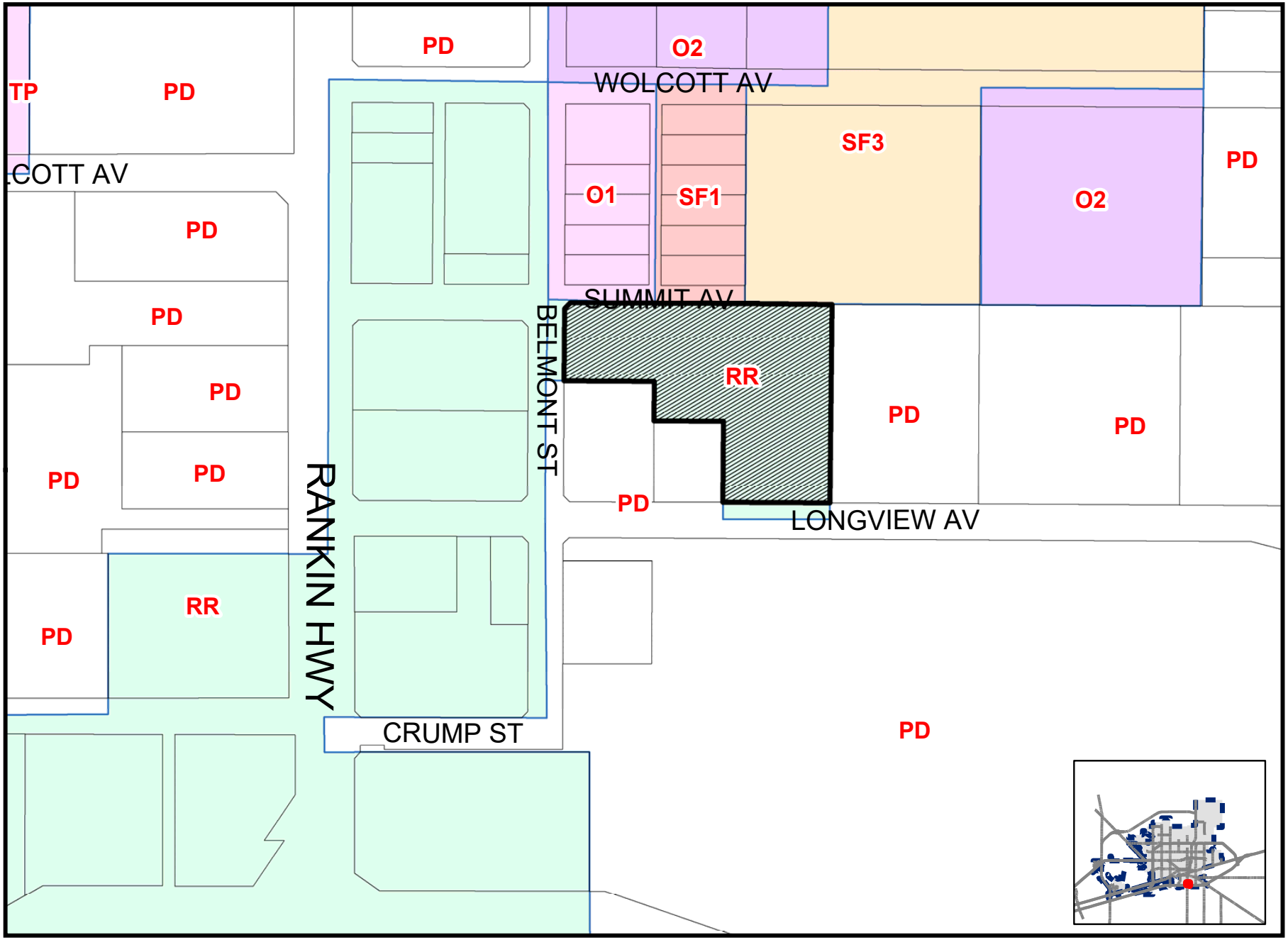
Generally located on the north side of West Longview Avenue, approximately 290 feet east of Belmont Street. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



August 11, 2020



Map By ES, 6/17/2020

SUD-20-0076

Scale: 1" = 200'

ZONING MAP

PACKET
12.17
August 11, 2020

ORDINANCE NO. 9450

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 1,920-SQUARE FOOT PORTION OF LOT 2B, BLOCK 52, BELMONT ADDITION, SECTION 21, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST LONGVIEW AVENUE, APPROXIMATELY 270 FEET EAST OF BELMONT STREET), WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, 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 LR-2, Local Retail District, to-wit:

> A 1,920-square foot portion of Lot 2B, Block 52, Belmont Addition, Section 21, 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 LR-2, Local Retail District.

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 approximately 1,920 contiguous square feet as shown in the site plan, which is attached hereto as Exhibit "A" and incorporated herein.

B. That the maximum number of seats shall be limited to 54.

C. That a building permit shall be obtained, and the restaurant shall meet all requirements of the Fire Department and the Code Administration Division.

D. That the sale and on-premise consumption of alcoholic beverages shall conform to all applicable state and local laws.

E. That the days and hours of alcoholic beverage sales and consumption shall be limited to:

1. Sunday through Thursday from 11:00 a.m. to 11:00 p.m.; and

2. Friday and Saturday from 11:00 a.m. to 12:00 a.m. (midnight).

F. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premise consumption to ensure that the conditions of this permit are satisfied.

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

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 9th day of June, A.D., 2015; and passed to second reading on motion of Council member Lacy, seconded by Council member Robnett, by the following vote:

Council members voting "AYE": Hotchkiss, 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 Love, seconded by Council member Hotchkiss, on the 23rd day of June, A.D., 2015, 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 23rd day of June, A.D., 2015.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

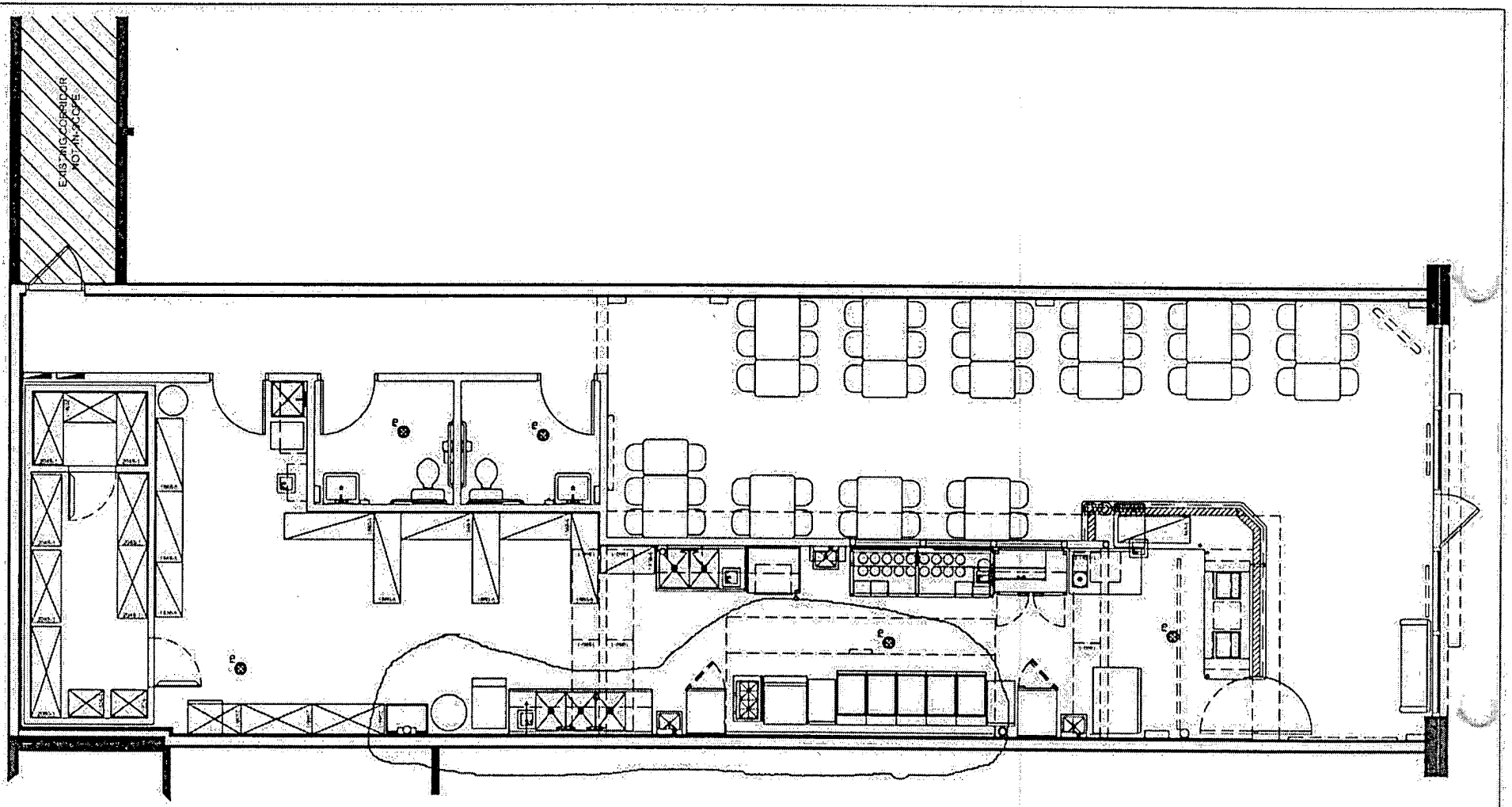
APPROVED AS TO CONTENT
AND COMPLETENESS:

Frank Salvato, Assistant City Manager

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



PROJECT DATA:

OVERALL NET LEASE (USABLE) AREA:	1,920 SQ. FT. (NET USABLE SPACE)
SALES, COOKING, PREP & JANITOR AREAS:	878 SQ. FT. @ 1/200 (GROSS) = 5 OCCUPANTS
SEATING AREA:	634 SQ. FT. @ 1/15 = 43 OCCUPANTS
ORDER (STANDING) AREA:	60 SQ. FT. @ 1/5 = 12 OCCUPANTS
PASSAGE, MEN & WOMEN RESTROOM AREAS:	282 SQ. FT. (ACCESSORY USE, NOT APPLICABLE)
SEATING ANALYSIS:	54 TOTAL SEATS
TOTAL OCCUPANT LOAD:	60 OCCUPANTS

THE WING WING·STOP WING EXPERTS

GL #P007

PROJECT LOCATION:

MIDLAND, TX

DRAWING NAME:

SCHEMATIC EQUIPMENT PLAN

ISSUE DATE: 09/27/2014

EXHIBIT A

Ord # 9450

City Council Agenda

APPROVED

Approved for Agenda:
fsalvato
City Manager's Office

MEETING DATE: June 23, 2015

TO: CITY COUNCIL/CITY MANAGER

FROM: Robert Baronti, Jr., AICP, CPM, Planning Division Manager

SUBJECT: **Consider an ordinance on second reading on a request by Longview Wingpartners, LLC for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on a 1,920-square foot portion of Lot 2B, Block 52, Belmont Addition, Section 21, City and County of Midland, Texas. (Generally located on the north side of W. Longview Avenue, approximately 270-feet east of Belmont Street. – District 2)**

Purpose:

Consider an ordinance on second reading on a request by Longview Wingpartners, LLC for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant is requesting a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, for a new restaurant, Wing Stop.

This restaurant is located at 210 W. Longview Avenue, Suite C, in a new retail center. The property is zoned LR-2, Local Retail District. To the north of the property is zoned O-1, Office District, 1F-1, One Family Dwelling District, and 1F-3, One-Family Dwelling District, and the locations of a residence, a vacant lot, and a church, respectively. To the east is zoned PD, Planned District for a Shopping Center, with an underlying zoning of LR-2, Local

Retail District, and the location of a hotel. To the south is zoned PD, Planned District for a Shopping Center, with an underlying zoning of LR-2, Local Retail District, and the location of Wal-Mart. To the west is zoned PD, Planned District for a Shopping Center, with an underlying zoning of LR-2, Local Retail District, and LR-2, Local Retail District, and the locations of a credit union and a Discount Tire, respectively.

The restaurant will have a floor area of 1,920 square feet. The applicant is requesting a maximum seating capacity of 54 seats. There are no schools or churches located within 300-feet of this site. The applicant is requesting service hours for alcohol sales as follows:

Sunday - Thursday: 11:00 a.m. – 11:00 p.m.

Friday and Saturday: 11:00 a.m. – midnight.

This area located near Rankin Highway and Interstate 20 has seen significant retail growth since the construction of the Wal-Mart. Because of this, staff sees that this request to sell alcohol for on-premises consumption in this restaurant is reasonable for this location.

City Council voted to approve this ordinance on first reading on June 9, 2015. This ordinance is now ready for consideration on second and final reading.

Letters of Objection:

Staff has received no letters of objection.

Case Number S-15001

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

Longview Wingpartners, LLC — 817-675-4269
Applicant Name — Contact Phone #s

210 W Longview Ave., Suite C, Midland, Tx 79701
Address — Zip Code

E-Mail address: wingedout@yahoo.com and ehernandez@geraldfranklinagency.com

Midland Crossing LLC — 901-300-3585
Property Owner Name — Contact Phone #s

5101 Wheelis Dr Ste 310 Memphis, TN 38117
Address — Zip Code

E-Mail address: jeff@whiteoakdevelopment.net

Operator (if different from Applicant or Property Owner) — Contact Phone #s

Address — Zip Code

Type of Permit: BG/FB

SUP with Term: / Yes ___ No
(For Office Use)

If Billboard: n/a
Static ___ Electronic ___
Latitude: ___ Longitude: ___ (decimal degrees, 5 decimal accuracy)
Projection: ___

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)
210 W Longview Ave., Suite C, Midland

Current Zoning: ___

Maximum Floor Area: 1920 sqft Max. Occupancy: 60

Proposed hours and days of use or operation: SUN-THUR 11am - 11pm
FRI-SAT 11am - midnight

Reason for request: for convenience of customers

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: All servers will have TABC seller/server certification. Also our sales are not driven by beer or wine it is driven by our food product. Our beer sales are estimated to be 1% of our total sales.

REQUIRED SUBMITTALS

1. Application fee: **$300.** (80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.)
2. Site plan – 16 copies (FOLDED)
3. On a CD in .pdf and .jpg format

SIGNATURES:

Applicant: _____ Date: 4/7/2015

Property Owner: _____ Date: 4/7/2015

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~~ Fort Bend

Before me, the undersigned authority, on this day personally appeared Donna R. Braun who, being by me duly sworn, upon oath says: That (s)he is authorized by Jeff Farmer, 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 08th day of April, 2015 to certify which witness my hand and seal of office.

Anju Chugh

NOTARY PUBLIC, ~~MIDLAND~~ COUNTY, TEXAS
Fort Bend

FOR OFFICE USE ONLY
Rec'd By: KC Date: 4/27/15
Assigned: CO
For: P&Z On: 5/11/15

ANJU B. CHUGH
Notary Public, State of Texas
My Commission Expires
September 12, 2017

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

PLANNING AND ZONING COMMISSION

May 11, 2015

CASE: S-15-011, Longview Wingpartners, LLC.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant.

APPLICANT: Longview Wingpartners, LLC.

OWNER: Midland Crossing, LLC.

LEGAL DESCRIPTION: On a 1,920-square foot portion of Lot 2B, Block 52, Belmont Addition, Section 21, City and County of Midland, Texas.

LOCATION: Generally located on the north side of W. Longview Avenue, approximately 270-feet east of Belmont Street.

CURRENT ZONING: LR-2, Local Retail District.

DETAILS OF REQUEST:

The applicant is requesting a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, for a new restaurant, Wing Stop.

SURROUNDING ZONING AND LAND USE:

This restaurant will be located at 210 W. Longview Avenue, Suite C, in a new retail center. The property is zoned LR-2, Local Retail District. To the north of the property is zoned O-1, Office District, 1F-1, One Family Dwelling District, and 1F-3, One-Family Dwelling District, and the locations of a residence, a vacant lot, and a church, respectively. To the east is zoned PD, Planned District for a Shopping Center, with an underlying zoning of LR-2, Local Retail District, and the location of a hotel. To the south is zoned PD, Planned District for a Shopping Center, with an underlying zoning of LR-2, Local Retail District, and the location of Wal-Mart. To the west is zoned PD, Planned District for a Shopping Center, with an underlying zoning of LR-2, Local Retail District, and LR-2, Local Retail District, and the locations of a credit union and a Discount Tire, respectively.

ANALYSIS:

The restaurant will have a floor area of 1,920 square feet. The applicant is requesting a maximum seating capacity of 54 seats. There are no schools or churches located within 300-feet of this site. The applicant is requesting service hours for alcohol sales as follows:

Sunday - Thursday: 11:00 a.m. – 11:00 p.m.

Friday and Saturday: 11:00 a.m. – midnight.

This area located near Rankin Highway and Interstate 20 has seen significant retail growth since the construction of the Wal-Mart. Because of this, staff sees that this request to sell alcohol for on-premises consumption in this restaurant is reasonable for this location.

STAFF RECOMMENDATION:

Staff recommends approval of the request for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to the following conditions:

A. **That the serviceable area of the restaurant shall be limited to approximately 1,920 square feet, as shown in Exhibit A.**

B. **That the maximum number of seats shall be limited to 54 seats.**

C. **That a building permit is obtained, and that the restaurant meets all requirements of the Fire Department and the Code Administration Division.**

D. **That the sale of alcoholic beverages for on-premises consumption shall comply with state and local laws.**

E. **That the permitted hours of the sale of alcoholic beverages be limited to:**

   a. **Sunday - Thursday: 11:00 a.m. – 11:00 p.m.**

   b. **Friday and Saturday: 11:00 a.m. – midnight.**

F. **That the applicant shall obtain a Certificate of Occupancy prior to the commencement of on-premises alcohol consumption to ensure that the conditions of this permit are satisfied.**

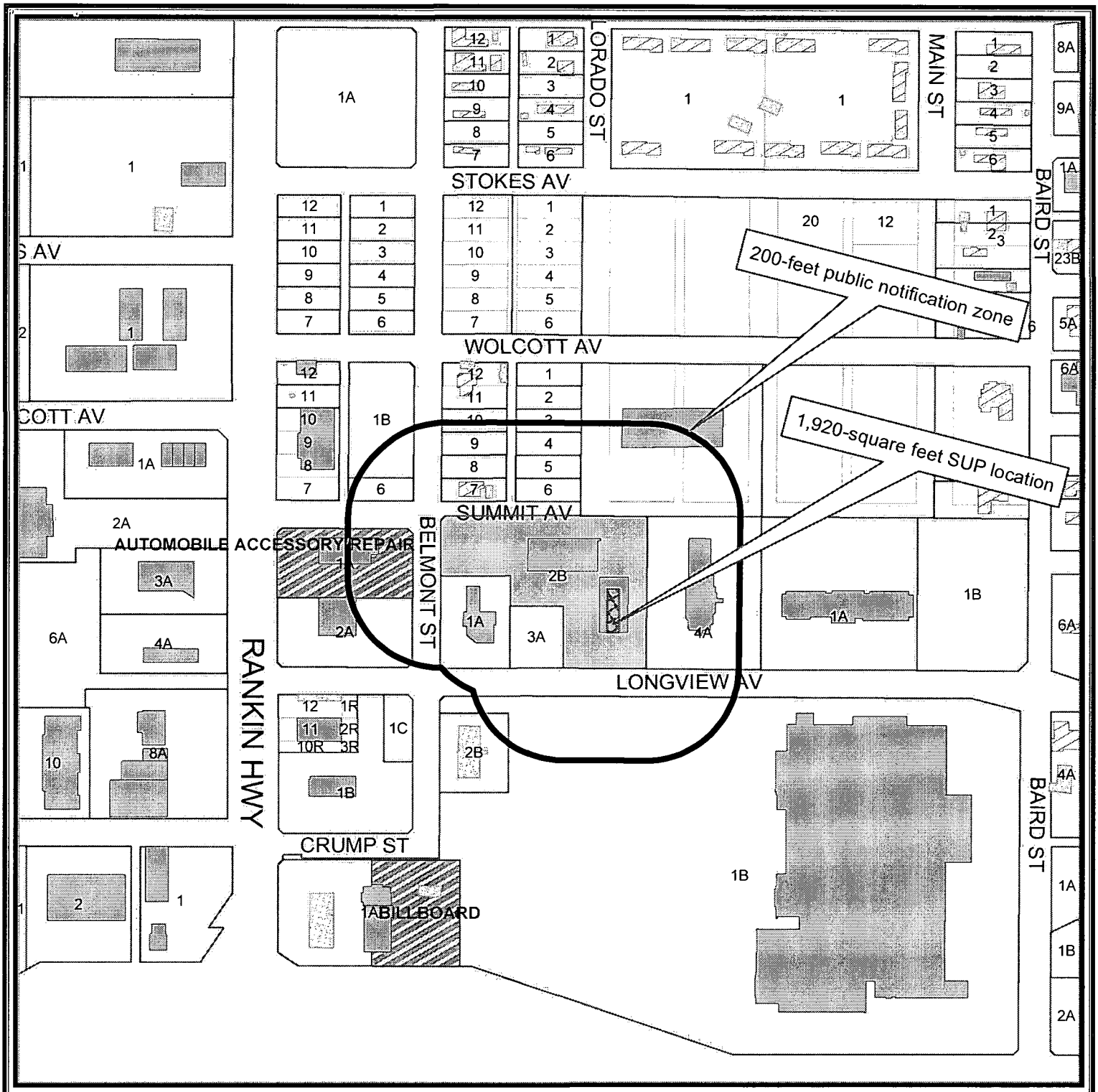
Site Plan (Exhibit A)

Cristina Odenborg
Senior Planner
Department of Development Services

Bob Baronti, Jr., AICP
Planning Division Manager
Department of Development Services

Attachments:

Application
Maps



LOCATION MAP

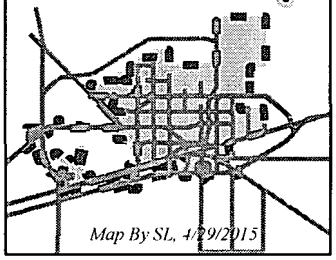
S - 15 - 011 **Scale: 1" = 300'**

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 1,920 square foot portion of Lot 2B, Block 52, Belmont Addition, Packet 21, City and County of Midland, Texas.. (Council District 2)

LEGEND

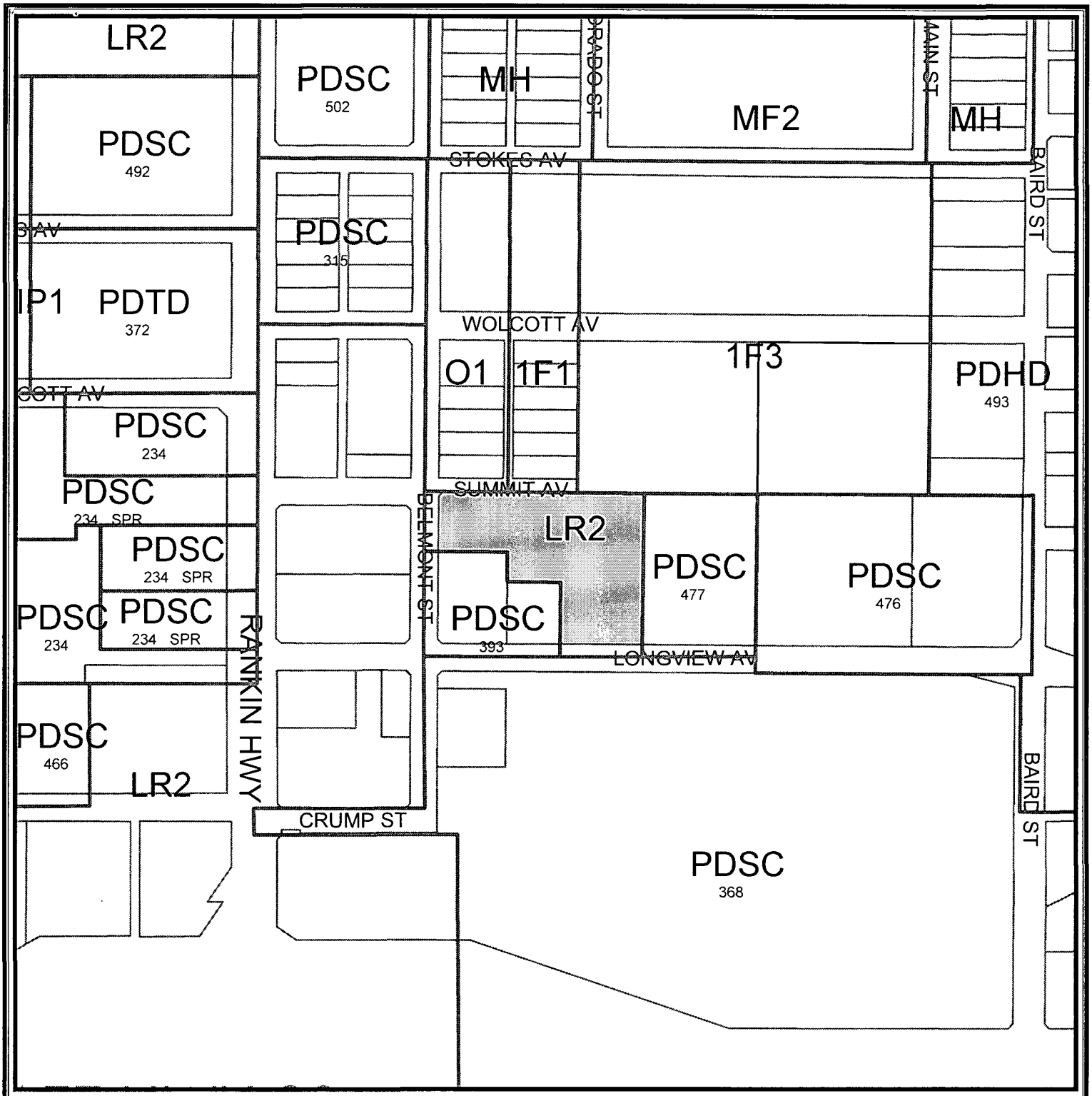
- CITY LIMITS
- 200-FEET PUBLIC NOTIFICATION ZONE
- CITY PARCEL
- SUBJECT AREA
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS
- EXISTING S.U.P

City of Midland, Texas
Planning Division



Map By SL, 4/29/2015

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ZONING MAP

Map By SL, 4/29/2015

S - 15 - 011 **Scale: 1" = 300'**

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 1,920 square foot portion of Lot 2B, Block 52, Belmont Addition, Section 21, City and County of Midland, Texas.. (Council District 2)

PACKET 12.30

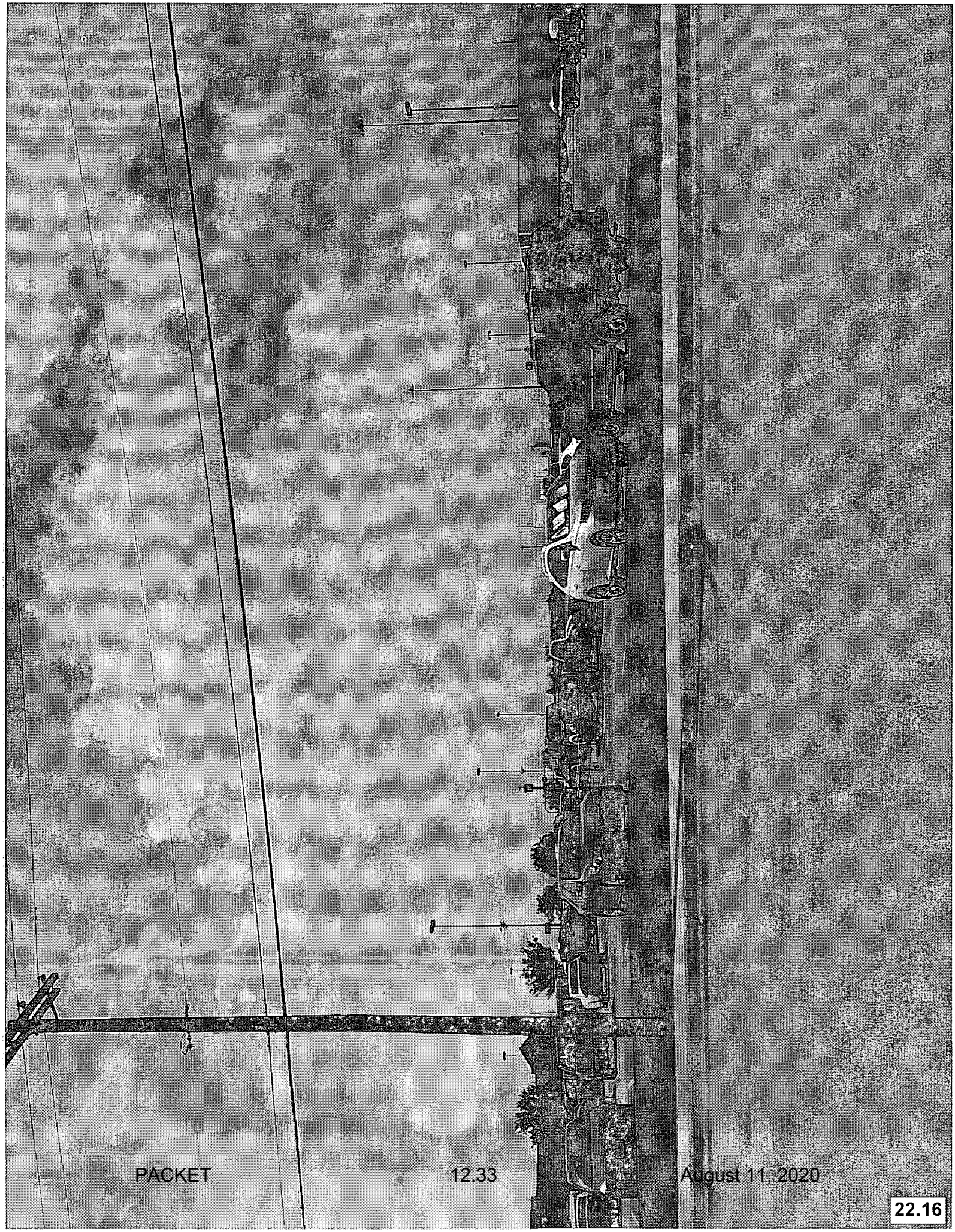
LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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White Oak Development
COMING SUMMER 2014
MIDLAND CROSSING
21,000 SF Shopping Center
For Leasing Info Contact
Jeff Farmer
CALL: 901-300-3585
www.whiteoakdevelopment.net


NO TRUCK PARKING
AT&T
LAVENDER NAILS & SPA


SOL
FOR
SALE
70-5100
SPACE AVAILABLE
MIDLAND
CROSSING
Contact Jeff Farmer
901-300-3585
MICROTEL
Walmart




SONIC

City Council Meeting

Item Number: 13

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Elizabeth Shaughnessy, 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 7 AND 8, BLOCK 11A, HIGHLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST PARKER AVENUE AND NORTH MAIN STREET), WHICH IS PRESENTLY ZONED SF-2, SINGLE-FAMILY DWELLING DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR A CHILD CARE: DAY CARE CENTER; 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 (DEVELOPMENT SERVICES)

Purpose:

The applicant, Rosa R. Ramirez, is requesting a Specific Use Designation with Term for a Child Care: Day Care Center to develop Mrs. Rosa's Learning Center, at 101 W. Parker Avenue.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Surrounding Zoning and Land Use:

The property is located at 101 West Parker Avenue, in a SF-2, Single-Family Dwelling District. The property to the north, east, south, and west are also zoned SF-2, Single-Family District and the location of residential houses.

Discussion:

The property is currently located in a SF-2, Single-Family District, which permits a Specific Use Designation with Term for a Child Care: Day Care Center. The applicant, Rosa R. Ramirez, has provided a site plan which shows 2,400 square feet of floor area for the Learning Center. The building to the north of the learning center will be a 3,100 square foot multipurpose center, which will include an office and gym.

Per the City of Midland Zoning Ordinance, Section 4.03 Use Chart, Child Care: Day Care Center is an allowed use in the SF-2, Single Family Dwelling District with a specific use designation with term.

Section 9.07 Specific Use Designation (SUD's)

F. Specific Use Designation "With Term" – Uses and Baseline Standards Specific Use Designations with term may be approved for the following types of uses and subject to, but not limited to, the specified restrictions, in the following districts.

> 6. Child-Care: Day-Care Center Uses a. See Section 4.03 Use Chart to determine if a Specific Use Designation is required a given district

The proposed hours of operation are:

> Monday through Friday from 7:00 a.m. to 6:00 p.m.

This project has been circulated and reviewed by all pertinent City departments for internal review their comments are as follows:

Engineering: (Approved)

No objection.

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.

Fire: (Approved)

No objections to zone change.

The learning center will require a fire inspection before opening.

Transportation: (Approved with Conditions)

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.

Due to traffic safety concerns, no pick-up/drop-off activity may occur in the right-of-way along Main St.

No objection to zone change.

Code Administration: (Approved with Conditions)

No Objections.

Planning:

The Planning and Zoning Commission recommended approval of this request at the July 6, 2020 meeting. The City Council approved this request at the July 28, 2020 meeting.

This request meets all requirements; therefore, staff recommends approval of the Specific Use Designation with Term for a Child Care: Day Care Center, subject to Conditions A through E.

Conditions:

A. That the operation of the Child Care: Day Care Center shall confirm to the attached site plan and floor plans incorporated herein as Exhibits A and B.

B. That all necessary permits, inspections, and approvals required by the City of Midland and the State of Texas shall be obtained prior to commencing operation of the Child Care: Day Care Center.

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 days and hours of operation shall be limited to the following

Monday through Friday from 7:00 a.m. to 6:00 p.m.

Letters of Objection:

As of July 22, 2020, staff has not received any letters of objections.

Attachments:

Site Plan (Exhibit A)
Floor Plans (Exhibit B)
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 WITH TERM FOR LOTS 7 AND 8, BLOCK 11A, HIGHLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST PARKER AVENUE AND NORTH MAIN STREET), WHICH IS PRESENTLY ZONED SF-2, SINGLE-FAMILY DWELLING DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR A CHILD CARE: DAY CARE CENTER; 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 7 and 8, Block 11A, Highland 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 a Child Care: Day Care Center (the "Establishment"), together with the uses permitted in the present SF-2, Single-Family Dwelling District.

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

A. That the operation of the Establishment shall conform to Exhibits "A" and "B", which are attached hereto and incorporated herein for all purposes.

B. That all necessary permits, inspections, and approvals required by the City of Midland and the State of Texas shall be obtained prior to commencing operation of the Establishment.

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 the requirements of the Fire Department and the Code Administration Division.

E. That the days and hours of operation of the Establishment shall be limited to Monday through Friday from 7:00 a.m. to 6:00 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 _____ day of _____, A.D., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, Assistant City Manager

_____
Charles Harrington, Director of Development Services

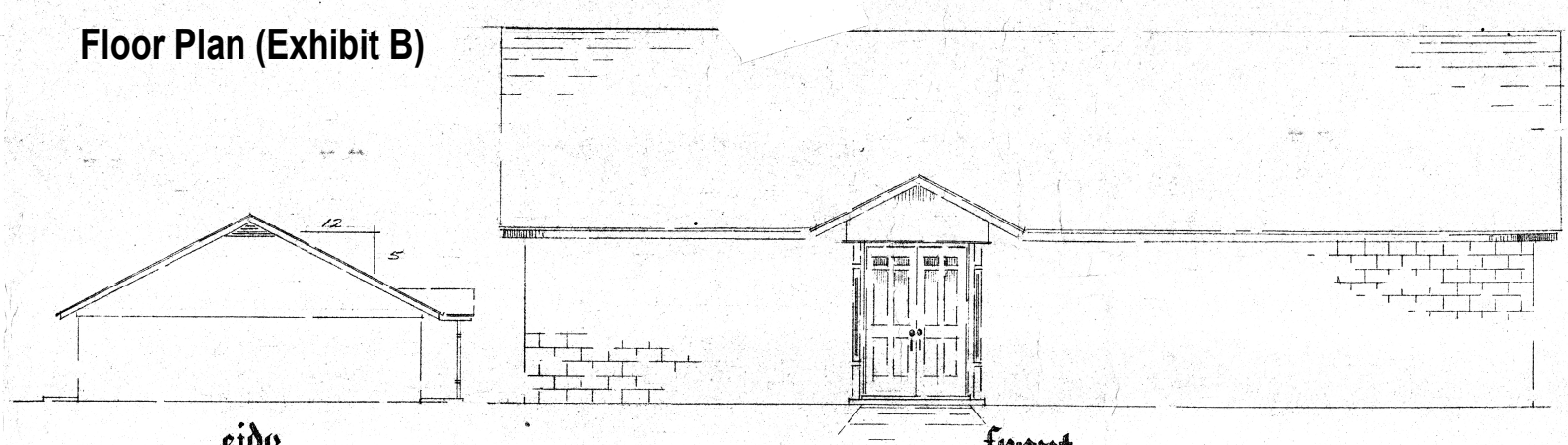
APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

Site Plan (Exhibit A)



Floor Plan (Exhibit B)

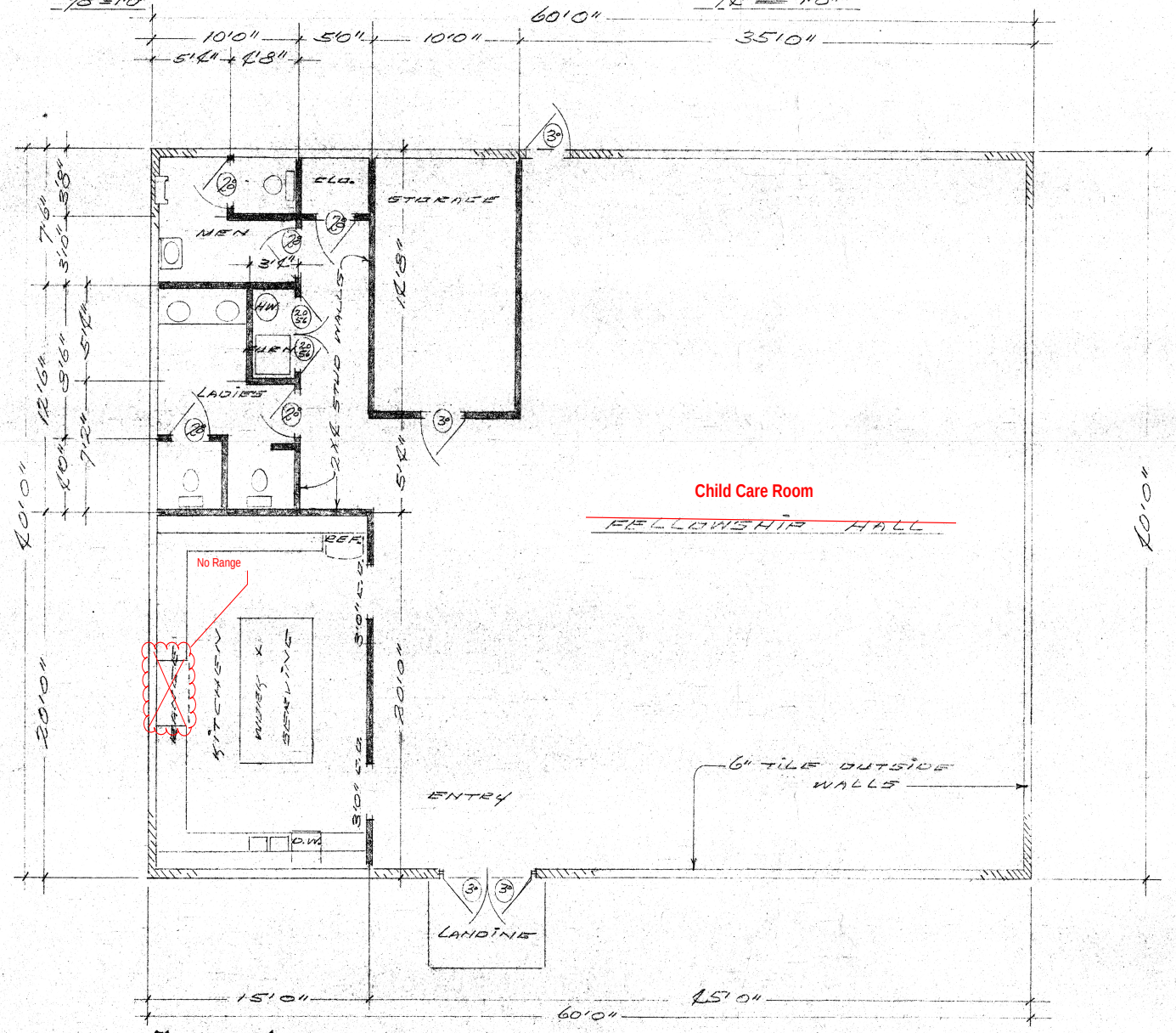


side

1/8"=1'0"

front

1/4"=1'0"



floor plan

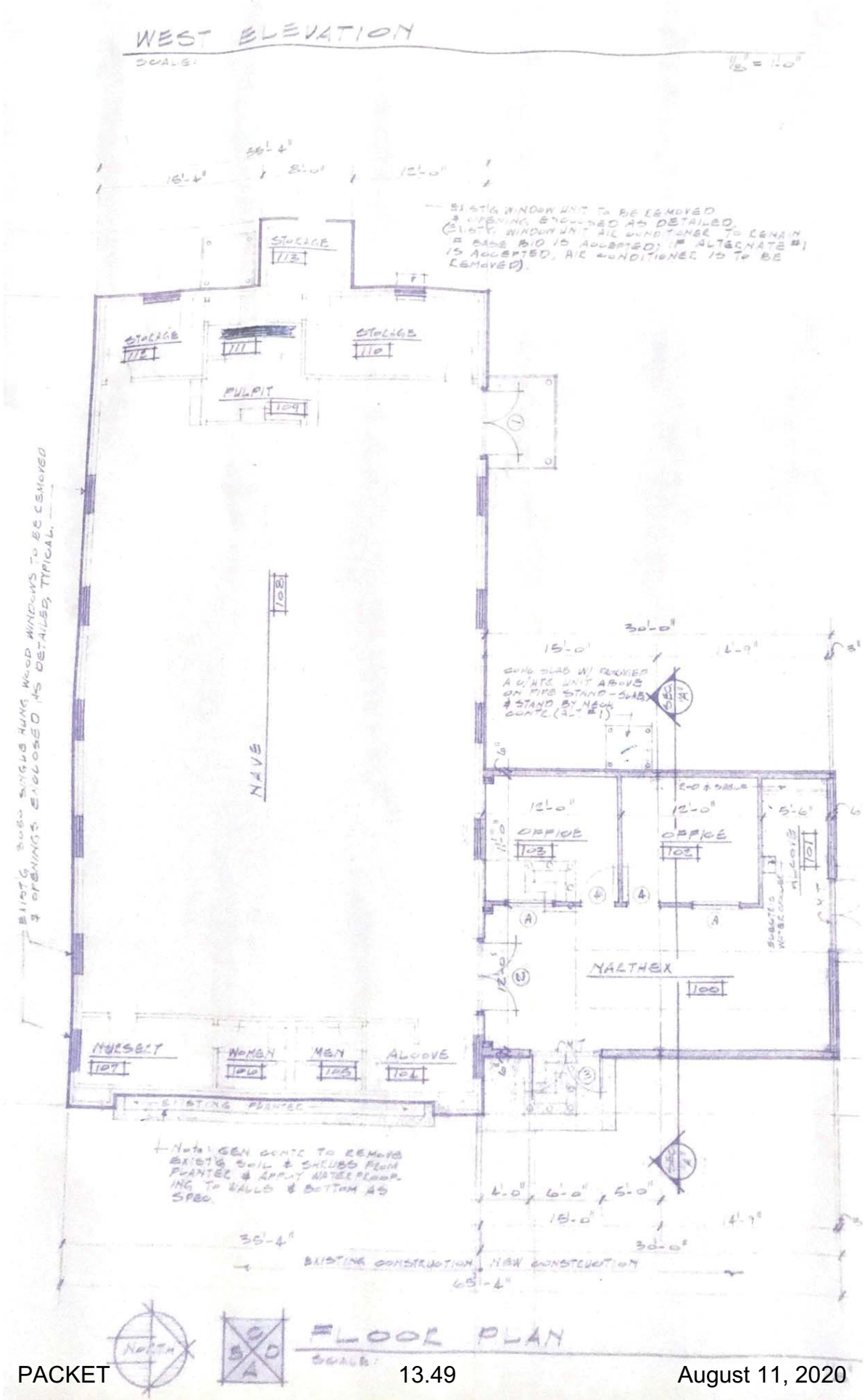
1/4"=1'0"

PROPOSED FELLOWSHIP BUILDING FOR

MAIN STREET CHURCH OF CHRIST

ROY WHITE MINISTER

W. D. LADD — DESIGNER


WEST ELEVATION
SCALE: 1/8" = 1'-0"
35'-4"
16'-4"
8'-0"
12'-0"
EXISTING WINDOW UNIT TO BE REMOVED & OPENING ENCLOSED AS DETAILED. (EXIST. WINDOW UNIT AIR CONDITIONER TO REMAIN & BASE BID IS ACCEPTED) IF ALTERNATE #1 IS ACCEPTED, AIR CONDITIONER IS TO BE REMOVED).
STORAGE 113
STORAGE 112
STORAGE 111
STORAGE 110
PULPIT 109
NAVE 108
EXISTING SHINGLE HUNG WOOD WINDOWS TO BE REMOVED & OPENINGS ENCLOSED AS DETAILED, TYPICAL
30'-0"
15'-0"
4'-9"
CONC SLAB W/ RECESSED A/C UNIT ABOVE ON PIPE STAND - SLAB & STAND BY MECH CONTR. (A-1 #1)
SEC 1/A
12'-0"
12'-0"
5'-6"
OFFICE 103
OFFICE 102
STORAGE 101
NARTHEX 100
NURSERY 107
WOMEN 106
MEN 105
ALCOVE 104
EXISTING PLANTER
Note: GEN CONTR TO REMOVE EXISTING SOIL & SHRUBS FROM PLANTER & APPLY WATERPROOFING TO WALLS & BOTTOM AS SPEC.
4'-0"
6'-0"
5'-0"
15'-0"
4'-7"
35'-4"
30'-0"
EXISTING CONSTRUCTION
NEW CONSTRUCTION
65'-4"
NORTH
FLOOR PLAN
SCALE:

MIDLAND Planning Division

Specific Use Designation Application (Non-Alcohol)

Case Number: SUD-20-0015

Ord. Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: ~~Mario B. Ramirez~~ Rosa R. Ramirez		Phone (~~432~~) ~~557-4570~~ Email Rosarramirez64@gmail.com	
Address 1408 N. Lorraine	City Midland	State ~~TX~~	Zip 79701
Property Owner Printed Name: Rosa & Mario Ramirez 432 557-4570		Phone (432) 813-7673 Email Rosarramirez64@gmail.com	
Address 1408 N. Lorraine	City Midland	State ~~TX~~	Zip 79701
Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Type of Permit: Specific Use Designation

For Office Use Only ☑ with Term ☐ without Term

Is there any Code Enforcement action pending on property? ☐ Yes ☐ No

Street Address: 101 W. Parker

Legal Description
Lot: 7 & 8 Block: Subdivision:

Current Zoning: SF2

Maximum Floor Area: **Maximum Occupancy:**

Proposed hours and days of use or operation: Mrs. Rosa's Learning Center Monday - Fri 7:00am 5:00pm

Reason for request: Open a Learning Center. 3 and 4 yr. old children. Mrs. Rosa's Learning Center

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: It's going to be a professional work place to provide care for young learners. and a well qualified work place.

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): Rosa R. Ra	Date: 6 · 1 · 2020
Applicant (printed): Rosar Ramirez	
Property Owner (signature): Mario Ramirez	Date: 6-1-2020
Property Owner (printed) : Mario Ramirez	

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 _____ 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*)

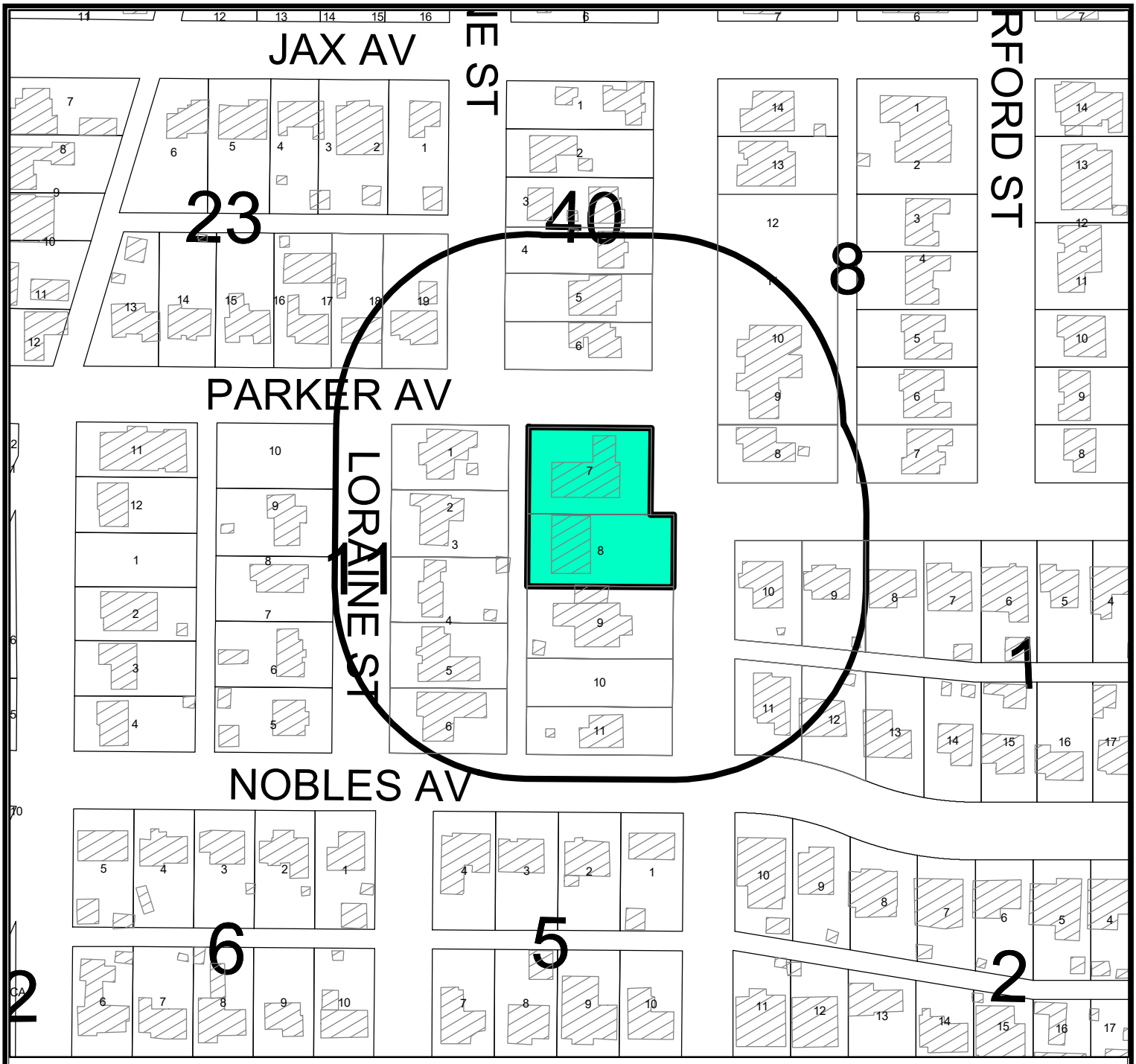
Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan Will Send plan w/dimensions
☐ ~~Application Fee~~ Visa Card	☐ Site Plan in Digital Format (PDF/JPEG)
Check #_____	
Received By: gac	Date: JUN 0 1 2020
	BY: .....

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



LOCATION MAP

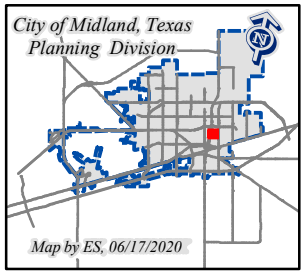
SUD-20-0075 **Scale: 1" = 150'**

Consider a request by Rosa R Ramirez for a Specific Use Designation with Term, for a Child Care: Day Care Center on Lots 7 & 8, Block 11A, Highland Addition, City and County of Midland, Texas.

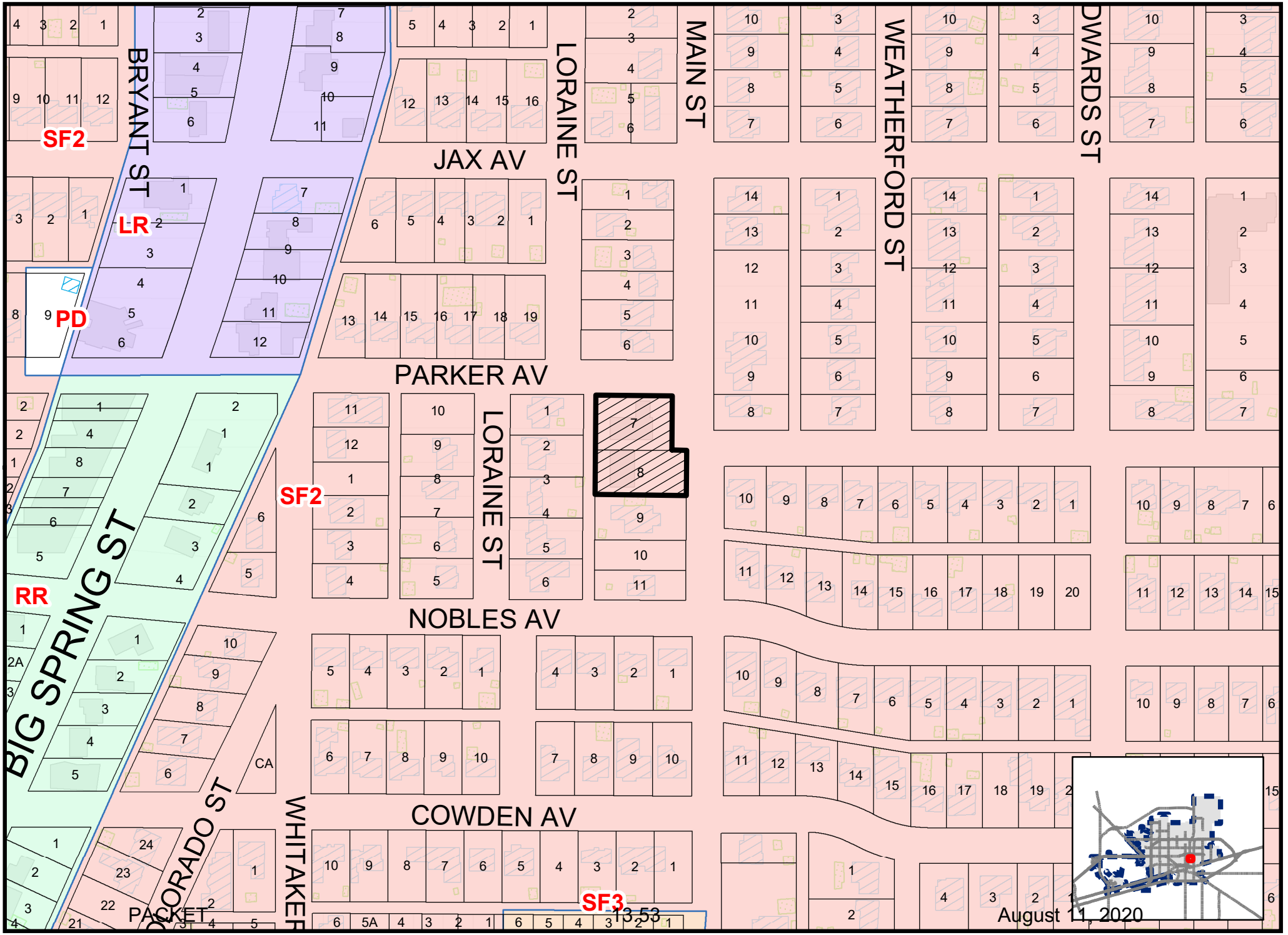
Generally located on the southwest corner of the intersection of W. Parker Avenue and N. Main Street. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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Map By ES, 06/17/2020

SUD-20-0075

Scale: 1" = 200'

ZONING MAP

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CHURCH OF CHRIST







City Council Meeting

Item Number: 14

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Glenda Arroyo-Cruz, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 26, BLOCK 5, NORTH PARK ADDITION, SECTION 18, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF WHITMAN DRIVE, APPROXIMATELY 165 FEET NORTH OF WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Slam-Dunk Food # 2, LLC is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption, in a restaurant at 4605 Whitman Drive.

Recommended City Council Action:

Approve

Fiscal Impact:

This request has no significant impact on the City's Budget.

Discussion:

Current Zoning:

RR, Regional Retail District.

Discussion:

The property to the north is zoned PD, Planned District for a Housing Development and the location of an apartment complex. The property to the east is zoned PD, Planned District for a Shopping Center and the location of a furniture shopping center. The properties to the south and west are zoned RR, Regional Retail District and the location of vacant land and a retail shopping center, respectively.

Analysis:

Alex Cade Underwood, a representative of Slam-Dunk Food #2, LLC, is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption, in a restaurant at 4605 Whitman Drive. The property is currently under construction and the future site for Walk On's Sports Bistreaux. The property is located in a RR, Regional Retail District, which allows the sale of all alcoholic beverages, for on premises consumption, in a restaurant with the approval of a Specific Use Designation.

The proposed site plan hereto shown as Exhibit A, illustrates proper access throughout the site. A total of 132 parking spaces are being provided for the restaurant. The building is approximately 9,904 square feet with an approximate area of 6,728 square feet being dedicated to the sale of alcohol, including a covered beer garden and a covered porch.

The proposed hours of operation for the restaurant are as stated:

Sunday through Thursday, from 11:00 a.m. to 11:00 p.m.,
Friday through Saturday, from 11:00 a.m. to 12:00 a.m. (Midnight)

The applicant is requesting the same hours for alcohol service

Per Midland City Code 5.4.4. –Prohibited place of business

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches, private schools, public schools, public school grounds, athletic stadium, public hospital within 300 feet measurement along the property lines of the street fronts, and from the front door in a direct line across intersection where they occur within this site.

This proposed project has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Building: (Approved)

No objections pending the building is properly permitted and completes all inspections.

Engineering: (Approved)

No objections.

Transportation: (Approved)

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

No objection to zone change.

Fire: (Approved)

No objections.

Planning:

This request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 6 Character Plan - Goal 4, “Encourage the development of places where Midland residents can gather and socialize to build connections.” (Tall City tomorrow, page 137) Walk On’s Sports Bistreaux will offer a new dining experience within Midland and attract customers to the adjacent retail centers.

This request was recommended for approval at the July 6, 2020 Planning and Zoning meeting and approved at the July 28, 2020 City Council meeting.

This request meets all requirements; therefore, staff recommends approval of the Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to Conditions A through F.

Conditions:

A. That the serviceable area of the restaurant shall be limited to approximately 6,728 square feet as shown in Exhibits “A and B”, 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:

Sunday through Thursday, from 11:00 a.m. to 11:00 p.m.,
Friday through Saturday, from 11:00 a.m. to 12:00 a.m. (Midnight)

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 in accordance with Section 9.07.E. 3 of the City Code, the establishment shall receive a certificate of occupancy within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of July 22, 2020, staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)
Floor Plan (Exhibit B)
Application
Maps

Robert Patrick

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 LOT 26, BLOCK 5, NORTH PARK ADDITION, SECTION 18, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF WHITMAN DRIVE, APPROXIMATELY 165 FEET NORTH OF WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for Lot 26, Block 5, North Park Addition, Section 18, 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 for on-premises consumption in a restaurant (the "Establishment"), together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 6,728 contiguous square feet as shown in Exhibits "A" and "B", which are 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:

Sunday through Thursday from 11:00 a.m. to 11:00 p.m.; and
Friday and Saturday from 11:00 a.m. to 12:00 a.m. (midnight).

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That 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., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

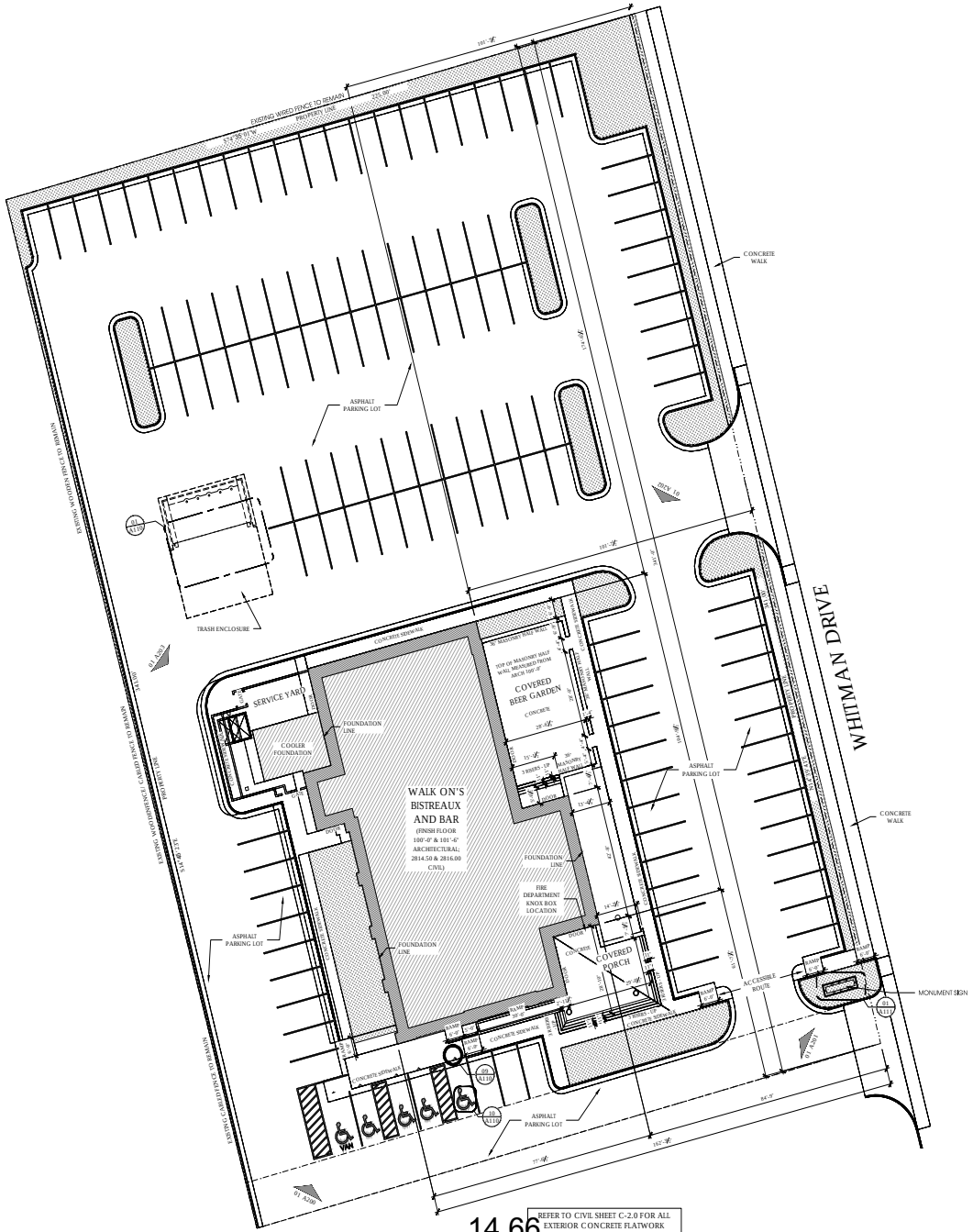
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, Assistant City Manager

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney



REFER TO CIVIL SHEET C-2.0 FOR ALL EXTERIOR CONCRETE FLATWORK DIMENSIONS AND SPECIFICATIONS OUTSIDE BUILDING FOUNDATION LINE

01 ARCHITECTURAL SITE PLAN
SCALE 1/16" = 1'-0"

EXHIBIT "A"

PACKET 14.66 August 11, 2020

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WCA Design Studio, LLC
ARCHITECTURE & PLANNING
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Lubbock, TX 79412
806-702-8969
www.wcadesignstudio.com

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WALK ONS BISTREAUX & BAR
LOOP 250 & WHITMAN .
MIDLAND, TEXAS 79705

REVISIONS

02/04/2019
DATE

PROJECT NUMBER
2018-4007

A105
SHEET NUMBER

2018-4007-A105 TABC REVIEW SITE PLAN

PHASE 4

THE DESIGNS REPRESENTED BY THESE PLANS ARE SUBJECT TO COPYRIGHT PROTECTION AS AN "ARCHITECTURAL WORK" UNDER 17 U.S.C. SECT. 102 WHICH IS TO PROHIBIT UNAUTHORIZED USE OF THESE PLANS (INCLUDING FORM AND ARRANGEMENT OF SPACES, DATA AND OTHER ASPECTS OF THE DESIGN) WILL SUBJECT THE INFRINGER TO DAMAGES AND/OR INJUNCTIVE ACTION AS PROVIDED BY FEDERAL LAW.

P:\2018\4000-COMM-NW\2018-4007 WALK-ONS BISTREAUX & BAR\WALK ONS BISTREAUX & BAR SHEETS\30X42 COMMERCIAL\100 SERIES\2018-4007-A105 TABC REVIEW SITE PLAN.DWG

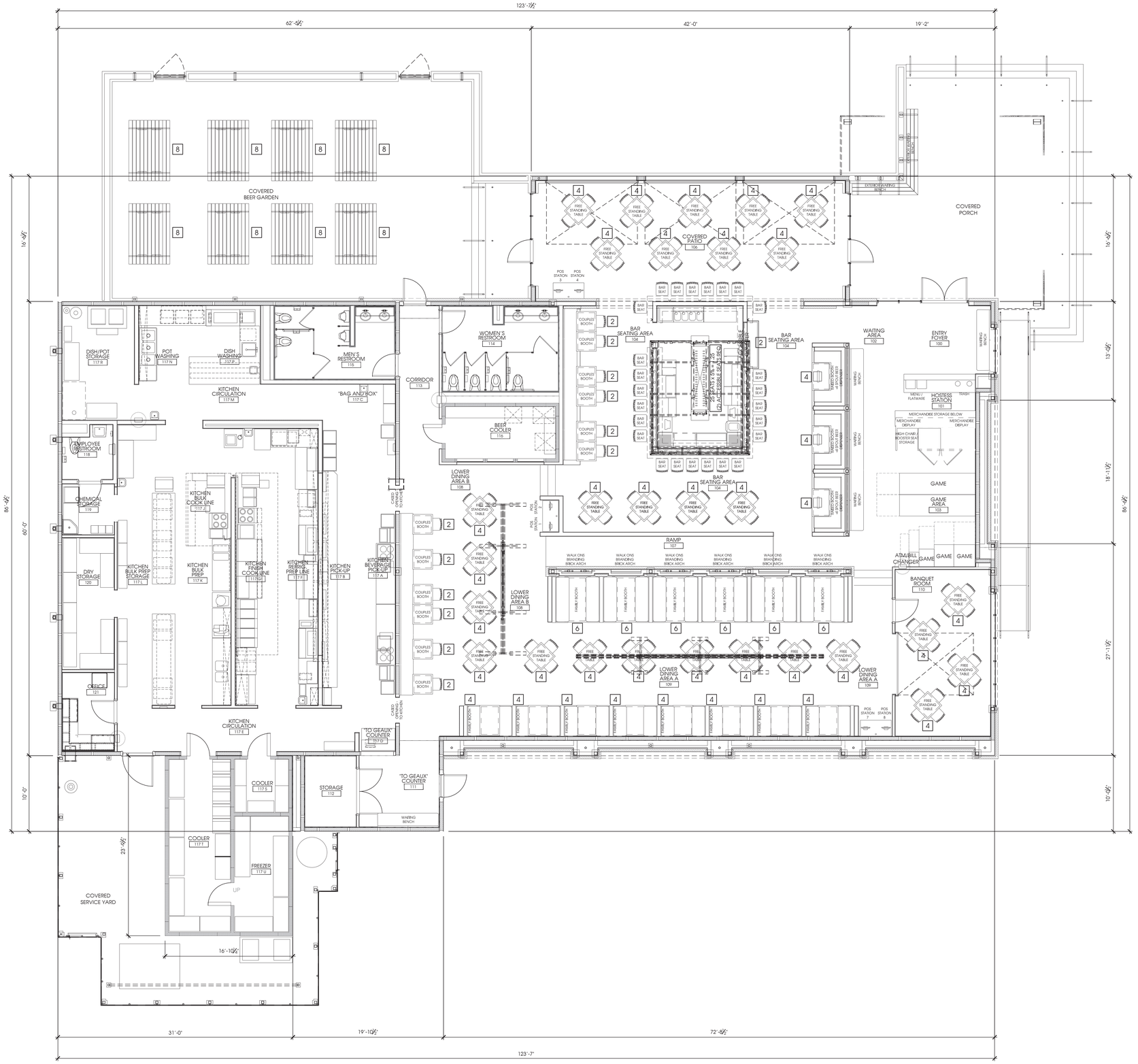


EXHIBIT "B"

1 TABC REVIEW PLAN
SCALE 3/16" = 1'-0"

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LOOP 250 & WHITMAN .
MIDLAND, TEXAS 79705

2018-4007-A106 TABC REVIEW PLAN
PHASE 4

REVISIONS

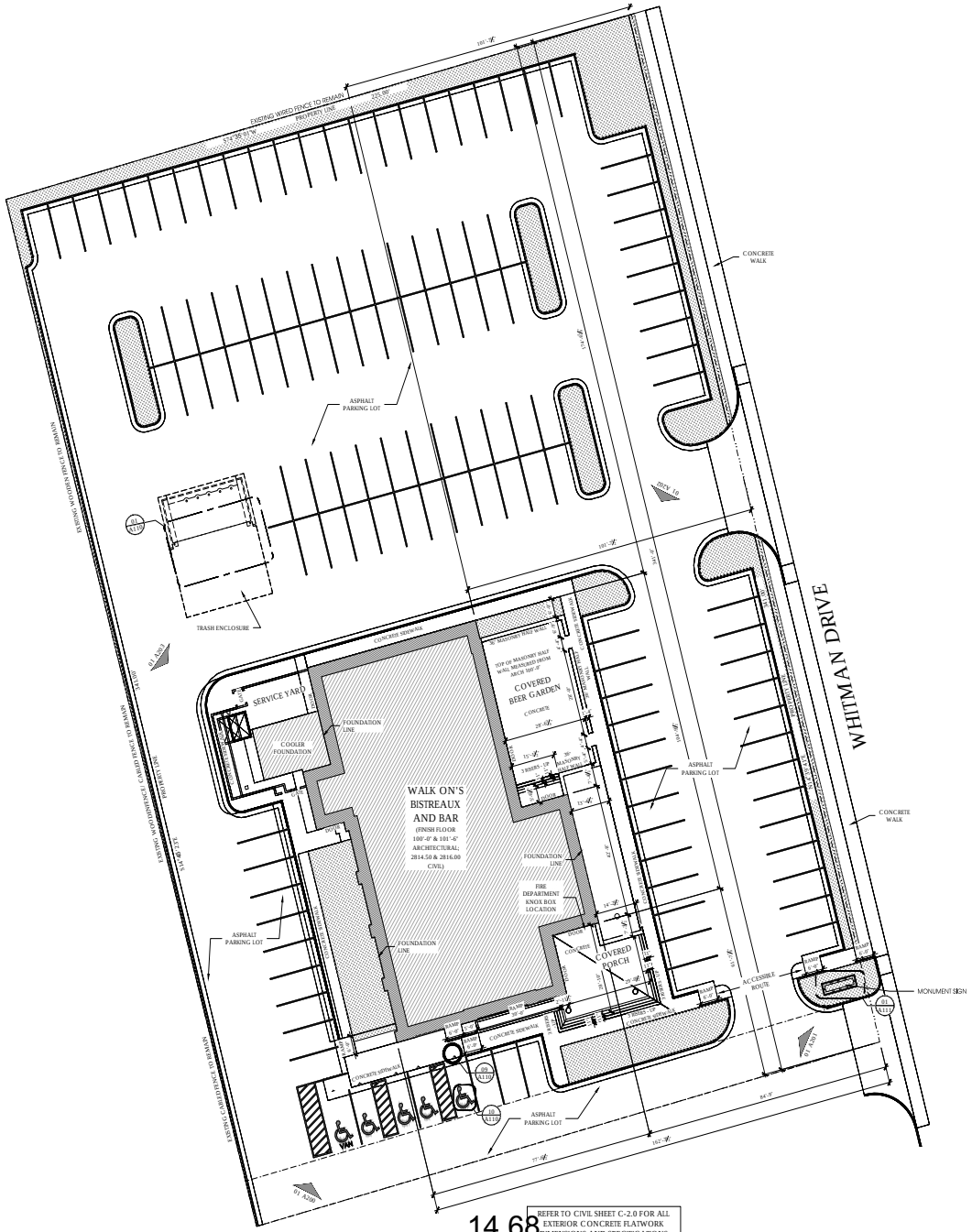
02/04/2019
DATE

PROJECT NUMBER
2018-4007

A106
SHEET NUMBER

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P:\2018\4000-COMM-NW\2018-4007 WALK-ONS BISTREAUX & BAR\WALK ONS BISTREAUX & BAR\SHEETS\30X42 COMMERCIAL\100 SERIES\2018-4007-A106 TABC REVIEW PLAN.DWG



01 ARCHITECTURAL SITE PLAN
SCALE 1/16" = 1'-0"

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MIDLAND, TEXAS 79705

REVISIONS

02/04/2019
DATE

PROJECT NUMBER
2018-4007

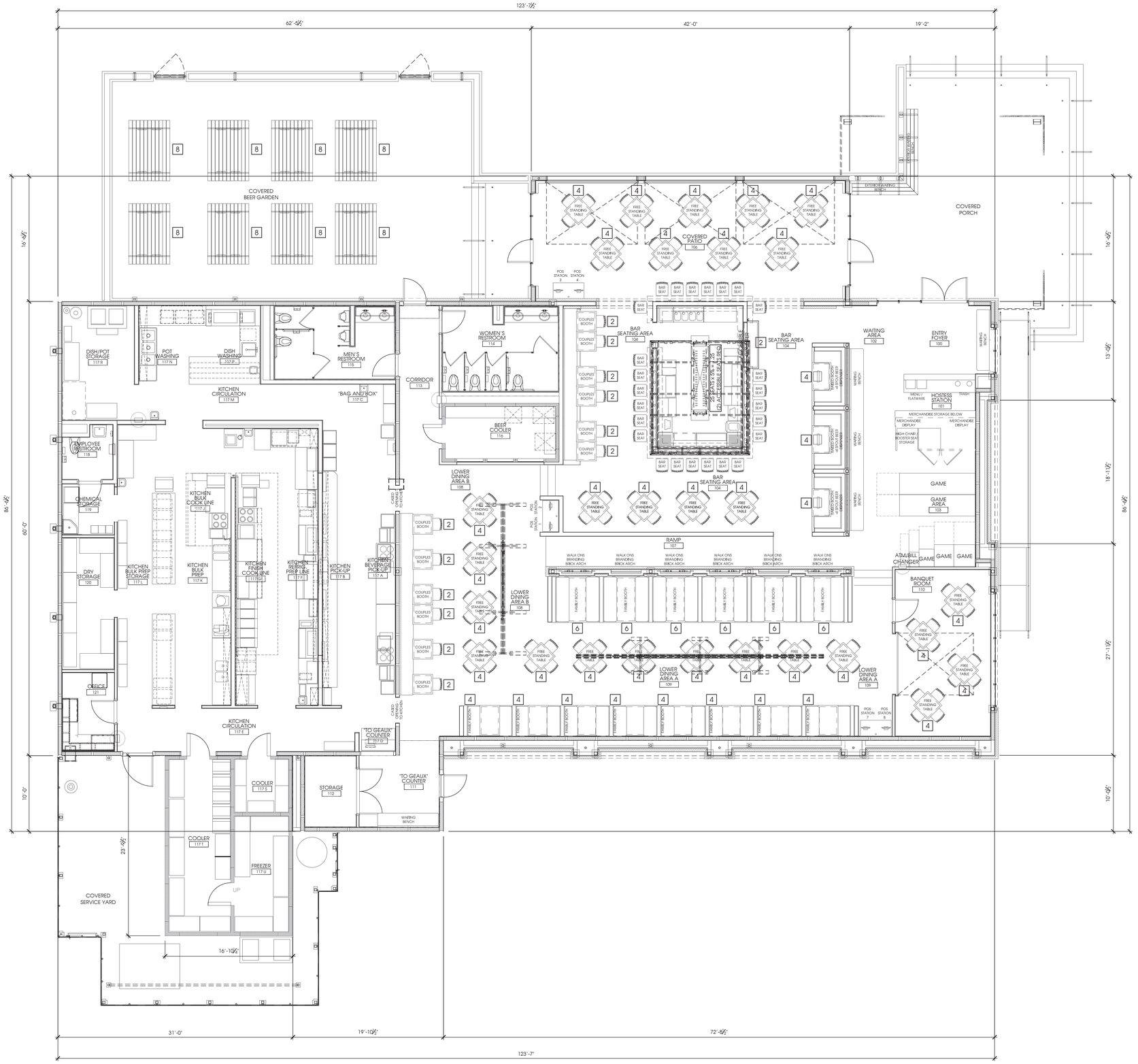
A105
SHEET NUMBER

2018-4007-A105 TABC REVIEW SITE PLAN

PHASE 4

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1 TABC REVIEW PLAN

SCALE 3/16" = 1'-0"

P:\2018\4000-COMM-NW\2018-4007 WALK-ONS BISTREAUX & BAR\WALK ONS BISTREAUX & BAR\SHEETS\30X42 COMMERCIAL\100 SERIES\2018-4007-A106 TABC REVIEW PLAN.DWG

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LOOP 250 & WHITMAN .
MIDLAND, TEXAS 79705

PHASE 4

2018-4007-A106 TABC REVIEW PLAN

REVISIONS

02/04/2019
DATE

PROJECT NUMBER
2018-4007

A106
SHEET NUMBER

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MIDLAND
Planning Division

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

Project Number: SUP-20-0077

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Slam-Dunk Food #2, LLC (VP: Alan Cade Underwood)		Phone (806) 789-0408 Email cade@underwoodcotton.com	
Address 1414 Avenue J	City Lubbock	State TX	Zip 79401

Property Owner Printed Name: Underwood West Texas Properties, LLC (Managing Member: Alan H. Underwood)		Phone (806) 470-7318 Email Alan@underwoodcotton.com	
Address 1320 Texas Avenue	City Lubbock	State TX	Zip 79401

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

Street Address: 4605 Whitman Drive, Midland, Texas 79705

Business Name: Slam-Dunk Food #2, LLC dba Walk On's Sports Bistreaux

Legal Description
Lot: SW/4 Section 4 Block: Block X Subdivision: H.P. Hilliard Survey, Abstract No. 13, City of Midland, Midland County, Texas

Current Zoning: PDSC

Reason for Request: Opening a new restaurant

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Restaurant

Proposed/Current Days and Hours of Operation: Sun-Thurs: 11am - 11pm; Fri-Sat: 11am - 12am

Proposed Days and Hours of Alcohol Service: Sun-Thurs: 11am - 11pm; Fri-Sat: 11am - 12am

Total Square Footage of Business: 9,904 sf.

Square Footage of Alcohol Serviceable Area: 6,728 sf.

Restroom Fixtures:			
Men	**Toilets/Urinals:** 2 / 2	**Bathroom Sinks:** 2
Women	**Toilets:** 4	**Bathroom Sinks:** 2

RECEIVED
JUN 09 2020
BY: .....

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)

RECEIVED
JUN 09 2020
BY: .....

Signatures

Applicant (signature):	Date: 6/9/20
Applicant (printed): Alan Cade Underwood, Vice President of Slam-Dunk Food #2, LLC	
Property Owner (signature):	Date: 6/9/20
Property Owner (printed) : Alan H. Underwood, Managing Member of Underwood West Texas Properties, LLC	

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

_____
Authorized Agent (*signature*)

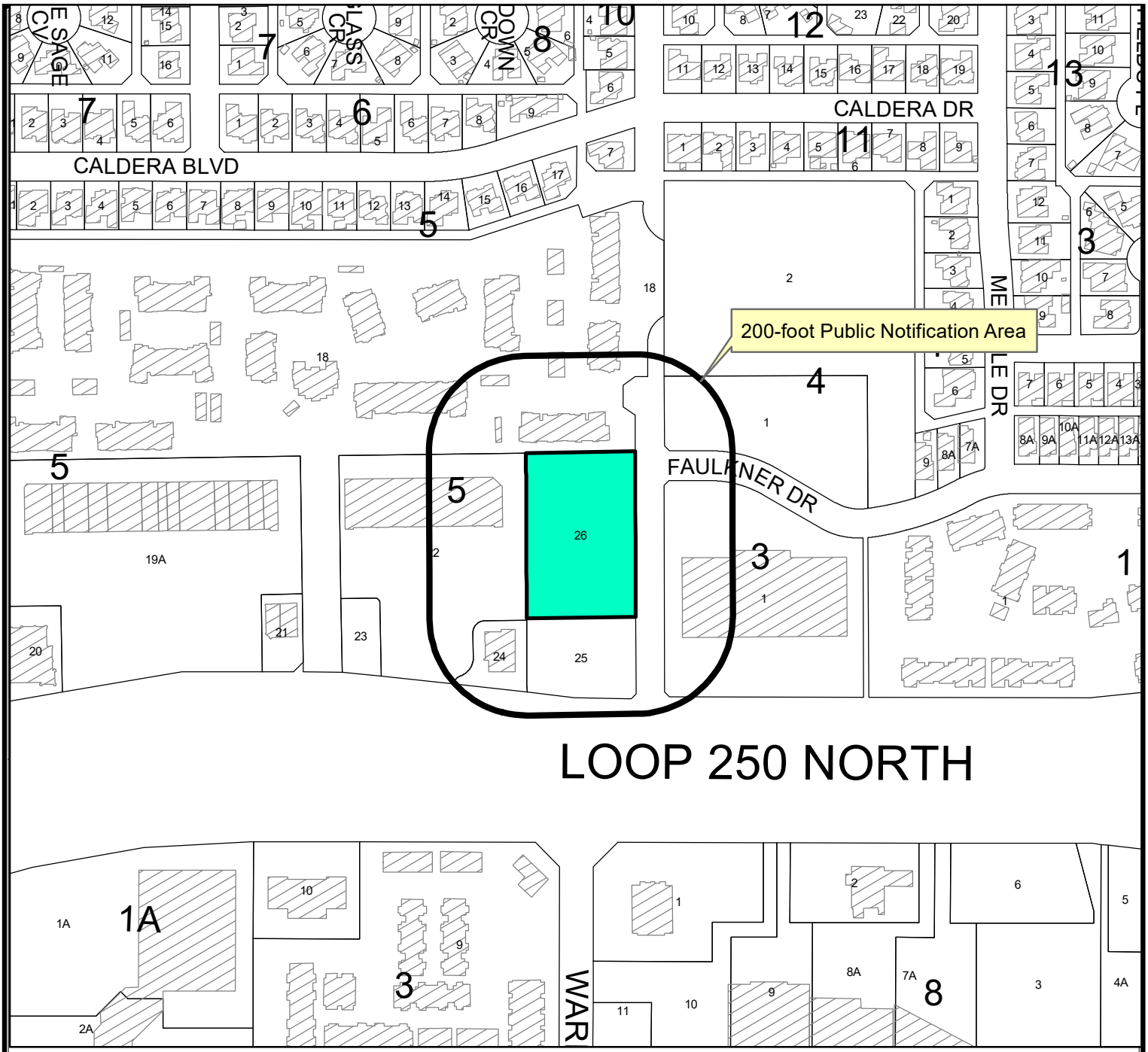
Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

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

FOR OFFICE USE ONLY	
☒ Property Owner Authorization	☒ Dimensioned Floor Plan
☒ Application Fee	☒ Site Plan
Check # 1007	☒ Plans in Digital Format (PDF/JPEG)
Received By: DM	Date: DM

RECEIVED
JUN 09 2020
BY: DM



LOCATION MAP

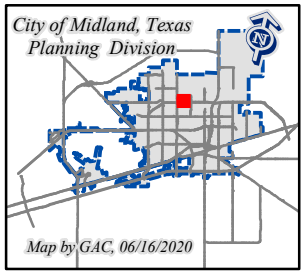
SUD-20-0077 **Scale: 1" = 400'**

Consider a request by Slam-Dunk Food #2, LLC for a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption in a restaurant, on Lot 26, Block 5, North Park Addition, Section 18 , City and County of Midland, Texas.

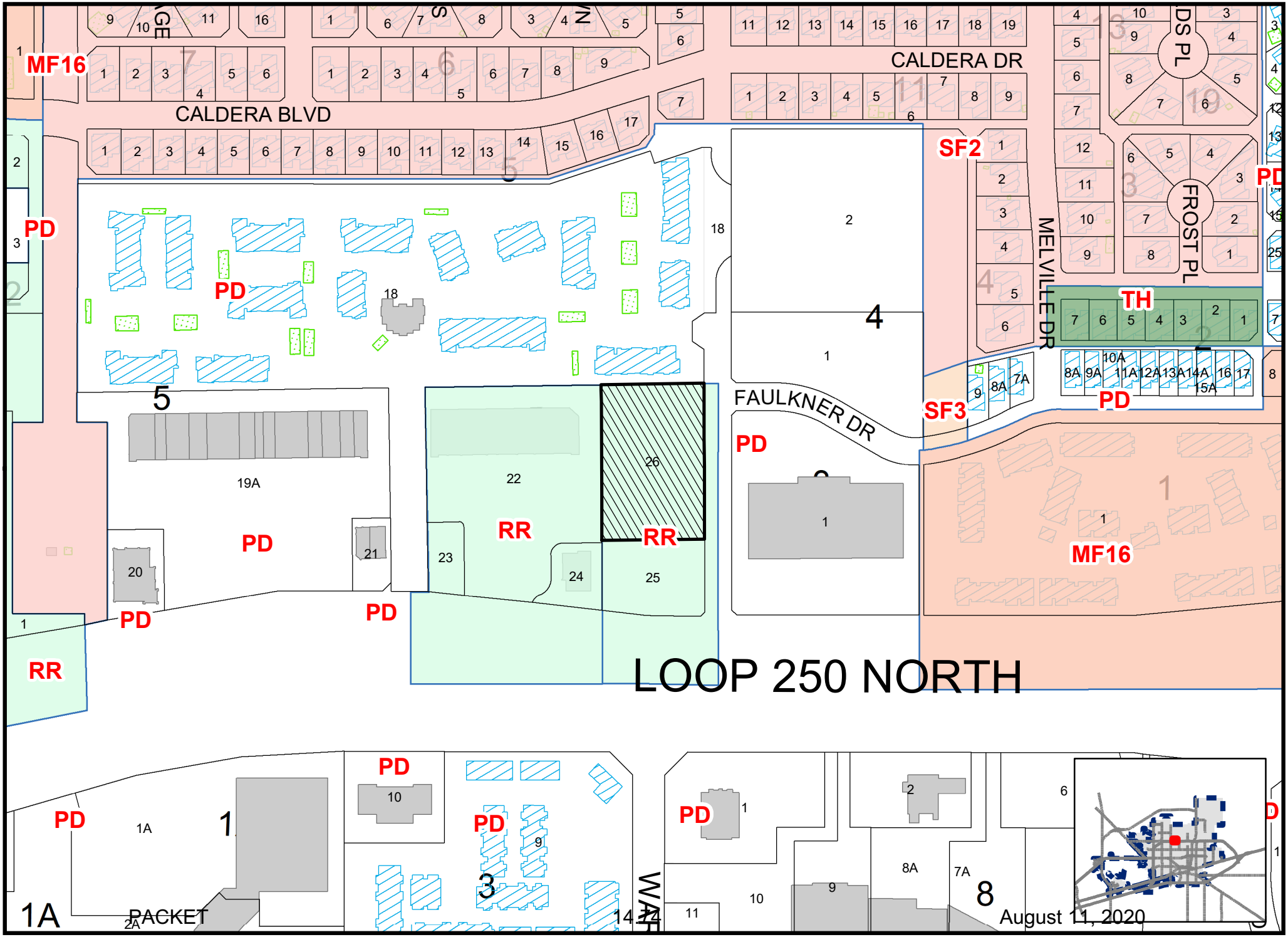
(Generally located on the west side of Whitman Drive, approximately 165-feet north of West Loop 250 North. Council District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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



Map By GAC, 06/16/2020

SUD-20-0077

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2019: 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.




FURNITURE ROW




RAM

City Council Meeting

Item Number: 15

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Joseph Marynak, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 5, GREENWOOD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH CLAY STREET, APPROXIMATELY 110 FEET SOUTH OF EAST INDIANA 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 (DEVELOPMENT SERVICES)

Purpose:

The applicant, Jorge Chavez, is requesting a zone change from MF-22, Multiple Family Dwelling District to SF-3 Single Family Dwelling District at 304 South Clay Street, for the construction of a single family home.

Recommended City Council Action:

Approve

Fiscal Impact:

Processing this request does not require any City funds.

Discussion:

Current Zoning:

MF-22, Multiple Family District

Surrounding Zoning and Land Use:

The properties to the north, south, east, and west are zoned MF-22, Multiple Family Dwelling District, and are the locations of single family residences and vacant land, respectively.

Analysis:

The applicant is requesting this zone change for the purpose of constructing a single family home. The lot dimensions satisfy the minimum requirements for the SF-3 zoning district. Under the previous zoning code, the current zoning district would have allowed for construction of single family homes, which allowed for the proliferation of their construction in this area. Under the new Zoning Code adopted in 2019, residential uses became more specified to single family zoning district.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objections to zone change.

Code: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

No objection to zone change.

Planning:

This request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision, “Future Land Use Map” as it designates this area for Urban Residential, a classification which calls for single family detached housing.

This request was recommended for approval at the July 6, 2020 Planning and Zoning

Commission meeting and was approved at the July 28, 2020 City Council meeting.

Staff recommends approval of this zone change from MF-22, Multiple Family Dwelling District to SF-3, Single Family Dwelling District, subject to condition A.

Conditions:

A. That the use and development of this property shall conform to the regulations of the SF-3, Single Family Dwelling District.

Letters of Objection:

Staff has not received any letters of objection as of July 22, 2020.

Attachments:

Application
Maps
Warranty Deed

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 5, GREENWOOD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH CLAY STREET, APPROXIMATELY 110 FEET SOUTH OF EAST INDIANA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 3, Block 5, Greenwood Addition, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

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

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, Assistant City Manager

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: Z-20-0183

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Jorge Chavez		Phone (432) 889-7005 Email 575-694-3413 terre_chavez@ymail.com	
Address 1611 N. Lamesa Rd.	City Midland	State TX	Zip 79701

Property Owner Printed Name: Jorge Chavez		Phone (432) 889-7005 Email 575-694-3413 terre_chavez@ymail.com	
Address	City	State	Zip

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

Street Address: 304 S. Clay St. Midland TX 79701

Legal Description
Lot: Block: Subdivision:

Current Zoning: MF 12

Proposed Zone: SF3
(List by tracts if more than one district is requested)

Reason for Zone Change Request:

Present Use of Property: Vacant

Proposed Use of Property: New house

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

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

Submittal and Fees
Items to be submitted with this application form:

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

RECEIVED
MAY 29 2020

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature): Jorge Chavez	Date: 05-29-2020
Applicant (printed): Jorge Chavez	
Property Owner (signature): Jorge Chavez	Date: 05-29-2020
Property Owner (printed) : Jorge Chavez	

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 # Visa	
Received By: JAC	Date: RECEIVED MAY 29 2020
	BY: .....

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

304 S. clay

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY OR DRIVERS LICENSE NUMBER.

WARRANTY DEED

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

STC - ~~4611~~ 4611 ~~83~~ 83

That **JOSE CONSTRUCTION** whether one or more hereinafter referred to as "Grantor") for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00), and other valuable consideration, to Grantor cash in hand paid, the receipt of which is hereby acknowledged, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto **JORGE CHAVEZ DBA JC CHAVEZ CONSTRUCTION** whether one or more, hereinafter referred to as "Grantee"), whose mailing address **1610 LAMESA RD., MIDLAND, TX 79701** all that certain lot, tract or parcel of land situated in **MIDLAND** County, Texas, and described as follows, to wit:

Lot 3, Block 5, Greenwood Addition, an addition to the City of Midland, Midland County, Texas, according to the map or plat thereof of record in Cabinet B, Page 54, Plat Records, Midland County, Texas being the same property described in deed of record in Volume 1775, Page 526, Official Records, Midland County, Texas.

SAVE AND EXCEPT all oil, gas and other minerals in, on and under said land as reserved by prior grantors; and SUBJECT TO all oil and gas leases, easements, rights-of-way, and covenants and restrictions of record in the Office of the County Clerk of **MIDLAND** County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the Grantee, Grantee's heirs, executors, administrators, successors and assigns forever, and Grantor does hereby bind Grantor, Grantor's heirs, executors, administrators, successors and assigns, to Warrant and Forever Defend, all and singular the said premises unto the said Grantee, Grantee's heirs, executors, administrators, successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

EFFECTIVE AS OF 2nd DAY OF **APRIL, 2020**

JOSE CONSTRUCTION

JOSE CHAVEZ, OWNER

THE STATE OF **TEXAS** §
§
COUNTY OF **MIDLAND** §

This instrument was acknowledged before me this 2nd day of APRIL, 2020 by **JOSE CHAVEZ.**

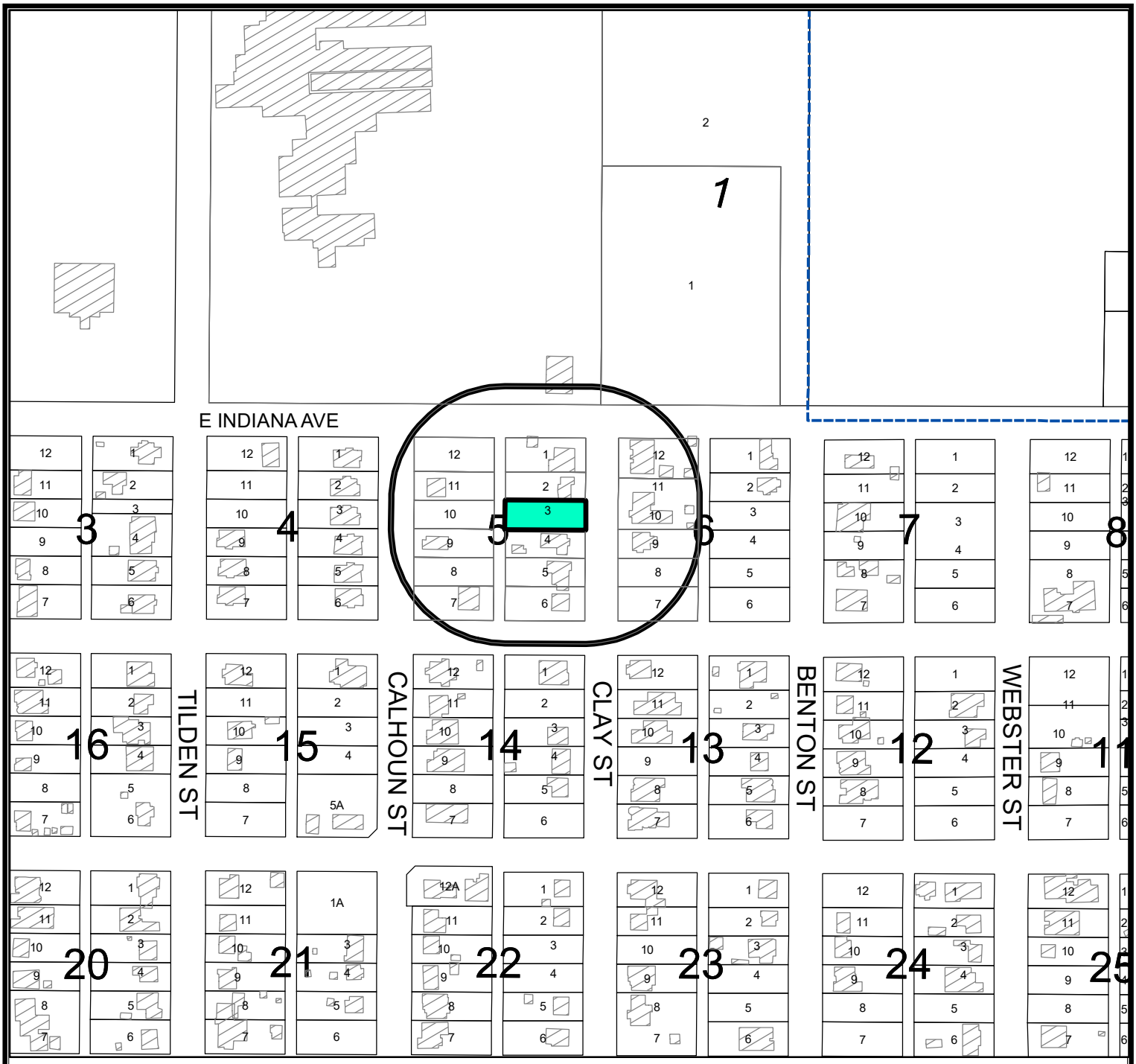
(SEAL)

IRMA V QUIROZ
NOTARY PUBLIC
ID# 10659398
State of Texas
Comm. Exp. 10-09-2020

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

RECEIVED
MAY 2 9 2020
BY: .....

PACKET 15.87 August 11, 2020



LOCATION MAP

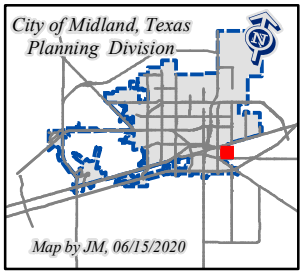
Z-20-0183 **Scale: 1" = 250'**

Consider a request by Jorge Chavez for a zone change from MF-22, Multiple Family Dwelling District to SF-3, Single Family Dwelling District on Lot 3, Block 5, Greenwood Addition, City and County of Midland, Texas.

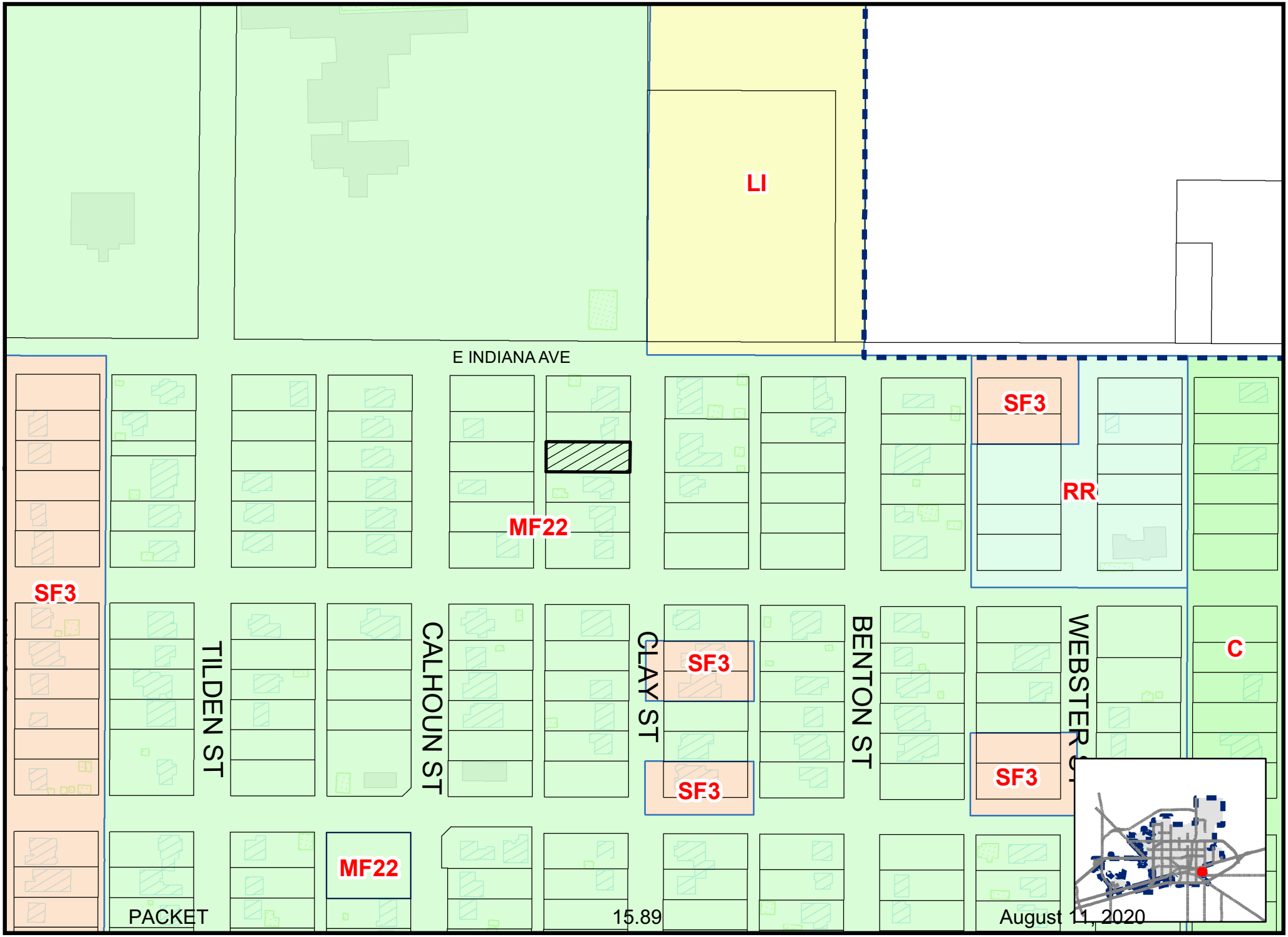
Generally located on the west side of South Clay Street, approximately 110 feet south of East Indiana Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2020
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY NOR IS IT DESIGNED TO BE USED AS THE ONLY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By JM, 06/15/2020

Z-20-0183

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2020: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.




305





City Council Meeting

Item Number: 16

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Joseph Marynak, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 10, BLOCK 23, GREENWOOD ADDITION, THIRD, FOURTH, AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH CLAY STREET, APPROXIMATELY 110 FEET SOUTH OF EAST WASHINGTON 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 (DEVELOPMENT SERVICES)

Purpose:

The applicant, Jorge Chavez, is requesting a zone change from MF-22, Multiple Family Dwelling District to SF-3 Single Family Dwelling District at 505 S Clay Street, for the construction of a single family home.

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not require any City funds.

Discussion:

Current Zoning:

MF-22, Multiple Family Dwelling District

Surrounding Zoning and Land Use:

The properties to the north, south, east, and west are zoned MF-22, Multiple Family Dwelling District, and are the locations of single family residences and vacant land, respectively.

Analysis:

The applicant is requesting this zone change for the purposes of constructing a single family home. The lot dimensions satisfy the minimum requirements for the SF-3 zoning district. Under the previous zoning code, the current zoning district would have allowed for the construction of single family homes, which allowed for the proliferation of their construction in this area. Under the new Zoning Code adopted in 2019, residential uses became more specified to single family zoning districts.

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 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objections to zone change.

Code: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

No objection to zone change.

Planning:

This request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision, “Future Land Use Map” as it designates this area for Urban Residential, a classification which calls for single family detached housing.

This request was recommended for approval at the July 6, 2020 Planning and Zoning Commission meeting and was approved at the July 28, 2020 City Council meeting.

Staff recommends approval of this zone change from MF-22, Multiple Family Dwelling District to SF-3, Single Family Dwelling District, subject to condition A.

Conditions:

A. That the use and development of this property shall conform to the regulations of the SF-3, Single Family Dwelling District.

Letters of Objection:

Staff has not received any letters of objection as of July 22, 2020.

Attachments:

Application
Maps
Warranty Deed

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 10, BLOCK 23, GREENWOOD ADDITION, THIRD, FOURTH, AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH CLAY STREET, APPROXIMATELY 110 FEET SOUTH OF EAST WASHINGTON AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 10, Block 23, Greenwood Addition, Third, Fourth, and Fifth Sections, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

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

SECTION THREE. The provisions of this ordinance are to be cumulative of all

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

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, Assistant City Manager

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-20-0182

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Jorge Chavez		Phone (432) 889-7005 575-694-3413 Email terre_chavez@ymail.com	
Address 1611 N. Lamesa Rd. Midland	City Midland	State TX	Zip 79701

Property Owner Printed Name: Jorge Chavez		Phone (432) 889-7005 575-694-3413 Email terre_chavez@ymail.com	
Address	City	State	Zip

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

Street Address: 505 S. Clay St Midland TX 79701

Legal Description
Lot: Block: Subdivision:

Current Zoning: MF 22	**Proposed Zone:** SF3 *(List by tracts if more than one district is requested)*

Reason for Zone Change Request:

Present Use of Property: Vacant

Proposed Use of Property: New house

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

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

Submittal and Fees
Items to be submitted with this application form:

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

RECEIVED
MAY 29 2020
BY: .....

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature): Jorgelchavez	Date: 05-29-2020
Applicant (printed): Jorge Chavez	
Property Owner (signature): Jorgelchavez	Date: 05-29-2020
Property Owner (printed) : Jorge Chavez	

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 # Visa	
Received By: gac	Date: MAY 29 2020

Application will not be considered for scheduling until reviewed by staff.

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

WARRANTY DEED

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

That **G AND G MIDESSA INVESTMENTS, LLC** (whether one or more hereinafter referred to as "Grantor") for and in consideration of $10.00 and other good and valuable consideration, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL, and CONVEY unto **JORGE CHAVEZ DBA JC CHAVEZ CONSTRUCTION** (whether one or more, hereinafter referred to as "Grantee"), whose mailing address is **1611 N. LAMESA RD., MIDLAND, TX 79701** all of that certain lot, tract or parcel of land situated in Midland County, Texas, and described as follows, to-wit:

STC - 69294

Lot 10, Block 23, Greenwood Addition, an addition to the City of Midland, Midland County, Texas, according to the map or plat thereof of record in Cabinet B, Page 54, Plat Records, Midland County, Texas.

SAVE AND EXCEPT For Grantor and Grantor's heirs, successors, and assigns forever, there is a reservation of all oil, gas, and other minerals in and under and that may be produced from the Property. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it.

SUBJECT TO and all oil and gas leases, easements, rights-of-way, and covenants and restrictions of record in the Office of the County Clerk of Midland County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the Grantee, Grantee's heirs, executors, administrators, successors and assigns forever, and Grantor does hereby bind Grantor, Grantor's heirs, executors, administrators, successors and assigns, to Warrant and Forever Defend, all and singular the said premises unto the said Grantee, Grantee's heirs, executors, administrators, successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

Dated: 4/2/2020

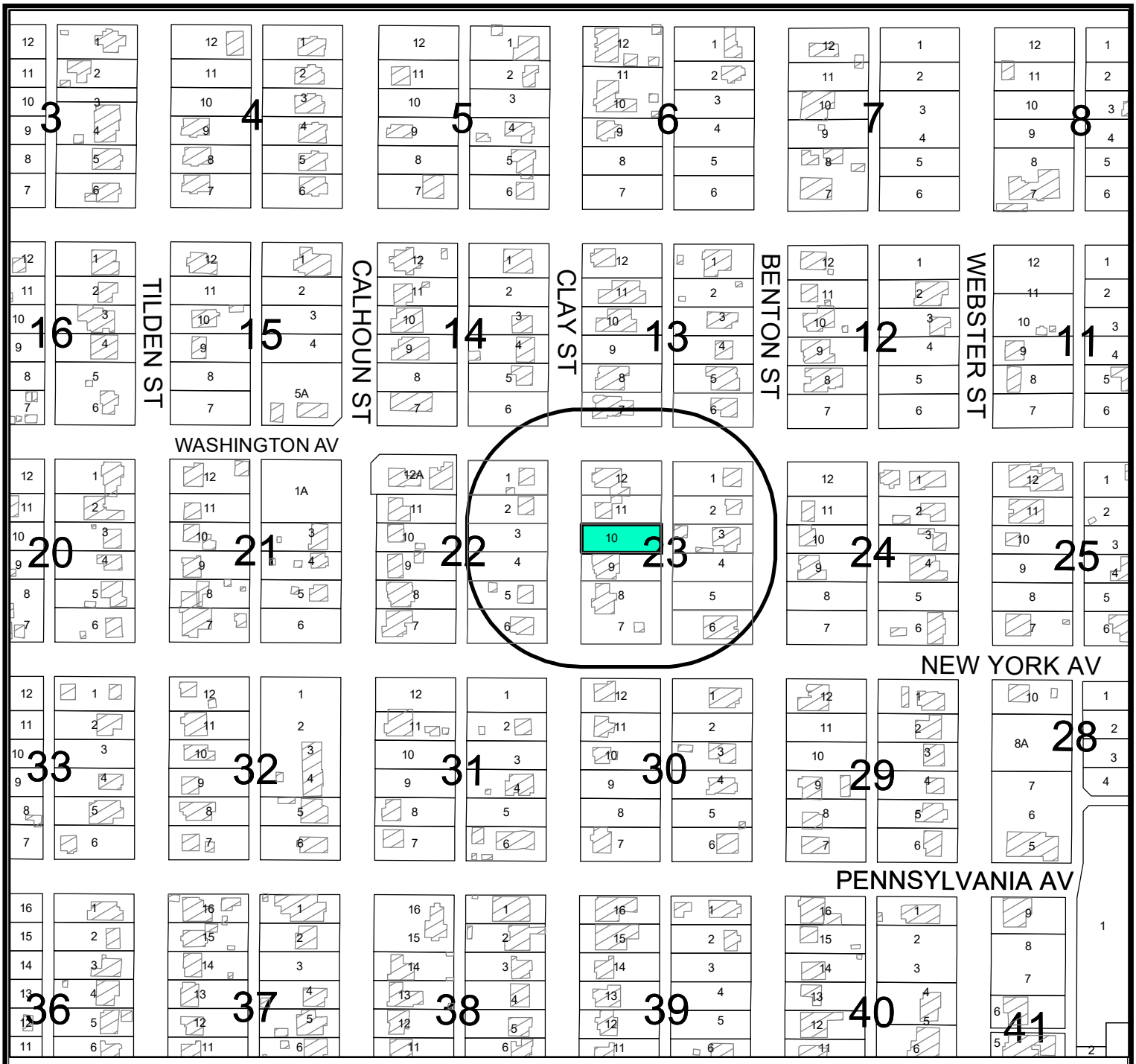
G AND G MIDESSA INVESTMENTS, LLC

BY: JOEL AMOS GORDON,
MANAGING MEMBER

Booker T. Green

BY: BOOKER T. GREEN,

RECEIVED
MAY 29 2020
BY:



LOCATION MAP

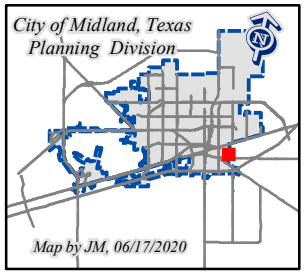
Z-20-0182 **Scale: 1" = 250'**

Consider a request by Jorge Chavez for a zone change from MF-22, Multiple Family Dwelling District to SF-3, Single Family Dwelling District on Lot 10, Block 23, Greenwood Addition, Third, Fourth, and Fifth Sections, City and County of Midland, Texas.

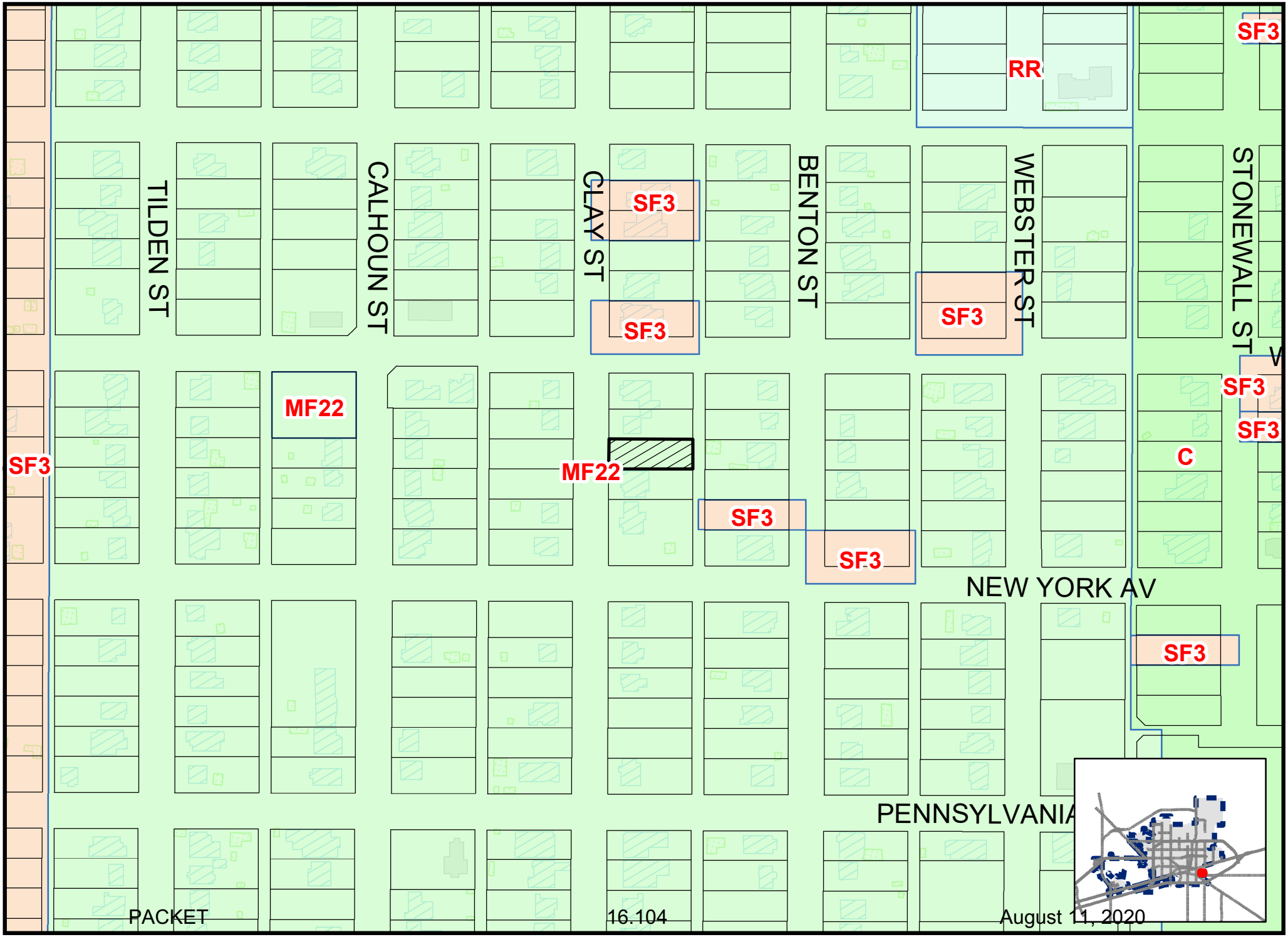
Generally located on the east side of South Clay Street, approximately 110 feet south of East Washington Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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Map By JM, 06/17/2020

Z-20-0182

Scale: 1" = 200'

ZONING MAP

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City Council Meeting

Item Number: 17

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Glenda Arroyo-Cruz, Planner

Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 43, SOUTH PARK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF EAST HICKS AVENUE AND SOUTH DALLAS STREET), BY PERMITTING A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM SF-3, SINGLE-FAMILY DWELLING DISTRICT TO 2F, TWO-FAMILY DWELLING (DUPLEX) DISTRICT ; 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 (DEVELOPMENT SERVICES)

Purpose:

The applicant, Jamie Alvarado Lopez, is requesting a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum lot width dimensions to be able to rezone his property to 2F, Two-Family Dwelling (Duplex) District.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located at 418 East Hicks and is currently vacant. The current zoning of this property was recently changed from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District on January 28, 2020.

During the first process of rezoning the property, the existing lot met the minimum lot dimensions for a corner lot as described in the SF-3, Single-Family Dwelling District dimensional regulations. The applicant has now submitted an application to rezone his property to 2F, Two-Family Dwelling (Duplex) District to build a duplex.

The current dimension of the width of the lot is approximately 63.24-feet as shown on the survey, Exhibit A.

Per our City of Midland Zoning Ordinance, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart:*

2F, Two-Family Dwelling (Duplex) District
Lot dimensions
Minimum Lot Width:
Corner Lot: 75 Feet

The applicant's property is considered a corner lot and would have to meet the minimum of 75-feet as listed in the zoning ordinance.

The applicant is requesting to reduce the required minimum lot width dimension for the proposed 2F, Two-Family Dwelling (Duplex) District to be able to proceed with his applications of rezoning his property to be able to build a duplex.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objection.

No additions or changes to site access are approved with plat or zoning review. Driveways or other access points are approved only with construction drawing review.

Transportation: (Approved)

No additions or changes to site access are approved with plat or zoning review. Driveways or other access points are approved only with construction drawing review.

No objections to plat.

Fire: (Approved)

No objections.

Code Compliance: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

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, *Section 5.04 – Residential Zoning District Dimensional Regulations Chart.*

Should the City Council approve this request, the property shall be subject to conditions A and B:

Conditions:

A. **That the property shall significantly conform to the site plan shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.**

B. **That the minimum lot width for this property shall be approximately 63.24-feet.**

Letters of Objection:

As of August 5, 2020, staff has not received any letters of objection

Attachments:

Survey (Exhibit A)
Application
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 43, SOUTH PARK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF EAST HICKS AVENUE AND SOUTH DALLAS STREET), BY PERMITTING A REDUCED MINIMUM LOT WIDTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM SF-3, SINGLE-FAMILY DWELLING DISTRICT TO 2F, TWO-FAMILY DWELLING (DUPLEX) DISTRICT ; 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 Code, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as Lot 1, Block 43, South Park Addition, City and County of Midland, Texas (the "Property"). Said special exception shall allow a reduced minimum lot width in the event that the Zoning District Map of the City of Midland, Texas, is amended to rezone the Property from SF-3, Single-Family Dwelling District to 2F, Two-Family Dwelling (Duplex) District.

SECTION TWO. That said special exception is subject to the following special conditions:

A. That the minimum lot width shall be 63.24 feet as shown in Exhibit "A", which is attached hereto and incorporated herein.

B. That said special exception shall be of no force or effect unless and until the Property is rezoned as described in Section One 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 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., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

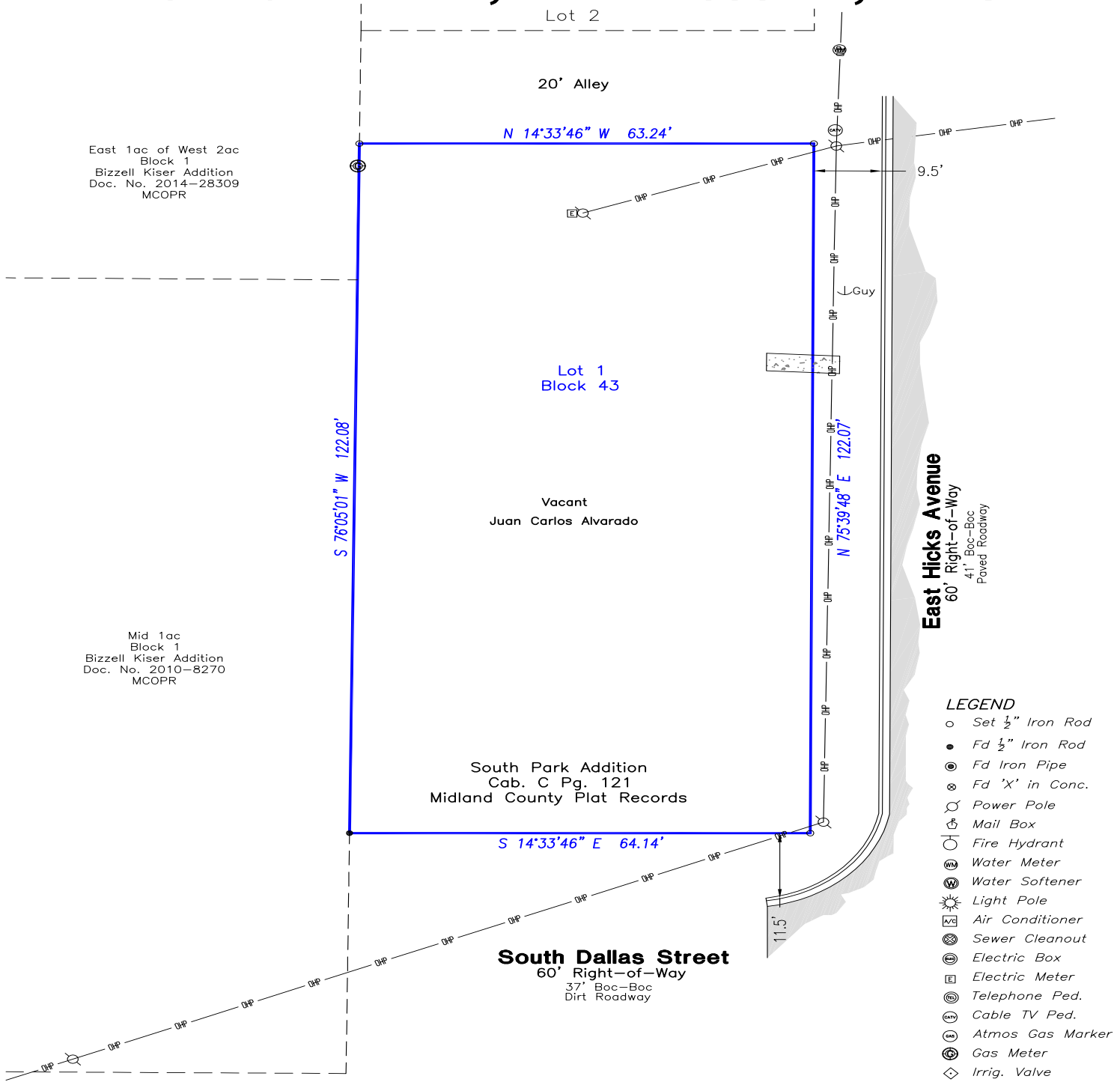
_____
Robert Patrick, Assistant City Manager

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

TITLE SURVEY OF LOT 1, BLOCK 43, SOUTH PARK ADDITION, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS.



LEGEND

- Set ½" Iron Rod
- Fd ½" Iron Rod
- Fd Iron Pipe
- Fd 'X' in Conc.
- Power Pole
- Mail Box
- Fire Hydrant
- Water Meter
- Water Softener
- Light Pole
- Air Conditioner
- Sewer Cleanout
- Electric Box
- Electric Meter
- Telephone Ped.
- Cable TV Ped.
- Atmos Gas Marker
- Gas Meter
- Irrig. Valve
- Conduit
- Street Sign
- Fence/Block Wall
- OHP — Overhead Powerline

Scale 1" =20'

FLOOD NOTE:
This Property is in Zone X and DOES NOT LIE within a Special Flood Hazard Area as graphically scaled onto FEMA Map No. 48135C0202F, Dated March 15, 2012, prepared for Ector County, Texas.

I, Aaron S. Burrell, do hereby certify: This plat represents a legal survey made on the ground on July 17, 2017, by me, of the property legally described hereon. All information shown is true and correct to the best of my knowledge and belief.

21 July 2017

STATE OF TEXAS REGISTERED AARON SCOTT BURRELL 5689 PROFESSIONAL LAND SURVEYOR

Aaron S. Burrell
Registered Professional Land Surveyor
Texas No. 5689

Bearings shown on this survey are relative to the Texas Coordinate System, NAD 1983, Central Zone (CORS).

AARON BURRELL LAND SURVEYORS, LLC.

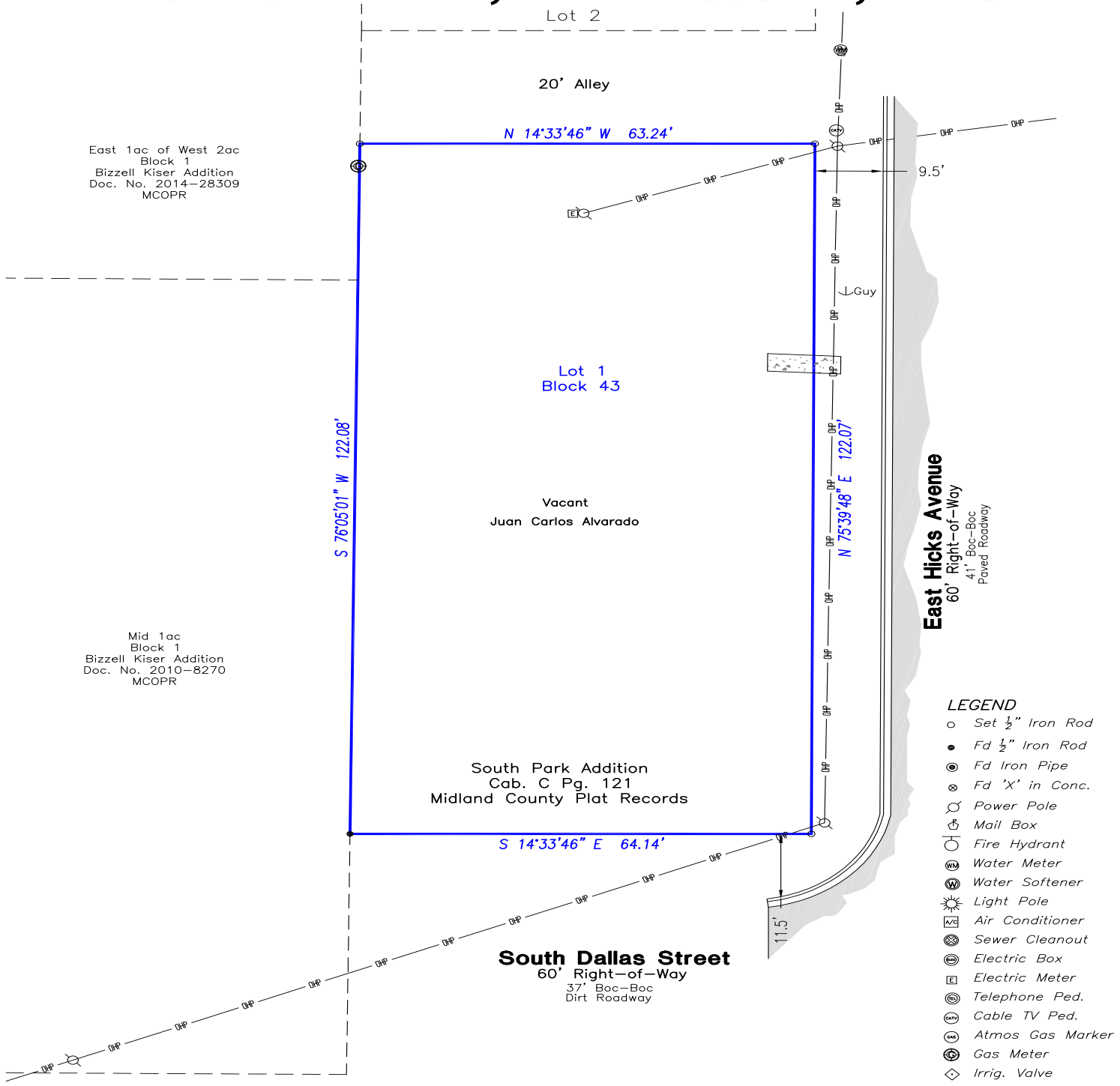
Professional Land Surveying & Mapping
Aaron Burrell Land Surveyors, LLC
TBPLS Firm No. 10194217
415 W. Wall St., Suite 204 Midland, Texas 79701
P.O. Box 81041 Midland, Texas 79708
432-848-4439
www.asbsurveyors.com

Page 1 of 1
2017-411

PACKET 17.9 August 11, 2020

EXHIBIT "A"

TITLE SURVEY OF LOT 1, BLOCK 43, SOUTH PARK ADDITION, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS.



LEGEND

- Set ½" Iron Rod
- Fd ½" Iron Rod
- Fd Iron Pipe
- Fd 'X' in Conc.
- Power Pole
- Mail Box
- Fire Hydrant
- Water Meter
- Water Softener
- Light Pole
- Air Conditioner
- Sewer Cleanout
- Electric Box
- Electric Meter
- Telephone Ped.
- Cable TV Ped.
- Atmos Gas Marker
- Gas Meter
- Irrig. Valve
- Conduit
- Street Sign
- Fence/Block Wall
- Overhead Powerline

Scale 1" =20'

FLOOD NOTE:
This Property is in Zone X and DOES NOT LIE within a Special Flood Hazard Area as graphically scaled onto FEMA Map No. 48135C0202F, Dated March 15, 2012, prepared for Ector County, Texas.

I, Aaron S. Burrell, do hereby certify: This plat represents a legal survey made on the ground on July 17, 2017, by me, of the property legally described hereon. All information shown is true and correct to the best of my knowledge and belief.

21 July 2017

STATE OF TEXAS REGISTERED AARON SCOTT BURRELL 5689 PROFESSIONAL LAND SURVEYOR

Aaron S. Burrell
Registered Professional Land Surveyor
Texas No. 5689

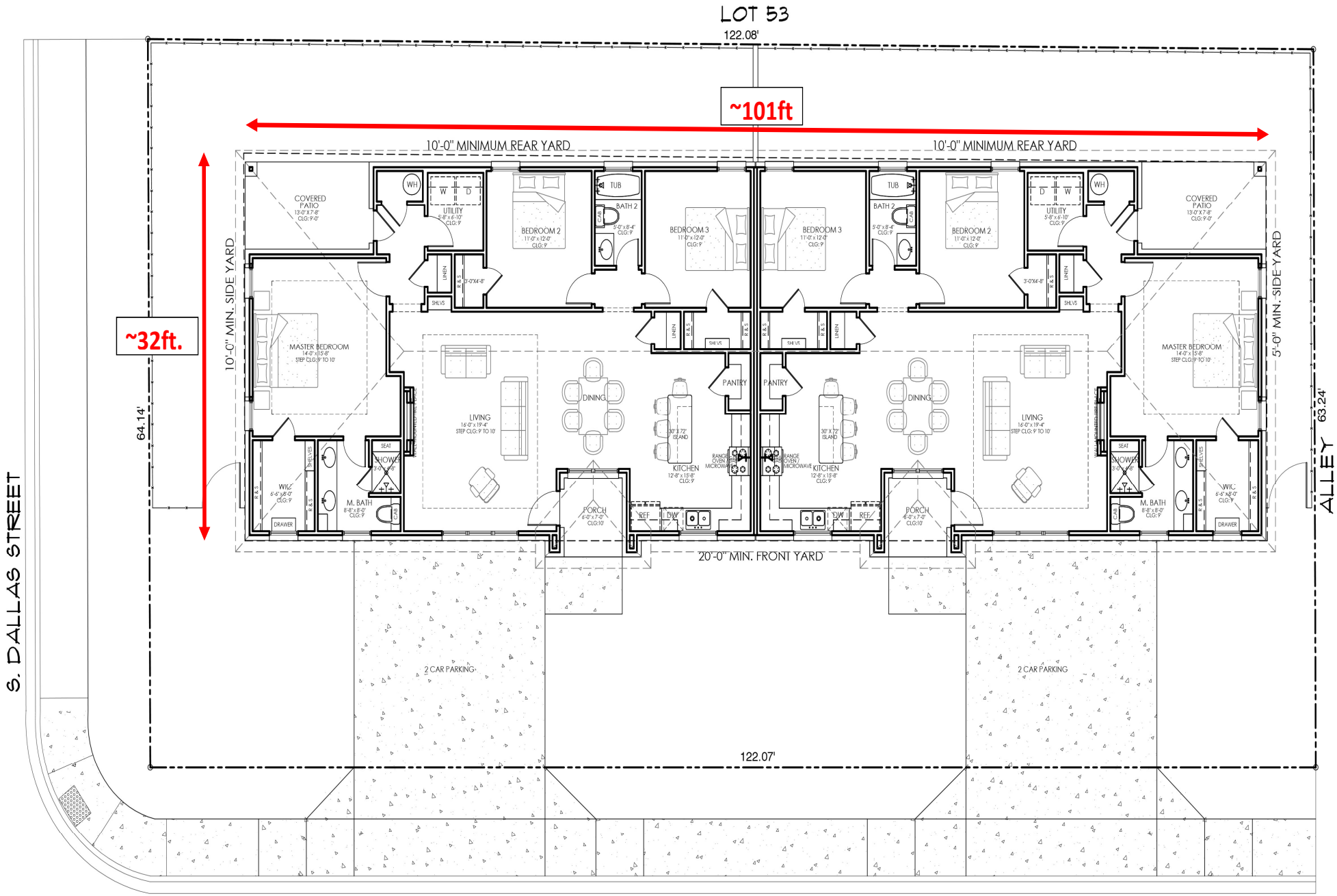
Bearings shown on this survey are relative to the Texas Coordinate System, NAD 1983, Central Zone (CORS).

AARON BURRELL LAND SURVEYORS, LLC.

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2017-411

PACKET 17.10 August 11, 2020



E. HICKS AVE.

1 SITE PLAN
NOT TO SCALE

SQUARE FOOTAGES

(OUTSIDE OF FINISH MATERIAL)

LIVABLE (EACH DWELLING):	1,625 SQ. FT.
TOTAL LIVABLE:	3,250 SQ. FT.

PACKET

0 1 2 3 4 5 10 20 30 40 50

August 11, 2020

DESIGN BY: Jose Juan Alvarez
alvarezudw@gmail.com
cell 432 599.0794

FOR REVIEW ONLY
NOT FOR PERMITTING
OR CONSTRUCTION

JAIME ALVARADO
418 E. HICKS AVE.
MIDLAND TEXAS

SHEET NO. SD3
DATE: 9-3-19



1 418 HICKS. FRONT ELEVATION

DATE: 9-3-2019

MIDLAND
Planning Division

Special Exception Application

Project Number: E-20-0038

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)*		Phone (432) 349-4281	
Printed Name: Jaime Alvarado Lopez		Email Alvarado_lopez9@yahoo.com	
Address 404 S. Jefferson	City Midland	State TX	Zip 79701

Property Owner		Phone (432) 349-4281	
Printed Name: Jaime Alvarado Lopez		Email Alvarado_lopez9@yahoo.com	
Address 404 S. Jefferson	City Midland	State TX	Zip 79701

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

Street Address: 418 E Hicks Ave.

Legal Description
Lot: 1 Block: 43 Subdivision: South Park Addition

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: Request change zone from SF-3 to 2F in order to build a duplex.

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)

JUL 20 2020

BY: .....

Signatures	
Applicant (signature):	Date: 7/20/2020
Applicant (printed): Jaime Alvarado Lopez	
Property Owner (signature):	Date: 7/20/2020
Property Owner (printed) : Jaime Alvarado Lopez	

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

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

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

STATE OF TEXAS
COUNTY OF MIDLAND

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

_____
Authorized Agent (*signature*)

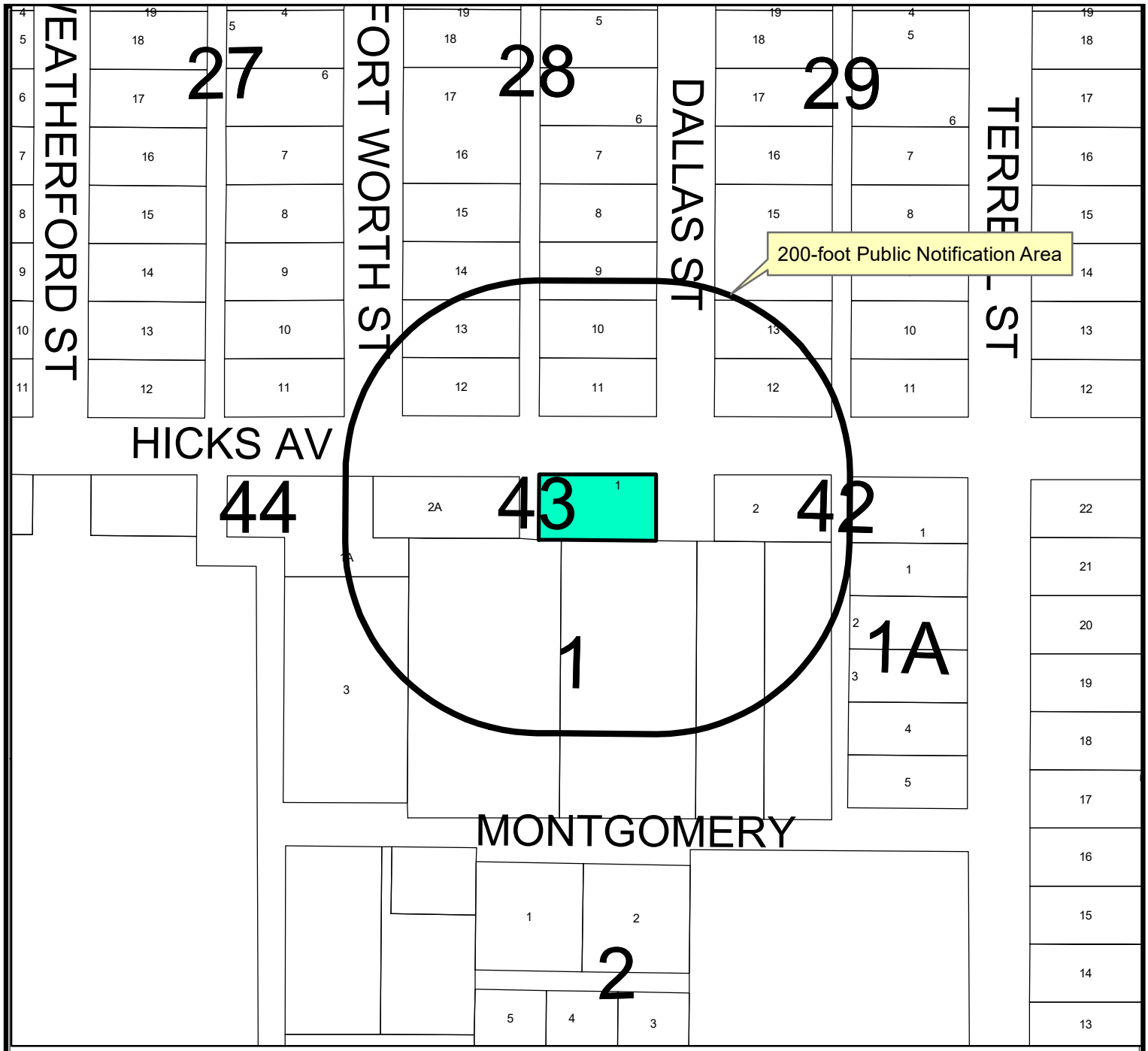
Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee Money order	☐ Plans in Digital Format (PDF/JPEG)
Check # 19-129972159	
Received By: GAC	Date: JUL 20 2020

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



LOCATION MAP

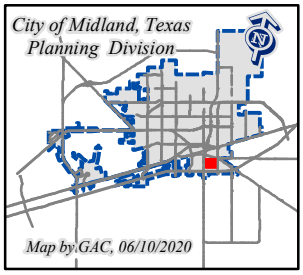
E-20-0038 **Scale: 1" = 400'**

Consider a request by Jamie Alvarado Lopez for a Special Exception from the City of Midland Zoning Ordinance, Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum lot width on Lot 1, Block 43, South Park Addition, City and County of Midland, Texas.

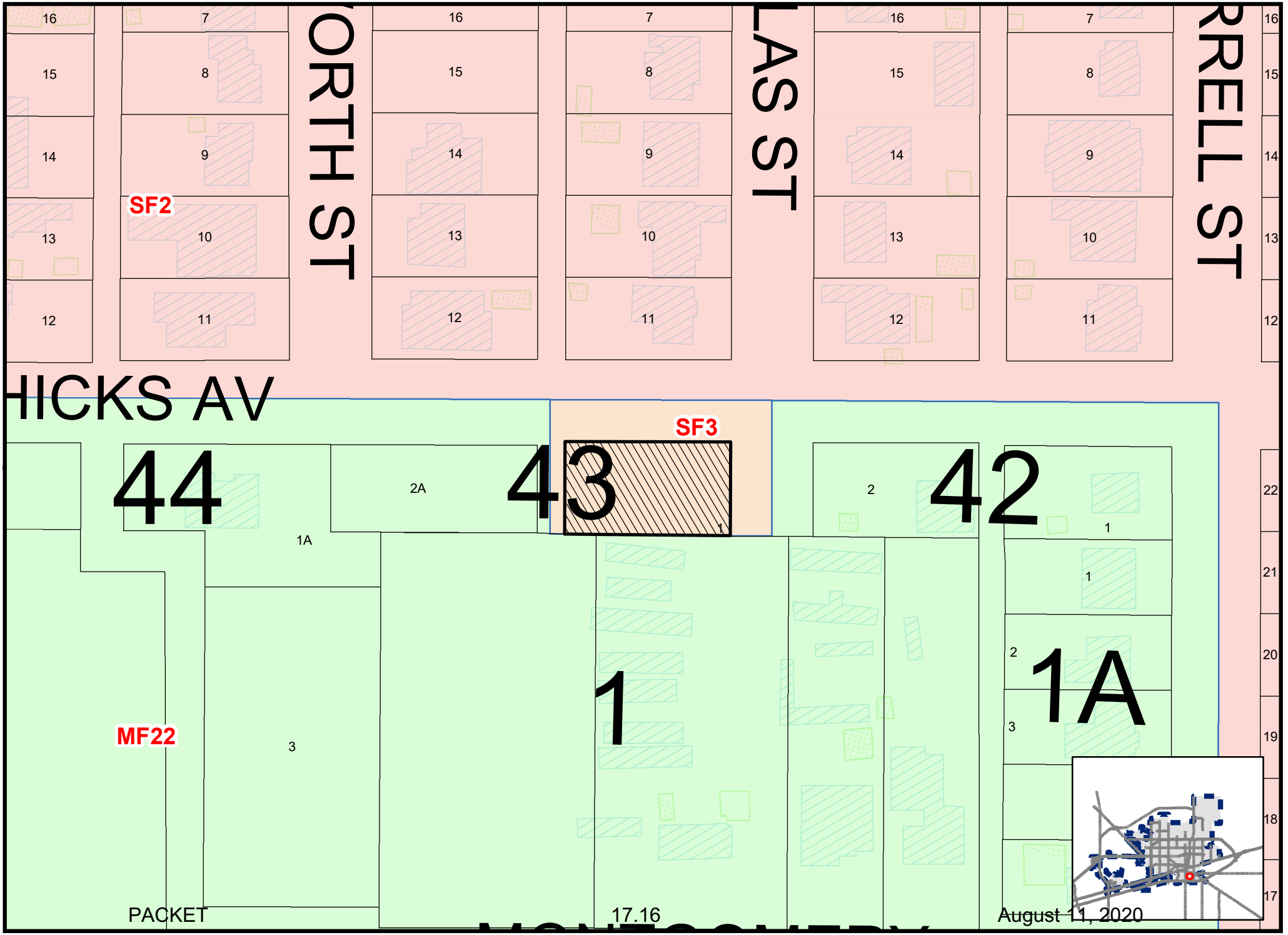
Generally located on the southwest corner of the intersection of East Hicks Avenue and South Dallas Street. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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



Map By GAC, 06/29/2020

E-20-0038

Scale: 1" = 200'

ZONING MAP

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City Council Meeting

Item Number: 18

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Glenda Arroyo-Cruz, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 43, SOUTH PARK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-3, SINGLE-FAMILY DWELLING DISTRICT TO 2F, TWO-FAMILY DWELLING (DUPLEX) DISTRICT (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF EAST HICKS AVENUE AND SOUTH DALLAS STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Jaime Alvarado Lopez, is requesting approval of a zone change for the development of a duplex.

Recommended City Council Action:

Deny

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

The properties to the north are zoned SF-2, Single-Family Dwelling District, and the location of residential homes. The properties to the east, south and west are zoned MF-22, Multiple-Family Dwelling District and the locations of a residential home, manufactured housing, and vacant land, respectively.

Analysis:

The property is located at 418 East Hicks Avenue and is currently vacant. The applicant is proposing the development of a two-family dwelling (duplex) unit. The current zoning of this property was recently changed from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District on January 28, 2020.

The property does not meet the minimum lot requirements for the 2F, Two-Family Dwelling District since the minimum lot width required for a corner lot is 75-feet. The lot width of this property is 65.95-feet. The appropriate setbacks and maximum height must also be met as described in the 2F, Two-Family (Duplex) Dwelling District Dimensional Regulations chart.

This proposed zone change has been circulated to and reviewed by respective City departments and their comments, conditions, and requirements are as follows:

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.

Fire: (Approved)

No objection.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Code Compliance: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

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

No objection to zone change.

Planning:

Per the Future Land Use map, this location is designated as Urban Residential. Potential zoning for this area includes single family dwelling districts; therefore, this zone change is not in compliance with the Future Land Use plan.

This request was recommended for denial with a 3-2 vote at the July 6, 2020 Planning and Zoning meeting; however, the applicant has appealed this decision.

Staff recommends denial of this request for approval of a zone change; however if approved, staff recommends that it shall be subject to condition A.

Conditions:

A. That the use and development of this property shall conform to the regulations of the 2F, Two-Family Dwelling (Duplex) District.

Letters of Objection:

As of August 5, 2020, staff has not received any letters of objection.

Attachments:

Application
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 43, SOUTH PARK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-3, SINGLE-FAMILY DWELLING DISTRICT TO 2F, TWO-FAMILY DWELLING (DUPLEX) DISTRICT (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF EAST HICKS AVENUE AND SOUTH DALLAS STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 1, Block 43, South Park Addition, City and County of Midland, Texas (the "Property") to 2F, Two-Family Dwelling (Duplex) District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from SF-3, Single-Family Dwelling District to 2F, Two-Family Dwelling (Duplex) District.

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

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as

that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, Assistant City Manager

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-20-0184

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Jaime Alvarado Lopez		Phone (432) 349 4281 Email Alvarado_lopez9@yahoo.com	
Address 404 S Jefferson	City Midland	State TX	Zip 79701

Property Owner Printed Name: Jaime Alvarado Lopez		Phone ( ) Email	
Address 404 S Jefferson	City Midland	State TX	Zip 79701

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

Street Address: 418 E Hicks

Legal Description
Lot: 1 Block: 43 Subdivision: South Park

Current Zoning: SF 3

Proposed Zone: 2F
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Proposed building on site plan.

Present Use of Property: N/A

Proposed Use of Property: Two family dwelling

How would this zone change affect the public health, safety and welfare? Will change in a positive way for area around.

Describe how conditions affecting the property have changed since present zoning designation: N/A

Submittal and Fees
Items to be submitted with this application form:

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

RECEIVED
MAY 29 2020
BY: .....

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date: 5/28/2020
Applicant (printed): Jaime Alvarado Lopez	
Property Owner (signature):	Date: 5/28/2020
Property Owner (printed) : Jaime Alvarado Lopez	

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.

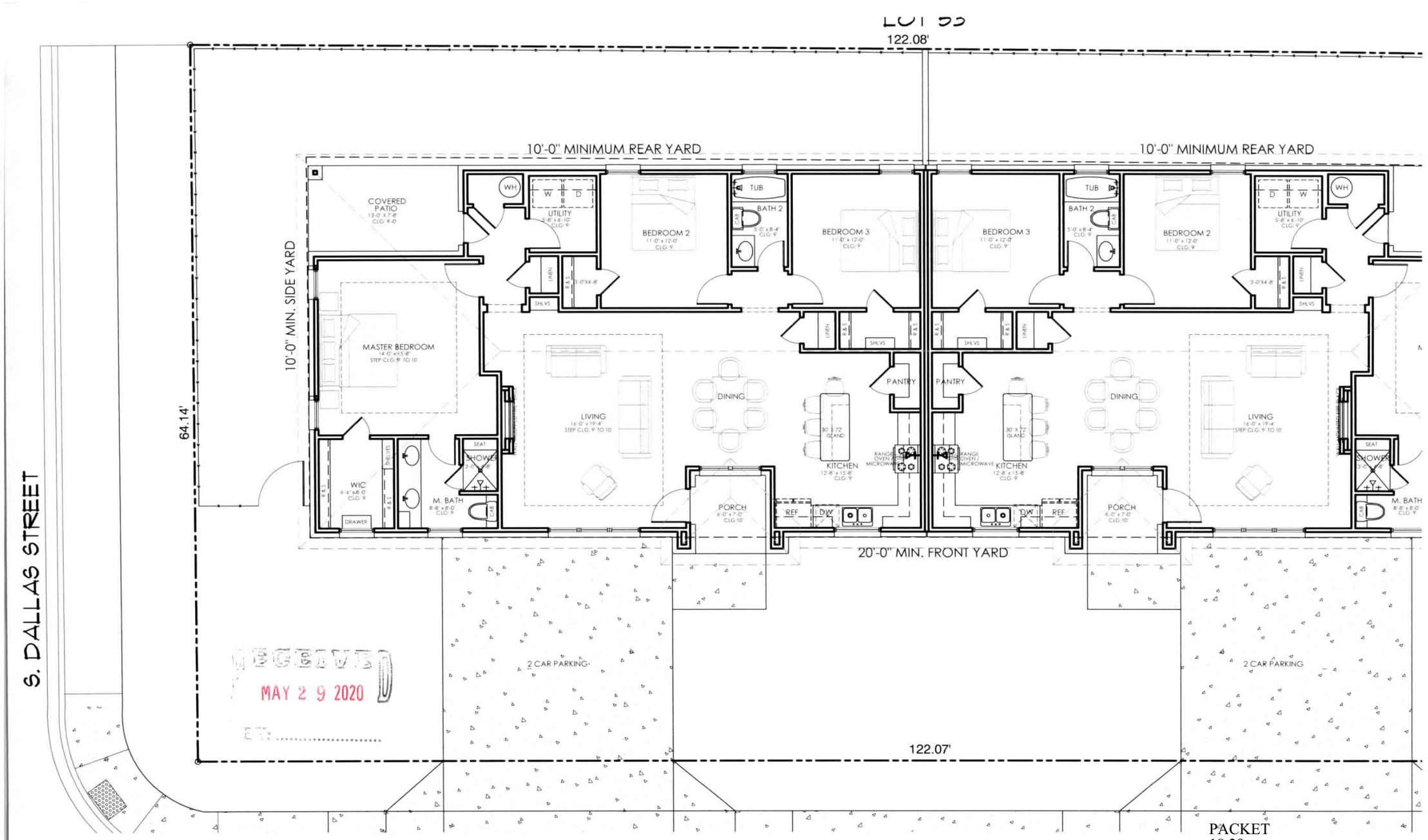
_____

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

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

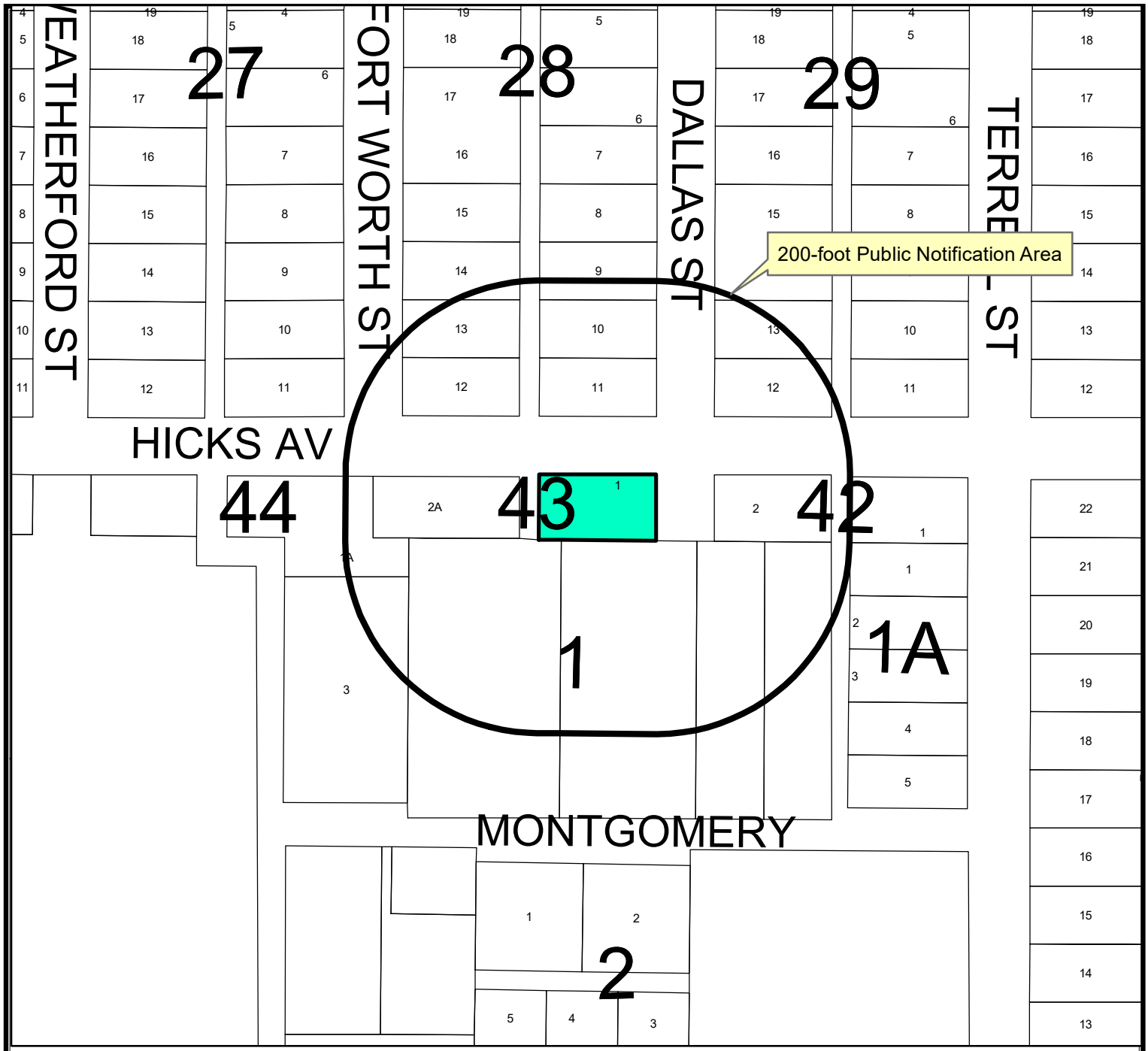
Application will not be considered for scheduling until reviewed by a planner.


LOT 55
122.08'
10'-0" MINIMUM REAR YARD
10'-0" MINIMUM REAR YARD
10'-0" MIN. SIDE YARD
64.14'
S. DALLAS STREET
COVERED PATIO
13'-0" X 7'-8"
CLG: 9'-0"
MASTER BEDROOM
14'-0" x 15'-8"
STEP CLG: 9' TO 10'
WIC
6'-6" x 8'-0"
CLG: 9'
DRAWER
M. BATH
8'-8" x 8'-0"
CLG: 9'
SEAT
SHOWER
LIVING
16'-0" x 19'-4"
STEP CLG: 9' TO 10'
DINING
KITCHEN
12'-8" x 15'-8"
CLG: 9'
30" X 72" ISLAND
PANTRY
PORCH
6'-0" x 7'-0"
CLG: 10'
REF
DW
UTILITY
5'-8" x 6'-10"
CLG: 9'
WH
W
D
LINEN
SHLVS
BEDROOM 2
11'-0" x 12'-0"
CLG: 9'
BATH 2
5'-0" x 8'-4"
CLG: 9'
TUB
CAB
BEDROOM 3
11'-0" x 12'-0"
CLG: 9'
20'-0" MIN. FRONT YARD
2 CAR PARKING
2 CAR PARKING
122.07'
RECEIVED
MAY 2 9 2020
BY:



1 418 HICKS. FRONT ELEVATION
DATE: 9-3-2019

RECEIVED
MAY 29 2020



LOCATION MAP

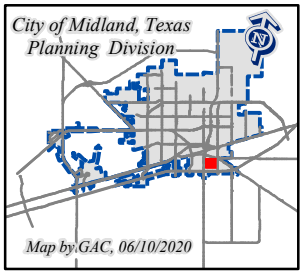
Z-20-0184 **Scale: 1" = 400'**

Consider a request by Jamie Alvarado Lopez for a zone change from SF-3, Single-Family Dwelling District to 2F, Two-Family Dwelling (Duplex) District on Lot 1, Block 43, South Park Addition, City and County of Midland, Texas.

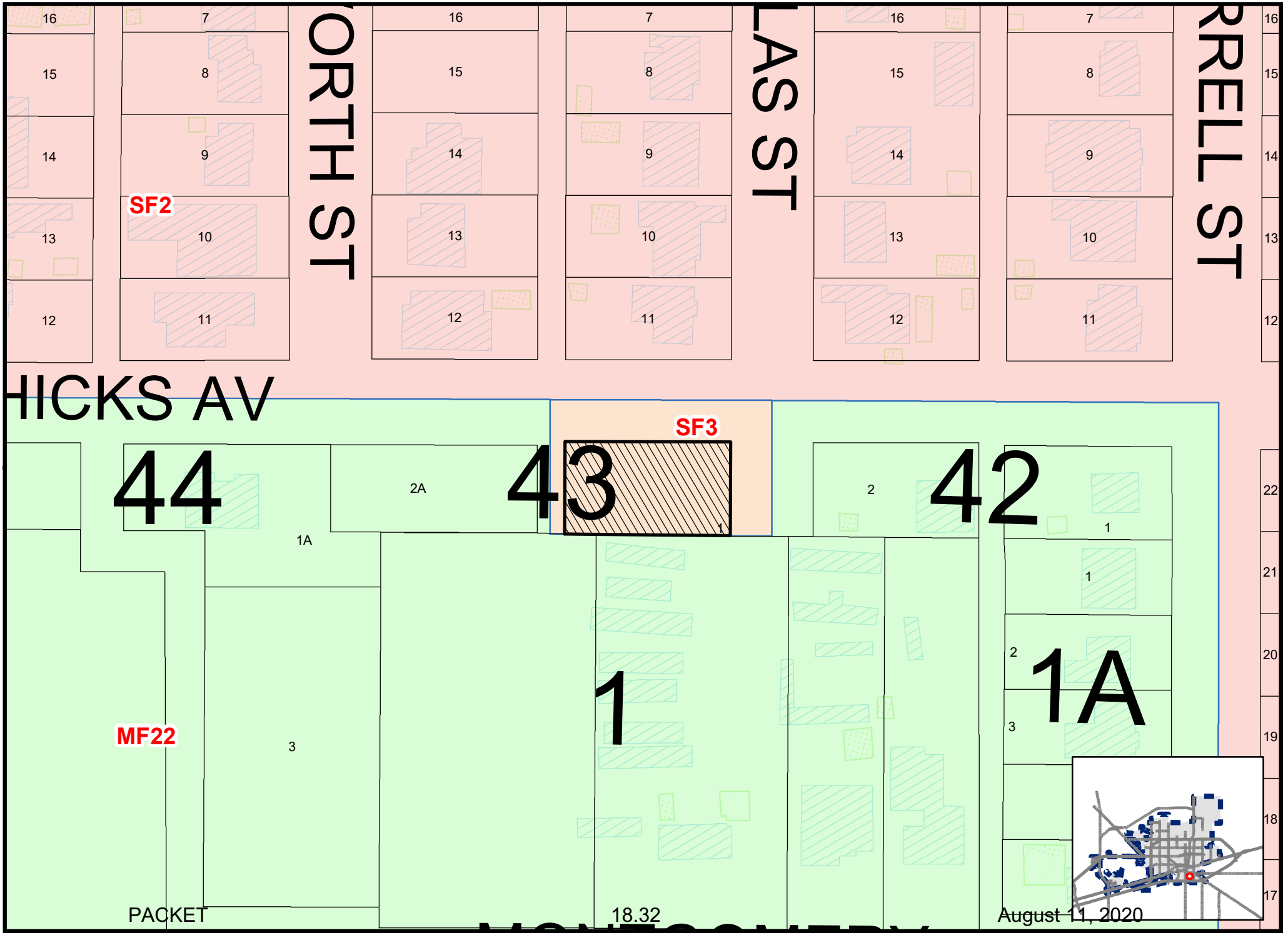
Generally located on the southwest corner of the intersection of East Hicks Avenue and South Dallas Street. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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



Map By GAC, 06/29/2020

Z-20-0184

Scale: 1" = 200'

ZONING MAP

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City Council Meeting

Item Number: 19

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Glenda Arroyo-Cruz, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOTS 1 AND 2, BLOCK 3, HINES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST FLORIDA AVENUE AND SOUTH GARFIELD STREET), WHICH IS PRESENTLY ZONED C, COMMERCIAL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AUTOMOBILE OR OTHER MOTORIZED VEHICLE SALES AND SERVICE; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Zakery Davis, is requesting a Specific Use Designation without Term for Automobile or other Motorized Vehicle Sales and Services.

Recommended City Council Action:

Approve

Fiscal Impact:

This request has no significant impact on the City's Budget.

Discussion:

The property to the north, east, south and west are zoned C, Commercial District and the location

of a shopping center, plumbing supply store, and industrial yards, respectively.

Analysis:

The applicant is requesting a Specific Use Designation without Term for Automobile or Other Motorized Vehicle Sales and Services at 2203 West Florida Avenue. The property is partially vacant, with an existing building.

The floor area of the building is approximately 3,716 square feet, with 1,500 square feet being used for storage. The proposed site plan, hereto shown as Exhibit A, shows the cars for sale will be within a fenced area located towards the middle of the property. Parking will be located on the northern portion north of the lots, with additional parking within the fenced area.

The proposed hours of the business are:

Monday through Saturday, from 11:00 a.m. through 7:00 p.m.

Per the zoning ordinance, a specific use designation without term is required for Automobile or other Motorized Vehicle Sales and Services within the C, Commercial District zoning.

The Automobile or Other Motorized Vehicle Sales and Services will need to comply with the standards as listed in Section 4.04.A.6 of the Zoning Ordinance.

6. Automobile or Other Motorized Vehicle Sales and Service Standards

a. Allowed by Specific Use Designation, according to the permitted Use Chart.

b. All exterior light sources shall be of a down-light type, indirect, diffused, or shielded type luminaries and so installed as to reduce glare effect and
consequent interference with use of adjacent properties and boundary streets.

c. No intermittent or flashing lights shall be permitted.

d. Luminaries shall be mounted at a height not to exceed 30 feet as measured vertically from the horizontal surface of the nearest parking pavement.

e. All building façades shall be constructed with the same masonry materials that meet the masonry regulations for the zoning district in which the property is located.

f. No exterior auditory devices shall be permitted.

This proposed project has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Building: (Approved with Conditions)

Parking lot must be striped with spaces properly sized and the number of required spaces must

be installed according to the City of Midland zoning code**.**

Engineering: (Approved with Conditions)

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.

Transportation: (Approved with Conditions)

Access spacing will be required to adhere to the TxDOT Access Management Standards along the state highway.

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

No objection to zone change.

Fire: (Approved)

No objection.

Planning:

This request meets all requirements of a Specific Use Designation without term for the Automobile or other Motorized Vehicle Sales and Services; therefore staff recommends approval of the Specific Use Designation without Term for Automobile or other Motorized Vehicle Sales and Services, subject to conditions A through D.

This request was recommended for approval at the July 20, 2020 Planning and Zoning meeting.

Conditions:

A. **That the use and development of this property shall significantly conform to the site plan, which is attached hereto as Exhibit "A" and incorporated herein.**

B. **That the days and hours of operation of the Automobile or other Motorized Vehicle Sales and Services shall be limited to the following:**

Monday through Saturday, from 11:00 a.m. through 7:00 p.m.

C. **That the use of the Automobile or other Motorized Vehicle Sales and Services shall conform to the standards as outlined in Section 4.04.6 of the Zoning Ordinance.**

D. **That the Off-Street Parking and Loading Requirements shall conform to the standards as outlined in Section 6.02.E of the Zoning Ordinance.**

Letters of Objection:

As of August 5, 2020, staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)
Application
Maps

Robert Patrick

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 LOTS 1 AND 2, BLOCK 3, HINES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST FLORIDA AVENUE AND SOUTH GARFIELD STREET), WHICH IS PRESENTLY ZONED C, COMMERCIAL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR AUTOMOBILE OR OTHER MOTORIZED VEHICLE SALES AND SERVICE; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation Without Term for Lots 1 and 2, Block 3, Hines 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 Without Term for Automobile or Other Motorized Vehicle Sales and Service, together with the uses permitted in the present C, Commercial District.

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

A. That the use of the Property for Automobile or Other Motorized Vehicle Sales and Service shall significantly conform to the site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes.

B. That the days and hours of Automobile or Other Motorized Vehicle Sales and Service shall be limited to Monday through Saturday from 11:00 a.m. to 7:00 p.m.

C. That the use of the Property for Automobile or Other Motorized Vehicle Sales and Service shall conform to Section 11-1-4.04.A.6 of the City Code and all other applicable laws, ordinances, and regulations.

D. That the off-street parking parking shown in Exhibit "A" shall be considered illustrative. The off-street parking shall conform to the regulations set forth in Section 11-1-6.02.E of the City Code.

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

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on

first reading, the _____ day of _____, A.D., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, Assistant City Manager

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

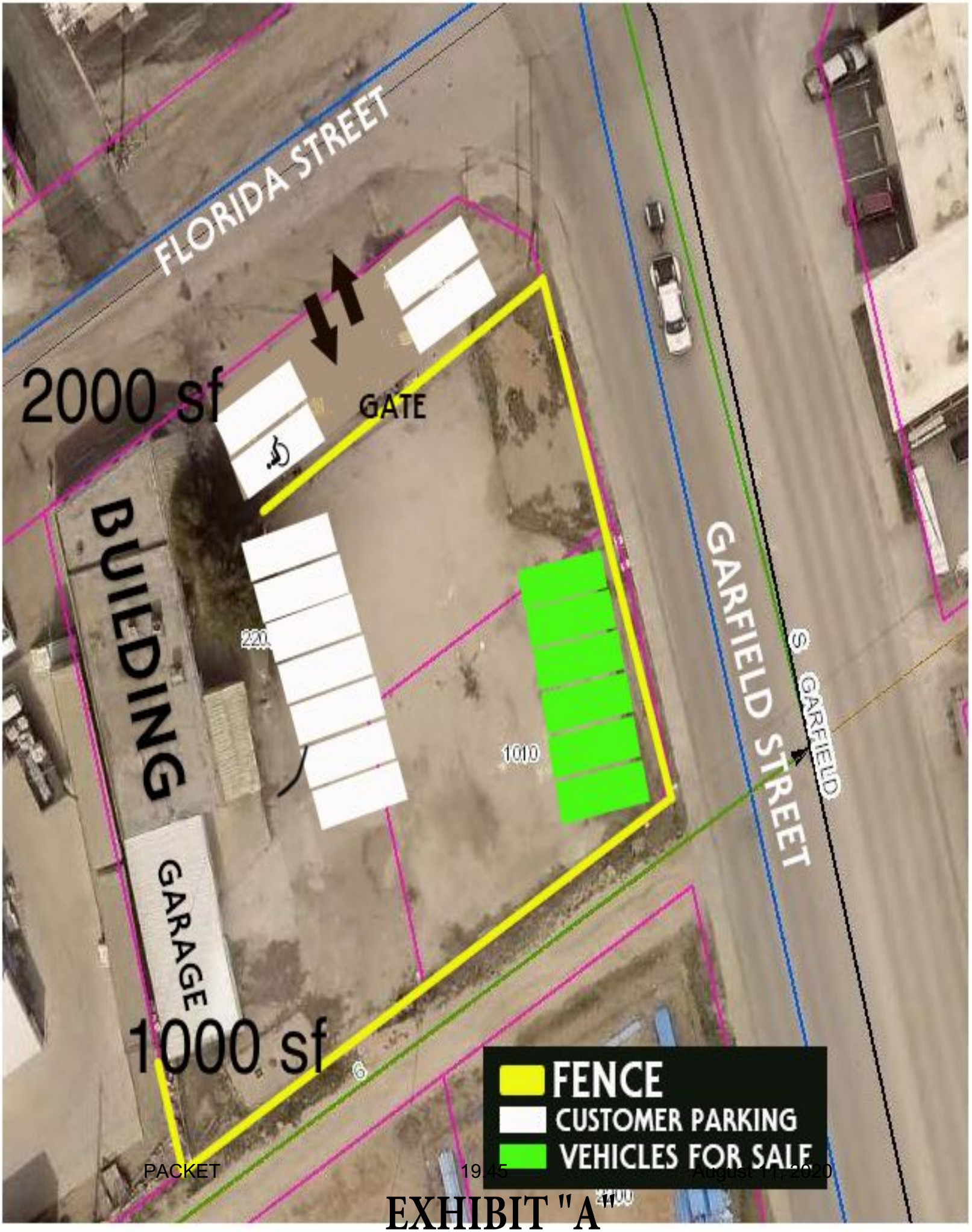
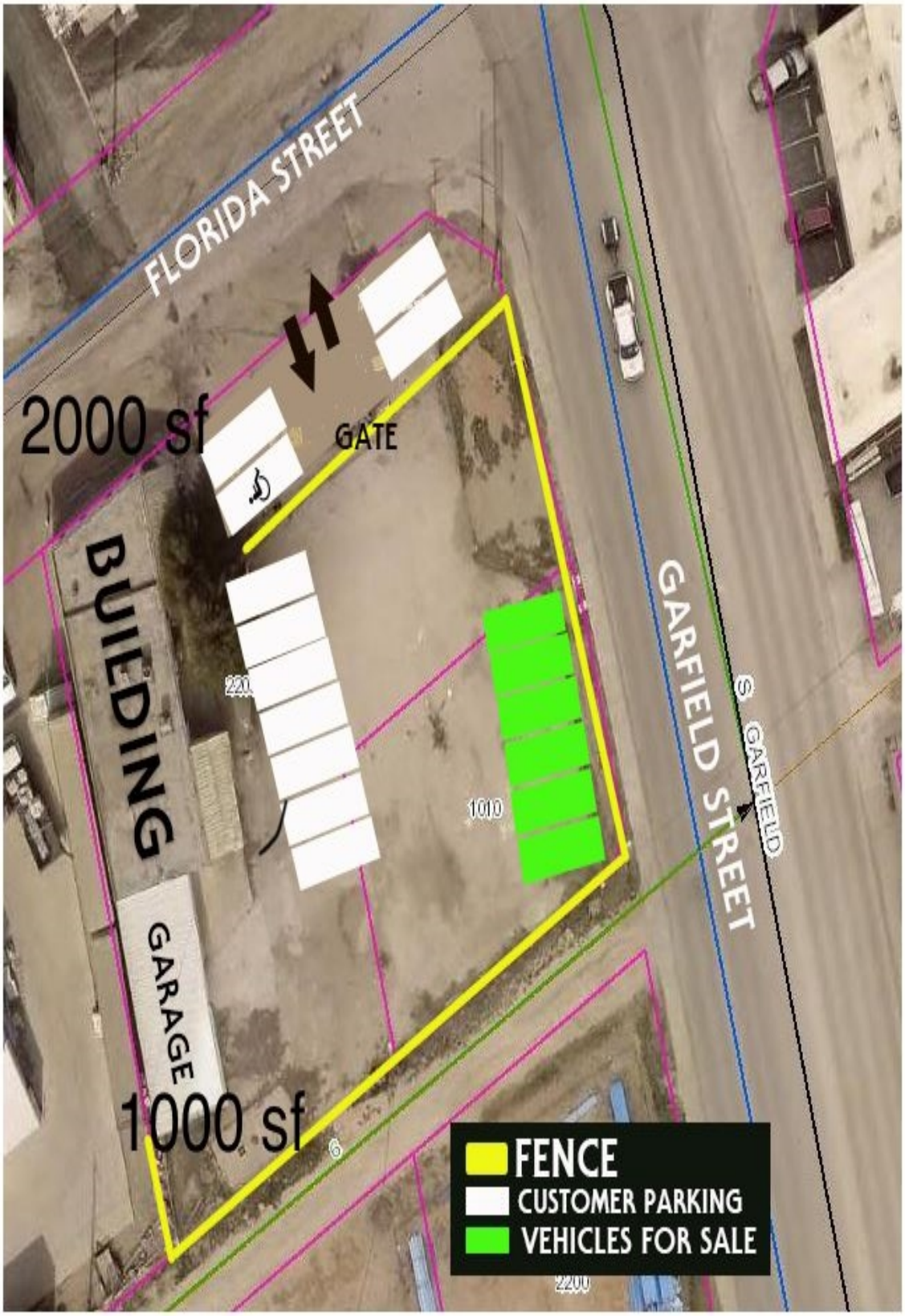

FLORIDA STREET
2000 sf
GATE
BUILDING
GARAGE
1000 sf
220
1010
GARFIELD STREET
S. GARFIELD
FENCE
CUSTOMER PARKING
VEHICLES FOR SALE

EXHIBIT "A"


FLORIDA STREET
2000 sf
GATE
BUILDING
GARAGE
1000 sf
220
1010
GARFIELD STREET
S. GARFIELD
6
2200
FENCE
CUSTOMER PARKING
VEHICLES FOR SALE

DocuSign Envelope ID: 8EB6A343-0A31-46AC-A5BF-07214FEE2146

MIDLAND Planning Division

Specific Use Designation Application (Non-Alcohol)

Project Number: SUdwo/20-0018

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)*			
Printed Name: Zakery Davis		Phone (432.)2358299 Email Zjdavis@westliberty.edu	
Address 5926 wagner	City Midland	State Tx	Zip 79706

Property Owner Partnership LTD			
Printed Name: Bosfam 1 [redacted]		Phone (432) 685 5233 Email	
Address 2205 w industrial	City Midland	State Tx	Zip 79701

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

Type of Permit: Vehicle sales	*For Office Use Only* ☐ with Term ☐without Term
Is there any Code Enforcement action pending on property? ☐ Yes ☒ No	

Street Address: 2203 w florida ave midland texas 79701

Legal Description
Lot: 1 & 2 Block: 3 Subdivision: Hines Addition

Current Zoning: Commercial

Maximum Floor Area: 3716 ft (1500 is storage) **Maximum Occupancy:**

Proposed hours and days of use or operation: 5-6 days a week 9 am - 8 pm at the maximum

Reason for request: Required by ordinance in property.

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience:
This property is surrounded by businesses there are no homes within sight. Also I have ample parking
Furthermore a car dealership with 10 cars is not going to produce excess traffic

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):	Date: 4/28/2020
Applicant (printed): Zakery Davis	
Property Owner (signature): DocuSigned by: Ron Ainsworth	Date: 4/29/2020
Property Owner (printed): Ron Ainsworth	

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 _____ 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

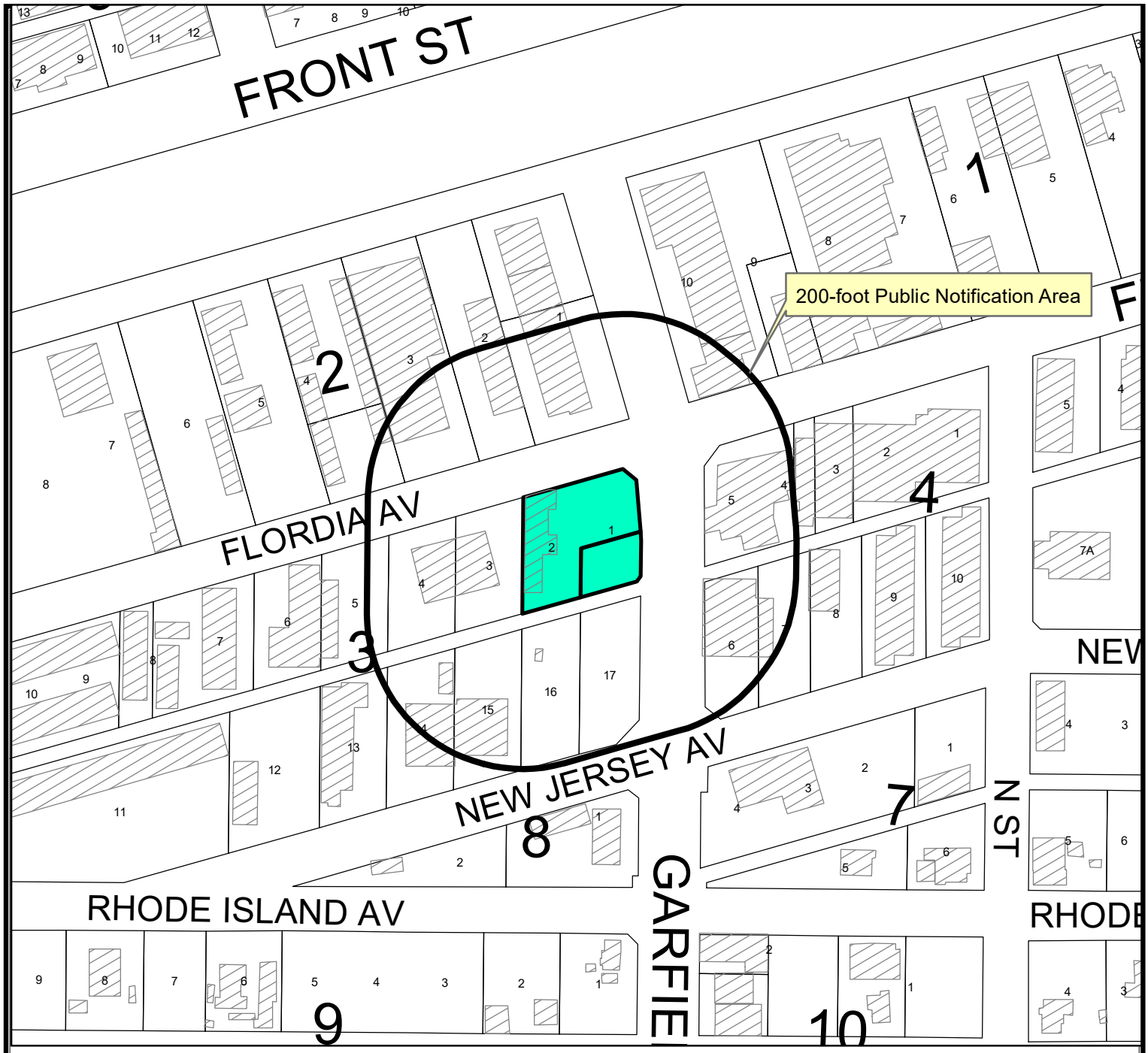
☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☐ Site Plan in Digital Format (PDF/JPEG)

Check # Money Order 19-095903494

Received By: Cristel Burns Date: MAY 2 2020

RECEIVED

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



LOCATION MAP

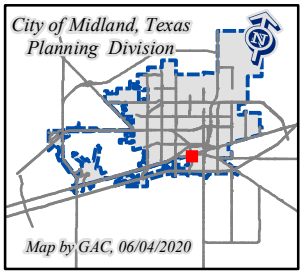
SUDwo-20-0018 **Scale: 1" = 400'**

Consider a request by Zakery Davis for a Specific Use Designation without Term for Automobile or other Motorized Vehicle Sales and Services on a Lots 1 and 2, Block 3, Hines Addition, City and County of Midland, Texas.

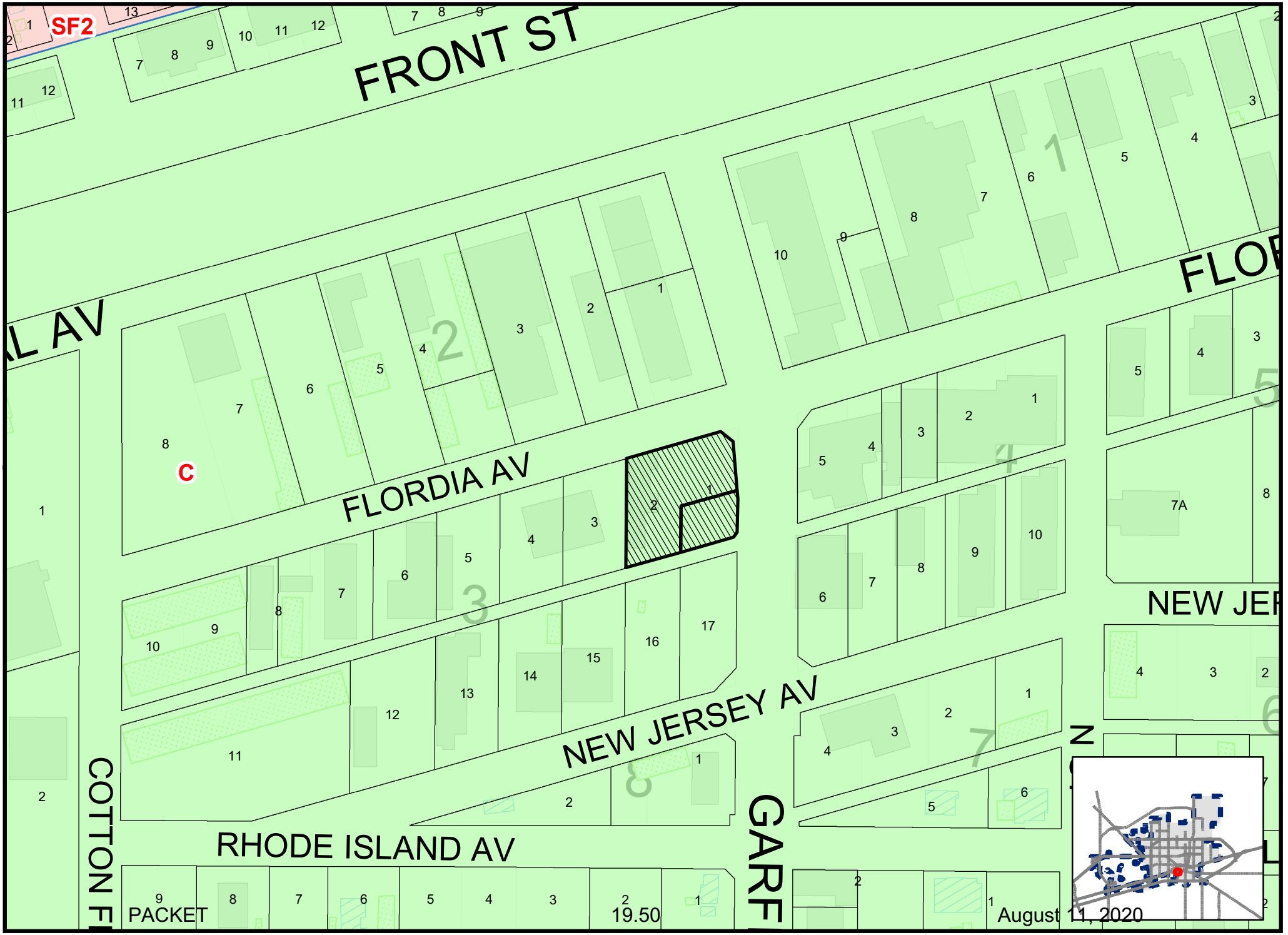
(Generally located on the southwest corner of the intersection of West Florida Avenue and South Garfield Street. Council District 7)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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



Map By GAC, 06/04/2020

SUDwo-20-0018

Scale: 1" = 200'

ZONING MAP

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BOSWORTH


STOP




BUSHWAY

City Council Meeting

Item Number: 20

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Glenda Arroyo-Cruz, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 6,811-SQUARE FOOT PORTION OF LOTS 3 THROUGH 9, BLOCK 138, REPLAT OF BLOCKS 137 AND 138, WILSHIRE PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST ILLINOIS AVENUE, APPROXIMATELY 160 FEET WEST OF NORTH MIDLAND DRIVE), WHICH IS PRESENTLY ZONED LR, LOCAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Labonita LLC, is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption, in a restaurant at 4411 West Illinois Avenue, Suite B1.

Recommended City Council Action:

Directional / Informational

Fiscal Impact:

This request has no significant impact on the City's Budget.

Discussion:

Jorge Ramos, a representative for Labonita LLC, is requesting approval of a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption, in a restaurant at 4411 West Illinois, Suite B1. The property is zoned LR, Local Retail District, which allows the sale of all alcoholic beverages, for on premises consumption, in a restaurant with the approval of a Specific Use Designation.

The property previously functioned as a restaurant named Casa Lopez under Ordinance No. 7139. The new restaurant will be named Macarena's and it is not in operation. There are no internal or external modifications being proposed for the establishment and the use of the facility will remain as a restaurant.

The floor plan attached hereto as Exhibit A, illustrates two dining areas and a bar located towards the back of the restaurant. The total square footage of the establishment is approximately 6,811 square feet, with an approximate area of 4,193 square feet being dedicated for the sale of alcoholic beverages.

The proposed hours of operations for the restaurant are as followed:

Monday through Thursday from 6:00 a.m. to 10:00 p.m.,
Friday through Saturday from 6:00 a.m. to 11:00 p.m.,
Sunday from 11:00 a.m. to 10:00 p.m.

The applicant is requesting alcohol service as the following:

Monday through Sunday from 11:00 a.m. to 11:00 p.m.

The existing Specific Use Designation failed to be renewed within the two (2) year period; therefore, the existing Ordinance for the property is nullified. With the expired Specific Use Designation and new ownership of the establishment, the process of obtaining a new Specific Use Designation would be required.

Per Midland City Code 5.4.4. –Prohibited place 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 is a church, The Potter's House Christian Fellowship Church, approximately 130-feet east of the proposed restaurant located in the same shopping center. The applicant has provided a letter from the church. It states their awareness of the sale of alcoholic beverages within such proximity and does not contest the application.

Per Sec. 109. 33 of the Texas Alcoholic Beverage Code,

(e) The governing board of a city or town that has enacted a regulation under Subsection (a) of this section may also allow variances to the regulation if the commissioners court of the governing body determines that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license of permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the court or governing board, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.

This proposed project has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Building: (Approved)

The SUD for Macarena's is acceptable provided that no major changes have taken place including increased sizing of the dining/seating area or increases to the building footprint. The property must adhere to the current maximum occupant load of 279 for the serviceable alcohol areas. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Engineering: (Approved)

No objections.

Transportation: (Approved)

No objections.

Fire: (Approved)

No Objections.

Planning:

This request was recommended for approval with a 5-1 vote, at the July 20, 2020 Planning and Zoning meeting.

This request does not meet the requirement set forth per the City Midland Code. *5.4.4. – Prohibited place of business*. However, if approved, staff recommends that it shall be subject to Conditions A through F.

Conditions:

A. **That the serviceable area of the restaurant shall be limited to approximately 4,193 square feet as shown in Exhibits "A and B", 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:

Sunday through Monday, from 11:00 a.m. to 11:00 p.m.

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 in accordance with Section 9.07.E. 3 of the City Code, the establishment shall receive a certificate of occupancy within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of August 5, 2020, staff has not received any letters of objection.

Attachments:

Floor Plan (Exhibit A)
Site Plan (Exhibit B)
Application
Maps
Ordinance No. 7139
Letter from Neighboring Church – Potter's House
Letter from Church – Westside Church
Section 109.33 of the Texas Alcoholic Beverage Code

Robert Patrick

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 6,811-SQUARE FOOT PORTION OF LOTS 3 THROUGH 9, BLOCK 138, REPLAT OF BLOCKS 137 AND 138, WILSHIRE PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST ILLINOIS AVENUE, APPROXIMATELY 160 FEET WEST OF NORTH MIDLAND DRIVE), WHICH IS PRESENTLY ZONED LR, LOCAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 6,811-square foot portion of Lots 3 through 9, Block 138, Replat of Blocks 137 and 138, Wilshire Park, 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 for on-premises consumption in a restaurant (the "Establishment"), together with the uses permitted in the present LR, Local Retail 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 4,193 contiguous square feet as shown in Exhibits "A" and "B", which are 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 11:00 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 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., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

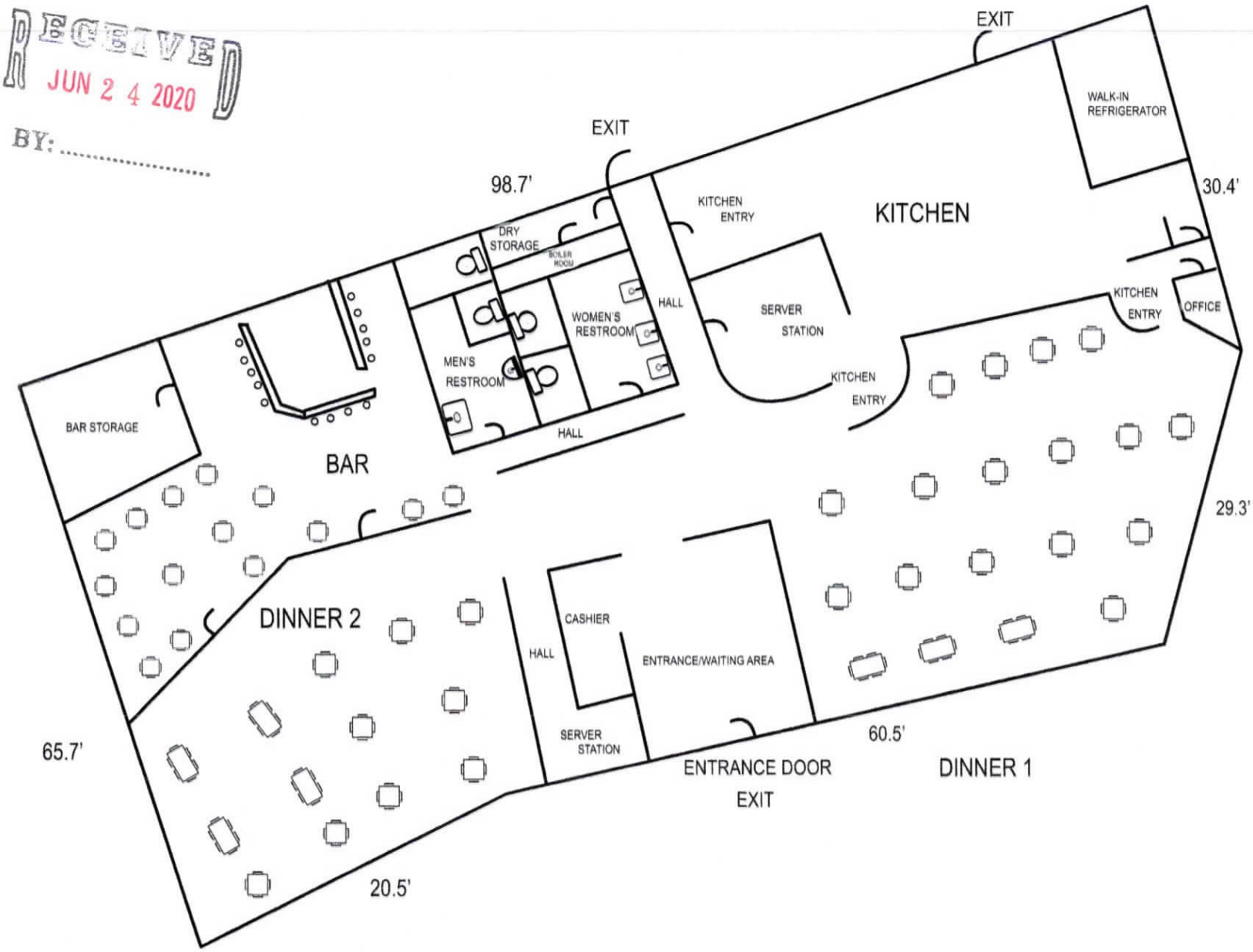
_____
Robert Patrick, Assistant City Manager

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

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JUN 2 4 2020
BY: .....



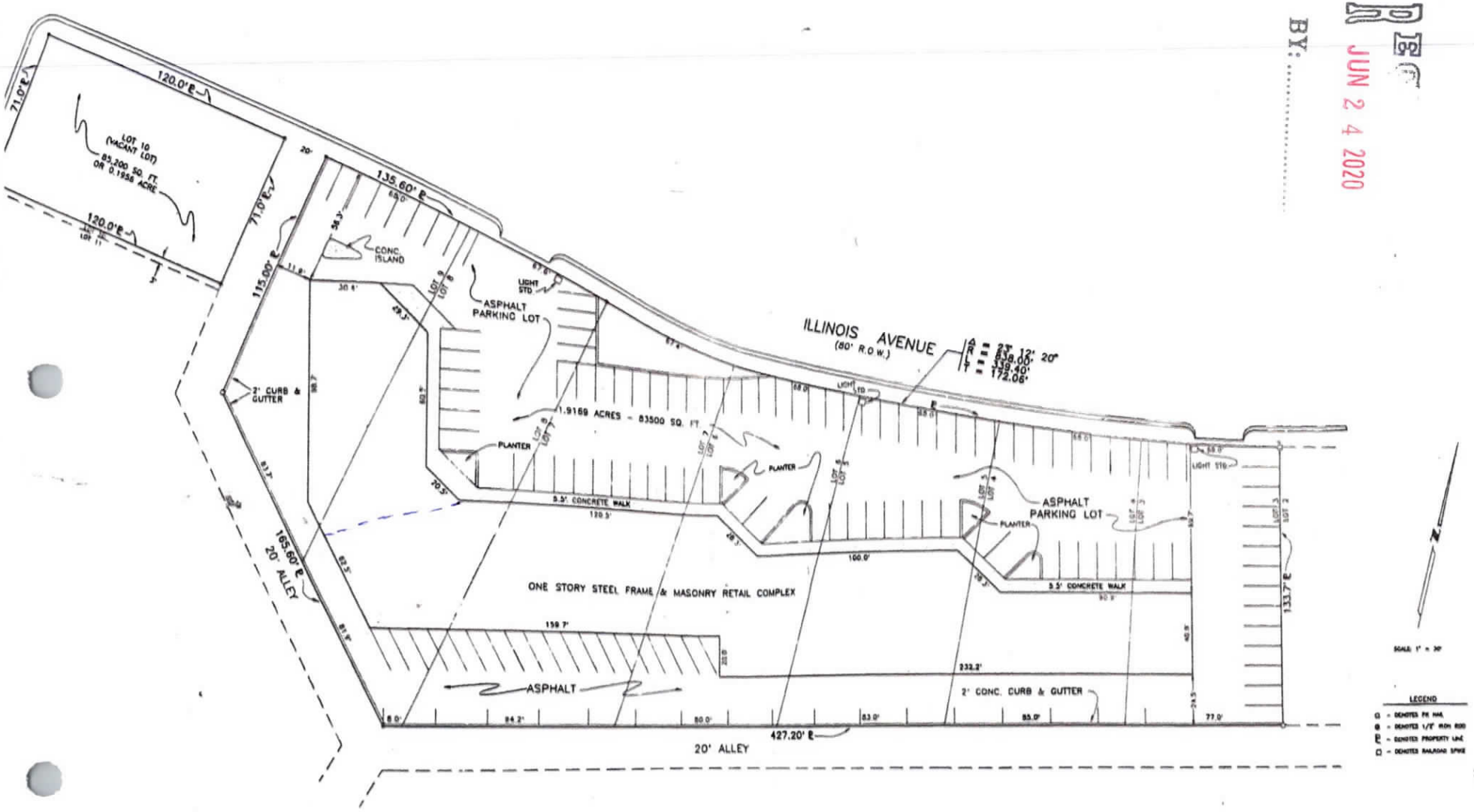
MACARENA'S

PACKET 20.63

EXHIBIT "A"

August 11, 2020

TOTAL SQUARE FOOT: 6811sq ft



RECEIVED
JUN 24 2020
BY: .....

URVEY PLAT FOR: CRUZ GILIBALDO LOPEZ DBA LOPEZ PROPERTIES
O THE LIENHOLDERS, ISSUING TITLE INSURANCE UNDERWRITER AND ADVANCE ABSTRACT FOR CAUSE
O. GF-910670 ONLY.
his is to certify that on this date, September 3, 1991, a careful and accurate survey was made
nder my direction and supervision on the ground of the property located at 4411 W. Illinois
venue, in Midland, Texas, described as follows: Lots 3, 4, 5, 6, 7, 8, 9, and all of lot 10 except
ie south 3 feet thereof, Block 138, Wilshire Park, an addition to the City of Midland, Texas, according
) the replat recorded in Plat cabinet B on page 172 of the Plat Records of Midland County, Texas.

ENSUS TRACT # 0012.00
OTE. With reference to the U.S.D.H.U.D. Federal Insurance Administration Flood Hazard Boundary
ap for Midland County, Texas, Community Panel 480477-0004-B, revised November 28, 1978, this
roperty is not located in a Special Flood Hazard Area Zone A. The above map may not include
l Special Flood Hazard Areas and after a more detailed study the Flood Hazard Areas may be
odified and other areas added. Localized flooding may occur someday due to adjacent changes
drainage patterns

The plat hereon is a true, correct and accurate representation of the property as determined by survey, the lines and dimensions of said property being as indicated by the plat; the size, location and type of buildings and improvements are as shown; all improvements being within the boundaries of the property, set back from property lines the distances indicated and that the distances to the nearest intersecting street or road is as shown on said plat. There are no encroachments, conflicts or protrusions, except as shown. Dated this the 6th day of September, 1991.

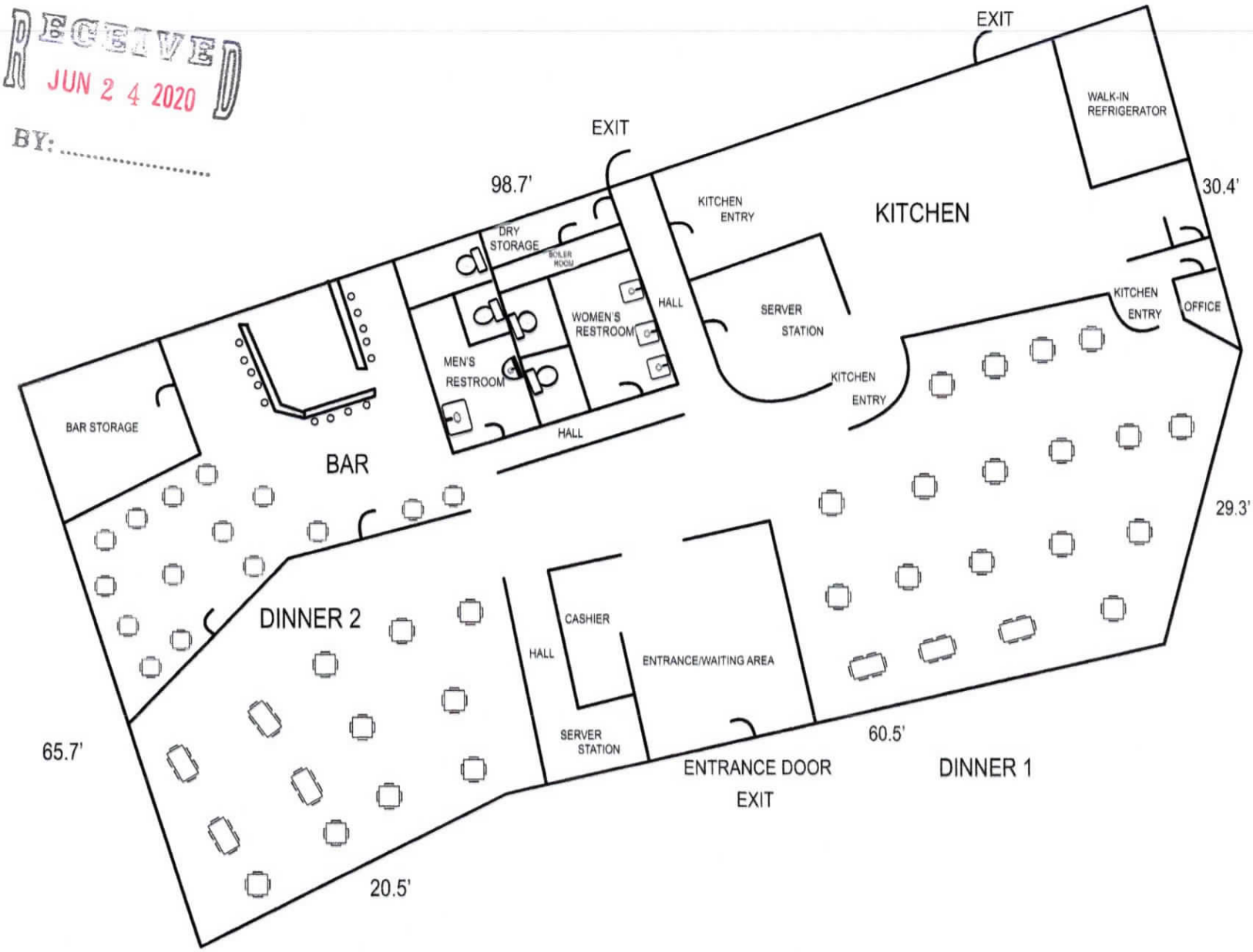
Mason McDonald 9/6/91

RONALD J. EIDSON TEXAS P.L.S. No. 1883
MACON McDONALD TEXAS P.L.S. No. 4398
GARY G. EIDSON TEXAS P.L.S. No. 4735

JOHN WEST & ASSOCIATES
MIDLAND, TEXAS

EXHIBIT "B"

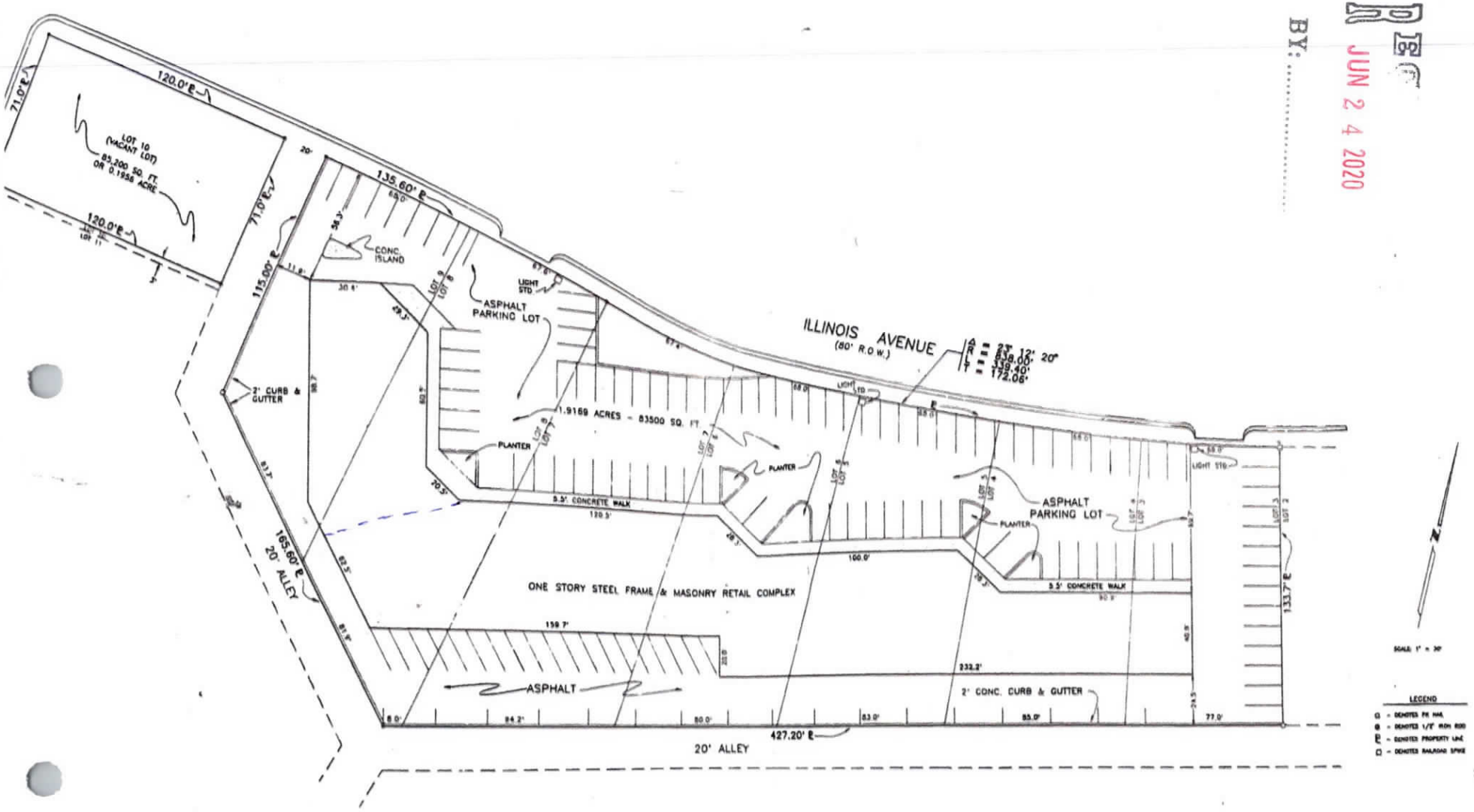
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BY: .....



MACARENA'S

PACKET 20.65 August 11, 2020

TOTAL SQUARE FOOT: 6811sq ft



URVEY PLAT FOR: CRUZ GILIBALDO LOPEZ DBA LOPEZ PROPERTIES
O THE LEINHOLDERS, ISSUING TITLE INSURANCE UNDERWRITER AND ADVANCE ABSTRACT FOR CAUSE
O. GF-910670 ONLY.
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venue, in Midland, Texas, described as follows: Lots 3, 4, 5, 6, 7, 8, 9, and all of lot 10 except
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) the replat recorded in Plat cabinet B on page 172 of the Plat Records of Midland County, Texas.

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OTE. With reference to the U.S.D.H.U.D. Federal Insurance Administration Flood Hazard Boundary
ap for Midland County, Texas, Community Panel 480477-0004-B, revised November 28, 1978, this
roperty is not located in a Special Flood Hazard Area Zone A. The above map may not include
l Special Flood Hazard Areas and after a more detailed study the Flood Hazard Areas may be
odified and other areas added. Localized flooding may occur someday due to adjacent changes
drainage patterns

The plat hereon is a true, correct and accurate representation of the property as determined by survey, the lines and dimensions of said property being as indicated by the plat; the size, location and type of buildings and improvements are as shown; all improvements being within the boundaries of the property, set back from property lines the distances indicated and that the distances to the nearest intersecting street or road is as shown on said plat. There are no encroachments, conflicts or protrusions, except as shown. Dated this the 6th day of September, 1991.

JOHN WEST & ASSOCIATES
MIDLAND, TEXAS

RONALD J. EIDSON TEXAS P.L.S. No. 1883
MACON McDONALD TEXAS P.L.S. No. 4398
GARY G. EIDSON TEXAS P.L.S. No. 4735

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JUN 24 2020
BY:

MIDLAND
Planning Division

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

Project Number: SUD-20-0079

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Labonita LLC---Jorge Ramos		Phone (806) 274-1469 Email jr9118223@gmail.com	
Address: 4405 N Garfield St	City: Midland	State: Tx	Zip: 79705

Property Owner Printed Name: Cruz G. Lopez		Phone (432) 557-7827 Email	
Address: 1 Belfield ct	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: 4411 W ILLINOIS, Suite B1

Business Name: Macarena's Delicious Mexican Dishes & Bar

Legal Description
Lot: Block: Subdivision:

Current Zoning:

Reason for Request: We want to provide drinks to our customers. It has been a Mexican food Restaurant for 15 years serving alcohol.

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Restaurant

Proposed/Current Days and Hours of Operation: MON-Thur 6AM-10PM FRI, SAT-6AM-11PM, SUN-11AM-10PM

Proposed Days and Hours of Alcohol Service: 11AM-Close Monday-Sunday

Total Square Footage of Business: 6,811

Square Footage of Alcohol Serviceable Area: 4,193

Restroom Fixtures: *Men*	**Toilets/Urinals:** 2 / 1	**Bathroom Sinks:** 1
Women	**Toilets:** 2	**Bathroom Sinks:** 3

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BY:

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
  - Seating
  - Exits
  - Restrooms
  - Kitchen (if applicable)
  - Total Square Footage
  - Serviceable Square Footage
- Dimensioned Site Plan showing:
  - Parking
  - Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature):	Date: 6-16-2020
Applicant (printed): Jorge V. Ramos	
Property Owner (signature):	Date: 6-16-2020
Property Owner (printed): Cruz G. Lopez	

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 Jorge Ramos who, being by me duly sworn, upon oath says: That ~~(s)~~he is authorized by Cruz Lopez, 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 16 day of June, 2020, to certify which witness my hand and seal of office.

J. BREWER
ID #124536528
My Commission Expires
April 22, 2023

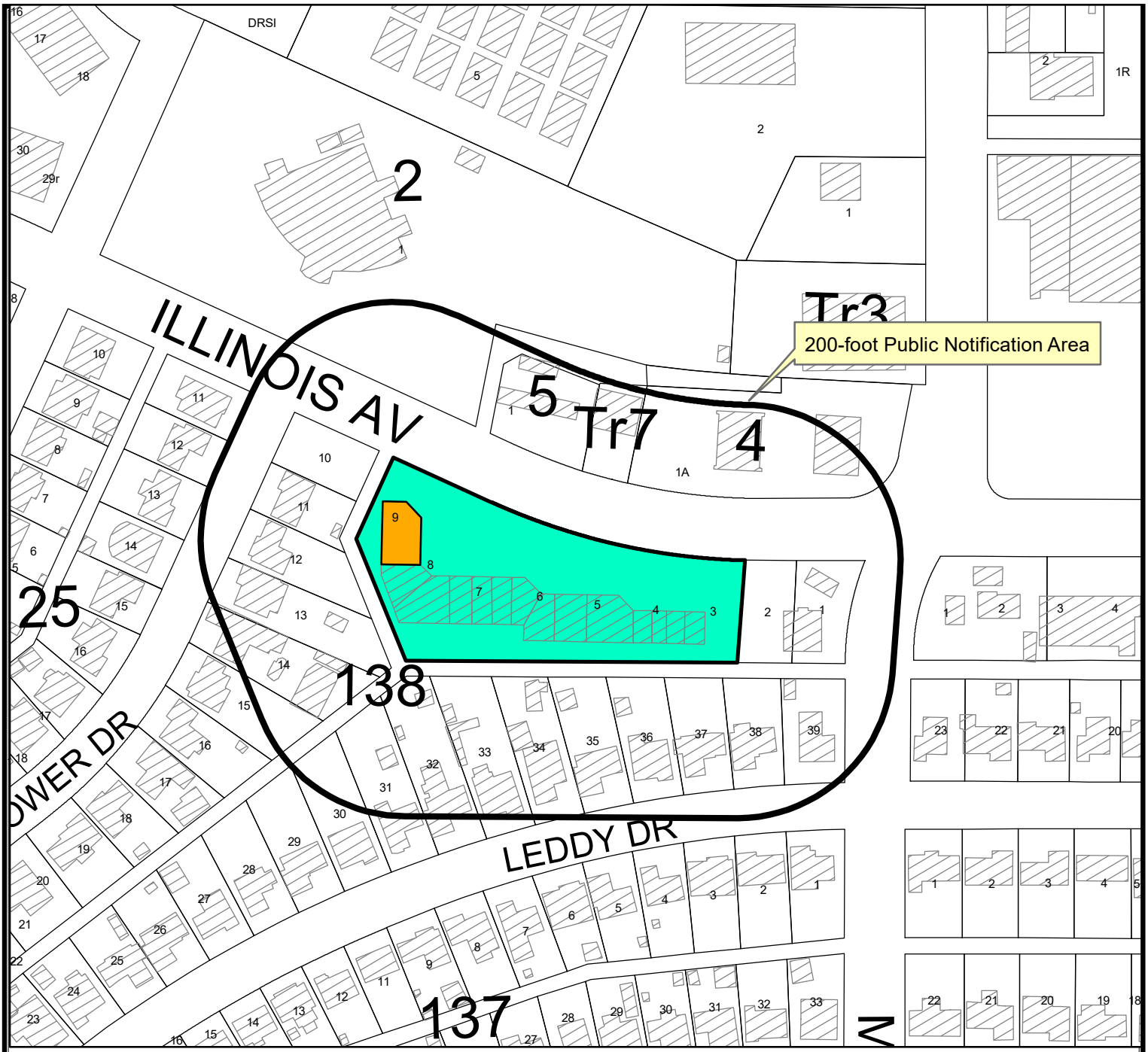
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

JUN 24 2020

****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 # Cash - $300	☑ Plans in Digital Format (PDF/JPEG)
Received By: GAC	Date: JUN 24 2020

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



LOCATION MAP

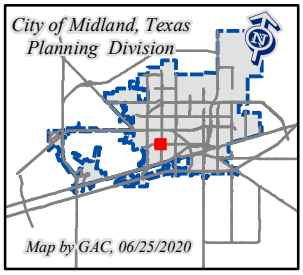
SUD-20-0079 **Scale: 1" = 400'**

Consider a request by Labonita LLC for a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption in a restaurant on a 6,811 square foot portion of Lots 3 through 9, Block 138, Replat of Blocks 137 and 138, Wilshire Park, City and County of Midland, Texas.

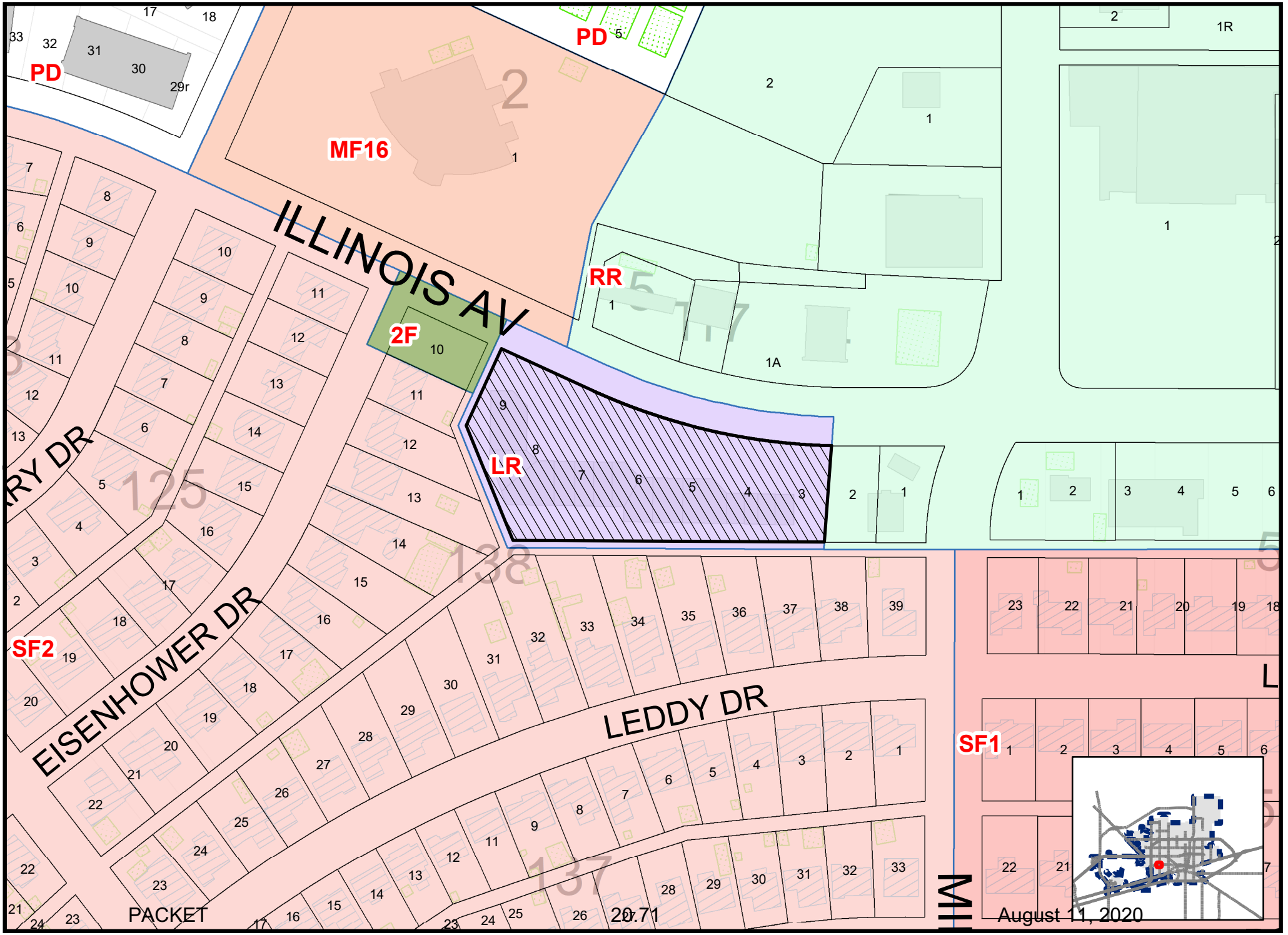
Generally located on the south side of West Illinois Avenue, approximately 160-feet west of North Midland Drive. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2019
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ABSTRACT NOR IS IT DESIGNED TO BE USED AS THE ONLY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By GAC, 06/25/2020

SUD-20-0079

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2019: 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.

pr

ORDINANCE NO. 7139

AN ORDINANCE REPEALING ORDINANCE NO. 6495; CHANGING THE ZONING USE CLASSIFICATION OF CERTAIN PROPERTIES DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED "LR-1", LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT FOR THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION IN A RESTAURANT; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the 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 repealing Ordinance No. 6495 which granted a Specific Use Permit for the sale of all alcoholic beverages for on-premises consumption in a restaurant and granting a Specific Use Permit for the sale of all alcoholic beverages for on-premises consumption in a restaurant, 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 "LR-1", Local Retail District, to wit:

Lots 3 through 9, Block 138, Wilshire Park Addition to the City of Midland, Midland County, Texas;

is hereby changed to permit same to be used under a Specific Use Permit for the sale of all alcoholic beverages for on-premises consumption in a restaurant, together with the uses permitted in an "LR-1", Local Retail District, subject to the following conditions:

1. That the use and development of this tract as a restaurant selling alcoholic beverages shall conform in all respects to the site plan attached hereto as Exhibit "A" and made a part hereof for all legal purposes.

2. That the sale and consumption of alcoholic beverages shall be limited to the portion of the building shown on Exhibit "A", that the maximum gross area of the restaurant shall not exceed 4,720 square feet, and that the maximum seating capacity shall not exceed 140 persons.

3. That the days and hours of alcoholic beverage sales shall be from 11:00 a.m. - 12:00 midnight on Monday through Thursday; from 11:00 a.m. - 2:00 a.m. of the next succeeding day on Friday and Saturday; and from 12:00 noon through 12:00 midnight on Sunday, on each day that such sales are otherwise permitted by law.

4. That the use and operation of this restaurant shall comply with all of the laws of the State of Texas and the regulations pertaining to the sale and consumption of alcoholic beverages specified in the Midland City Code.

5. That a business sign or signs may be displayed outside the restaurant indicating the business name, "Gili's Restaurante Y Cantina".

SECTION THREE. That Ordinance No. 6495 is hereby expressly repealed.

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 26th day of November, A.D., 1991; and passed to second reading on motion of Council member Devenport, seconded by Council member Sipes, by the following vote:

Council members voting "AYE": Devenport, Sipes, DeVaughn, Castro, Faircloth, Thomas and Johnston

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 Castro, seconded by Council member Johnston, on the 17th day of December, A.D., 1991, at a regular meeting of

the City Council:

Council members voting "AYE": Castro, Johnston, DeVaughn, Faircloth, Thomas, Devenport and Sipes

Council members voting "NAY": None

PASSED AND APPROVED THIS 17th day of December, A.D., 1991.

Carroll M. Thomas, Mayor

ATTEST:

B. C. Clanton, City Secretary

APPROVED AS TO FORM:

David W. Reagan, City Attorney

ORD\GILIS.SUP

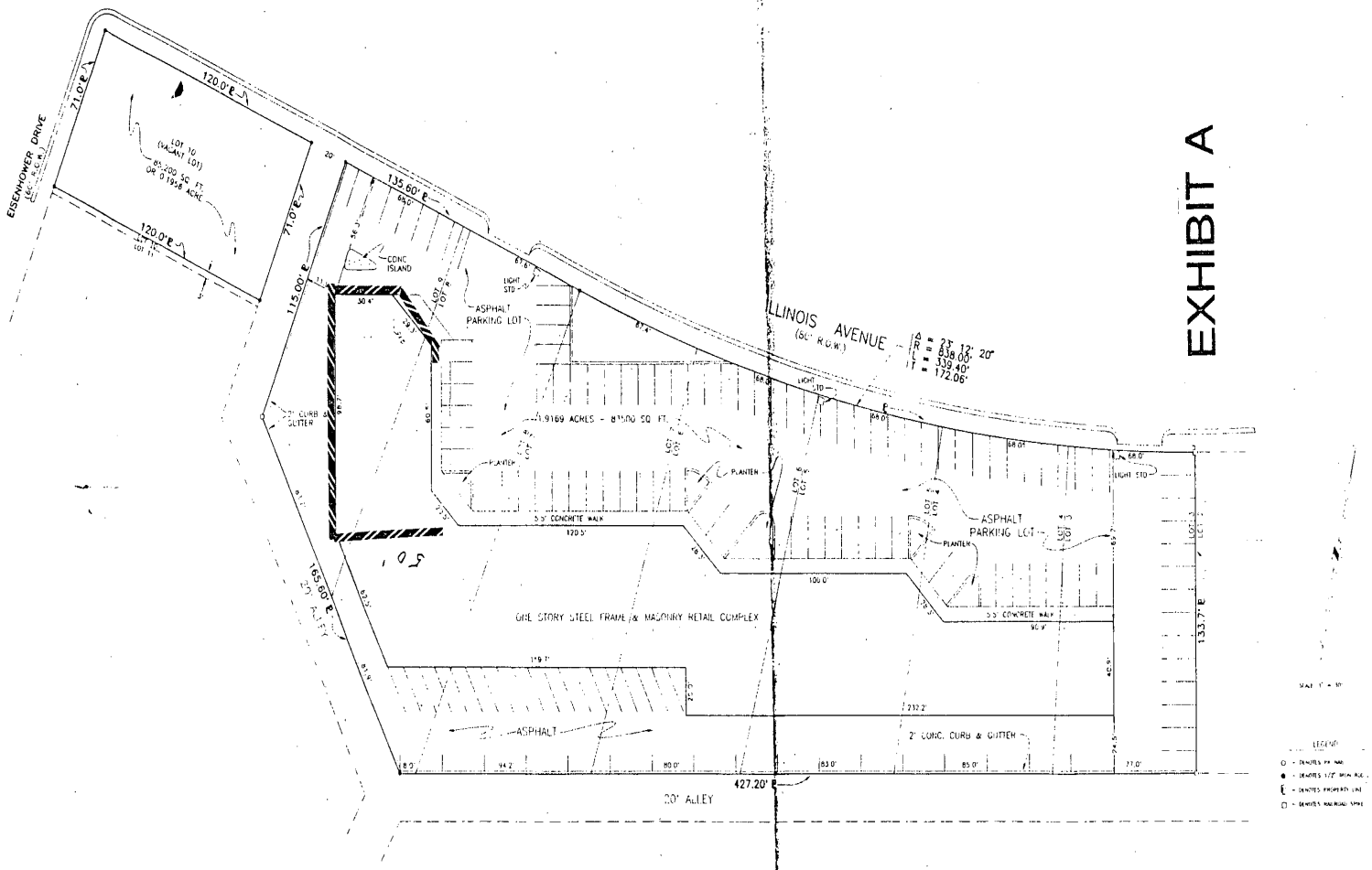


EXHIBIT A

SURVEY PLAT FOR: CRUZ GILIBALDO LOPEZ DBA LOPEZ PROPERTIES
TO THE LIENHOLDERS, ISSUING TITLE INSURANCE UNDERWRITER AND ADVANCE ABSTRACT FOR CAUSE NO. OF-9106.7C ONLY:

This is to certify that on this date, September 3, 1991, a careful and accurate survey was made under my direction and supervision of the ground of the property located at 4411 W. Illinois Avenue, in Midland, Texas, described as follows: Lots 3, 4, 5, 6, 7, 8, 9, and all of lot 10 except the south 3 feet thereof, Block 139, Wilshire Park, an addition to the City of Midland, Texas, according to the replat recorded in Plat cabinet B on page 172 of the Plat Records of Midland County, Texas.

CENSUS TRACT # 0013.00

NOTE: With reference to the U.S.D.H.U.D. Federal Insurance Administration Flood Hazard Boundary Map for Midland County, Texas, Community Panel 480477-0004-B, revised November 26, 1978, this property is not located in a Special Flood Hazard Area Zone A. The above map may not include all Special Flood Hazard Areas and after a more detailed study the Flood Hazard Areas may be modified and other areas added. Localized flooding may occur someday due to adjacent changes in drainage patterns.

The plat hereon is a true, correct and accurate representation of the property as determined by survey, the lines and dimensions of said property being as indicated by the plat, the size, location and type of buildings and improvements are as shown; all improvements being within the boundaries of the property, set back from property lines the distances indicated and that the distances to the nearest intersecting street or road is as shown on said plat. There are no encroachments, conflicts or protrusions, except as shown. Dated this the 6th day of September, 1991.

Ronald J. Eidson 9/6/91

RONALD J. EIDSON TEXAS R.P.L.S. No. 1863
MACON McDONALD TEXAS R.P.L.S. No. 4395
GARY C. EIDSON TEXAS R.P.L.S. No. 4735

JOHN WEST & ASSOCIATES
MIDLAND, TEXAS

PACKET 20.75 August 11, 2020

The Potter's House Christian Fellowship Church

Tuesday, June 30, 2020

To whom it may concern,

I Pastor Robert Hernandez of The Potter's House Christian Fellowship Church located at 4411 W. Illinois Ave, Suite B5, Midland, TX 79703. Do give consent for Jorge Ramos and Angelica Estrada dba Macarenas Mexican Dishes & Bar to operate in the former Casa Lopez Café location; located at the same address as long as they maintain the same hours and type of business as Café Casa Lopez operating mainly as a restaurant.

Please call if you have any questions or concerns.

Thank you,

Robert Hernandez

Pastor

Cell: (325) 500-8602

The Potter's House Christian Fellowship | 4411 W. Illinois Ave Suite B5, Midland, TX. 79703

www.tphmidland.com | info@tphmidland.com | (432) 279-0198

June 19, 2020

JUN 2 4 2020

To Whom it may concern.

We understand that the restaurant next door to our church building is applying for a liquor license and intends to sell liquor. While our beliefs and practices do not encourage the use of liquor, we do not contest you're your application with the city and hope that all applicable laws and expectations of the "TABC" will be complied with should you be issued a license.

For the Elders,

Lynn Mayfield

Lynn Mayfield

Westside Church of Christ
4410 W Illinois
Midland Tx 79703.

Sec. 109.22. DELIVERY OF HOME-PRODUCED WINE, ALE, MALT LIQUOR, OR BEER FOR CERTAIN PURPOSES. (a) This section applies only to a person who is authorized under Section 109.21(a) to produce wine, ale, malt liquor, or beer.

(b) For the purpose of participating in an organized tasting, evaluation, competition, or literary review, a person to whom this section applies may deliver wine, ale, malt liquor, or beer produced and manufactured by the person to locations that are not licensed under this code for the purpose of submitting those products to an evaluation at an organized tasting competition that is closed to the general public or by a reviewer whose reviews are published if:

(1) no charge of any kind is made for the wine, ale, malt liquor, or beer, for its delivery, or for attendance at the event; and

(2) the commission consents in writing to the delivery.

(c) Nothing in this section shall be construed to authorize an increase in the quantity of wine, ale, malt liquor, or beer authorized to be produced by a person under the authority of Section 109.21(a) of this code.

SUBCHAPTER C. LOCAL REGULATION OF ALCOHOLIC BEVERAGES

Sec. 109.31. MUNICIPAL REGULATION OF LIQUOR. A city by charter may prohibit the sale of liquor in all or part of the residential sections of the city.

Sec. 109.32. MUNICIPAL AND COUNTY REGULATION OF BEER. (a) An incorporated city or town by charter or ordinance may:

(1) prohibit the sale of beer in a residential area; and

(2) regulate the sale of beer and prescribe the hours when it may be sold, except the city or town may not permit the sale of beer when its sale is prohibited by this code.

(b) In a county that has only one incorporated city or town that has a majority of the population of the county, according to the most recent federal census, and where the city or town has shortened the hours of sale for beer on Sundays by a valid charter amendment or ordinance before January 1, 1957, the commissioners court may enter an order prohibiting the sale of beer on Sundays during the hours it is prohibited in the city or town. The order may apply to all or part of the area of the county located outside the city or town. The commissioners court may not adopt the order unless it first publishes notice for four consecutive weeks in a newspaper of general circulation in the county published in the county or a nearby county.

(c) In exercising the authority granted by this section, the city, town, or county may distinguish between retailers selling beer for on-premises consumption and retailers, manufacturers, or distributors who do not sell beer for on-premises consumption.

Sec. 109.33. SALES NEAR SCHOOL, CHURCH, OR HOSPITAL. (a) The commissioners court of a county may enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town may enact regulations applicable in the city or town, prohibiting the sale of alcoholic beverages by a dealer whose place of business is within:

(1) 300 feet of a church, public or private school, or public hospital;

(2) 1,000 feet of a public school, if the commissioners court or the governing body receives a request from the board of trustees of a school district under Section 38.007, Education Code [*Refer to Appendix for this citation*]; or

(3) 1,000 feet of a private school if the commissioners court or the governing body receives a request from the governing body of the private school.

(b) The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections. The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be:

(1) in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; or

(2) if the permit or license holder is located on or above the fifth story of a multistory building, in a direct line from the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.

(c) Every applicant for an original alcoholic beverage license or permit for a location with a door by which the public may enter the place of business of the applicant that is within 1,000 feet of the nearest property line of a public or private school, measured along street lines and directly across intersections, must give written notice of the application to officials of the public or private school before filing the application with the commission. A copy of the notice must be submitted to the commission with the application. This subsection does not apply to a permit or license covering a premise where minors are prohibited from entering the premises under Section 109.53.

(d) As to any dealer who held a license or permit on September 1, 1983, in a location where a regulation under this section was in effect on that date, for purposes of Subsection (a), but not Subsection (c), of this section, the measurement of the distance between the place of business of the dealer and a public or private school shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections.

(e) The commissioners court of a county or the governing board of a city or town that has enacted a regulation under Subsection (a) of this section may also allow variances to the regulation if the commissioners court or governing body determines that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the court or governing board, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.

(f) Subsections (a)(2) and (3) do not apply to the holder of:

(1) a retail on-premises consumption permit or license if less than 50 percent of the gross receipts for the premises is from the sale or service of alcoholic beverages;

(2) a retail off-premises consumption permit or license if less than 50 percent of the gross receipts for the premises, excluding the sale of items subject to the motor fuels tax, is from the sale or service of alcoholic beverages; or

(3) a wholesaler's, distributor's, brewer's, distiller's and rectifier's, winery, wine bottler's or manufacturer's permit or license, or any other license or permit held by a wholesaler or manufacturer as those words are ordinarily used and understood in Chapter 102.

(f-1) Subsections (a)(2) and (3) do not apply to a performing arts facility leased to a nonprofit organization under a policy adopted under Section 11.179, Education Code.

(g) Subsection (a)(3) does not apply to the holder of:

(1) a license or permit issued under Chapter 27, 31, or 72 who is operating on the premises of a private school; or

(2) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 and that is located within 1,000 feet of a private school.

(h) Subsection (a)(1) does not apply to the holder of:

(1) a license or permit who also holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or

(2) a license or permit covering a premise where minors are prohibited from entering under Section 109.53 and that is located within 300 feet of a private school.

(i) In this section, “private school” means a private school, including a parochial school, that:

(1) offers a course of instruction for students in one or more grades from kindergarten through grade 12; and

(2) has more than 100 students enrolled and attending courses at a single location.




KENT KWIK
DRIVE THRU
HOT STONE SPA
432-599-0528
WALK-INS WELCOME


Hot Stone Spa
HIRING




MACARENA'S
Delicious Mexican Dishes & Bar

July 29, 2020

City of Midland

City Planning and Zoning

Midland, Texas

Dear Ms. Burns:

Thank you for keeping us informed of the public hearing that will take place soon in reference to a request of Labonita LLC on the use of Designation with Term on the described property.

We have no objection to the opening of this business,

- However, we ask that they do not dump any materials outside their boundaries.
- Keep the business clean of all trash
- Do not dump any material that can clog up the drainage system, as it has happened in the past.

Thank you

Andy and Yolanda Hernandez

4414 Leddy Drive

City Council Meeting

Item Number: 21

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Elizabeth Shaughnessy, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 4A, BLOCK 17, 349 RANCH ESTATES, SECTION 18, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT, IN PART, AND PD, PLANNED DEVELOPMENT DISTRICT FOR AN INDUSTRIAL DISTRICT, IN PART, TO SF-1, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF ARAPAHOE ROAD, APPROXIMATELY 830 FEET EAST OF NORTH STATE HIGHWAY 349); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Vicente Carrasco, is requesting approval of a zone change for the construction of a residential home at 1205 Arapahoe Road.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned District for a Housing Development, and the

location of vacant land. The properties to the east and south are zoned AE, Agricultural Estate District and the location of residential homes. The properties to the west are zoned AE, Agricultural Estate District and PD, Planned District for an Industrial District and the location of a cemetery and an oil well, respectively.

Analysis:

The property is located at 1205 Arapahoe Road and is currently vacant. The applicant is proposing the development of a residential home. The current zoning of this property is AE, Agricultural Estate District, in part and PD, Planned District for an Industrial District, in part (Ordinance No. 8543).

Although this property is partially zoned and is adjacent to the AE, Agricultural Estate District, it does not meet the minimum lot requirement of 2 acres for the AE, Agricultural Estate District as the area of the property is 0.71 acres. Therefore, the applicant is requesting to change the zoning to SF-1, Single-Family Dwelling District to make the zoning of the property consistent. The appropriate setbacks and maximum height must also be met as described in Section 5.04 Residential Zoning District Dimensional Regulations chart.

This proposed zone change has been circulated to and reviewed by respective City departments and their comments, conditions, and requirements are as follows:

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.

Fire: (Approved)

No objection.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Code Compliance: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

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

No objection to zone change.

Planning:

Per the Future Land Use map, this location is designated as Urban Residential-Low. Potential zoning for this area includes single family dwelling districts; therefore, this zone change is in compliance with the Future Land Use plan.

The Planning and Zoning Commission recommended approval of this request at the July 20, 2020 meeting.

Staff recommends approval of this request, subject to condition A.

Conditions:

A. That the use and development of this property shall conform to the regulations of the SF-1, Single-Family Dwelling District.

Letters of Objection:

As of August 5, 2020, staff has not received any letters of objection.

Attachments:

Application
Maps
Ordinance No. 8543

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 4A, BLOCK 17, 349 RANCH ESTATES, SECTION 18, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT, IN PART, AND PD, PLANNED DEVELOPMENT DISTRICT FOR AN INDUSTRIAL DISTRICT, IN PART, TO SF-1, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF ARAPAHOE ROAD, APPROXIMATELY 830 FEET EAST OF NORTH STATE HIGHWAY 349); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 4A, Block 17, 349 Ranch Estates, Section 18, City and County of Midland, Texas (the "Property") to SF-1, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from AE, Agricultural Estate District, in part, and PD, Planned Development District for an Industrial District, in part, to SF-1, Single-Family Dwelling District.

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

SECTION THREE. The provisions of this ordinance are to be cumulative of all

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

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, Assistant City Manager

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: Z-20-0187

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Vicente Carrasco		Phone (432)553-6344 Email carrascohomesllc@sbcglobal.net	
Address 3417 Caldera Blvd	City Midland	State TX	Zip 79707

Property Owner Printed Name: Vicente Carrasco		Phone (432) 553 6344 Email	
Address	City	State	Zip

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

Street Address: 1205 Arapahoe

Legal Description
Lot: 4 Block: 17 Subdivision: 349 Ranch Estates Sec 3

Current Zoning: AE & PD

Proposed Zone: SF
(List by tracts if more than one district is requested)

Reason for Zone Change Request: build residential home

Present Use of Property: Vacant lot

Proposed Use of Property: Build residential home

How would this zone change affect the public health, safety and welfare? NONE

Describe how conditions affecting the property have changed since present zoning designation: NONE

Submittal and Fees
Items to be submitted with this application form:

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

RECEIVED
JUN 23 2020
BY: .....

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature): Vicente Carrasco	Date: 6-15-2020
Applicant (printed): Vicente Carrasco	
Property Owner (signature): Vicente Carrasco	Date: 6-15-2020
Property Owner (printed) : Vicente Carrasco	

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 Jennifer Carrasco who, being by me duly sworn, upon oath says: That (s)he is the owner of 1205 Arapahoe or authorized by Vicente Carrasco 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 23rd day of June, 2020, to certify which witness my hand and seal of office.

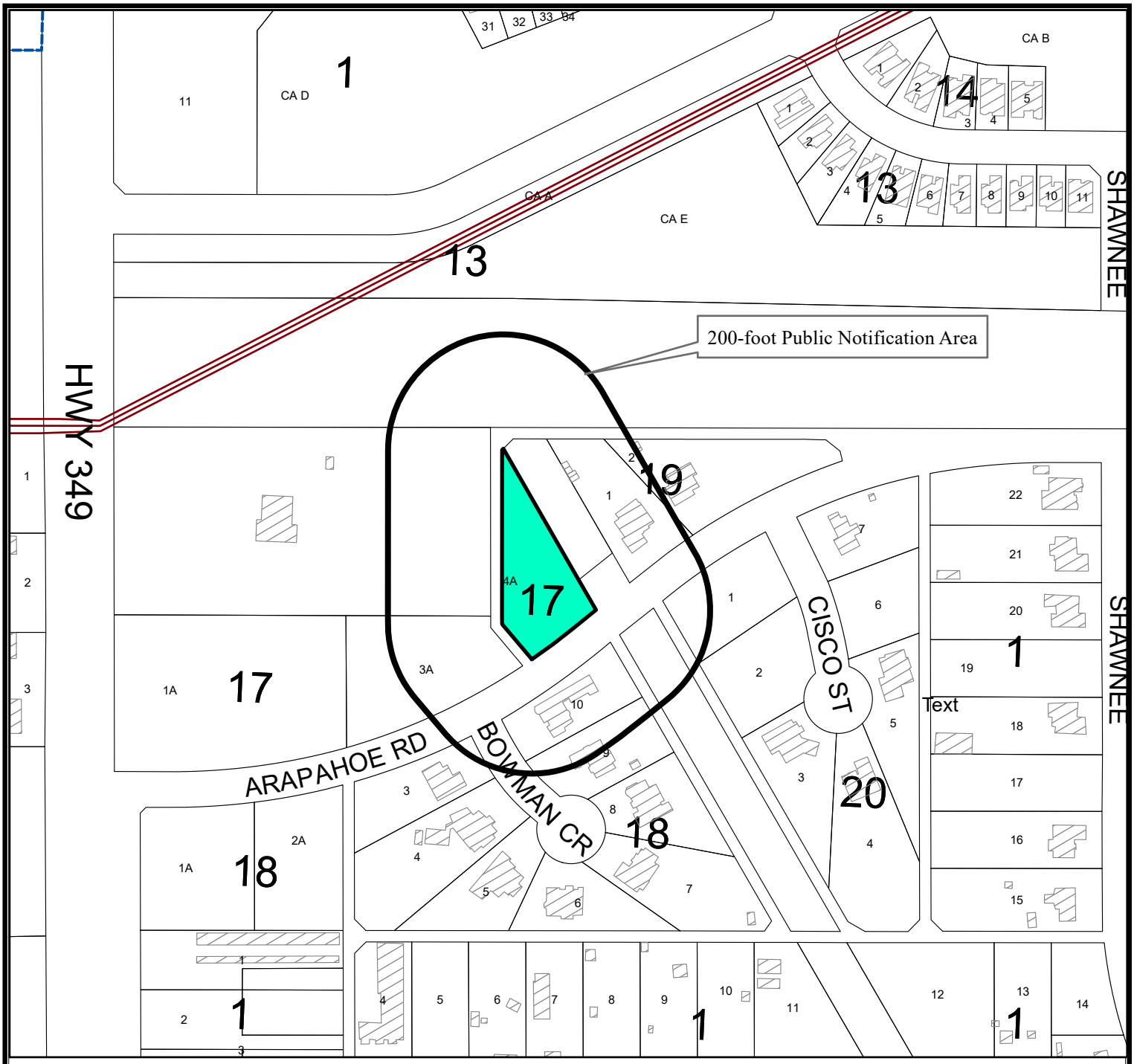
DALIA SALINAS
My Notary ID # 128541568
Expires March 9, 2023

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # 1956	
Received By: ES	Date: RECEIVED JUN 23 2020
	BY: .....

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



LOCATION MAP

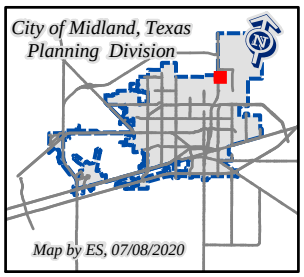
Z-20-0187 **Scale: 1" = 250'**

Consider a request by Vicente Carrasco for a Zone Change from AE, Agricultural Estates District and PD, Planned District for an Industrial District, to SF-1, Single Family Dwelling District, on Lot 4A, Block 17, 349 Ranch Estates, Section 18, City and County of Midland, Texas.

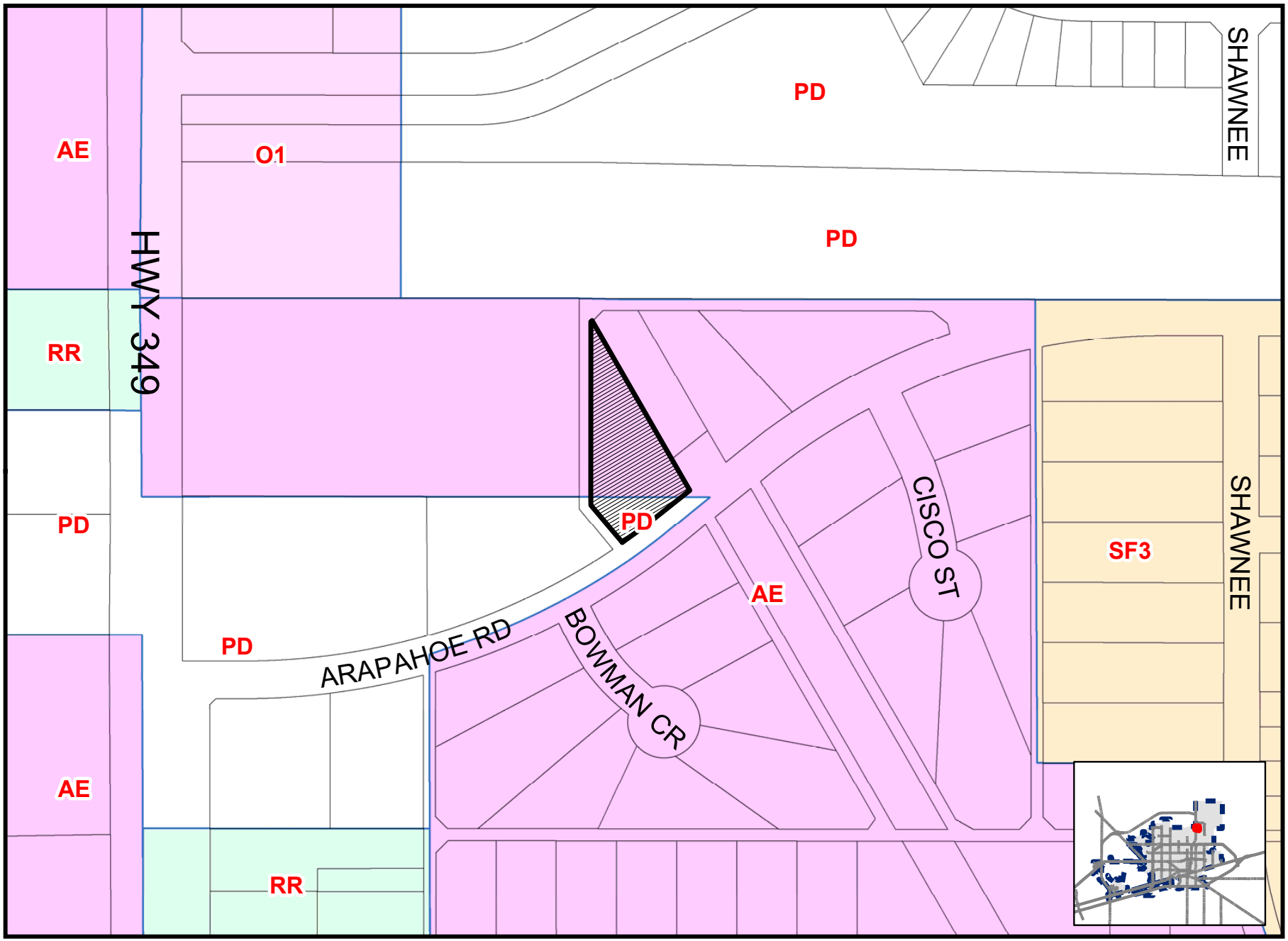
Generally located on the north side of Arapahoe Road, approximately 850 feet east of N. SH 349 (Council District 1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



August 11, 2020



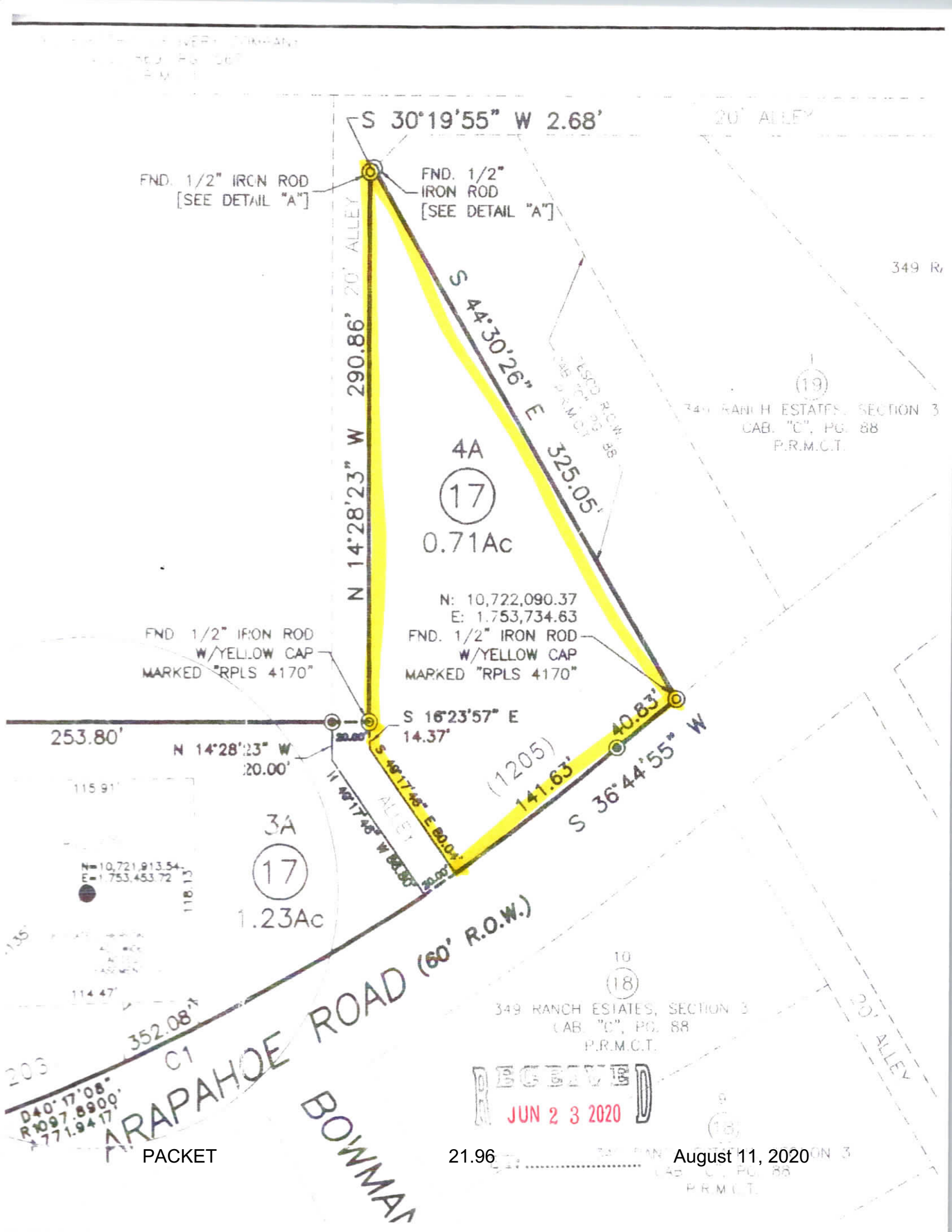
Map By ES, 7/13/2020

Z-20-0187

Scale: 1" = 200'

ZONING MAP

PACKET
21.95
August 11, 2020


S 30°19'55" W 2.68'
FND. 1/2" IRON ROD [SEE DETAIL "A"]
FND. 1/2" IRON ROD [SEE DETAIL "A"]
20' ALLEY
N 14°28'23" W 290.86'
S 44°30'26" E 325.05'
4A
17
0.71Ac
N: 10,722,090.37
E: 1,753,734.63
FND. 1/2" IRON ROD W/YELLOW CAP MARKED "RPLS 4170"
FND 1/2" IRON ROD W/YELLOW CAP MARKED "RPLS 4170"
S 16°23'57" E 14.37'
253.80'
N 14°28'23" W 20.00'
20.00'
S 49°17'46" E 80.00'
N 49°17'46" W 80.00'
(1205)
141.63'
40.83'
S 36°44'55" W
3A
17
1.23Ac
N=10,721,913.54
E=1,753,453.72
118.13'
115.91'
114.47'
352.08'
C1
D40°17'08"
R1097.8900'
T771.9417'
ARAPAHOE ROAD (60' R.O.W.)
BOWMAN
349 RANCH ESTATES, SECTION 3
CAB. "C", PG. 88
P.R.M.C.T.
(19)
(18)
(16)
JUN 2 3 2020

ORDINANCE NO. 8543

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 7.0-ACRE TRACT OF LAND OUT OF SECTION 11, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND LOTS 1, 2 & 3, BLOCK 17, 349 RANCH ESTATES, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, AND LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR AN INDUSTRIAL DISTRICT; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; INCLUDING SAID PROPERTIES WITHIN THE FIRE DISTRICT; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for an Industrial District, as set out hereinafter and subject to the conditions and restrictions as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned AE, Agriculture Estate District, and LR-2, Local Retail District, and it shall be used as a PD, Planned District for an Industrial District, subject to the special conditions and restrictions hereinafter set out, said

property being described as follows:

All of Lots 1, 2 & 3, Block 17, 349 Ranch Estates, Section 3, City and County of Midland, Texas; and a 7.0-acre tract of land out of Section 11, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, and being more specifically described by metes and bounds in Exhibit "A", which is attached and incorporated herein for all purposes.

SECTION TWO. That the use and development of this property shall adhere to LR-2, Local Retail District standards, except for the following special conditions and restrictions:

1. This property may also be developed with indoor contractors shops and screened storage yards, warehouse/office combinations, a cabinet shop, welding shop, and paint shops with paint mixing. Covered self-storage facilities are also permitted.

2. No construction or development of said property shall occur prior to the approval of a site plan or site plans in the same manner as a zone change.

3. A minimum 50-foot front yard building setback shall be provided on the west side of N. Big Spring Street and such setback shall be shown on a site plan in accordance with condition 2 above.

SECTION THREE. That the Fire District be amended so as to add the following described premises within the Fire District, to-wit:

Lots 1, 2 & 3, Block 17, 349 Ranch Estates, Section 3, City and County of Midland, Texas; and a 7.0-acre tract of land out of Section 11, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, and being more specifically described in Section One hereof.

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 26th day of June, A.D., 2007; and passed to second reading on motion of Council member Morgan, seconded by Council member Hailey, by the following vote:

Council members voting "AYE": Morgan, Hailey, Perry, Dingus, Canon, Simpson and Dufford

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 Morgan, seconded by Council member Perry, on the 10th day of July, A.D., 2007, at a regular meeting of the City Council:

Council members voting "AYE": Morgan, Perry, Dingus, Canon, Simpson, Dufford and Hailey

Council members voting "NAY": None

PASSED AND APPROVED THIS 10th day of July, A.D., 2007.

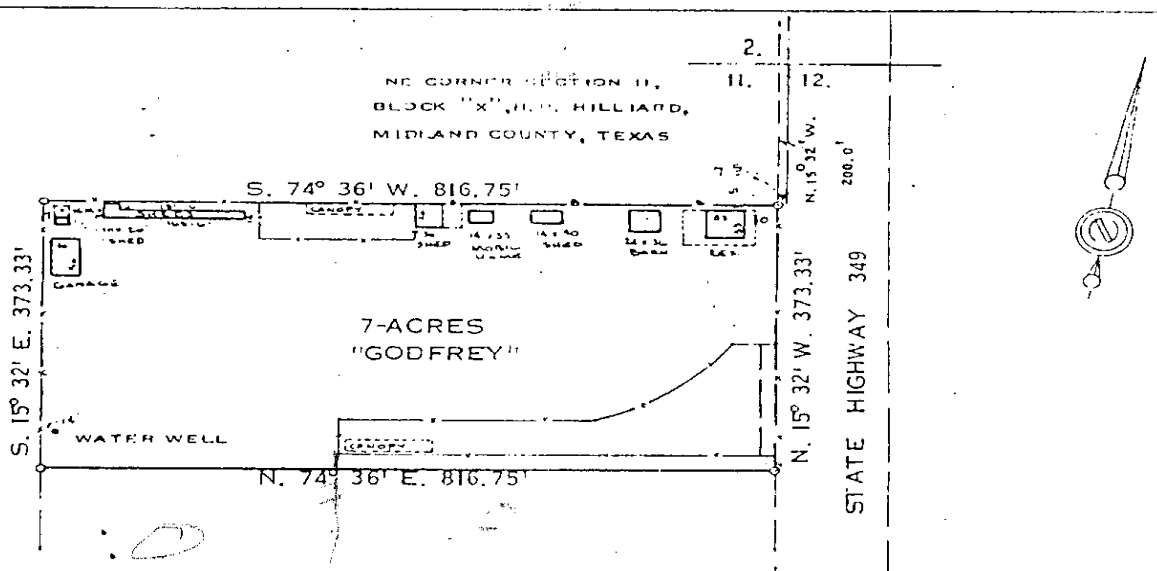
Michael J. Canon, Mayor

ATTEST:

Kaylah J. McCord, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



FIELD NOTE DESCRIPTION OF THE SURVEY OF A 7.00 ACRE TRACT OF LAND OUT OF THE NE/4 OF SECTION 11, BLOCK "X", H. P. HILLIARD SURVEY, MIDLAND COUNTY, TEXAS, AND BEING DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" REINF. BAR SET FOR THE NE CORNER OF THIS TRACT IN A FENCE LINE IN THE WEST LINE OF STATE HIGHWAY 349, FROM WHICH THE NE CORNER OF SAID SECTION 11 BEARS N. 74° 36' E. 7.5 FEET AND N. 15° 32' W. 200.0 FEET;

THENCE S. 74° 36' W. 816.75 FEET ALONG A FENCE LINE AND ALONG THE SOUTH LINE OF THE MIDLAND HUMANE SOCIETY 3.75 ACRE TRACT TO A 1/2" REINF. BAR SET FOR THE NW CORNER OF THIS TRACT IN A FENCE LINE;

THENCE S. 15° 32' E. 373.33 FEET ALONG SAID FENCE LINE TO A 1/2" REINF. BAR SET FOR THE SW CORNER OF THIS TRACT IN A FENCE LINE;

THENCE N. 74° 36' E. 816.75 FEET ALONG SAID FENCE LINE TO A 1/2" REINF. BAR SET FOR THE SE CORNER OF THIS TRACT IN SAID WEST LINE OF STATE HIGHWAY 349;

THENCE N. 15° 32' W. 373.33 FEET ALONG SAID WEST LINE OF STATE HIGHWAY 349 TO THE PLACE OF BEGINNING.

THIS IS TO CERTIFY THAT THIS SURVEY WAS MADE BY ME OR UNDER MY SUPERVISION ON THE GROUND AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

THIS 22ND DAY OF MAY, 1981

MAX A SCHUMANN JR
REG. PUBLIC SURVEYOR

SCHUMANN ENGINEERING COMPANY
BOX 504 AREA CODE 915 - 684 - 3548
MIDLAND, TEXAS 79702

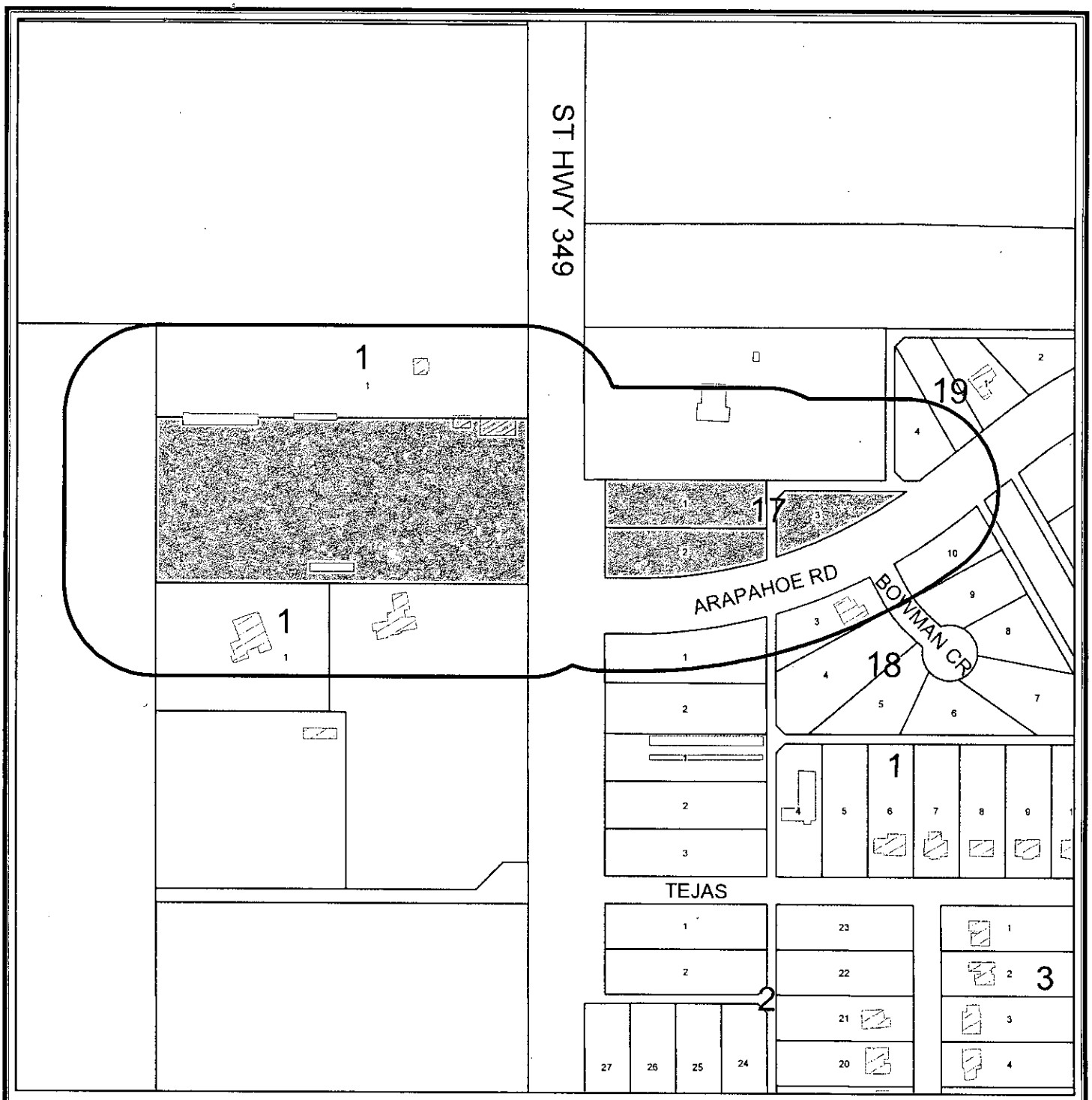
STATE OF TEXAS
Max A. Schumann, Jr.
137
REGISTERED PUBLIC SURVEYOR

SURVEY PLAT

7.00 ACRES OF LAND OUT OF THE NE/4 OF SECTION 11, BLOCK "X", H. P. HILLIARD SURVEY, MIDLAND COUNTY, TEXAS

SCALE: 1" = 200'

JOB NO. 43,210



PROPERTY OWNER NOTIFICATION MAP

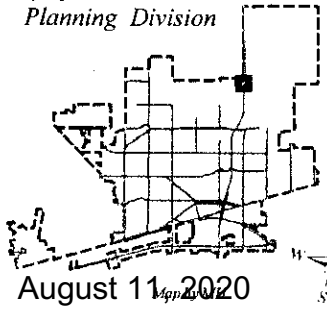
Z - 07 - 021 **Scale: 1" = 300'**

Consider a request for a zone change from AE, Agriculture Estate District, to PD, Planned District for an Industrial District on a 7.00-acre tract of land out of Section 11, Block "X", H. P. Hilliard Survey, and on Lot 3, Block 17, 349 Ranch Estates; and from LR-2, Local Retail District, to PD, Planned District for an Industrial District on Lots 1 and 2, Block 17, 349 Ranch Estates, City of Midland, Midland County, Texas.

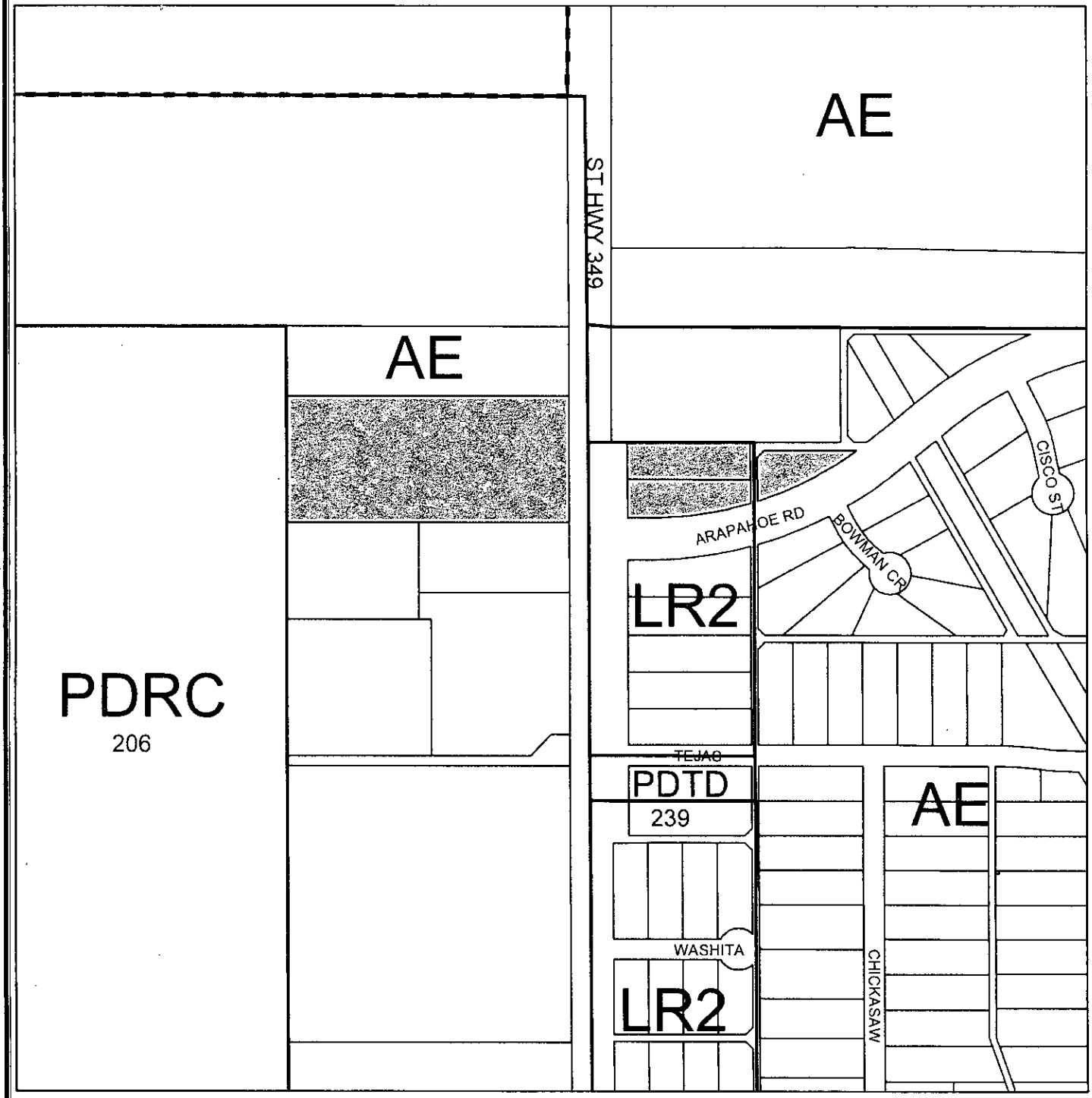
LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS

City of Midland, Texas
Planning Division



August 11, 2020



ZONING MAP

Z - 07 - 021 **Scale: 1" = 400'**

Consider a request for a zone change from AE, Agriculture Estate District, to PD, Planned District for an Industrial District on a 7.00-acre tract of land out of Section 11, Block "X", H. P. Hilliard Survey, and on Lot 3, Block 17, 349 Ranch Estates; and from LR-2, Local Retail District, to PD, Planned District for an Industrial District on Lots 1 and 2, Block 17, 349 Ranch Estates, City of Midland, Midland County, Texas.

LEGEND

ZONING | PARCELS | CITY LIMITS | SPECIFIC USE PERMITS | PUBLIC BLDGS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

Case Number: Z-07-021

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Cliff Chalmers + Louis Dunnam — 432-528-2201
Applicant Name — Contact #s

Address — Zip Code

Bart Hotchkiss + Louis Dunnam — 432-620-0200
Property Owner Name — Contact #s

1701 Community Ln. — 79701
Address — Zip Code

Representative Name — Contact #s

Address — Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal). Describe by tracts if more than one zoning district is requested:

Lots 1, 2, and 3, Block 17, 349 Ranch Estates, Sec. 3 and a 7.0 acre tract out of the NE/4, Block X, HP Hilliard Survey

PRESENT ZONE: AE — REQUESTED ZONE: PD
(List by tracts if more than one district is requested)

Reason for Zone Change or PD Amendment:

Present Use of Property:

Proposed Use of Property:

How will zone change affect the public health, safety and welfare?

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

Will a Specific Use Permit with Term for alcoholic beverages sales be needed: ____ Yes ____ No

APPLICATION FEES:

- Single, standard zone change: **$400**. Multiple, standard zone change: add **$100** per district.
- Single PD, Planned District zone change: **$550**. Multiple PD proposal: add **$100** per district.

80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.

- If a Traffic Impact Analysis is required, a fee of up to $500.00 will be assessed.

SITE PLAN SUBMITTALS *(if applicable)*:

16 copies of the PD site plan: _____

Site Plan on a CD in .pdf and .jpg format: _____

SIGNATURE *(by property owner only - authorized agent must sign affidavit below)*

Property Owner (signature): Bart Hotchkiss Date: 5-6-07

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 7th day of May, 2007, to certify which witness my hand and seal of office.

DIANN FOWLER
MY COMMISSION EXPIRES
September 23, 2007

Dilann Fowler
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY
Rec'd By: CW Date: 5/17/07
Assigned: CW DC
For: P+Z On: 6/4/07

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

PLANNING AND ZONING COMMISSION

June 4, 2007

CASE: Z-07-021

REQUEST: Hold a public hearing and consider approval of a zone change from AE, Agriculture Estate District and from LR-2, Local Retail District to PD, Planned District for an Industrial District.

APPLICANT/OWNER: Cliff Chalmers and Louis Dunnam.

LEGAL DESCRIPTION: A 7.0 acre tract of land out of Section 11, Block "X" H.P. Hilliard Survey, and on Lots 1-3, Block 17, 349 Ranch Estates, City and County of Midland, Texas.

LOCATION: Both sides of N. Big Spring Street near Arapahoe.

CURRENT ZONING: AE, Agriculture Estate District and LR-2, Local Retail District.

ASSOCIATED CASE: N/A.

DETAILS OF REQUEST:

1. The property being requested for rezoning is located on both sides of N. Big Spring Street. A 7.0 acre tract is located on the west side and three vacant, but platted lots are located on the east side. The western tract is zoned AE, Agriculture Estate District. The eastern land is zoned LR-2 District and AE.

2. There are differences in the style of development on each side of Big Spring Street in this location. The east side is zoned LR-2 and has both older and new retail development. A north-south alley separates the neighborhood residences from the retail buildings. This is an ideal zoning boundary. The 7.0 acre tract on the west side of Big Spring Street was developed in the 1950's as a polo ground with accompanying horse stables. These stables are still in existence and are in reasonable condition. Adjacent to this acreage is a pet cemetery to the north and two residences to the south. Both

the pet cemetery and the residences have been present for decades. To the west of the 7.0 acre tract is the Midland Country Club. Recently, Patriot Oil drilled several wells on the Country Club land. One of these wells is located immediately west of the tract and is within 200 feet. Access to the residences is provided through a driveway located near the southern boundary of the 7.0 acre tract.

3. The applicants have expressed a desire to develop facilities that would serve the needs of contractors in the northern part of the City. Due to the rapid growth and construction in the north and west part of the city, they believe that a properly located facility would meet the needs of many building trades contractors. This would typically include room for indoor storage of materials such as electrical equipment, plumbing, roofing, insulation materials, etc. A small office and daily routing of fleet vehicles from a screened yard is also envisioned. The applicants have stated that the vehicle parking would be screened from public view by buildings and fences when they develop a site plan for the Commission and Council's review.

4. Staff has reviewed this proposal for rezoning. As pointed out earlier, there are differences between the development patterns on each side of N. Big Spring. The potential for residential development on the west side is limited by the oil well to the west and the pet cemetery to the north. These uses are not likely to be discontinued. The east side has developed with non-residential uses already so the proposed use would blend in more readily. The applicants have been advised that site plan approval involving public hearings will be required prior to any development. They have been made aware that the land they are proposing to rezone is located at a gateway into the City. Accordingly, when a site plan is prepared for review it should include proper architectural design and building materials that would suit the area's scale and pattern. In addition, a plat must be prepared for the western land prior to issuance of any building permit.

STAFF RECOMMENDATION:

We recommend approval of this request for a Planned District for an Industrial District, subject to the following conditions:

A. **Use of this property shall conform to the LR-2, Local Retail District use and development standards except as follows:**

B. **These properties may also be developed with indoor contractors shops and screened storage yards, warehouse/office combinations, a cabinet shop, welding shop, and paint shops with paint mixing. Covered self-storage facilities are also permitted.**

C. **No construction or development of said property shall occur prior to the approval of a site plan or site plans in the same manner as a zone change.**

D. **A minimum 50' front yard building setback shall be provided on the west side of N. Big Spring Street and such setback shall be shown on a site plan in accordance with condition C. above.**

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Attachments:

Application
Maps

City Council Agenda

26

Approved for Agenda:
MJohnston
City Manager's Office

MEETING DATE: June 26, 2007

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Z-07-021; Consider approval of a zone change to PD, Planned District for an Industrial District.

Purpose:
At 11:09 AM, hold a public hearing and consider an ordinance on a request by Clifford Chalmers and Louis Dunnam for a zone change from AE, Agriculture Estate District and from LR-2, Local Retail District to PD, Planned District for an Industrial District.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
New business location(s) along N. Big Sprig Street.

Discussion:
The property being requested for rezoning is located on both sides of N. Big Spring Street near Arapahoe. A 7.0 acre tract is located on the west side and three vacant, but platted lots are located on the east side. The western tract is zoned AE, Agriculture Estate District. The eastern land is zoned LR-2 District and AE. There are differences in the style of development on each side of Big Spring Street in this area. The east side has both older and new retail development. A north-south alley separates the neighborhood residences from the retail buildings. The 7.0 acre tract on the west side of Big Spring Street was developed in the 1950's as a polo ground with accompanying horse stables. These stables are still in existence and are in reasonable condition. Adjacent to this acreage is a pet cemetery to the north and two residences to the south. Both the pet cemetery and the residences have been present for decades. To the west of the 7.0 acre tract is the Midland Country Club. Recently, Patriot Oil drilled several wells on the Country Club land. One of these wells is located immediately west of the subject tract and is within 200 feet. Access to the residences is provided through a driveway located near the southern boundary of the 7.0 acre tract.

The applicants have expressed a desire to develop facilities that would serve the needs of contractors in the northern part of the City. Due to the rapid growth and construction in the north and west part of the city, they believe that a properly located facility would meet the needs of many building trade contractors. The eventual construction would typically include room for indoor storage of materials such as electrical equipment, plumbing, roofing, insulation materials, etc. A small office and daily routing of fleet vehicles from a screened yard is also envisioned. The applicants have stated that the vehicle parking would be screened from public view by buildings and fences when they develop a site plan for the Commission and Council's review.

In our opinion, the potential for residential development on the west side is limited by the oil well to the west and the pet cemetery to the north. These uses are not likely to be discontinued. The east side has developed with non-residential uses already so the proposed use would blend in readily. The applicants have been advised that site plan approval involving public hearings will be required prior to any development. They have been made aware that the land they are proposing to rezone is located at a gateway into the City. Accordingly, when a site plan is prepared for review it should include proper architectural design and building materials that would suit the area's scale and pattern. In addition, a plat must be prepared for the western land prior to issuance of any building permit.

Attachments: Application, maps.

CDS









City Council Meeting

Item Number: 22

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Joseph Marynak, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1A AND 5, BLOCK 1, ROLLING GREEN ACRES ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A TRANSITION DISTRICT TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A TRANSITION DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF BUSINESS INTERSTATE 20, APPROXIMATELY 245 FEET WEST OF TODD DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Newton Engineering, PC is requesting a zone change from PD, Planned Development for a Transition District to Amended PD, Planned Development District for a Transition District, to develop a miniature golf course and arcade.

Recommended City Council Action:

Approve

Fiscal Impact:

Processing this request does not require any City funds.

Discussion:

Current Zoning:

PD, Planned Development District for a Transition District. (Ordinance No. 9590)

Surrounding Zoning and Land Use:

The properties to the north and west are zoned AE, Agricultural Estates District and the locations of a residence and vacant land respectively. The property to the east is zoned PD, Planned Development District for a Transition District and the location of a Dollar General. The property to the south is located outside of City limits and the location of a pump jack.

Analysis:

The applicant is requesting this zone change to develop a miniature golf course and arcade. Per the Planned Development District, regulated by Ordinance No. 9590, the use of this property as a miniature golf course is permitted, however, prior to any development or issuance of any building permit, a site plan must be submitted and approved in the same manner prescribed for a zone change. The applicant is amending the Planned Development District to adopt the site plan (Exhibit A).

As indicated on the site plan, the eastern lot of this property will be used as a miniature golf course. The western lot will have various uses including a 3,000 square foot arcade, a 750 square foot golf building, and a splash pad located just north of those buildings. Potential future development is also noted on this site plan and includes an outdoor amphitheater at the far north end of the western lot and five shade structures for picnic areas along the western boundary. The site meets all required setback regulations and has adequate parking (121 spaces) for the planned development.

This proposed zone change has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2017 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objections to zoning/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 or Gas issues.

Transportation: (Approved)

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

No objection to zone change.

Planning:

This proposed development fits with Chapter 3, An Integrated Land Use Vision, Future Land Use Map of the Tall City Tomorrow comprehensive plan as this area calls for Urban High uses. This designation calls for “regional attractors” and focuses on improving “economic performance and opportunities for social interaction.” The miniature golf course and arcade would create a local attraction for people to visit and enjoy themselves while also bringing economic activity to a region that is predominantly vacant.

This request was recommended for approval at the July 20, 2020 Planning and Zoning Commission meeting.

Therefore, staff recommends approval of this zone change, subject to conditions A through D.

Conditions:

A. That the use and development of this property shall conform to the regulations of the LR, Local Retail District, except as stated below.

B. That the property shall significantly conform to the site plan, attached hereto and incorporated as Exhibit A.

C. That the use of the property for a miniature golf course is permitted.

D. That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.

Letters of Objection:

Staff has not received any letters of objection as of August 5, 2020.

Attachments:

Site Plan (Exhibit A)
Application
Maps
Ordinance No. 9590

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 1A AND 5, BLOCK 1, ROLLING GREEN ACRES ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A TRANSITION DISTRICT TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A TRANSITION DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF BUSINESS INTERSTATE 20, APPROXIMATELY 245 FEET WEST OF TODD DRIVE); 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 1A and 5, Block 1, Rolling Green Acres Addition, Section 3, City and County of Midland, Texas (the "Property") to an amended PD, Planned Development District for a Transition District and adopting a site plan therefor, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Transition District to an amended PD, Planned Development District for a Transition District.

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

LR, Local Retail District.

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

A. That the Property shall significantly conform to the site plan attached hereto as Exhibit "A".

B. That the use of the property for a miniature golf course is permitted.

C. That the landscaping shown in Exhibit "A" shall be considered illustrative. The landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.

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

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

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

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

($2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

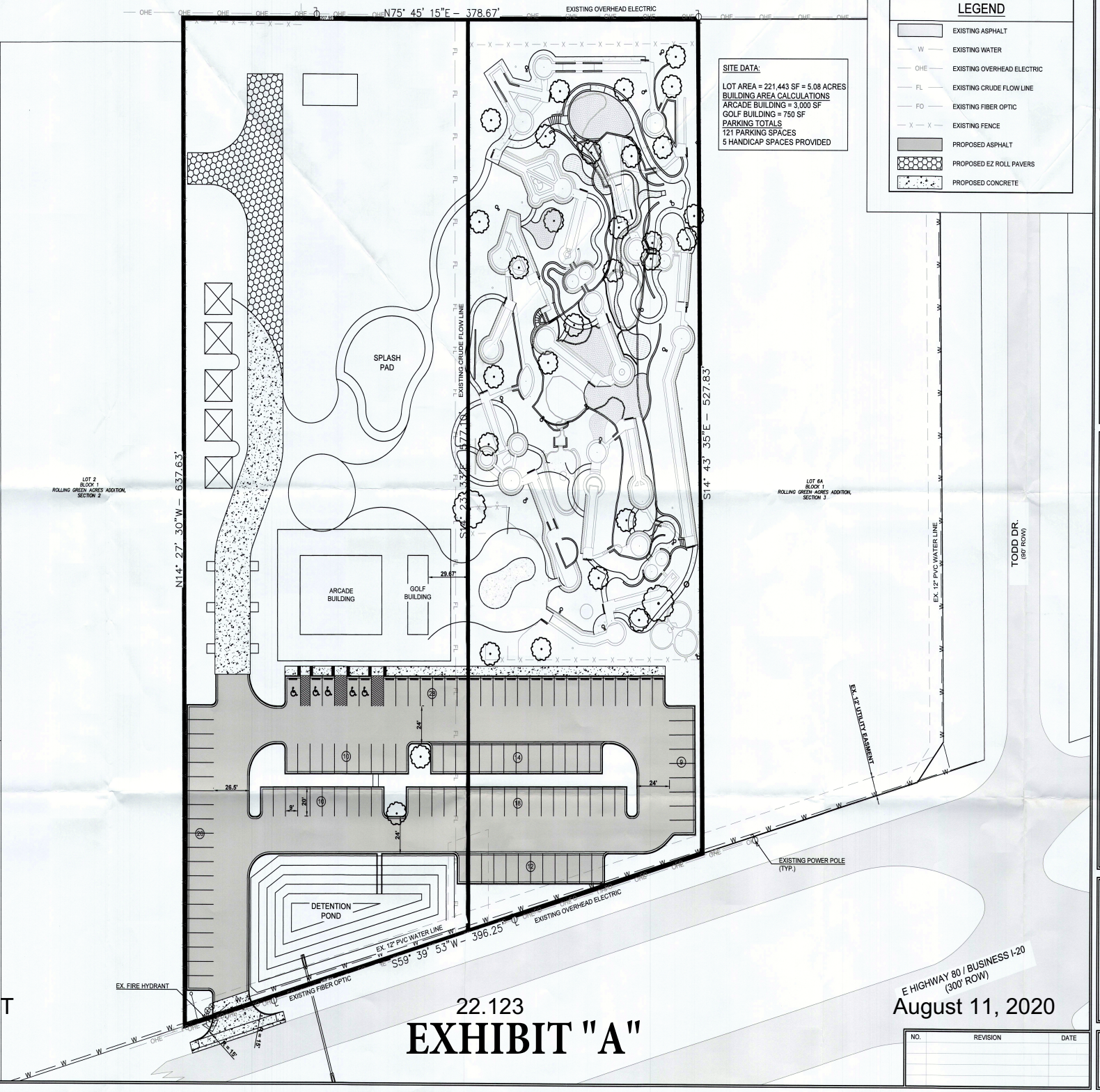
_____
Robert Patrick, Assistant City Manager

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

RECEIVED
JUN 19 2020
BY: .....



PACKET

22.123

EXHIBIT "A"

August 11, 2020

NO.	REVISION	DATE

NEWTON ENGINEERING, PC
2500 E. 8th St.
Odessa, Texas 79761
(432) 550-0707
F-13856
3209 Caldera Blvd.
Midland, Texas 79705
(432) 770-0482

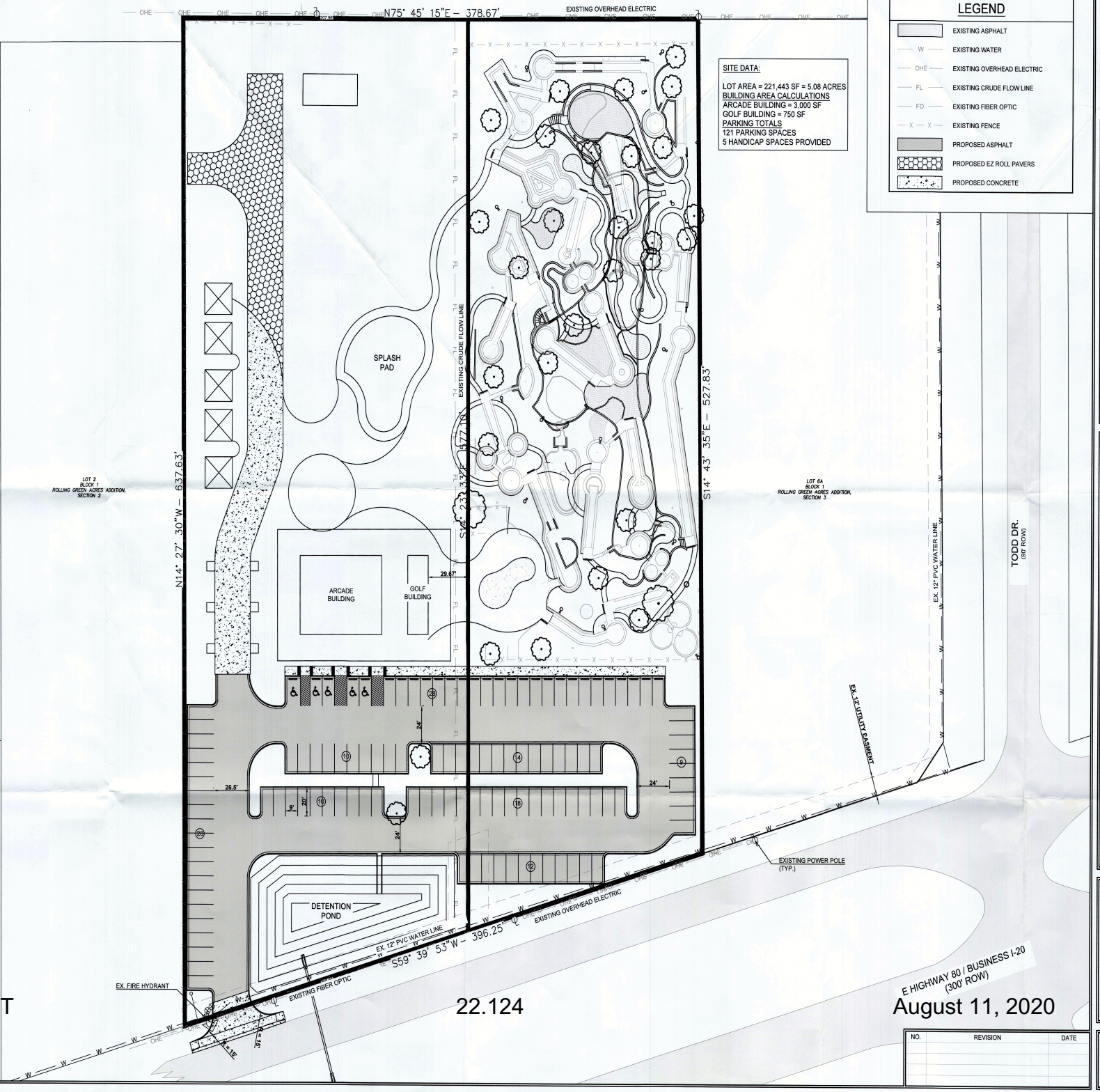
GREEN ACRES MINI GOLF
MIDLAND, TX

PLANNED DEVELOPMENT SITE PLAN

Project No.	20-ME02101
Date:	JUN 2020
Drawn By:	CBD
Checked By:	JMN
Scale:	

Sheet: 01

RECEIVED
JUN 19 2020
BY:



NEWTON ENGINEERING, PC
2500 E. 8th St.
Odessa, Texas 79761
(432) 550-0707
3209 Caldera Blvd.
Midland, Texas 79705
(432) 770-0482
F-13856

GREEN ACRES MINI GOLF
MIDLAND, TX

PLANNED DEVELOPMENT SITE PLAN

NO.	REVISION	DATE

Project No.	20-ME02101
Date:	JUN 2020
Drawn By:	CBD
Checked By:	JMN
Scale:	
Sheet:	01

PACKET 22.124 August 11, 2020

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-20-0186

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)*		Phone ( ) Email	
Printed Name: Green Acres Golf, LLC			
Address PO Box 52268	City Midland	State TX	Zip 79710

Property Owner		Phone ( ) Email	
Printed Name: Same as Applicant			
Address	City	State	Zip

Representative *(if different from Applicant or Property Owner)*		Phone (432)559-5128 Email	
Firm: Newton Engineering, PC			
Printed Name: Chase Dunnam		chase@newtoncivil.com	
Address 3209 Caldera Blvd.	City Midland	State TX	Zip 79705

Street Address: 2905 E. Hwy. 80

Legal Description
Lot: 1A & 5 Block: 1 Subdivision: Rolling Green Acres Addition, Section 3

Current Zoning: PD	**Proposed Zone:** PD *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: Site Plan Update

Present Use of Property: Miniature golf course and residence.

Proposed Use of Property: Miniature golf course/arcade.

How would this zone change affect the public health, safety and welfare? No change.

Describe how conditions affecting the property have changed since present zoning designation: No changes.

Submittal and Fees
Items to be submitted with this application form:

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

RECEIVED
JUN 19 2020
BY: .....

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature): Jeffrey T. Beard	Date: 6/17/2020
Applicant (printed): Jeffrey T. Beard	
Property Owner (signature): Jeffrey T. Beard	Date: 6/17/2020
Property Owner (printed) : Jeffrey T. Beard	

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

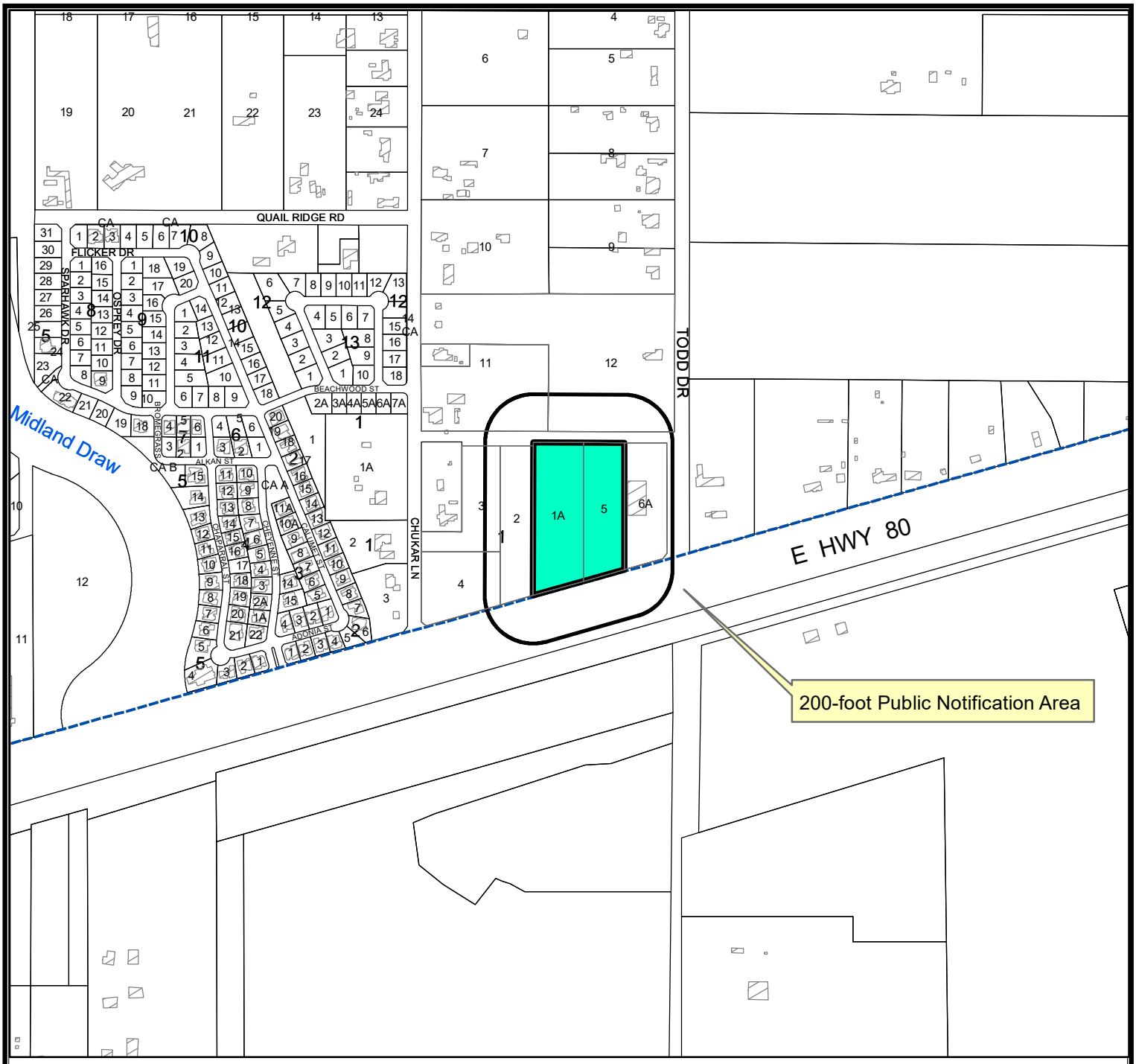
☑ Application Fee ☐ Plans in Digital Format (PDF/JPEG)

Check # CC

Received By: DL Date: RECEIVED JUN 19 2020

BY: .....

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



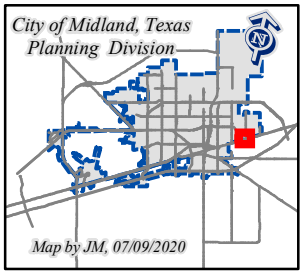
LOCATION MAP

Z-20-0186 **Scale: 1" = 400'**

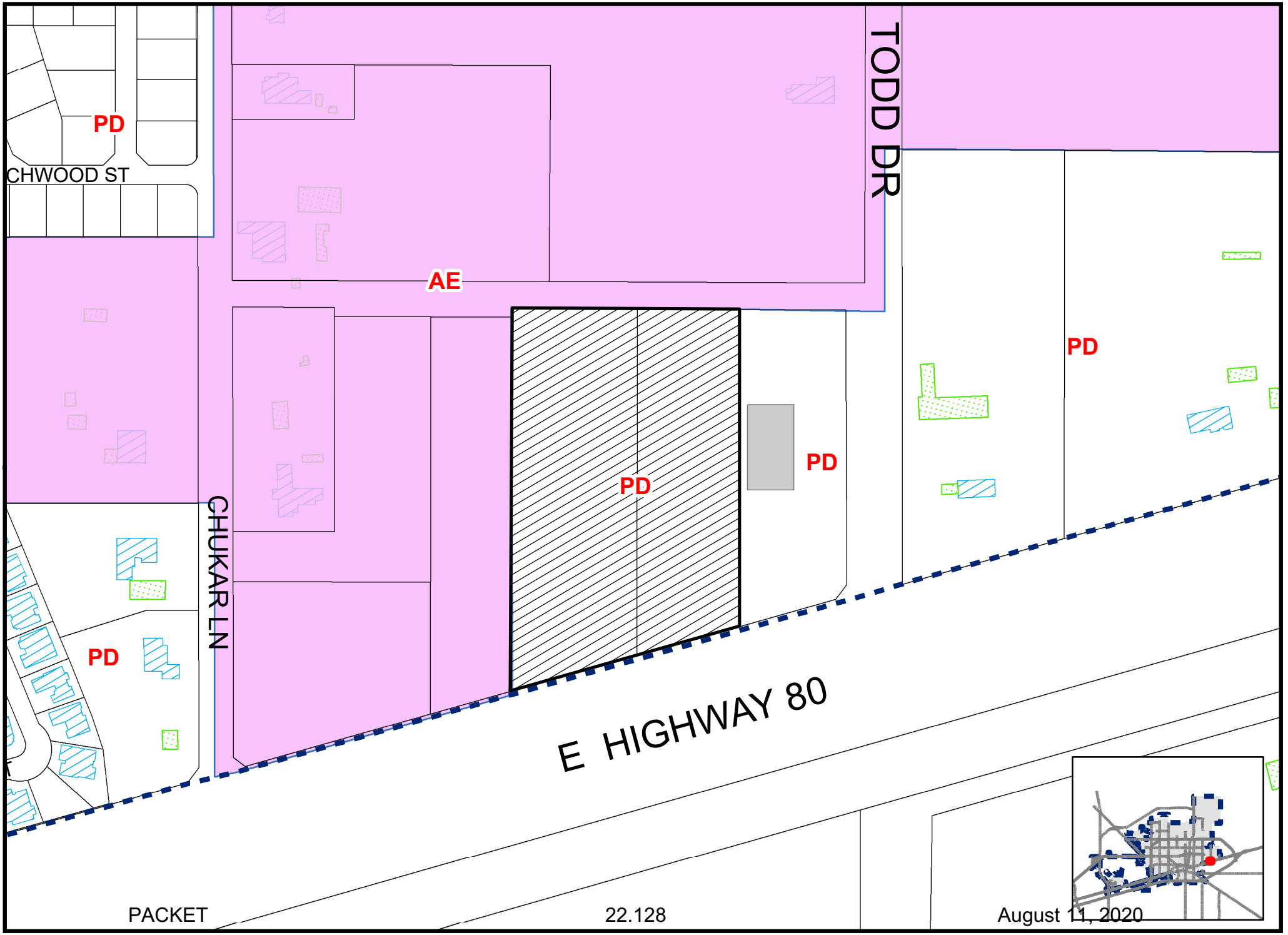
Consider a request by Newton Engineering, PC, for a zone change from PD, Planned Development for a transition district to Amended PD, Planned Development District for a Transition District, on Lots 1A and 5, Block 1, Rolling Green Acres Addition, Section 3, City and County of Midland, Texas. Generally located on the north side of East State Highway 80, approximately 245 feet west of Todd Drive. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2020
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY NOR IS IT DESIGNED TO BE USED AS THE ONLY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By JM, 07/14/2020

Z-20-0186

Scale: 1" = 200'

ZONING MAP

© **THE CITY OF MIDLAND - 2020:** THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

ORDINANCE NO. 9590

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 7.45-ACRE TRACT OF LAND, BEING ALL OF LOT 1, BLOCK 1, ROLLING GREEN ACRES ADDITION, AND A 6.25-ACRE TRACT OF LAND OUT OF SECTION 42, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED CE, COUNTRY ESTATE DISTRICT, IN PART, AND AE, AGRICULTURE ESTATE DISTRICT, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A TRANSITION DISTRICT (GENERALLY LOCATED NORTHWEST OF THE INTERSECTION OF TODD DRIVE AND EAST HIGHWAY 80); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Transition District, as set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned CE, Country Estate District, in part, and AE, Agriculture Estate District, in part, and it shall be used as a PD, Planned District for a Transition District, said property being described as follows:

A 7.45-acre tract of land, being all of Lot 1, Block 1, Rolling Green Acres Addition, and a 6.25-acre tract of land out of Section 42, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said 7.45-acre tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein.

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

A. That the use and development of this property shall conform to the regulations of the LR-1, Local Retail District, except as otherwise stated below.

B. That the use of the property for a miniature golf course is permitted.

C. That prior to any development or the issuance of any building permit, a site plan must be submitted and approved in the same manner prescribed for a zone change.

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

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

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

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 23rd day of August, A.D., 2016; and passed to second reading on motion of Council member Sparks, seconded by Council member Lacy, by the following vote:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, 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 13th day of September, A.D., 2016, 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 13th day of September, A.D., 2016.

Jerry E. 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 Ohmemiller, City Attorney

EXHIBIT A

52.8

FIELD NOTE DESCRIPTION OF THE SURVEY OF A 7.45 ACRE TRACT OF LAND, BEING ALL OF LOT 1, BLOCK 1, ROLLING GREEN ACRES ADDITION AND 6.25 ACRE TRACT OF LAND OUT OF A 12.28 ACRE TRACT OF LAND OUT OF THE SOUTH/2 OF SECTION 42, BLOCK 38, T-1-S, T&P RR CO SURVEY, MIDLAND COUNTY, TEXAS, SAID 7.45 ACRE TRACT DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

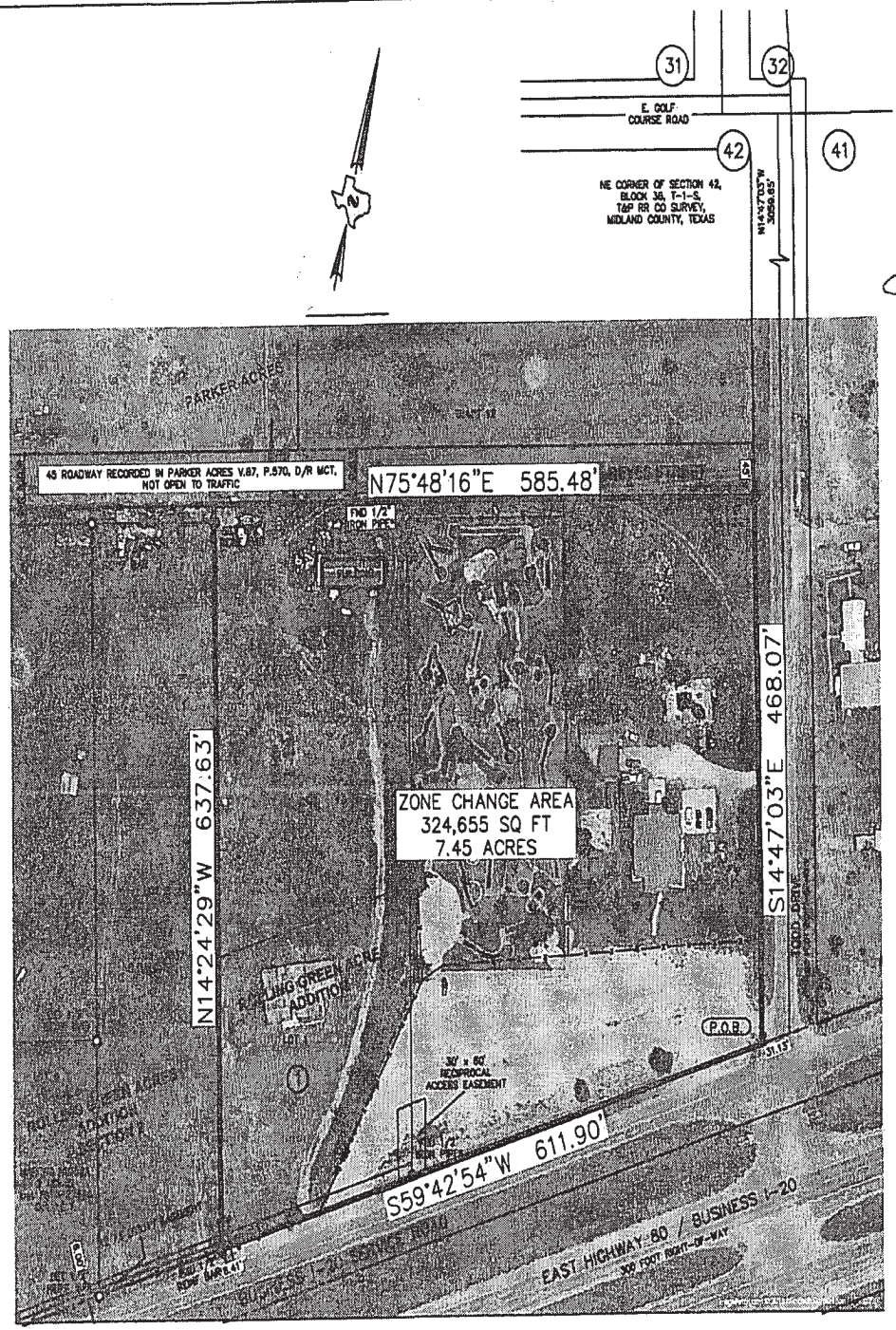
BEGINNING AT A POINT FOR THE SOUTHEAST CORNER OF THIS TRACT AT THE INTERSECTION OF THE WEST RIGHT OF WAY LINE OF TODD DRIVE WITH THE NORTH RIGHT OF WAY LINE OF BUSINESS I20 SERVICE ROAD, FROM WHICH THE NORTHEAST CORNER OF SIAD SECTION 42 BEARS NORTH 14°47'03" WEST 3059.65 FEET;

THENCE SOUTH 59°42'54" WEST 611.90 FEET ALONG THE NORTH RIGHT OF WAY LINE OF BUSINESS I20 SERVICE ROAD TO A 1/2" REINF BAR FOUND FOR THE SOUTHWEST CORNER OF THIS TRACT, SAME BEING THE SOUTHWEST CORNER OF SAID LOT 1, BLOCK 1;

THENCE NORTH 14°24'29" WEST 637.63 FEET TO A 1/2" REINF BAR FOUND FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE NORTH 75°48'16" EAST 585.48 FEET ALONG THE SOUTH LINE OF REYES STREET TO A 1" IRON PIPE FOUND IN THE WEST RIGHT OF WAY LINE OF TODD DRIVE FOR THE NORTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 14°47'03" EAST 468.07 FEET ALONG THE WEST RIGHT OF WAY LINE OF YTODD DRIVE TO THE PLACE OF BEGINNING.



DATED THIS 10TH DAY OF MAY, 2016.

RJ DAUM
TEXAS RPLS 4826

STATE OF TEXAS REGISTERED RJ DAUM 4826 PROFESSIONAL LAND SURVEYOR

SURVEY

A 7.45 ACRE TRACT OF LAND,

BEING ALL OF LOT 1, BLOCK 1,

ROLLING GREEN ACRES ADDITION

AND 6.25 ACRE TRACT

OF LAND OUT OF A 12.28 ACRE TRACT

OF LAND OUT OF THE SOUTH/2 OF

SECTION 42, BLOCK 38, T-1-S,

T&P RR CO SURVEY,

MIDLAND COUNTY, TEXAS

SCALE: 1" = 150'

PROJECT: 75201ZR
JOB NO.: 75,201-Z

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS — REGISTERED PROFESSIONAL CIVIL ENGINEERS

Civil Engineering ~ Land Surveying

TEXAS FIRM No. F1880 — TEXAS FIRM No. 10149500

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

9590

City Council Agenda

APPROVED

Approved for Agenda:
fsalvato
City Manager's Office

MEETING DATE: September 13, 2016

TO: City Council / City Manager

FROM: Kierra Williams, Planner

SUBJECT: **Consider an ordinace on a request by Johnny Reyes for a Zone Change from CE, Country Estate District, in part, and AE, Agriculture Estate District, in part, to PD, Planned District for a Transition District, with an underlying zoning of LR-1, Local Retail District, on a 7.45-acre tract of land, being all of Lot 1, Block 1, Rolling Green Acres Addition, and a 6.25-acre tract of land out of Section 42, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located northwest of the intersection of Todd Drive and E. Highway 80.)**

Purpose:

Consider an ordinance on a request by Johnny Reyes for a Zone Change from CE, Country Estate District, in part, and AE, Agriculture Estate District, in part, to PD, Planned District for a Transition District, with an underlying zoning of LR-1, Local Retail District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The property is located northwest of the intersection of Todd Drive and E. Highway 80 in a CE, Country Estate District, in part, and AE, Agriculture Estate District, in part. The zoning to the north of the property is AE, Agriculture Estate District, and the location of a residence. Zoning to the East is PD, Planned District for a Transition District, and the location of a residence. The property to the south is located in the ETJ, Extraterritorial Jurisdiction, and is the location of Eastex Crude Company. Zoning to the west is AE, Agriculture Estate District, and is currently vacant.

The applicant's first request went before the Planning and Zoning Commission on June 6, 2016 to request a zone change from CE, Country Estate District, in part, and AE, Agriculture Estate District, in part, to LR-1, Local Retail District. The commission approved the request unanimously. The zone change request then went before City Council on June 28, 2016 with several oppositions. The applicant withdrew the application, on the floor on a request by Council, to apply again for a Planned District so that the City Council can revisit again for a site plan approval.

The applicant is now requesting a zone change to PD, Planned District for a Transition District for future retail use and to expand upon the Green Acres Golf Course. The subject area is currently serving as the site of two (2) residential properties and the mentioned golf course. The applicant is also in the process of platting the property.

The most recent approved action taken on the property was on the property currently designated as CE, Country Estate District, The lot was rezoned in 2009 to PD, Planned District for a Recreation Center, with an underlying zoning of LR-1, Local Retail District, with the intention of opening an indoor golf facility. Although, the use is permitted in the underlying zoning, the proposed full metal building façade was not, hence the planned district designation. The plans for the facility did not come to fruition, therefore, the property was rezoned again in 2014 to CE, Country Estate District to build a single-family home.

LR-1 is the most restrictive zoning classification to allow retail uses. The Planned District designation will allow the property to go before City Council to seek site plan approval and allow area residents to speak. The City code has design standards and setbacks in place to buffer residential districts from nonresidential districts if the circumstance arises. Todd Drive is projected to become a major arterial in the future. The intersection of Todd Drive and E. Highway 80 is an ideal location for retail uses.

Staff recommends approval of this zone change from CE, Country Estate District, in part, and AE, Agricultural Estate District, in part, to PD, Planned District for a Transition District, with an underlying zoning of LR-1, Local Retail District.

Conditions:

A. That the use and development of this property shall conform to the regulations of the LR-1, Local Retail District, except as otherwise stated below.

B. That the use of the property for a miniature golf course shall be permitted.

C. That prior to any development or the issuance of any building permit, a Planned District Site Plan must be submitted and approved in the same manner prescribed for a zone change.

Letters of Objection:

As of August 19, 2016, staff has received eleven (11) letters of objection to this request. Only two (2) of the letters are within the 200-ft. notification area and accounts for a 43% oposition rate. This request will require a super majority vote to be approved.

Attachments:

Application
Maps
Metes and Bounds (Exhibit A)

Case Number: 2-16-0018

MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

I. APPLICATION

Applicant:

JOHNNY REYES	432-978-3346
(Name)	(Phone)
1722 E OAK ST	ZREYES@YAHOO.COM
(Address)	(Email)

Property Owner:

SAME AS ABOVE	
(Name)	(Phone)
(Address)	(Email)

Representative (*please see affidavit on page 2*):

Schumann Engineering Co, Inc.	432-684-5548
(Name)	(Phone)
408 N. Pecos St., Midland, TX 79701	ben@schumannonline.net
(Address)	(Email)

Street address:

Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal, each district must be described separately):
See attached metes and bounds

Present Zone: AE Proposed Zone: PD-TD (underlying LR-1)
(List by tracts if more than one district is requested)

Reason for Zone Change Request: upgrades to existing miniature golf-course and potential retail

Present Use of Property: residential and a miniature-golf business

Proposed Use of Property: 1.) Retain residential and miniature golf business use, and
2.) Use the property at the intersection of Todd Rd and Hwy 80 for retail development; unknown at this time

How would this zone change affect the public health, safety and welfare?
no effect

Describe how conditions affecting the property have changed since present zoning designation:
The growth to the east of Midland has produced a need for more stores and shopping availability

II. APPLICATION FEES:

Single, standard zone change: **$400**, Multiple, standard zone change: add **$100** per additional district.
Single PD zone change: **$550**, Multiple PD proposal: add **$100** per district.

Total: $ _____

III. SITE PLAN SUBMITTALS *(if applicable)*:

5 FOLDED copies of the PD site plan: _____
Site Plan in digital format (PDF & JPEG): _____

VI. Signature

Property Owner (signature): _____ Date: _____

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 **BEN SANCHEZ** who, being by me duly sworn, upon oath says: That (s)he is authorized by **JOHNNY REYES**, 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)

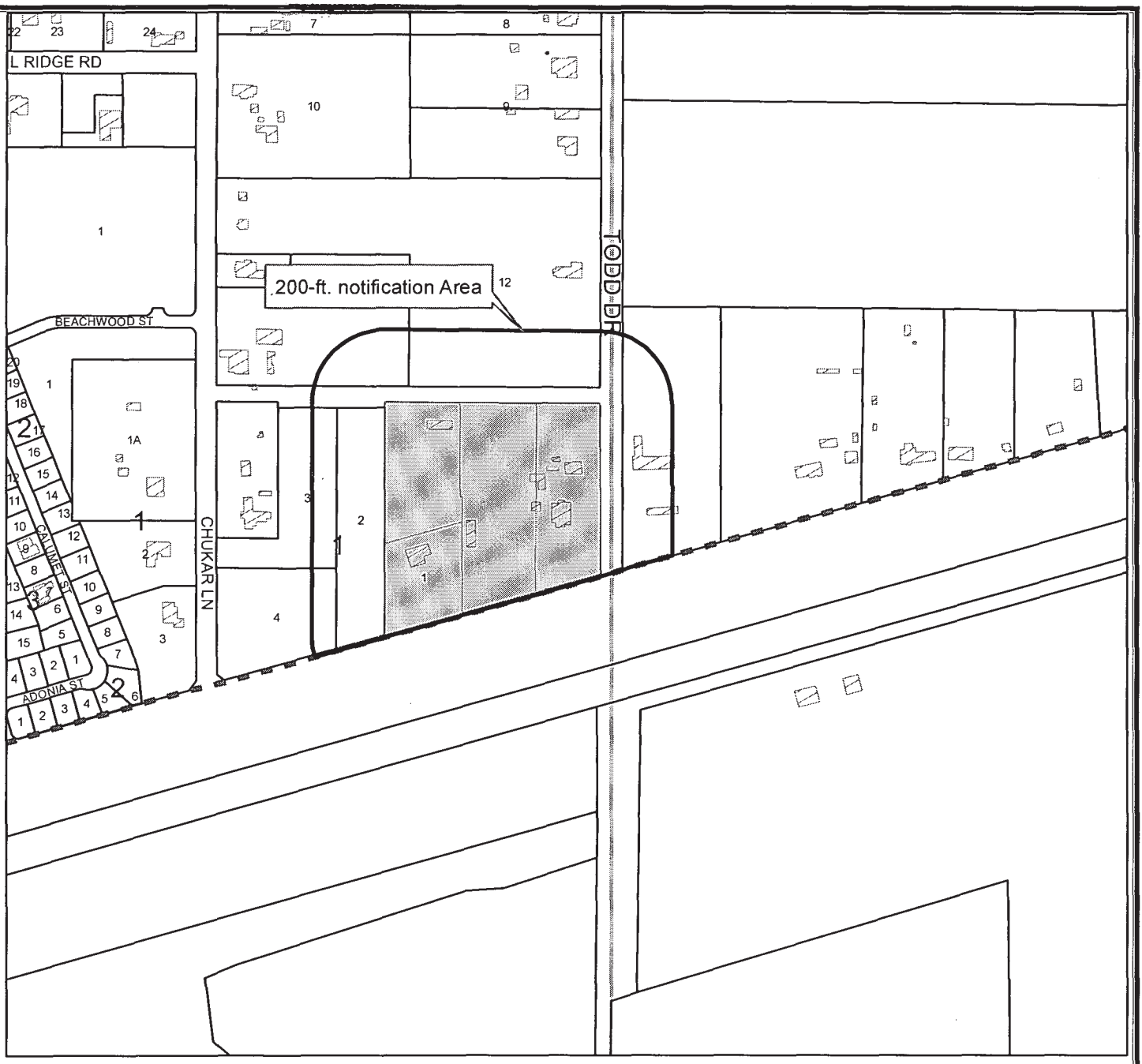
Subscribed and sworn to before me, this 1ST day of July, 20 16, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

PATRICIA Y SCHUMANN
Notary Public, State of Texas
My Commission Expires
February 4, 2018

FOR OFFICE USE ONLY
Rec'd By: _____ Date: _____
Assigned: _____
For: _____ On: _____

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



LOCATION MAP

Z-16-0018 **Scale: 1" = 400'**

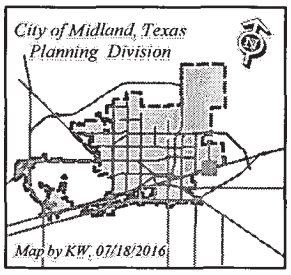
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Generally located northwest of the intersection of Todd Drive and E. Highway 80.

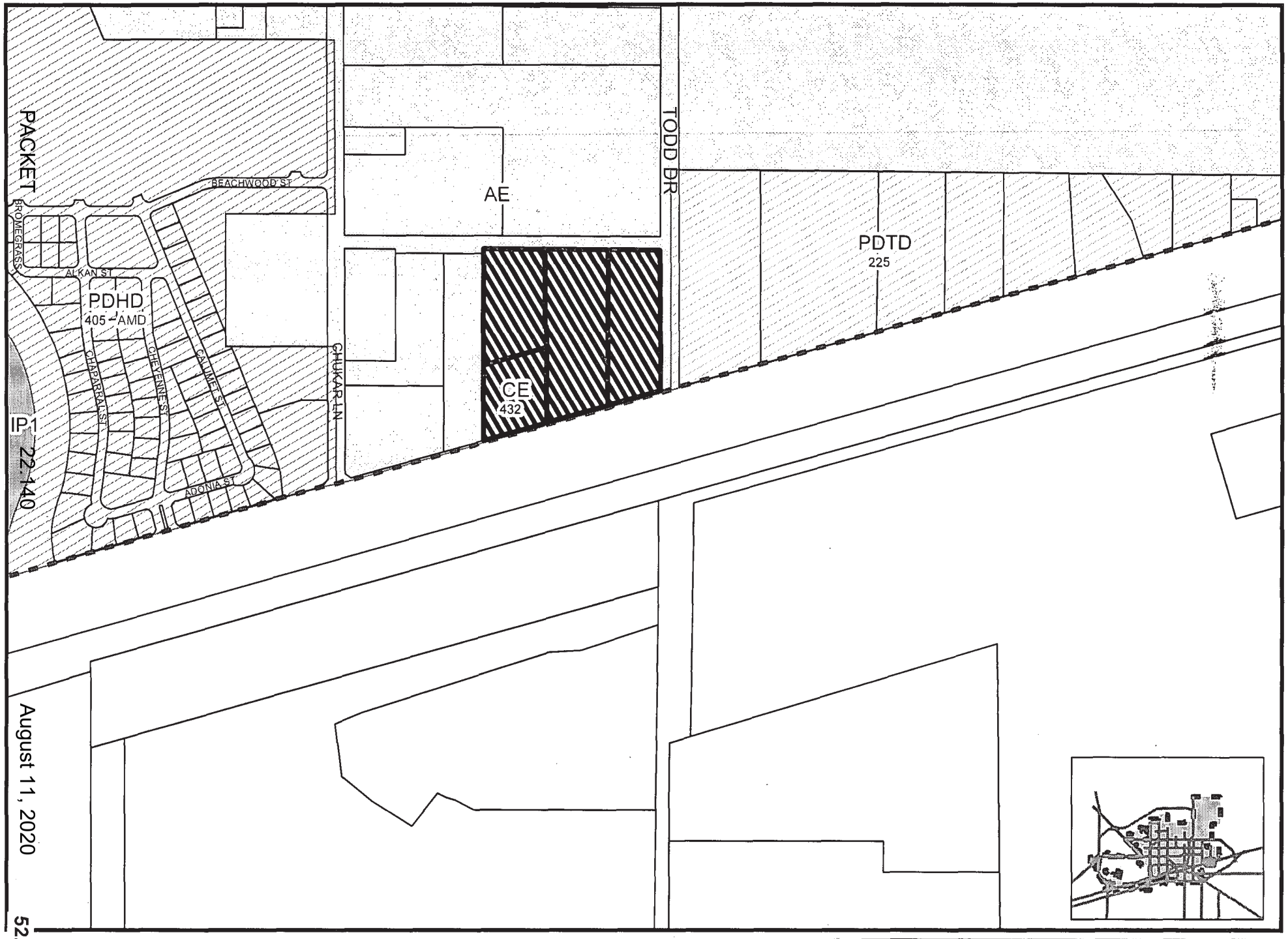
(Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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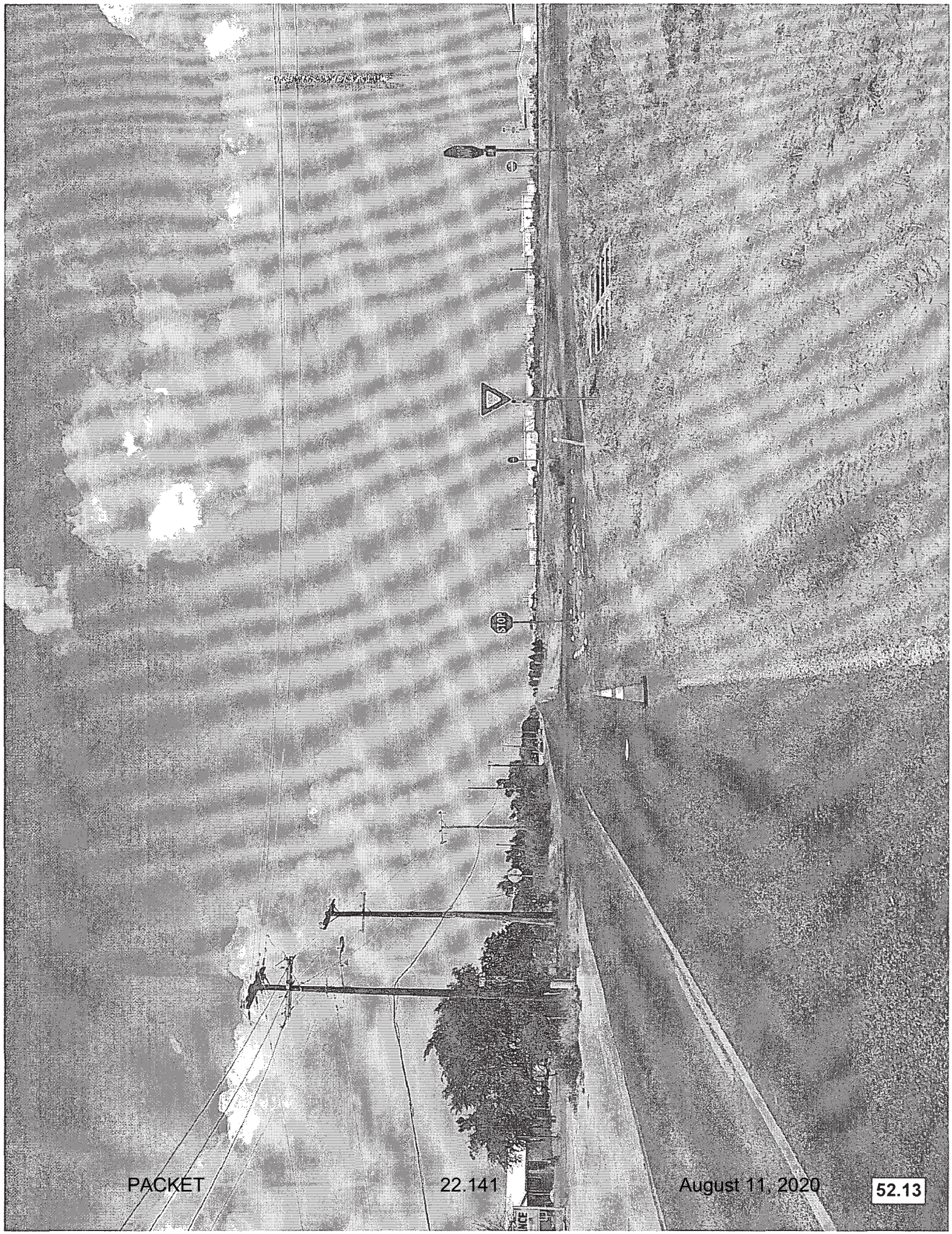
ap By KW, 7/21/2016

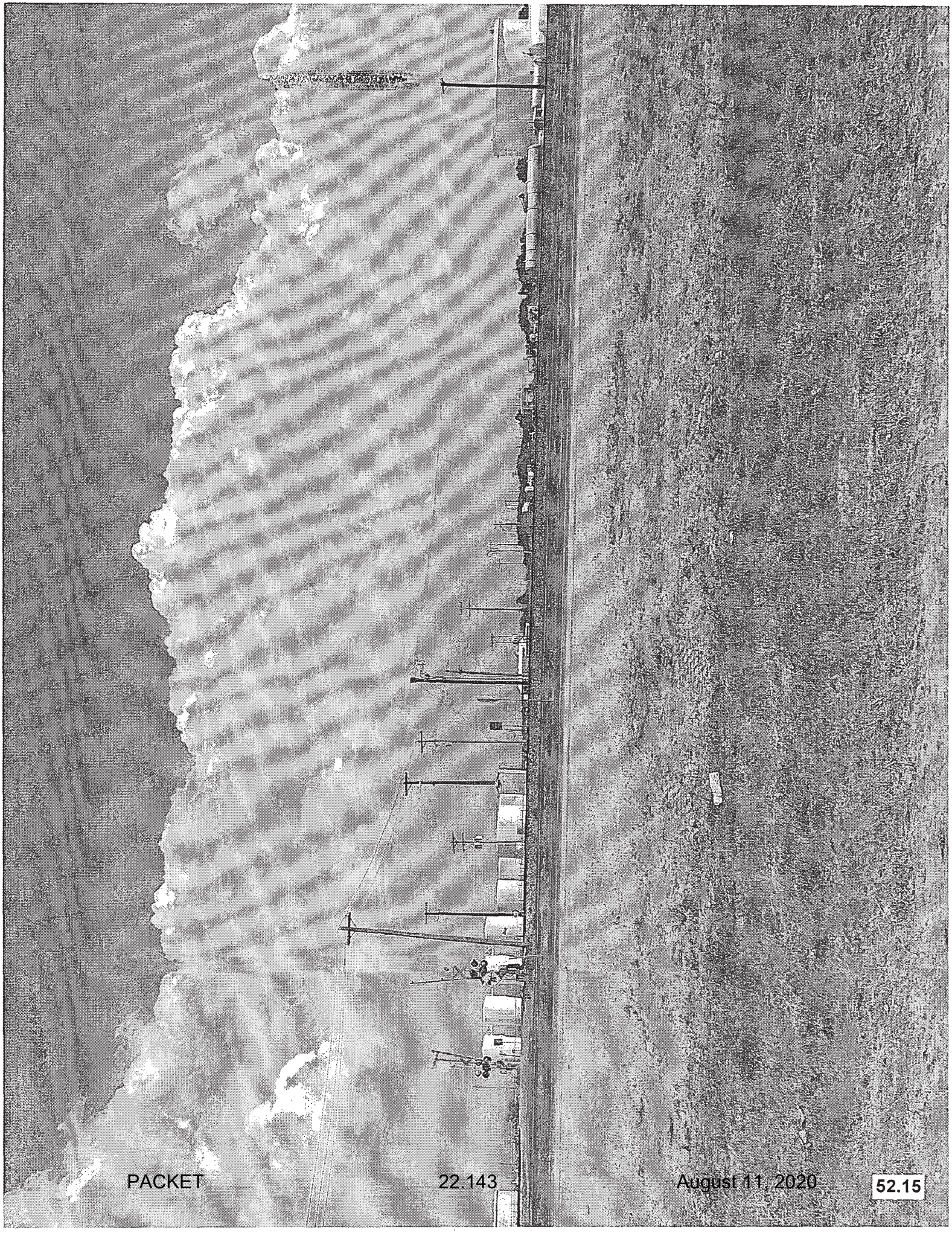
Z-16-0018

Scale: 1" = 400'

ZONING MAP

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STOP

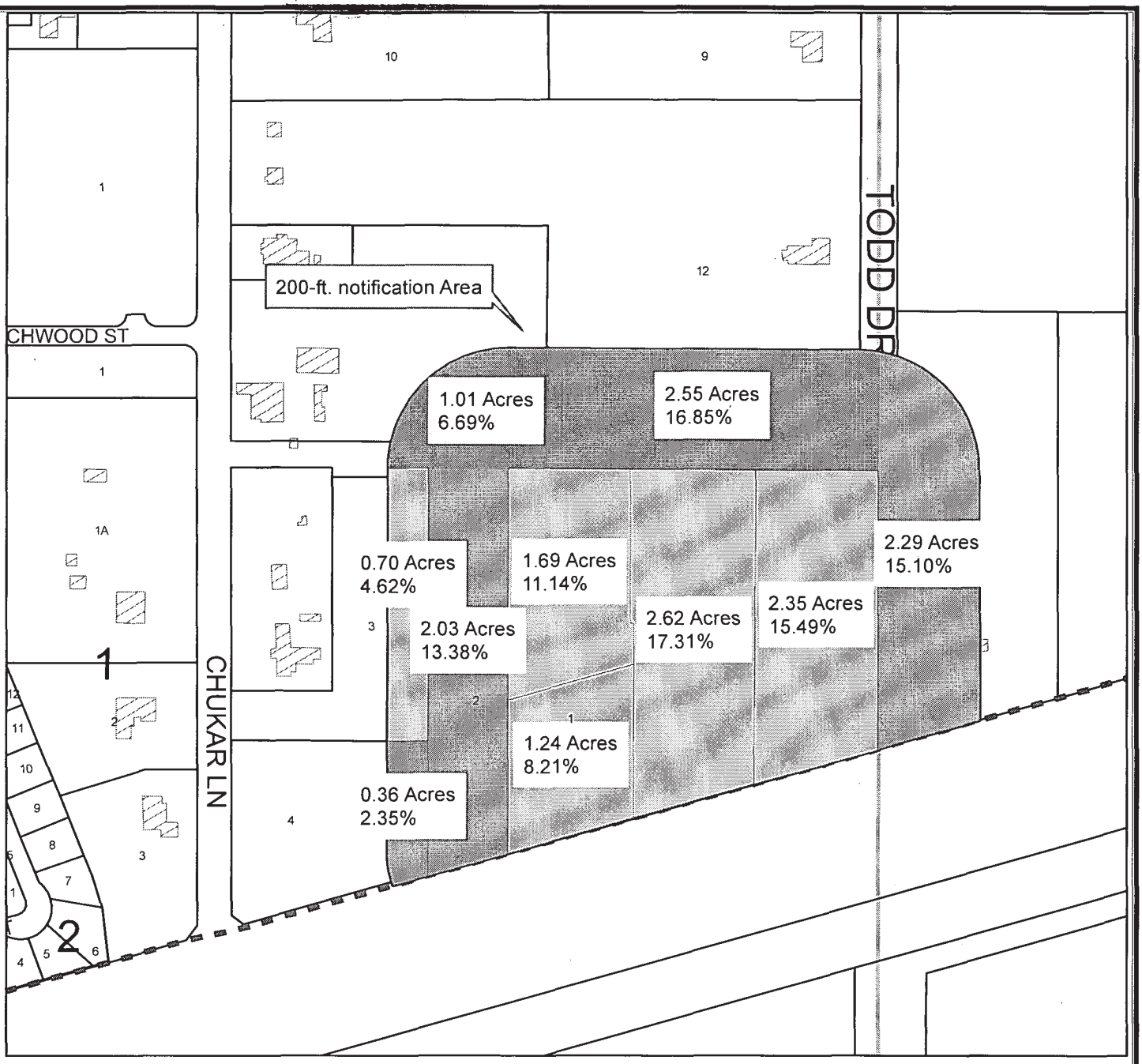




Johnny Reyes Zone Change Z-16-0018

Objection Table

ADDRESS	OWNER	Acreage	Percent	Opposed	Percent Against
1117 HICKORY AVE	NATIVIDAD RAYMUNDO G	2.29	27.78%	0	0.00%
1101 TODD DR	KETTER ROBERT J	2.55	30.98%	1	30.98%
1002 CHUKAR LN	DAVIS HAROLD E	1.01	12.30%	1	12.30%
P O BOX 1337	DOMINGUEZ EPIFANIO & ANDREA DOMIN	2.03	24.61%	0	0.00%
1909 E HUDSON	MUNGUIA MARCOS A & VERONICA MUNC	0.36	4.33%	0	0.00%
TOTAL:		8.24	100.00%		43.29%



JOHNNY REYES OBJECTION MAP

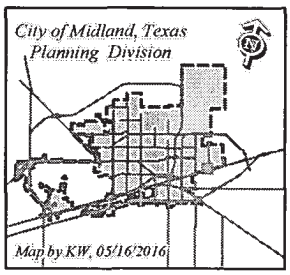
Z-16-0018 **Scale: 1" = 400'**

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Generally located on the northwest corner of Todd Drive and E. Highway 80.
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LEGEND

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MIDLAND
Planning Division

PUBLIC NOTICE

The **Planning and Zoning Commission** of the City of Midland, Texas will hold a public hearing at **3:30 p.m.** on **Monday, August 1, 2016**, in the Council Chambers, City Hall, 300 N. Loraine, on a request by **Johnny Reyes** for approval of a **Zone Change** on the following described property:

LEGAL DESCRIPTION: A 7.45-acre tract of land, being all of Lot 1, Block 1, Rolling Green Acres Addition, and a 6.25-acre tract of land out of Section 42, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.

LOCATION: Generally located northwest of the intersection of Todd Drive and E. Highway 80.

PROPOSED ZONING: **From:** CE, Country Estate District, in part, and AE, Agricultural Estate District, in part.
To: PD, Planned District for a Transition District, with an underlying zoning of LR-1, Local Retail District.

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered *in writing*** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request X Comments:
This will take away from our quiet ~~Neighborhood~~ Neighborhood

Required Information:

Alicia Fult — Gary Fulton — AliciaFulton — 2701 Quail Ridge Rd.
Property Owner's Signature — Printed Name — Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division, at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 6
Date Mailed: July 22, 2016
Case Number: Z-16-0018
Case Name: Johnny Reyes
KW Planner's Initials

Jessica Carpenter
Planning Division Manager
Department of Development Services

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Compliance Coordinator for the City of Midland at (432) 685-7251. If communication via TDD is required, please call 1-800-735-2989.

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I object to this request X Comments:

Required Information Rachelle Taylor Rachelle Taylor

Property Owner's Signature | Dustin B. Taylor Printed Name | 2512 E. Golfcourse Rd Property Address (**No P. O. Boxes**)

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I object to this request X Comments:

Required Information:

Property Owner's Signature | Jackie Taylor / Joyce Taylor (Printed Name) | 1213 Chukar Lane 79701 (Property Address (No P. O. Boxes))

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MIDLAND
Planning Division

PUBLIC NOTICE

The **Planning and Zoning Commission** of the City of Midland, Texas will hold a public hearing at **3:30 p.m.** on **Monday, August 1, 2016,** in the Council Chambers, City Hall, 300 N. Loraine, on a request by **Johnny Reyes** for approval of a **Zone Change** on the following described property:

LEGAL DESCRIPTION: A 7.45-acre tract of land, being all of Lot 1, Block 1, Rolling Green Acres Addition, and a 6.25-acre tract of land out of Section 42, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.

LOCATION: Generally located northwest of the intersection of Todd Drive and E. Highway 80.

PROPOSED ZONING: **From:** CE, Country Estate District, in part, and AE, Agricultural Estate District, in part.
To: PD, Planned District for a Transition District, with an underlying zoning of LR-1, Local Retail District.

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I object to this request ~~IS~~ Comments:

Required Information:

Tonya S Brandon | Tonya S Brandon | 904 Chukar Ln
Property Owner's Signature | Printed Name | Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division, at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 6
Date Mailed: July 22, 2016
Case Number: Z-16-0018
Case Name: Johnny Reyes
KW Planner's Initials

Jessica Carpenter
Planning Division Manager
Department of Development Services

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Compliance Coordinator for the City of Midland at (432) 685-7251. If communication via TDD is required, please call 1-800-735-2989.

MIDLAND
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I object to this request ✓ Comments:
do not want a store or the increased traffic in our neighborhood.

Required Information:

Property Owner's Signature	Printed Name	Property Address (No P. O. Boxes)
[signature]	Justin Cerdes	901 chukar ln.

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[signature]
Jessica Carpenter
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I object to this request X Comments: TO MUCH ADDED TRAFFIC & CRIME

Required Information:

Paul Perry — Property Owner's Signature
PAUL PERRY — Printed Name
905 CHUKAR Ln. — Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division, at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 6
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300 N. Loraine, Midland TX 79701 • 432-685-7400 • fax 432-686-1609

MIDLAND
Planning Division

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I object to this request. YES Comments: I do NOT WANT the added traffic.

Required Information:

Property Owner's Signature — Richard C Bate (Printed Name) — 1401 Todd Rd (Property Address (No P. O. Boxes))

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I object to this request ___X___ Comments: THIS IS A NEIGHBORHOOD, NOT A BUSINESS DISTRICT. ALLOWING RV'S AND TRUCK ZONES CURRENTLY EXIST IN THE CITY OF MIDLAND, THE DESTRUCTION OF A PEACEFUL NEIGHBORHOOD AND THE PRIVACY OF PEOPLES HOMES FOR REVENUE MAKES NO SENSE.

Required Information: Johnnie Lowe 1203 Tobo Rd

Property Owner's Signature Printed Name Property Address (No P. O. Boxes)

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MIDLAND
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I object to this request X Comments: This is no business district!

Required Information:

Marian V. Jones | Marian V. Jones | 1307 Todd

Property Owner's Signature | Printed Name | Property Address (No P. O. Boxes)

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MIDLAND
Planning Division

KETTER ROBERT J
1101 TODD DR
MIDLAND TX 79706-4348

7/25/16

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I object to this request XXX **Comments:**

Required Information:

Robert Ketter	Robert Ketter	1101 Todd Dr.
Property Owner's Signature	Printed Name	Property Address (**No P. O. Boxes**)

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MIDLAND
Planning Division

DAVIS HAROLD E
1002 CHUKAR LN
MIDLAND TX 79706 4327

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I object to this request X **Comments:**

Required Information:

Property Owner's Signature | Harold Davis (Printed Name) | 1002 Chukar Ln. (Property Address (No P. O. Boxes))

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City Council Meeting

Item Number: 23

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Joseph Marynak, Planner

Subject: ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 1,700-SQUARE FOOT PORTION OF LOT 18, BLOCK 1, PROVIDENCE PARK ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 150 FEET NORTH OF WEST WADLEY AVENUE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Zhiguan Yu, is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption, in a restaurant, at 3303 North Midkiff Road, Suite # 129.

Recommended City Council Action:

Approve

Fiscal Impact:

Processing this request does not require any City funds.

Discussion:

Current Zoning:

RR, Regional Retail District.

Surrounding Zoning and Land Use:

The properties to the north and west are zoned SF-2, Single Family Dwelling District and the locations of single family houses. The properties to the east and south are zoned RR, Regional Retail District and PD, Planned Development District for a Shopping Center, and the locations of a shopping center and a grocery store, respectively.

Analysis:

This property is located in the RR, Regional Retail District, which allows for the sale and on-premises consumption of alcoholic beverages with the approval of a specific use designation with term.

The site is located at 3303 North Midkiff Road, Suite #129, and does not currently have a Specific Use Designation for sale and on premises consumption of alcoholic beverages. The site currently has adequate parking and restroom facilities. The proposed hours of operation are the following:

Monday through Sunday from 11:00 a.m. to 10:00 p.m.

The applicant is requesting the same hours for alcohol service. The sale and on-premises consumption of alcoholic beverages will be limited to a 940-square foot portion of the restaurant, which includes the dining area.

Per Midland City Code 5.4.4. –Prohibited place of business

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches, private schools, public schools, public school grounds, athletic stadium, public hospital within 300 feet measurement along the property lines of the street fronts, and from the front door in a direct line across intersection where they occur within this site.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objections.

Engineering: (Approved)

No objections.

Transportation: (Approved)

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

No objection to zone change.

Building Code: (Approved)

The SUD for Korean Oppa is acceptable provided that no major changes have taken place including increased sizing of the dining/seating area or increases to the building footprint.

The property must adhere to the current maximum occupant load of 55 persons. 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, “Encourage the development of places where Midland residents can gather and socialize to build connections.” (Tall City Tomorrow page 137) Korean Oppa will create a vibrant atmosphere where residents can feel relaxed and enjoy drinks with their meals

This request was recommended for approval at the July 20, 2020 Planning and Zoning Commission meeting.

This request meets all requirements; therefore, staff recommends approval of the request for a Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to Condition A through F.

Conditions:

A. That the serviceable area of the restaurant shall be limited to approximately 940 square feet as shown in Exhibit “B”, which is attached hereto and incorporated herein for all purposes.

B. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

C. That the establishment shall meet all requirements of the Fire Department and Code Administration.

D. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.

E. That the days and hours of alcoholic beverages sales and consumption shall be limited to:

Monday through Sunday from 11:00 a.m. to 10:00 p.m.

F. That in accordance with Section 9.07.E.3 of the Zoning Ordinance, the establishment shall receive a certificate of occupancy within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of August 5, 2020, staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)
Floor Plan (Exhibit B)
Application
Maps

Robert Patrick

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 1,700-SQUARE FOOT PORTION OF LOT 18, BLOCK 1, PROVIDENCE PARK ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 150 FEET NORTH OF WEST WADLEY AVENUE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 1,700-square foot portion of Lot 18, Block 1, Providence Park Addition, Section 2, City and County of Midland, Texas, as shown 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 With Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant (the "Establishment"), together with the uses permitted in the present RR, Regional Retail District.

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

A. That the serviceable area of the Establishment shall be limited to approximately 940 contiguous square feet as shown in Exhibit "B", 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 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 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., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, Assistant City Manager

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

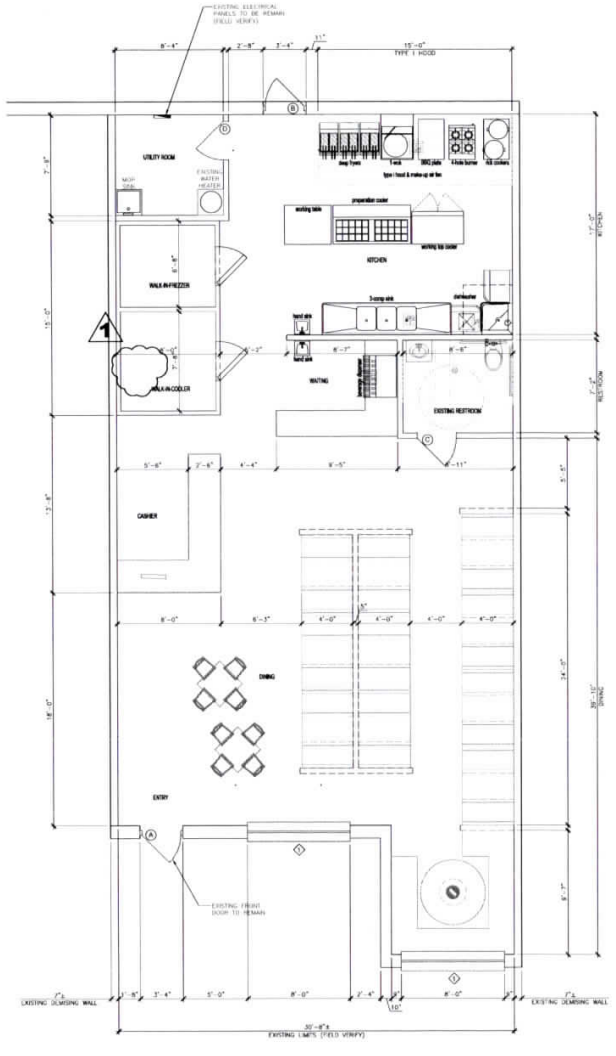
_____
John Ohnemiller, City Attorney



JUN 23 2020

EXHIBIT "A"

PACKET 23.170 August 11, 2020



01 PROPOSED FLOOR PLAN
SCALE: 1/4" = 1'-0" [2,467+/- SQ FT]

FINISH-OUT NOTES:

1. QUARRY TILED FLOOR WITH A TILE COVED BASE IS REQUIRED IN ALL WET AREAS INCLUDING: ENTIRE KITCHEN/SERVICE, WALK-IN COOLER, AND FOOD STORAGE/PREPARATION AREAS. NO SEALED CONCRETE IN THESE AREAS.
2. CERAMIC TILED FLOOR WITH A TILE BASE BOARD IS REQUIRED IN ALL RESTROOMS. NO SEALED CONCRETE IN THESE AREAS.
3. ALL HAND SINKS WITHIN 18 INCHES OF EQUIPMENT OR FOOD PREPARATION SURFACES MUST HAVE A SPLASH GUARD.
4. ALL EQUIPMENT MUST BE COMMERCIAL-GRADE AND "NSF"-CERTIFIED. REFER TO MANUFACTURER'S SPECIFICATIONS & INSTALLATION REQUIREMENTS.
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6. STAINLESS STEEL SHEETING IS REQUIRED ON ENTIRE BACK LENGTH AND SIDE(S) OF WALLS UNDER VENT-A-HOOD.
7. WALLS IN KITCHEN AND FOOD STORAGE/PREPARATION REQUIRE "FRP" OR TILE COVERAGE UP TO CEILING. RESTROOM WALLS REQUIRE "FRP" OR CERAMIC TILE UP TO 8'-0" OR TO CEILING.
8. ALL LIGHTS REQUIRE SHIELDING ABOVE FOOD AREAS, INCLUDING CAN LIGHTS.
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10. CEILING SHALL BE SMOOTH AND EASILY CLEANABLE IN THE SERVICE STATION, KITCHEN, STORAGE, PREPARATION, AND RESTROOMS.
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12. ALL EXIT DOORS SHALL BE SELF-CLOSING.
13. PROVIDE TRAP PRIMERS AS REQUIRED FOR ALL FLOOR DRAINS AND FLOOR SINKS.

PLAN NOTES:

1. FIELD VERIFY SITE/SPACE CONDITION AND ALL DIMENSIONS PRIOR TO NEW CONSTRUCTION.
2. ALL CONTRACTOR SHALL VERIFY WITH BUSINESS FOR FINAL MATERIALS AND SPECIFICATIONS FOR THIS STORE FINISH-OUT CONSTRUCTION NEEDS PRIOR TO MATERIAL ORDERS AND/OR ANY WORK STARTING.
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   - EXISTING STOREFRONT WALL TO REMAIN
   - IF ANY, EXISTING WALL TO BE REMOVED
   - IF ANY, NEW WALL UP TO DECK OR SUSPENDED CEILING
   - PROPOSED HALF-WALL, 48" HEIGHT MINIMUM A.F.F. OR U.N.O.
   - EXISTING DOOR
   - IF ANY, PROPOSED DOOR
   - FLOOR DRAINS, FD
   - FLOOR SINK, FS

DOOR ○ AND WINDOW ◇ SCHEDULES

MARK	DOOR	QUANTITY	REMARKS	HARDWARE
Ⓐ	3'-0" X 7'-0"	1	EXTERIOR - EXISTING STOREFRONT DOOR TO REMAIN	PANIC DEVICE, LOCK, CLOSURE
Ⓑ	3'-0" X 7'-0"	1	EXTERIOR - EXISTING STEEL SOLID BACK DOOR TO REMAIN	PANIC DEVICE, LOCK, CLOSURE
Ⓒ	3'-0" X 7'-0"	1	INTERIOR - RESTROOM, EXISTING HOLLOW DOOR	PRIVATE LOCK, CLOSURE
Ⓓ	3'-0" X 7'-0"	1	INTERIOR - UTILITY ROOM, EXISTING HOLLOW DOOR	
TOTAL		4		
	WINDOW			
◇1	EXISTING	VARIES	EXISTING STOREFRONT WINDOWS TO REMAIN (FIELD VERIFY)	ALL EXISTING
TOTAL				

NOTES:
1. EXISTING PERIMETER CONDITION WITH WINDOWS OR DOORS ARE TO REMAIN UNLESS NOTICE OTHERWISE ON FLOOR PLAN.
2. ALL EXISTING PANIC HARDWARE AND LOCKS ON THE EGRESS DOORS ARE TO REMAIN. FIELD VERIFY TO MEET CURRENT CITY CODES.

INTERIOR FINISH SCHEDULE

ROOM NAME	FLOOR	BASE BOARD	WALL	CEILING	REMARKS
DINING / ENTRY	CERAMIC TILE	6" TILE	DRYWALL TEXTURE	2X4 ACOUSTICAL TILE, 10'-0"(+/-) A.F.F.	SEE PLAN
CASHIER / WAITING	QUARRY TILE	6" QUARRY TILE	FULL HT CERAMIC TILE / "FRP"	2X4 WASHABLE TILE, 10'-0"(+/-) A.F.F.	1, 2
KITCHEN	QUARRY TILE	6" QUARRY TILE	FULL HEIGHT "FRP"	2X4 WASHABLE TILE, 10'-0"(+/-) A.F.F.	1, 2
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RESTROOM	CERAMIC TILE	6" TILE	FULL HT CERAMIC TILE / "FRP"	2X4 WASHABLE TILE, 9'-0"(+/-) A.F.F.	1, 2

NOTES:
1. LIGHT COLORED (WHITE, OFF-WHITE, IVORY) FLOORS, WALLS, AND CEILINGS.
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FIELD NOTE:

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JUN 2 3 2020

BC STRUCTURAL ENGINEERS, LLC
• Consulting • Planning
• Design • Forensic Evaluation
• Construction Support
857 Fairoaks Drive
Allen, TX 75013
PHONE: (214) 801-6117
FAX: (214) 383-2757
Email: xbsai_bc@yahoo.com

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INTERIOR FLOOR PLAN ONLY FOR:
KOREAN NO X
3303 N MIDKIFF ROAD, SUITE #129, MIDLAND, TEXAS 79705

SEAL: 06/22/2020
STATE OF TEXAS
XUESONG BAI
89538
REGISTERED PROFESSIONAL ENGINEER
REGISTRATION: F-13842

REVISIONS

NO.	DATE	DESCRIPTION

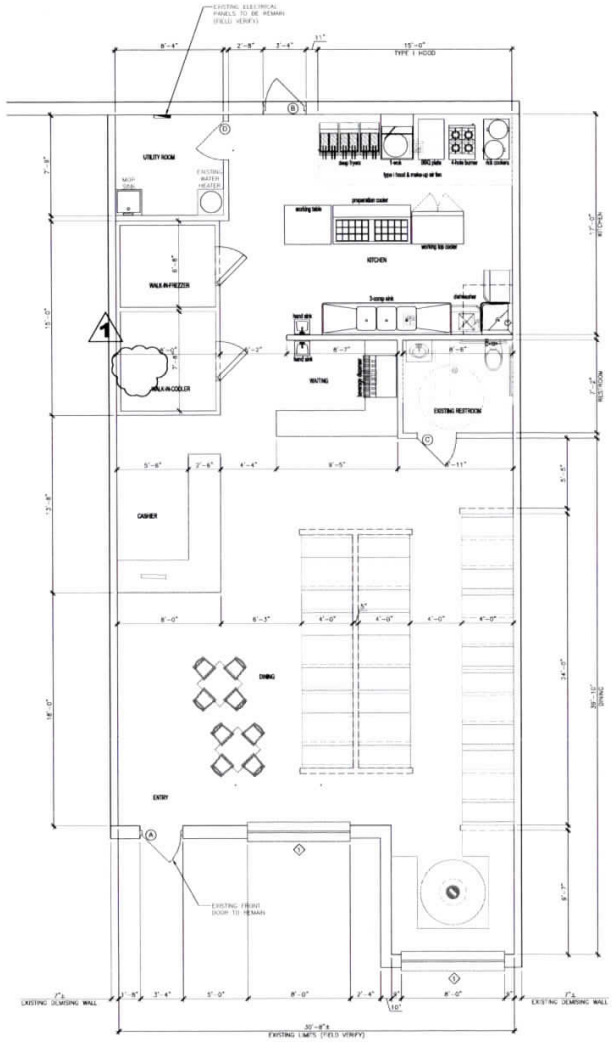
ISSUE FOR PERMIT
06-22-2020
PROJECT NO.
2020-B076-01
PROPOSED FLOOR PLAN
SHEET
A-1

EXHIBIT "B"

PACKET
23.171
August 11, 2020


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JUN 23 2020



01 PROPOSED FLOOR PLAN
SCALE 1/4" = 1'-0"

FINISH-OUT NOTES:

1. QUARRY TILED FLOOR WITH A TILE COVED BASE IS REQUIRED IN ALL WET AREAS INCLUDING: ENTIRE KITCHEN/SERVICE, WALK-IN COOLER, AND FOOD STORAGE/PREPARATION AREAS. NO SEALED CONCRETE IN THESE AREAS.
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(C)	3'-0" X 7'-0"	1	INTERIOR - RESTROOM, EXISTING HOLLOW DOOR	PRIVATE LOCK, CLOSURE
(D)	3'-0" X 7'-0"	1	INTERIOR - UTILITY ROOM, EXISTING HOLLOW DOOR	
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	WINDOW			
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JUN 2 3 2020

BC STRUCTURAL BROKERS, LLC
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• Design • Forensic Evaluation
• Construction Support
857 Fairoaks Drive
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PHONE: (214) 801-6117
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Email: xiuseng_bai@sbcglobal.com

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INTERIOR FLOOR PLAN ONLY FOR:
KOREAN NO X
3303 N MIDKIFF ROAD, SUITE #129, MIDLAND, TEXAS 79705

SEAL: 06/22/2020
STATE OF TEXAS
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89538
REGISTERED PROFESSIONAL ENGINEER
REGISTRATION: F-13842

REVISIONS

NO.	DATE	DESCRIPTION

ISSUE FOR PERMIT
06-22-2020
PROJECT NO.
2020-B076-01
PROPOSED FLOOR PLAN
SHEET
A-1

MIDLAND Planning Division

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

Project Number: SUP-20-0078

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name:			Phone ( ) Email
Address 3503 N Midkiff RD #129	City Midland	State TX	Zip 79705
Property Owner Printed Name: Fulang zhang			Phone (605) 858-9535 Email gbddzfl@gmail.com
Address 5206 Belaire DR	City Midland	State TX	Zip 79703
Representative *(if different from Applicant or Property Owner)* Firm: Printed Name: Zhiguan Yu			Phone (626) 264 3963 Email haosunmcjf@gmail.com
Address 315 Willowood DR	City Midland	State TX	Zip 79703

Street Address:

Business Name: Korean BBQ

Legal Description
Lot: Block: Subdivision:

Current Zoning: RR

Reason for Request: to obtain alcohol permit

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: restaurant

Proposed/Current Days and Hours of Operation: ~~7~~ every day 11am 10pm

Proposed Days and Hours of Alcohol Service: 11am 10pm

Total Square Footage of Business: 1700 sq ft

Square Footage of Alcohol Serviceable Area: 940 sq ft

Restroom Fixtures: *Men*	**Toilets/Urinals:** 1	**Bathroom Sinks:** 1
Women	**Toilets:** 1	**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):	Date: 06/22/20
Applicant (printed): Tuliang Zhang	
Property Owner (signature): Zhiqiang Yu	Date: 06/22/20
Property Owner (printed): Zhi qiang Yu	

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 Zhang Fuliang who, being by me duly sworn, upon oath says: That (s)he is authorized by ~~Zhiqiang~~ Jay Curtin, 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.

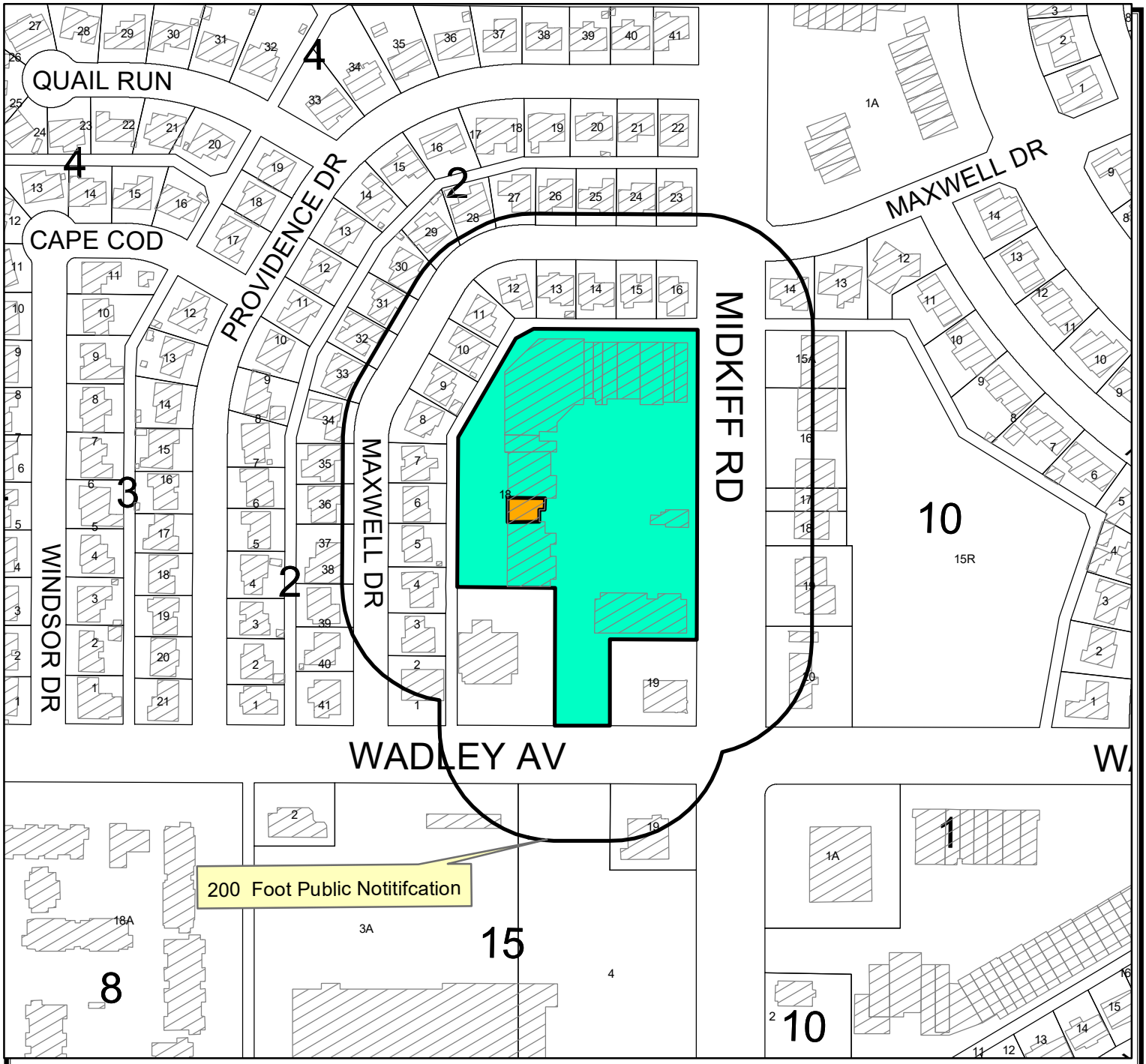
Authorized Agent (*signature*)

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

MIRNA A. GRANADOS
Notary Public, State of Texas
Comm. Expires 04-07-2024
Notary ID 130610784

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

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



LOCATION MAP

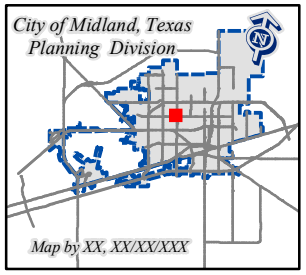
SUD-20-0078 **Scale: 1" = 250'**

Consider a request by Zhiguan Yu for a Specific Use Designation with Term for the Sale of all alcoholic beverages for on-premesis consumption in a restaurant on a 1,700 square foot portion of Lot 18, Block 1, Providence Park Addition, Section 2, City and OCunty of Midland, Texas.

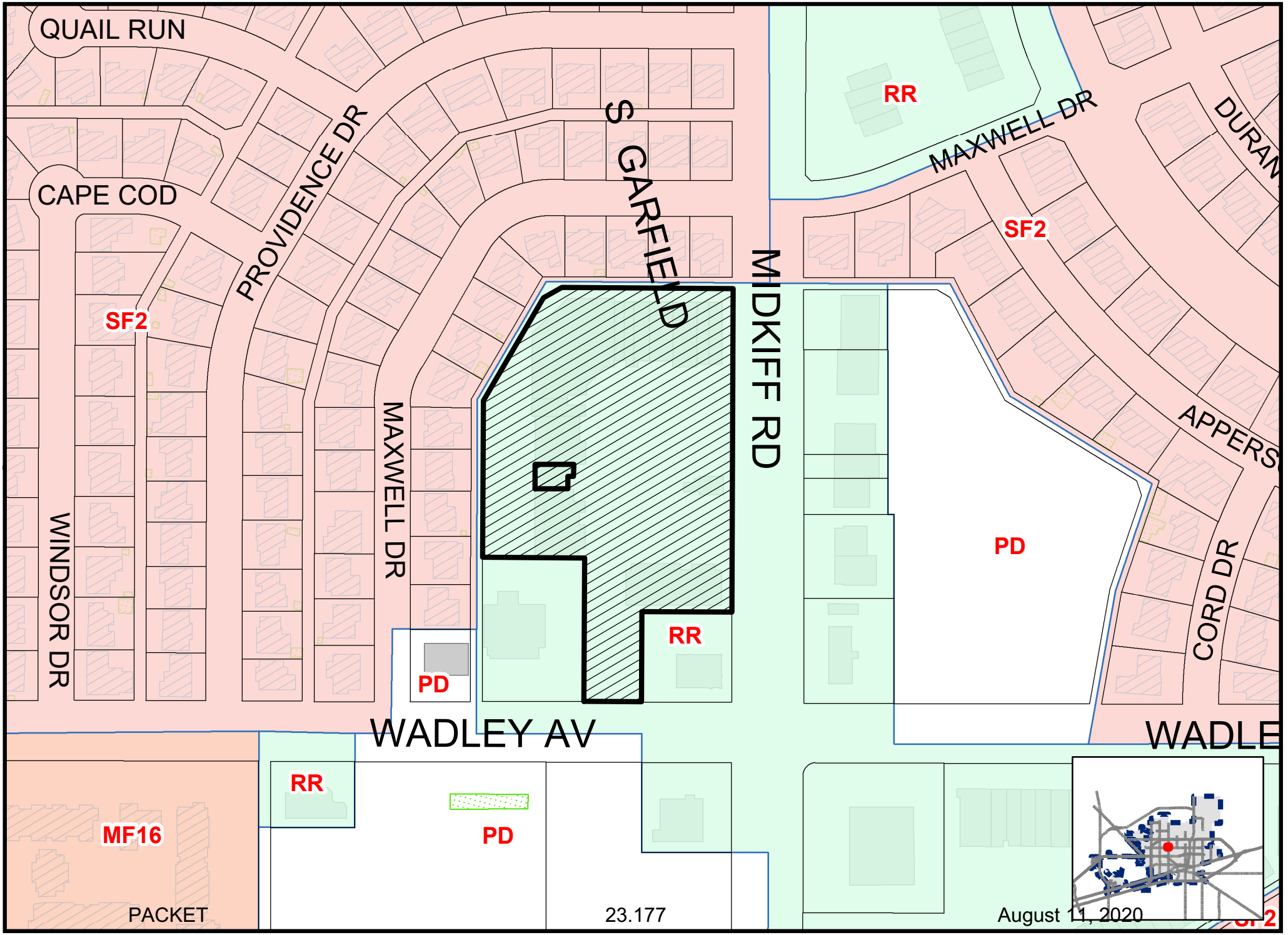
Generally located on the west side of North Midkiff Road, approximately 150 feet north of West Wadley Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2020
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND NOR IS IT DESIGNED TO BE USED AS THE ONLY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By JM, 07/14/2020

SUD-20-0078

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2020: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.




A&A NAILS


CNB
Community National Bank
ATM



City Council Meeting

Item Number: 24

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Joseph Marynak, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,233-SQUARE FOOT PORTION OF LOT 23B, BLOCK 40, FAIRMONT PARK ADDITION, SECTION 39, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND TREMONT AVENUE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Aimee Valenzuela, is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption, in a restaurant, at 3322 North Loop 250 West, Suite 300.

Recommended City Council Action:

Approve

Fiscal Impact:

Processing this request does not require any City funds.

Discussion:

Current Zoning:

RR, Regional Retail District

Surrounding Zoning and Land Use:

The properties to the north and west are zoned PD, Planed Development Districts for Shopping Centers, and the locations of a bank and a shopping centers, respectively. The properties to the south and east are zoned RR, Regional Retail District and the locations of a car wash and a shopping center, respectively.

Analysis:

This property is located in the RR, Regional Retail District, which allows for the sale and on-premises consumption of alcoholic beverages with the approval of a specific use designation with term.

The site is located at 3322 North Loop 250 West, Suite 300, and does not currently have a Specific Use Designation for the sale and on premises consumption of alcoholic beverages. The site currently has adequate parking and restroom facilities. The proposed hours of operation are:

Monday through Friday from 7:00 a.m. to 10:00 p.m.
Saturday through Sunday from 8:00 a.m. to 10:00 p.m.

The applicant is requesting alcohol service hours as the following:

Monday through Saturday 10:00 a.m. to 10:00 p.m.
Sunday from 12:00 p.m. (noon) to 10:00 p.m.

The sale and on-premises consumption of alcoholic beverages will be limited to a 1,303-square foot portion of the restaurant, which includes the dining area.

Per Midland City Code 5.4.4. –Prohibited place of business

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches, private schools, public schools, public school grounds, athletic stadium, public hospital within 300 feet measurement along the property lines of the street fronts, and from the front door in a direct line across intersection where they occur within this site.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objections.

Engineering: (Approved)

No objections.

Transportation: (Approved)

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

No objection to zone change.

Building Code: (Approved)

The SUD for La Jaiba is acceptable provided that no major changes have taken place including increased sizing of the dining/seating area or increases to the building footprint. The property must adhere to the maximum occupant load that was provided with the original building permit and submittal documents. 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, “Encourage the development of places where Midland residents can gather and socialize to build connections.” (Tall City Tomorrow page 137) La Jaiba will create a vibrant atmosphere where residents can feel relaxed and enjoy drinks with their meals

This request was recommended for approved at the July 20, 2020 Planning and Zoning Commission meeting.

This request meets all requirements; therefore, staff recommends approval of the request for a Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to Condition A through F.

Conditions:

A. That the serviceable area of the restaurant shall be limited to approximately 1,303 square feet as shown in Exhibits “A and B”, which is attached hereto and incorporated herein for all purposes.

B. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

C. That the establishment shall meet all requirements of the Fire Department and Code Administration.

D. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.

E. That the days and hours of alcoholic beverages sales and consumption shall be limited to:

Monday through Saturday 10:00 a.m. to 10:00 p.m.
Sunday from 12:00 p.m. (noon) to 10:00 p.m.

F. That in accordance with Section 9.07.E.3 of the Zoning Ordinance, the establishment shall receive a certificate of occupancy within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of August 5, 2020, staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)
Floor Plan (Exhibit B)
Application
Maps

Robert Patrick

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 2,233-SQUARE FOOT PORTION OF LOT 23B, BLOCK 40, FAIRMONT PARK ADDITION, SECTION 39, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND TREMONT AVENUE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 2,233-square foot portion of Lot 23B, Block 40, Fairmont Park Addition, Section 39, 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 for on-premises consumption in a restaurant (the "Establishment"), together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 1,303 contiguous square feet as shown in Exhibits "A" and "B", which are 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 10:00 p.m.; and
Sunday from 12:00 p.m. (noon) 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 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., 2020; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, Assistant City Manager

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

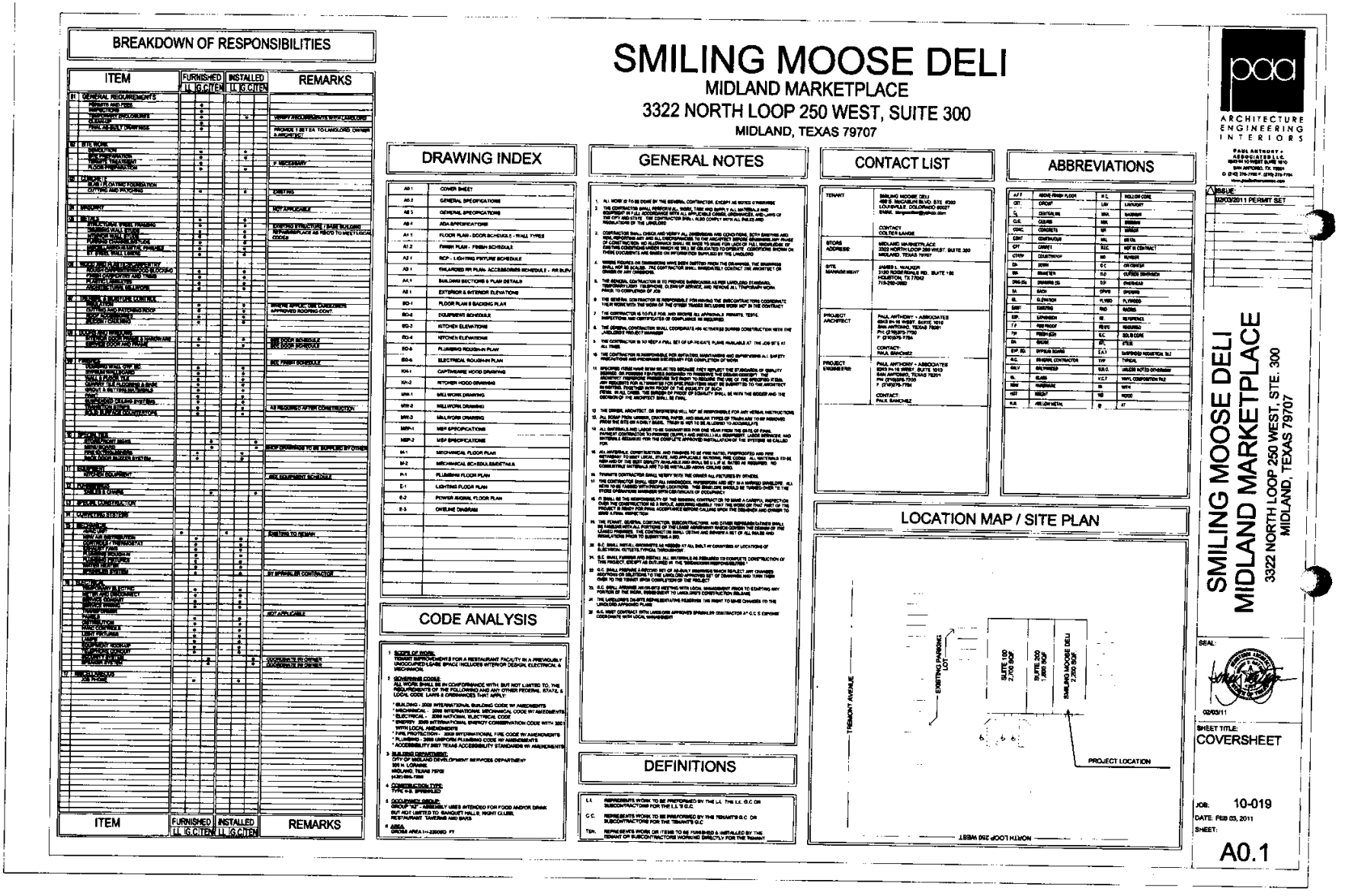

BREAKDOWN OF RESPONSIBILITIES
ITEM
FURNISHED LL \G.C\TEN
INSTALLED LL \G.C\TEN
REMARKS
SMILING MOOSE DELI
MIDLAND MARKETPLACE
3322 NORTH LOOP 250 WEST, SUITE 300
MIDLAND, TEXAS 79707
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ISSUE:
02/03/2011 PERMIT SET
SMILING MOOSE DELI
MIDLAND MARKETPLACE
3322 NORTH LOOP 250 WEST, STE. 300
MIDLAND, TEXAS 79707
SEAL:
02/03/11
SHEET TITLE:
COVERSHEET
JOB: 10-019
DATE: FEB 03, 2011
SHEET:
A0.1

EXHIBIT "A"

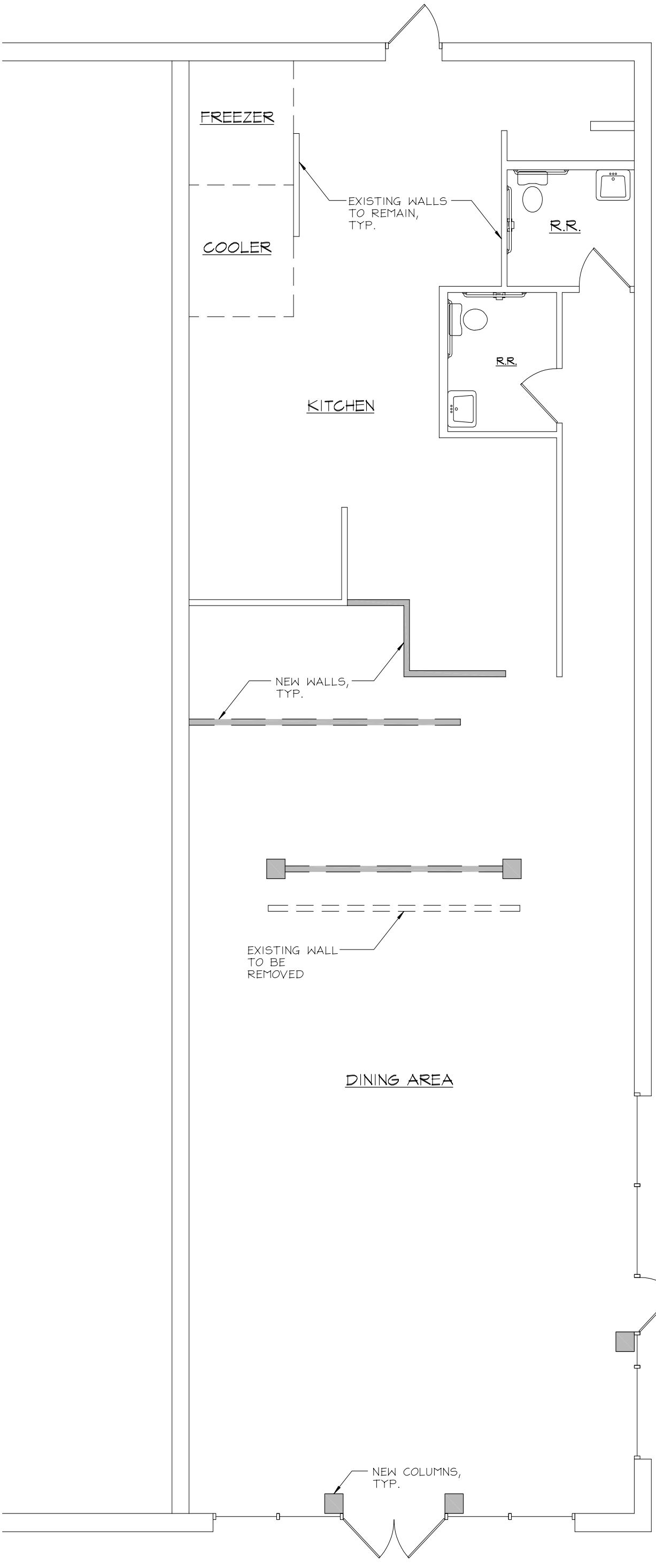


EXHIBIT "B"

A FLOOR PLAN

SCALE 3/16" = 1'-0"

DATE:
MAY 29, 2020
DWG2020/ALEXJIEZADA/LAJAVA-AI
JOB # JM12005.1

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EXTENDING TO DERIVATIVE PLANS,
IS APPLICABLE TO INTENTIONAL AND
UNINTENTIONAL INFRINGEMENTS
AND PROVIDES FOR SPECIFIC
STATUTORY DAMAGES BOTH
CIVIL AND CRIMINAL. UNAUTHORIZED
REPRODUCTION IN ANY FORM IS
STRICTLY PROHIBITED AND FORBIDDEN.

PREPARED BY:
J M DRAFTING & DESIGN
NEW BUILDING FOR:
LAJAVA
3322 N LOOP 250 W
SUITE C
MIDLAND
TEXAS

SMILING MOOSE DELI

MIDLAND MARKETPLACE

3322 NORTH LOOP 250 WEST, SUITE 300

MIDLAND, TEXAS 79707

BREAKDOWN OF RESPONSIBILITIES

ITEM	FURNISHED LL | G.C | TEN	INSTALLED LL | G.C | TEN	REMARKS
01 GENERAL REQUIREMENTS			
PERMITS AND FEES	G		
INSPECTIONS	G		
TEMPORARY ENCLOSURES	G	V	VERIFY REQUIREMENTS WITH LANDLORD
CLEANUP	G		
FINAL AS-BUILT DRAWINGS	G		PROVIDE 1 SET EA TO LANDLORD, OWNER & ARCHITECT
02 SITE WORK			
DEMOLITION	G	G	
SITE PREPARATION	G	G	
WEIGHT TREATMENT	G	G	IF NECESSARY
FLOOR PREPARATION	G	G	
03 CONCRETE			
SLAB / FLOATING FOUNDATION	G	G	
CUTTING AND PATCHING	G	G	EXISTING
04 MASONRY			NOT APPLICABLE
05 METALS	G	G	
STRUCTURAL STEEL FRAMING	G	G	EXISTING STRUCTURE / BASE BUILDING
FURRING WALL STUDS	G	G	REFURBISH/REPLACE AS REQ'D TO MEET LOCAL CODES
FURRING WALL STUDS	G	G	
MISCELLANEOUS STEEL	G	G	
SPECIAL TRIM & CEILING	G	G	
06 WOOD, PLASTICS & COMPOSITES	G	G	
FURRING WALL STUDS	G	G	
FURRING CEILING & TRIM	G	G	
ARCHITECTURAL WOODWORK	G	G	
07 THERMAL & MOISTURE PROTECTION	G	G	WHERE APPLIC; SEE CONCEPTS
CUTTING AND PATCHING ROOF	G	G	APPROVED ROOFING CONT
ROOF FLASHINGS	G	G	
SEALANT / CAULKING	G	G	
08 DOORS AND WINDOWS			
DOORS, DOOR FRAMES & TRANSOM UNITS	G	G	SEE DOOR SCHEDULE
ENTRY DOOR HARDWARE	G	G	SEE DOOR SCHEDULE
GLAZING	G	G	
09 FINISHES	G	G	SEE FINISH SCHEDULE
FURRING WALL STUD	G	G	
GYPSUM WALLBOARD	G	G	
PAINT & FLOOR TILE	G	G	
CARPET TILE FLOORING & BASE	G	G	
EPOXY & WATERPROOFING	G	G	
PAINT	G	G	
SUSPENDED CEILING SYSTEMS	G	G	
ACOUSTICAL CEILING	G	G	
PAINTING & FINISHES	G	G	AS REQUIRED AFTER CONSTRUCTION
10 SPECIALTIES	G	G	
TOILET PARTITIONS	G	G	
SIGNAGE	G	G	SHOP DRAWINGS TO BE SUPPLIED BY OTHERS
FIRE EXTINGUISHERS	G	G	
FIRE CABINET BUZZER SYSTEM	G	G	
11 EQUIPMENT			
KITCHEN EQUIPMENT	G	G	SEE EQUIPMENT SCHEDULE
12 FURNISHINGS			
VENTILE CHAIRS	G	G	
13 SPECIAL CONSTRUCTION			
14 CONVEYING SYSTEMS			
15 MECHANICAL			
PLUMBING	G	G	EXISTING TO REMAIN
HVAC AIR DISTRIBUTION	G	G	
CONTROLS / THERMOSTAT	G	G	
ELECTRICAL PANEL	G	G	
PLUMBING ROUGH-IN	G	G	
PLUMBING FIXTURES	G	G	
WATER HEATER	G	G	
SPRINKLER SYSTEM	G	G	BY SPRINKLER CONTRACTOR
16 ELECTRICAL			
TELEPHONE & DATA	G	G	
SECURITY SYSTEM	G	G	
SERVICE ENTRANCE	G	G	
PANELS	G	G	
WIRING	G	G	
DISTRIBUTION	G	G	
HVAC CONTROLS	G	G	
LIGHT FIXTURES	G	G	
LAMPS	G	G	
EMERGENCY WIDEUP	G	G	
TRANSFER DEVICE	G	G	
EMERGENCY	G	G	
SPRINKLER SYSTEM	G	G	COORDINATE BY OWNER
			COORDINATE BY OWNER
17 MISCELLANEOUS			
SUB TRADES	G	G	
ITEM	FURNISHED LL | G.C | TEN	INSTALLED LL | G.C | TEN	REMARKS

DRAWING INDEX

A0.1	COVER SHEET
A0.2	GENERAL SPECIFICATIONS
A0.3	GENERAL SPECIFICATIONS
A0.4	ADA SPECIFICATIONS
A1.1	FLOOR PLAN - DOOR SCHEDULE - WALL TYPES
A1.2	FINISH PLAN - FINISH SCHEDULE
A2.1	RCP - LIGHTING FIXTURE SCHEDULE
A3.1	ENLARGED RR PLAN- ACCESSORIES SCHEDULE - RR ELEV
A4.1	BUILDING SECTIONS & PLAN DETAILS
A5.1	EXTERIOR & INTERIOR ELEVATIONS
SD-1	FLOOR PLAN & BACKING PLAN
SD-2	EQUIPMENT SCHEDULE
SD-3	KITCHEN ELEVATIONS
SD-4	KITCHEN ELEVATIONS
SD-5	PLUMBING ROUGH-IN PLAN
SD-6	ELECTRICAL ROUGH-IN PLAN
KH-1	CAPTIVAIRE HOOD DRAWING
KH-2	KITCHEN HOOD DRAWING
MW-1	MILLWORK DRAWING
MW-2	MILLWORK DRAWING
MW-3	MILLWORK DRAWING
MSP-1	MSP SPECIFICATIONS
MSP-2	MSP SPECIFICATIONS
M-1	MECHANICAL FLOOR PLAN
M-2	MECHANICAL SCHEDULES/DETAILS
P-1	PLUMBING FLOOR PLAN
E-1	LIGHTING FLOOR PLAN
E-2	POWER SIGNAL FLOOR PLAN
E-3	ONELINE DIAGRAM

CODE ANALYSIS

1. SCOPE OF WORK:
TENANT IMPROVEMENTS FOR A RESTAURANT FACILITY IN A PREVIOUSLY UNOCCUPIED LEASE SPACE INCLUDES INTERIOR DESIGN, ELECTRICAL & MECHANICAL

2. GOVERNING CODES:
ALL WORK SHALL BE IN CONFORMANCE WITH, BUT NOT LIMITED TO, THE REQUIREMENTS OF THE FOLLOWING AND ANY OTHER FEDERAL, STATE & LOCAL CODE LAWS & ORDINANCES THAT APPLY:
- BUILDING - 2009 INTERNATIONAL BUILDING CODE W/ AMENDMENTS
- MECHANICAL - 2009 INTERNATIONAL MECHANICAL CODE W/ AMENDMENTS
- ELECTRICAL - 2009 NATIONAL ELECTRICAL CODE
- ENERGY - 2009 INTERNATIONAL ENERGY CONSERVATION CODE WITH 350 WITH LOCAL AMENDMENTS
- FIRE PROTECTION - 2009 INTERNATIONAL FIRE CODE W/ AMENDMENTS
- PLUMBING - 2009 UNIFORM PLUMBING CODE W/ AMENDMENTS
- ACCESSIBILITY 2007 TEXAS ACCESSIBILITY STANDARDS W/ AMENDMENTS

3. BUILDING DEPARTMENT:
CITY OF MIDLAND DEVELOPMENT SERVICES DEPARTMENT
300 N. LORAINE
MIDLAND, TEXAS 79702
(432) 685-7200

4. CONSTRUCTION TYPE:
TYPE V-B SPRINKLED

5. OCCUPANCY GROUP:
GROUP "A2" - ASSEMBLY USES INTENDED FOR FOOD AND/OR DRINK BUT NOT LIMITED TO: BANQUET HALLS, NIGHT CLUBS, RESTAURANT TAVERNS AND BARS

6. AREA
GROSS AREA (+/-) 2,000 SF

GENERAL NOTES

1. ALL WORK IS TO BE DONE BY THE GENERAL CONTRACTOR, EXCEPT AS NOTED OTHERWISE
2. THE CONTRACTOR SHALL WARRANT ALL WORK, TIME AND WORK IN ALL MATERIALS AND EQUIPMENT IN FULL ACCORDANCE WITH ALL APPLICABLE CODES, ORDINANCES, AND LAWS OF THE CITY AND STATE. THE CONTRACTOR SHALL ALSO COMPLY WITH ALL RULES AND REGULATIONS OF THE LANDLORD
3. CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND CONDITIONS, BOTH EXISTING AND OF CONSTRUCTION, AND ALL SHOP DRAWINGS, TO THE ARCHITECT BEFORE BEGINNING ANY PHASE OF CONSTRUCTION. ANY DISCREPANCIES SHALL BE BROUGHT TO HIS ATTENTION FOR CLARIFICATION. EXISTING CONDITIONS UNDER WHICH WORK IS TO BE DONE TO BE VERIFIED BY CONTRACTOR. EXISTING CONDITIONS SHOWN ON DRAWINGS ARE BASED ON INFORMATION SUPPLIED BY THE LANDLORD
4. WRITTEN FIGURES ON DRAWINGS TAKE PRECEDENCE OVER SCALED DIMENSIONS. THE DRAWINGS SHALL NOT BE SCALED. THE CONTRACTOR SHALL IMMEDIATELY CONTACT THE ARCHITECT OR OWNER OF ANY DISCREPANCIES.
5. THE GENERAL CONTRACTOR IS TO PROVIDE BARRICADES AS PER LANDLORD STANDARD, TEMPORARY LIGHT, TELEPHONE, CLEAN UP SERVICE, AND REMOVE ALL TEMPORARY WORK PRIOR TO COMPLETION OF JOB
6. THE GENERAL CONTRACTOR IS RESPONSIBLE FOR ENSURING THE SUBCONTRACTORS COORDINATE THEIR WORK WITH THE WORK OF THE OTHER TRADES BEING PUT IN THE CONTRACT
7. THE CONTRACTOR IS TO FILE FOR, AND SECURE ALL APPROVALS, PERMITS, TESTS, INSPECTIONS AND CERTIFICATES OF COMPLIANCE AS REQUIRED.
8. THE GENERAL CONTRACTOR SHALL COORDINATE HIS ACTIVITIES DURING CONSTRUCTION WITH THE LANDLORD'S NEIGHBOR MANAGER
9. THE CONTRACTOR IS TO KEEP A FULL SET OF UP-TO-DATE PLANS AVAILABLE AT THE JOB SITE AT ALL TIMES.
10. THE CONTRACTOR IS RESPONSIBLE FOR INITIATING, MAINTAINING AND SUPERVISING ALL SAFETY PRECAUTIONS AND PROGRAMS AND PRIVACY FOR COMPLETION OF WORK
11. SPECIFIED ITEMS HAVE BEEN SELECTED BECAUSE THEY REFLECT THE STANDARDS OF QUALITY DESIRED. ON WORKING IT BATHES SUBMITTED TO THOSE THE DESIGN CONCEPT. THE ARCHITECT RESERVES THE RIGHT TO REQUIRE THE USE OF THE SPECIFIED ITEM. ANY REQUESTS FOR ALTERNATES FOR SPECIFIED ITEMS MUST BE SUBMITTED TO THE ARCHITECT IN WRITING, TOGETHER WITH PROOF OF THE QUALITY OF SUCH ITEMS. IN ALL CASES, THE BURDEN OF PROOF OF EQUALITY SHALL BE WITH THE BIDDER AND THE DECISION OF THE ARCHITECT SHALL BE FINAL.
12. THE OWNER, ARCHITECT, OR ENGINEERS WILL NOT BE RESPONSIBLE FOR ANY VERBAL INSTRUCTIONS
13. ALL DEBRIS FROM WRECKING, CRATING, PAPER, AND SIMILAR TYPES OF TRASH ARE TO BE REMOVED FROM THE SITE ON A DAILY BASIS. TRASH IS NOT TO BE ALLOWED TO ACCUMULATE
14. ALL MATERIALS AND LABOR TO BE GUARANTEED FOR ONE YEAR FROM THE DATE OF FINAL PAYMENT CONTRACTOR TO PROMISE SUPPLY AND INSTALL ALL ADDITIONAL MATERIALS AND MATERIALS REQUIRED FOR THE COMPLETE APPROVED INSTALLATION OF THE SYSTEMS AS CALLED FOR.
15. ALL MATERIALS, CONSTRUCTION, AND FINISHES TO BE FIRE RATED, FIREPROOFED AND FIRE RETARDANT TO MEET LOCAL, STATE, AND APPLICABLE NATIONAL FIRE CODES. ALL MATERIALS TO BE APPROVED BY THE BEST QUALITY FIRE RATING AVAILABLE UP TO 1 HR IF RATED AS REQUIRED. NO COMBUSTIBLE MATERIALS ARE TO BE INSTALLED ABOVE CEILING GRID.
16. TENANT'S CONTRACTOR SHALL VERIFY WITH THE OWNER ALL FIXTURES BY OTHERS.
17. THE CONTRACTOR SHALL KEEP ALL WARRANTIES, IMPRESSIONS AND KEY IN A MARKED ENVELOPE. ALL KEYS TO BE TAGGED WITH PROPER LOCATIONS. THIS ENVELOPE SHOULD BE TURNED OVER TO THE STORE OPERATIONS MANAGER UPON CERTIFICATE OF OCCUPANCY.
18. IT SHALL BE THE RESPONSIBILITY OF THE GENERAL CONTRACTOR TO MAKE A CAREFUL INSPECTION OVER THE CONSTRUCTION 30 3 DAYS, IF NECESSARY, PRIOR TO THE ANTICIPATED DATE THAT THE PROJECT IS READY FOR FINAL ACCEPTANCE BEFORE CALLING UPON THE DESIGNER AND OWNER TO MAKE A FINAL INSPECTION
19. THE PERMIT, CLIENT'S, CONTRACTOR, SUBCONTRACTORS, AND OTHER REPRESENTATIVES SHALL BE FAMILIAR WITH ALL PORTIONS OF THE LEASE AGREEMENT WHICH CONTAIN THE DESIGN OF THE LEASED PREMISES. THE CONTRACTOR SHALL OBTAIN AND REVIEW A SET OF ALL RULES AND REGULATIONS PRIOR TO SUBMITTING A BID.
20. G.C. SHALL INSTALL GROMMETS AS NEEDED AT ALL BUILT-IN COUNTERS AT LOCATIONS OF ELECTRICAL OUTLETS (TYPICAL THROUGHOUT)
21. G.C. SHALL FURNISH AND INSTALL ALL MATERIALS AS REQUIRED TO COMPLETE CONSTRUCTION OF THIS PROJECT, EXCEPT AS OUTLINED IN THE "EXCLUSIONS RESPONSIBILITIES"
22. G.C. SHALL PREPARE A RECORD SET OF AS-BUILT DRAWINGS WHICH REFLECT ANY CHANGES ADDITIONS OR DELETIONS TO THE LANDLORD APPROVED SET OF DRAWINGS AND TURN THEM OVER TO THE TENANT UPON COMPLETION OF THE PROJECT.
23. G.C. SHALL ATTEND AN ON-SITE MEETING WITH LOCAL MANAGEMENT PRIOR TO STARTING ANY PORTION OF THE WORK, MANAGEMENT TO LANDLORD'S CONSTRUCTION RULE/MS
24. THE LANDLORD'S 24-SITE REPRESENTATIVE RESERVES THE RIGHT TO MAKE CHANGES TO THE LANDLORD APPROVED PLANS
25. G.C. MUST CONTRACT WITH LANDLORD APPROVED SPRINKLER CONTRACTOR A.P.G.C.'S EXPENSE COORDINATE WITH LOCAL MANAGEMENT

DEFINITIONS

L.I.	REPRESENTS WORK TO BE PERFORMED BY THE L.I. THE L.I. G.C. OR SUBCONTRACTORS FOR THE L.I.'S G.C.
G.C.	REPRESENTS WORK TO BE PERFORMED BY THE TENANT'S G.C. OR SUBCONTRACTORS FOR THE TENANT'S G.C.
TBR	REPRESENTS WORK OR ITEMS TO BE FURNISHED & INSTALLED BY THE TENANT OR SUBCONTRACTORS WORKING DIRECTLY FOR THE TENANT

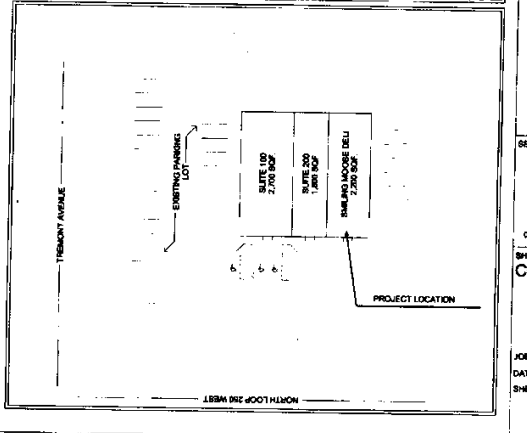
CONTACT LIST

TENANT	SMILING MOOSE DELI 485 S. McCULLAH BLVD, STE #300 LOUISVILLE, COLORADO 80027 EMAIL:
	CONTACT: COLTEN LANGE
STORE ADDRESS	MIDLAND MARKETPLACE 3322 NORTH LOOP 250 WEST, SUITE 300 MIDLAND, TEXAS 79707
SITE MANAGEMENT	JAMES L. WALKER 3120 ROSEWALK RD, SUITE 190 HOUSTON, TX 77042 713-210-3922
PROJECT ARCHITECT	PAUL ANTHONY - ASSOCIATES 8303 IH-10 WEST, SUITE 1010 SAN ANTONIO, TEXAS 78201 PH: (210)979-7700 F: (210)979-7784 CONTACT: PAUL SANCHEZ
PROJECT ENGINEERING	PAUL ANTHONY - ASSOCIATES 8303 IH-10 WEST, SUITE 1010 SAN ANTONIO, TEXAS 78201 PH: (210)979-7700 F: (210)979-7784 CONTACT: PAUL SANCHEZ

ABBREVIATIONS

A.F.F.	ABOVE FINISH FLOOR	H.C.	HOLLOW CORE
CNT.	CARPET	LAV.	LAVATORY
C.L.	CENTERLINE	MAS.	MASONRY
C.J.C.	CEILING	MIN.	MINIMUM
CONC.	CONCRETE	MT.	MARBLE
CONT.	CONTINUOUS	MTL.	METAL
CPT.	CARPET	N.I.C.	NOT IN CONTRACT
CTR'TP	COUNTERTOP	NO.	NUMBER
DR.	DOWN	O.C.	ON CENTER
DW.	DRAWER	O.D.	OUTSIDE DIMENSION
DWG.(S)	DRAWING (S)	O.H.	OVERHEAD
EA.	EACH	OPNG.	OPENING
EL.	ELEVATION	PLYWD.	PLYWOOD
EXIST.	EXISTING	RAD.	RADIUS
EXP.	EXPANSION	REF.	REFERENCE
F.P.	FIRE PROOF	REINF.	REINFORCED
FIN.	FINISH	S.C.	SOLID CORE
FR.	FRAME	SPEC.	SPECIFICATION
EXP. SD.	GYPSUM BOARD	T.A.T.	SUSPENDED ACOUSTICAL TILE
G.C.	GENERAL CONTRACTOR	TYP.	TYPICAL
GALV.	GALVANIZED	U.O.S.	UNLESS NOTED OTHERWISE
GL.	GLASS	V.C.T.	VINYL COMPOSITION TILE
HDW.	HARDWARE	W.	WITH
HGT.	HEIGHT	WD.	WOOD
H.M.	HOLLOW METAL	Y.	AT

LOCATION MAP / SITE PLAN



paa
ARCHITECTURE ENGINEERING INTERIORS
PAUL ANTHONY + ASSOCIATES, L.L.C.
8303 IH-10 WEST, SUITE 1010
SAN ANTONIO, TX 78230
O: (210) 979-7700 F: (210) 979-7784

ISSUE:
02/03/2011 PERMIT SET

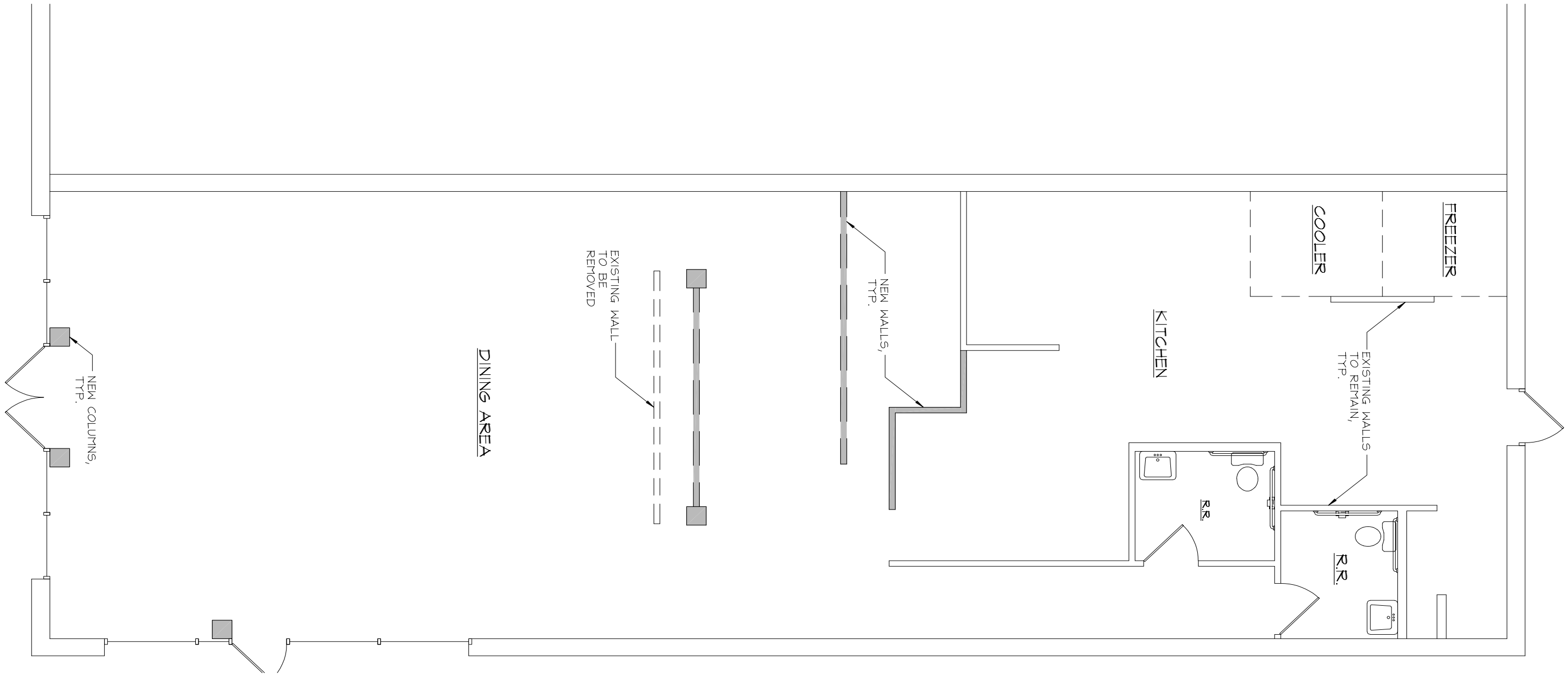
SMILING MOOSE DELI
MIDLAND MARKETPLACE
3322 NORTH LOOP 250 WEST, STE. 300
MIDLAND, TEXAS 79707

SEAL:

02/03/11

SHEET TITLE:
COVERSHEET

JOB: 10-019
DATE: FEB 03, 2011
SHEET:
A0.1



PACKET
24.193
August 11, 2020

PREPARED BY:
DRAFTING & DESIGN

NEW BUILDING FOR:
LA JAIVA
3322 N LOOP 250 W
SUITE C
MIDLAND TEXAS

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DATE:
MAY 29, 2020
DWG2020/ALEXQUEZADA/LAJAIVA-A1
JOB # JM120051

A FLOOR PLAN
SCALE 3/16" = 1'-0"

MIDLAND
Planning Division

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

Project Number: SUD-20-0080

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Alex Quezada		Phone (432) 770-6605 Email alexquezada2552@gmail.com	
Address 5216 Tremont Apt. 505	City Midland	State TX	Zip 79707
Property Owner Printed Name: RAAS Texas Ventures, LLC		Phone (972)465-8400 Email allison@realspacetexas.com	
Address 3990 East Side Avenue	City Dallas	State TX	Zip 75226
Representative *(if different from Applicant or Property Owner)* Firm: Aimee Valenzuela LLC Printed Name: Aimee Valenzuela		Phone (432) 694-7000 Email aimee@avllc.org	
Address 1401 N. Garfield St.	City Midland	State TX	Zip 79701

Street Address: 3322 North Loop 250 West, Suite 300

Business Name: La Jaiba, LLC/Trade Name: La Jaiba -Mexican Grill & Seafood

Legal Description
Lot: 23B Block: 40 Subdivision: Fairmont Park Addition Section 39

Current Zoning: RR, Regional Retail District

Reason for Request: Opening new bar and restaurant, TABC license requires city secretary seal

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: restaurant

Proposed/Current Days and Hours of Operation: Monday - Friday 7:00 a.m. to 10:00 p.m.
Saturday - Sunday 8:00 a.m. to 10:00 p.m.

Proposed Days and Hours of Alcohol Service: Monday - Saturday 10:00 a.m to 10:00 p.m.
Sunday 12:00 p.m. to 10:00 p.m.

Total Square Footage of Business: 2233 sq ft.

Square Footage of Alcohol Serviceable Area:

Restroom Fixtures: 1 *Men*	**Toilets/Urinals:** 1 toilet for men	**Bathroom Sinks:** 1 for men
1 *Women*	**Toilets:** 1 toilet for women	**Bathroom Sinks:** 1 for women

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JUN 2 4 2020

BY: .....

RECEIVED
JUN 2 4 2020
BY: .....

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
  - Seating
  - Exits
  - Restrooms
  - Kitchen (if applicable)
  - Total Square Footage
  - Serviceable Square Footage
- Dimensioned Site Plan showing:
  - Parking
  - Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature):	Date: 6/24/2020
Applicant (printed): Alejandro Quezada	
Property Owner (signature): authorized agent	Date: 6-24-20
Property Owner (printed): Jason Morahan	

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 Jason Morahan who, being by me duly sworn, upon oath says: That (s)he is authorized by RAAS Texas Ventures, LLC the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (*signature*)

Subscribed and sworn to before me, this 24th day of June, 2020, to certify which witness my hand and seal of office.

ANA LAZALDE
Notary Public, State of Texas
Comm. Expires 08-29-2021
Notary ID 3979010

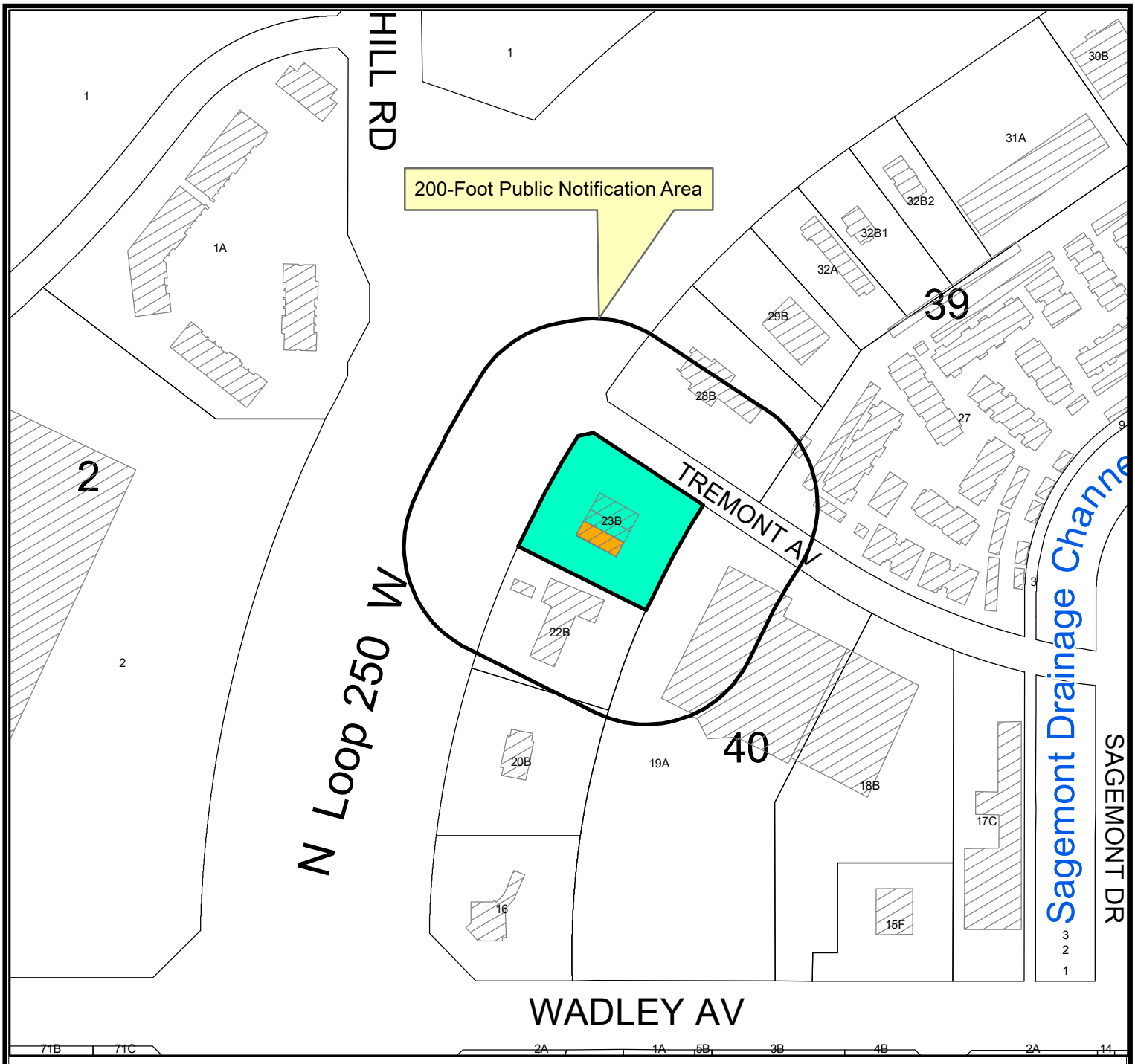
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

****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 # 179	☒ Plans in Digital Format (PDF/JPEG)
Received By: DL	Date: JUN 2 4 2020

RECEIVED
BY: DL

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



LOCATION MAP

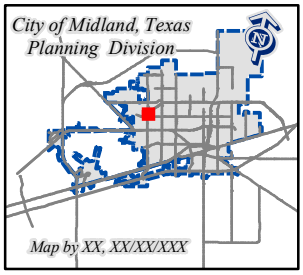
SUD-20-0080 **Scale: 1" = 250'**

Consider a request by Aimee Valenzuela for a Specific Use Designation, with Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant on a 2,233 square foot portion of Lot 23B, Block 40, Fairmont Park Addition, Section 39, City and County of Midland, Texas.

Generally located on the southeast corner of the intersection of North Loop 250 West and Tremont Avenue. (Council District 1)

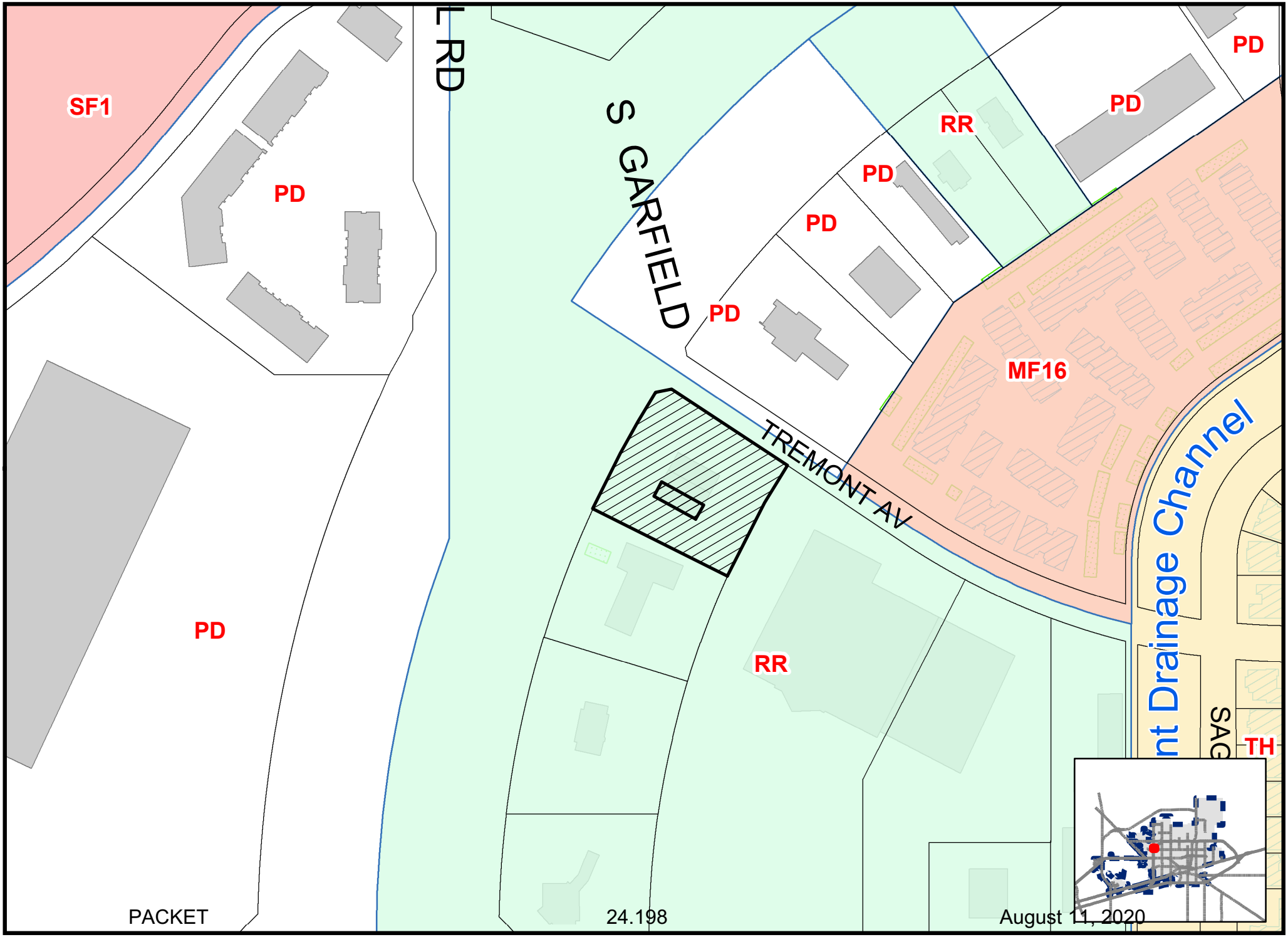
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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

August 11, 2020



Map By JM, 07/14/2020

SUD-20-0080

Scale: 1" = 200'

ZONING MAP

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City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 7/15/2020

TO: City Council / City Manager

FROM: Matt Carr, PE, City Engineer

SUBJECT: Motion on request by Newton Engineering, to defer water, wastewater, paving and sidewalk improvements for Skyway Addition, and to waive the corresponding financial security guarantee valued at $437,247.30, an amount equal to the estimated cost of construction. The subject property is generally located northwest of the intersection of SH 349 (FM 1788) and SH 191 and is located outside the corporate limits of the City of Midland, but is surrounded on all sides by the corporate limits of the City.

Purpose:

Consider a motion on request by Newton Engineering, to defer water, wastewater, paving and sidewalk improvements for Skyway Addition, and to waive the corresponding financial security guarantee valued at $437,247.30, an amount equal to the estimated cost of construction. The subject property is generally located northwest of the intersection of SH 349 (FM 1788) and SH 191 and is located outside the corporate limits of the City of Midland, but is surrounded on all sides by the corporate limits of the City.

Recommended City Council Action

☐ Approve ☒ Deny ☐ Directional / Informational

Fiscal Impact:

Water Distribution	$	116,238.00
Wastewater Collection	$	144,887.00
Paving	$	105,448.30
Sidewalk	$	70,674.00
Drainage	$	0.00
Total Value of Deferral	$	437,247.30

Cash deposit or other acceptable security (requested) $0

Discussion:

Skyway Addition is proposed as a 23.36-acre property being developed as an industrial site by FM 1788 Ventures LLC. The property is generally located on the Northwest corner of SH 349 (FM 1788) and SH 191, within the Extraterritorial Jurisdiction of the City of Midland. The property is not annexed, but all surrounding properties are within City Limits.

Newton Engineering, on behalf of the developer, has requested to defer public water, wastewater, paving, and sidewalk improvements, and waive the corresponding financial security guarantee, which is equal to 100% of the developer's portion of the construction costs. The developer is not requesting to defer the drainage study. The drainage study has been approved by City personnel and TxDOT.

Paving:

The property is located at the intersection of SH 191 and SH (FM 1788). SH 191 is in TxDOT's jurisdiction and will be maintained by TxDOT. The portion of 1788 along the frontage of Skyway Addition does not have curb and gutter, but this is consistent with other developments along 1788. It is staff's recommendation to **support** deferral of paving and curb/gutter along the platted frontage.

Wastewater:

Existing wastewater utilities exist on the east side of SH 349/FM 1788. The developer would need to bore under SH 349 in order to access the existing wastewater line. Also, the adjacent business park is currently using septic systems. This type of system would be consistent to what is being proposed at Skyway Addition. It is the staff's recommendation to **support** the deferral of wastewater improvements.

Water:

Existing water services are 500 feet to the North of the Property. Staff considers the availability of water, the proximity to surrounding annexed properties, and the need for fire protection, sufficient reason to request the applicant install water improvements. For these reasons, staff does **not support** the request to defer water services to the proposed business park.

Sidewalk:

Sidewalks are typically built along roadways constructed to city standards, with curb and gutter. The roadways along the platted frontage do not have curb and gutter. This condition is consistent with the other developments in the surrounding area. It is Staff's recommendation to **support** the deferral of sidewalks.

For the reasons stated above, staff **does not support** deferral of water improvements within this subdivision. However, Staff **does support** the deferral of wastewater, paving, and sidewalk and supports that Council waive the corresponding financial security guarantee for these improvements

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

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

NEWTON ENGINEERING, PC
3209 Caldera Blvd. F-13856 2500 E. 8th St.
Midland, Texas 79705 Odessa, Texas 79761
(432) 770-0499 (432) 935-0707

May 27, 2020

Matt Carr
City of Midland Texas
300 N. Loraine
Midland, Texas 79702

RE: Skyway Addition Request for a Deferral of Public Improvement Installation

Mr. Carr:

On behalf of my client, FM 1788 Ventures LLC, we respectfully request deferral of public improvements for Skyway Addition, and waiver of the corresponding financial security guarantee valued at $437,247.30, an amount equal to the estimated cost of construction. The subject property is a 23.363 acre tract of land located on the northwest corner of the intersection of Hwy 191 and FM 1788.

Fiscal Impact:

Water Distribution	$116,238.00
Waste Water Collection	$144,887.00
Paving	$105,448.30
Sidewalk	$70,674.00
Drainage	$0.00
Total Value of Deferral	$437,247.30
Cash deposit or other acceptable security (requested)	$0.00

Skyway Addition is a 23.363-acre industrial development for FM 1788 Ventures LLC located just outside the northwest boundary of the City of Midland corporate limits, in Midland County, Texas.

The plat consists of 6 industrial lots and 1 drainage area. The landowner proposes to develop the property as an industrial development.

The area surrounding the proposed development is comprised of industrial development. Hwy 191 frontage is a two-lane highway frontage TxDOT paved roadway with no curb and gutter. FM 1788 is a five-lane TxDOT paved roadway with no curb and gutter. The pavement surfaces exhibit heavy weathering, but otherwise appear fair in condition. The nearest City water distribution mains are located in Tower Rd approximately 535' north of the development. The nearest city sewer collection mains are located 1,235' east of the proposed development at the intersection of Hwy 191 and Hwy 1788.

1. Water Distribution: We request deferral of public water distribution improvements and waiver of the corresponding financial security guarantee, equal to construction costs estimated to be $116,238.00.
    - The closest existing City water is an 8-inch distribution main located on in Tower Rd. Looped extension of this main would require approximately 4,135 feet (0.78 miles) of pipe, as the line would be laid. The easements for the extension are not in place, therefore the property is subject to a non-accessible Public Water Supply (City of Midland Subdivision Regulations § 11-2-5(A)(3)(b)(2)), and it is therefore not reasonable to expect the property owners to extend a water main to their property.
    - Rather than install a water distribution system, the applicant intends to supply their own water with a water wells.
    - In summary: (1) the proposed plat is subject to a non-accessible Public Water Supply; (2) applicant intends for water wells as their water supply source; I recommend the staff support the deferral of water distribution mains and the entire security guarantee for said system be waived.

2. Wastewater Collection: We request deferral public wastewater collection improvements, and waiver of the corresponding financial security guarantee, equal to construction costs estimated to be $144,887.00.
    - An 8-inch public wastewater collection main is located on Hwy 191 at Hwy 1788. Extension of this main would require approximately 3,736 feet (0.71 miles) of pipe. Given the contours of the land, it will require a lift station be installed in order to connect to the existing 8-inch waterwater main. As with the water system, the proposed plat is subject to a non-accessible Wastewater System (City of Midland Subdivision Regulations § 11-2-5(A)(3)(b)(3)), and, therefore, it is not reasonable to expect the property owners to extend a wastewater main to their property.

- Rather than install a wastewater collection system, FM 1788 Ventures LLC proposes to dispose of the wastewater with an on-site sewage facility (i.e., septic system).
- In summary: (1)the proposed plat is subject to a non-accessible Wastewater System; (2) at more than 0.71 miles from the property, the likelihood that a gravity waste water collection system will be extended to the property in the foreseeable future is low; (3) on-site sewage facility can serve this lot. We request that you consider supporting the deferral of wastewater collection system and the entire security guarantee for said system be waived.

3. Paving: We are requesting to defer public paving improvements, and waiver of the corresponding financial security guarantee, equal to the construction costs estimated to be $105,448.30.
   - The subject property comprises of 23.363 acres with 702 feet of frontage along FM 1788 and 1,235 feet of frontage along Hwy 191.
   - The nearest roadway paved to City Standards, with full-depth structural section comprised of rock base under hot mix asphalt and bound on each side with concrete curb and gutters, is the Midland International Airport Industrial Park subdivision at Hwy 1788 and Loop 40., approximately 2.8 miles from this site as the crow flies.
   - Hwy 191 frontage Road is a two-lane highway frontage road paved to TxDOT standards with no curb and gutters. The road abuts the south side of Skyway Addition. These roads show heavy weathering but are otherwise in fair condition.
   - FM 1788 is a five-lane highway paved to TxDOT standards with no curb and gutters. The road abuts the east side of Skyway Addition. These roads show heavy weathering but are otherwise in fair condition
   - The City of Midland Subdivision Regulations § 11-2-6(D)(3) requires that, upon request, escrowed funds deposited by developers to guarantee public improvements such as paving must be returned, with interest, in 10 years if the City does not construct the improvements intended to be guaranteed.
   - In summary: (1) the property has direct access to improved state roadways; (2) at 2.8 miles from the nearest development meeting City of Midland Standards and the surrounding industrial operations, the possibility that development growth will reach the site within the 10 year horizon for escrowing securities is extremely low. We request your support for deferral of improvements to Hwy 191 frontage and FM 1788 and that

NEWTON ENGINEERING, PC
3209 Caldera Blvd. F-13856 2500 E. 8th St.
Midland, Texas 79705 Odessa, Texas 79761
(432) 770-0499 (432) 935-0707

the corresponding financial security guarantee for said improvements be waived.

4. Drainage: We are not requesting to defer the Drainage Study.

5. Sidewalks: We are requesting to defer public sidewalk improvements, and waiver of the corresponding financial security guarantee, equal to the construction costs estimated to be $70,674.00.
    - Sidewalk construction is typically accomplished during the building permit phase.
    - In this case, the roadways that abut the property do not have curb and gutters. Sidewalks are typically not installed along roadways that lack curb and gutters because the safe clear zone for pedestrians is wider than practically available within the usual right of way.
    - The likelihood of city sidewalks being extended to the region in the foreseeable future is remote.
    - In summary: (1) sidewalks would not typically be installed on Hwy 191 because the infrastructure is not in place to adequately protect pedestrians; and (2) the subject property is located in a neighborhood in which the likelihood that city sidewalks will be extended and constructed in the foreseeable future is remote. We request construction of sidewalks along Hwy 191 frontage be deferred, and the financial security guarantee for said improvements be waived.

We request that this item be placed on the next scheduled City Council meeting. If you have any questions or need additional information please let me know.

Sincerely,

Kyle L. Newton, P.E.

Kyle Newton, P.E.

Summary of Public Improvements - Opinion of Probable Cost

Location:	Skyway Addition
Engineer:	Kyle L. Newton

Summary	Total
Wastewater Collection Improvements	$144,887.00
Water Distribution Improvements	$116,238.00
Storm Sewer Improvements	$0.00
Paving Improvements	$105,448.30
Sidewalk Improvements	$70,674.00
Construction Total	**$437,247.30**

Wastewater Collection - Opinion of Probable Cost

Location: Skyway Addition
Engineer: Kyle L. Newton

Wastewater Main Improvements	Quantity	Unit	Unit Price	Total
12" SDR 35 PVC	0	LF	25.00	0.00
8" SDR 35 PVC	1937	LF	15.00	29,055.00
6" SDR 35 PVC	0	LF	13.00	0.00
Trenching/Backfill 0'-5'	0	LF	20.00	0.00
Length under paved surface:	0	LF		
Trenching/Backfill 5'-8'	0	LF	22.00	0.00
Length under paved surface:	0	LF		
Trenching/Backfill 8'-10'	1937	LF	25.00	48,425.00
Length under paved surface:	0	LF		
Trenching/Backfill 10'-12'	0	LF	30.00	0.00
Length under paved surface:	0	LF		
Trenching 12'-14'	0	LF	35.00	0.00
Length under paved surface:	0	LF		
Imported Backfill Material	0.00	TN	15.00	0.00
Imported Backfill Material - Unit Weight	120.00	PCF		
Replacement Manhole	0	EA	5000.00	0.00
New Manhole	2	EA	3500.00	7,000.00
Remove Manhole	0	EA	1000.00	0.00
Manhole Extra Depth (MH>5')	1	VF	400.00	400.00
Connect to Existing MH	0	EA	500.00	0.00
24" Bore & Steel Encasement	0	LF	480.00	0.00
18" Bore & Steel Encasement	0	LF	360.00	0.00
12" Bore & Steel Encasement	0	LF	240.00	0.00
4" Wastewater Service	6	EA	550.00	3,300.00
6" Wastewater Service	0	EA	750.00	0.00
Volume, Flowable Fill (3 Sac)	0.00	CY	105.00	0.00
Length of Flowable Fill (Under Pavmt):	0.00	LF		
Length of Flowable Fill (Other Misc):	0.00	LF		
Depth of Flowable Fill (ft):	2.00	FT		

Construction Subtotal **$88,180.00**

Wastewater Collection - Opinion of Probable Cost

Location: Skyway Addition
Engineer: Kyle L. Newton

Wastewater Main Improvements	Quantity	Unit	Unit Price	Total
Construction Subtotal (from prev page)				**$88,180.00**
Asphalt Pavement Repair	0	LF	20.00	0.00
Concrete Pavement Repair	0	LF	25.00	0.00
Erosion Protection ($/100LF)	19.37	cLF	500.00	9,685.00
Trench Protection (Trenching > 5')	1937	LF	2.00	3,874.00
Traffic Control / Job Site Safety	19.37	cLF	150.00	2,905.50
Construction Staking ($/100LF)	19.37	cLF	250.00	4,842.50
Contingency (nearest $100)	15	%	15%	16,400.00
Construction Total				**$125,887.00**
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10	LS	10%	13,000.00
Construction Administration	5	LS	5%	6,000.00
Engineering & Administration Total				**$19,000.00**
TOTAL				**$144,887.00**
$Cost / LF	1937	LF		**74.79969024**

Water Distribution - Opinion of Probable Cost

Location: Skyway Addition
Engineer: Kyle L. Newton

Water Main Improvements	Quantity	Unit	Unit Price	Total
12" C-900 DR 18	0	LF	42.00	0.00
Length under paved surface:	0	LF		
8" C-900 DR 18	1937	LF	30.00	58,110.00
Length under paved surface:	0	LF		
6" C-900 DR 18	0	LF	24.00	0.00
Length under paved surface:	0	LF		
Imported Backfill Material	0.00	TN	15.00	0.00
Imported Backfill Material, Unit Weight:	120.00	PCF		
Lower Water Main Under Existing Utliliy	0	EA	1000.00	0.00
16" Tapping Sleeve	0	EA	4000.00	0.00
12" Tapping Sleeve	0	EA	2500.00	0.00
8" Tapping Sleeve	2	EA	1500.00	3,000.00
6" Tapping Sleeve	0	EA	1200.00	0.00
12" Gate Valve	0	EA	1700.00	0.00
12" Gate Valve (MJ x F)	0	EA	2000.00	0.00
8" Gate Valve	2	EA	1100.00	2,200.00
8" Gate Valve (MJ x F)	0	EA	1100.00	0.00
6" Gate Valve	2	EA	1000.00	2,000.00
6" Gate Valve (MJ x F)	0	EA	1000.00	0.00
Fire Hydrant	2	EA	3000.00	6,000.00
Wet Connection	0	EA	2500.00	0.00
Ductile Iron Fittings	0.50	TN	4000.00	2,000.00
12" Joint Restraint	0	EA	200.00	0.00
8" Joint Restraint	0	EA	150.00	0.00
6" Joint Restraint	2	EA	100.00	200.00
24" Bore & Steel Encasement	0	LF	240.00	0.00
18" Bore & Steel Encasement	0	LF	180.00	0.00
12" Bore & Steel Encasement	0	LF	120.00	0.00
1" Water Service (short)	0	EA	600.00	0.00
1" Water Service (long)	0	EA	1100.00	0.00
2" Water Service (short)	0	EA	1500.00	0.00
2" Water Service (long)	0	EA	2500.00	0.00
Volume, Flowable Fill (3 Sac)	0.00	CY	105.00	0.00
Length of Flowable Fill (Under Pavmt):	0.00	LF		
Length of Flowable Fill (Other Misc):	0.00	LF		
Depth of Flowable Fill (ft):	2.00	FT		
Construction Subtotal				**$73,510.00**

Water Distribution - Opinion of Probable Cost

Location: Skyway Addition
Engineer: Kyle L. Newton

Water Main Improvements	Quantity	Unit	Unit Price	Total
Construction Subtotal (from prev page)				**$73,510.00**
Asphalt Pavement Repair	0	LF	25.00	0.00
Concrete Pavement Repair	0	LF	35.00	0.00
Erosion Protection ($/100LF)	19.37	cLF	500.00	9,685.00
Traffic Control / Job Site Safety ($/100LF)	19.37	cLF	150.00	2,905.50
Construction Staking ($/100LF)	19.37	cLF	100.00	1,937.00
Contingency (nearest $100)	15	%	15%	13,200.00
Construction Total				**$101,237.50**
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10	LS	10%	10,000.00
Construction Administration	5	LS	5%	5,000.00
Engineering & Administration Total				**$15,000.00**
TOTAL				**$116,238.00**
$Cost / LF	1937	LF		**60.00929272**

Storm Sewer - Opinion of Probable Cost

Location: Skyway Addition
Engineer: Kyle L. Newton

Wastewater Main Improvements	Quantity	Unit	Unit Price	Total
48" HDPE	0	LF	100.00	0.00
36" HDPE	0	LF	75.00	0.00
30" HDPE	0	LF	50.00	0.00
24" HDPE	0	LF	30.00	0.00
18" HDPE	0	LF	25.00	0.00
Trenching/Backfill 0'-5'	0	LF	40.00	0.00
Length under paved surface	0	LF		
Trenching/Backfill 5'-8'	0	LF	50.00	0.00
Length under paved surface	0	LF		
Trenching/Backfill 8'-10'	0	LF	70.00	0.00
Length under paved surface	0	LF		
Trenching/Backfill 10'-12'	0	LF	100.00	0.00
Length under paved surface	0	LF		
Trenching/Backfill 12'-14'	0	LF	150.00	0.00
Length under paved surface	0	LF		
Imported Backfill Material	0.00	TN	15.00	0.00
Imported Backfill Material - Unit Weight	120.00	PCF		
Replacement Manhole/Junction Box	0	EA	5000.00	0.00
New Manhole/Junction Box	0	EA	3500.00	0.00
ManholeJunction Box Extra Depth (MH>5')	0	VF	400.00	0.00
Connect to Existing MH/J-Box	0	EA	500.00	0.00
48" Bore & Steel Encasement	0	LF	720.00	0.00
36" Bore & Steel Encasement	0	LF	540.00	0.00
30" Bore & Steel Encasement	0	LF	450.00	0.00
24" Bore & Steel Encasement	0	LF	360.00	0.00
18" Bore & Steel Encasement	0	LF	240.00	0.00
Volume - Flowable Fill (3 Sac)	0.00	CY	105.00	0.00
Length of Flowable Fill (Under Pavmt):	0.00	LF		
Length of Flowable Fill (Other Misc):	0.00	LF		
Depth of Flowable Fill (ft)	0.00	FT		
Construction Subtotal				**$0.00**

Storm Sewer - Opinion of Probable Cost

Location: Skyway Addition
Engineer: Kyle L. Newton

Wastewater Main Improvements	Quantity	Unit	Unit Price	Total
Construction Subtotal (from prev page)				**$0.00**
Asphalt Pavement Repair	0	LF	20.00	0.00
Concrete Pavement Repair	0	LF	25.00	0.00
Erosion Protection ($/100LF)	0	cLF	500.00	0.00
Trench Protection (Trenching > 5')	0	LF	2.00	0.00
Traffic Control / Job Site Safety	0	cLF	150.00	0.00
Construction Staking ($/100LF)	0	cLF	250.00	0.00
Contingency (nearest $100)	15	%	15%	0.00
Construction Total				**$0.00**
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10	LS	10%	0.00
Construction Administration	5	LS	5%	0.00
Engineering & Administration Total				**$0.00**
TOTAL				**$0.00**
$Cost / LF	0	LF		**#DIV/0!**

Paving - Opinion of Probable Cost

Location: Skyway Addition
Engineer: Kyle L. Newton

Paving Improvements	Quantity	Unit
Paving Width (back-to-back)	0	FT
Length of Paving	1937	FT
Base Rock Depth - Bott Lift (6" min - 8" max)	6	in
Base Rock Depth - Top Lift (5", 6" or 8" max)	6	in
Base Rock Unit Weight (95% Standard Proctor)	120	PCF
Base Rock waste	0	%
HMAC thickness (in)	4	in
HMAC waste	0	%

Paving Improvements	Quantity	Unit	Unit Price	Total
ROW Preparation	1937	LF	10.00	19,370.00
24" Curb & Gutter	3874	LF	15.00	58,110.00
Excavation	143.48	CY	5.00	717.41
Scarify / Shape / Compact Sub-grade	0.00	SY	3.50	0.00
Base Rock - Bott Lift (Material Only)	0.00	TN	9.50	0.00
Base Rock - Top Lift (Material Only)	0.00	TN	9.50	0.00
Shape / Compact Base Rock - Bottom Lift	0.00	SY	3.50	0.00
Shape / Compact Base Rock - Top Lift	0.00	SY	3.50	0.00
Tack Coat	0.00	SY	1.00	0.00
HMAC (Material Only)	0.00	TN	80.00	0.00
Installation of HMAC Surface Course	0.00	SY	4.00	0.00
Erosion Protection ($/100 LF)	19.37	LS	1000.00	19,370.00
Construction Staking ($/100LF)	19.37	LS	500.00	9,685.00
Traffic Control / Job Site Safety ($/100LF)	19.37	LS	250.00	4,842.50
Contingency (nearest $100)	15	%	15%	16,800.00
Construction Total				**$128,894.91**

Paving - Opinion of Probable Cost

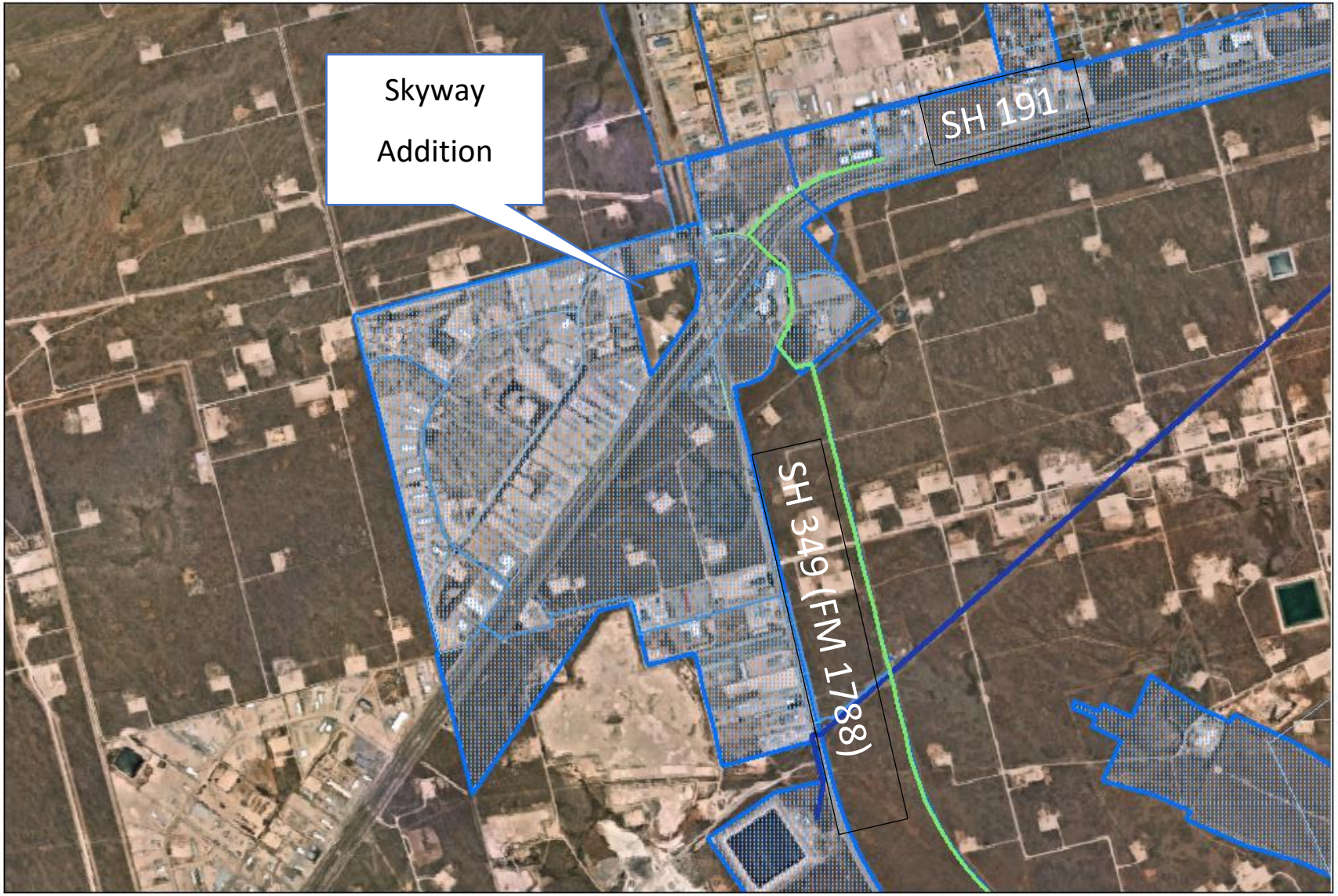
Location: Skyway Addition
Engineer: Kyle L. Newton

Paving Improvements	Quantity	Unit	Unit Price	Total
Construction Total (from prev page)				**$128,894.91**
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10	LS	10%	13,000.00
Construction Administration	5	LS	5%	6,000.00
Engineering & Administration Total				**$19,000.00**
TOTAL				**$147,895.00**
Developers Share	71%			**$105,448.30**
$Cost / LF	1937	LF		**76.35260712**

Sidewalk - Opinion of Probable Cost

Location: Skyway Addition
Engineer: Kyle L. Newton

Sidewalk Improvements	Quantity	Unit	Unit Price	Total
Sidewalk Width	5	Ft		
Length of Sidewalk	1937	LF		
4" Concrete Sidewalks	9685	SF	6.75	65373.75
Construction Total				**$65,373.75**
Engineering & Surveying	5	LS	5%	3,300.00
Construction Administration	3	LS	3%	2,000.00
Engineering & Administration Total				**$5,300.00**
TOTAL				**$70,674.00**



Location Map - Skyway Addition

City Council Meeting

Item Number: 26

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Mark Mason, Director

Subject: **Discussion and consideration of all matters incident and related to the issuance and sale of "City of Midland, Texas General Obligation Refunding Bonds, Taxable Series 2020," including the adoption of an ordinance authorizing the issuance of such bonds, establishing parameters for the sale and issuance of such bonds and delegating certain matters to an authorized official of the City. (FINANCE)**

Purpose:

Adoption of an ordinance to issue the City of Midland, Texas General Obligation Refunding Bonds, Taxable Series 2020.

Recommended City Council Action:

Approve

Fiscal Impact:

Total issuance size for the City of Midland, Texas General Obligation Refunding Bonds, Taxable Series 2020 is a not-to-exceed $21.5 million. Proposed savings are estimated at $94,000 per year or $1.3 million at a minimum up to approximately $155,000 per year or $2.1 million at the top end over the remaining term of the bonds. Fees incidental to the sale of the bonds will be paid for from bond proceeds.

Discussion:

This bond issuance will refund the Tax and Limited Pledge Revenue Certificates of Obligation, Series 2014. This ordinance provides for the Delegation of Authority to the Pricing Officer, the City Manager or the Finance Director, allowing for the City to take the most advantageous pricing to fulfill the obligations of the ordinance. There term of the ordinance is six months to issue the bonds.

City staff estimates the net present value savings of the bond to be 10.16% or $1.8 million with the delegation of pricing allowing for the issuance of the bonds at a minimum net present value savings of 6% or $1,078,384.

City Manager's Office

ORDINANCE NO. 20-____

AN ORDINANCE authorizing the issuance of "CITY OF MIDLAND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, TAXABLE SERIES 2020"; levying a continuing direct annual ad valorem tax for the payment of said Bonds; resolving other matters incident and related to the issuance, sale, payment and delivery of said Bonds; establishing procedures for the sale and delivery of said Bonds; and delegating matters relating to the sale and issuance of said Bonds to an authorized City official.

WHEREAS, the City of Midland, Texas (the "City") currently has outstanding obligations of the City of the following issue or series, to wit: City of Midland, Texas, Tax and Limited Pledge Revenue Certificates of Obligation, Series 2014, dated January 15, 2014 (hereinafter called the "Refunded Obligations");

WHEREAS, pursuant to the provisions of Texas Government Code, Chapter 1207, as amended ("Chapter 1207"), the City Council of the City (the "Council") is authorized to issue refunding bonds and deposit the proceeds of sale directly with any place of payment for the Refunded Obligations, or other authorized depository, and such deposit, when made in accordance with Chapter 1207 and the ordinances authorizing the issuance of the Refunded Obligations, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

WHEREAS, the City shall by this Ordinance, in accordance with the provisions of Texas Government Code, Section 1207.007, as amended, delegate to a Pricing Officer (hereinafter designated) the authority to determine the principal amount and certain other specified terms of the Bonds to be issued, negotiate the terms of sale thereof and select the specific maturities, in whole or in part, of the Refunded Obligations to be refunded; and

WHEREAS, the Council hereby finds and determines that it is a public purpose and in the best interests of the City to refund the Refunded Obligations in order to achieve a present value debt service savings, with such savings, among other information and terms, to be included in a pricing certificate (the "Pricing Certificate") to be executed by the Pricing Officer, all in accordance with the provisions of Texas Government Code, Section 1207.007, as amended; now, therefore

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

SECTION 1. Authorization - Series Designation - Principal Amount - Purpose - Bond Date. General obligation refunding bonds of the City shall be and are hereby authorized to be issued in the maximum aggregate principal amount hereinafter set forth to be designated and bear the title "CITY OF MIDLAND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, TAXABLE SERIES 2020", or such other designation as specified in the Pricing Certificate (herein referred to as the "Bonds"), for the purpose of providing funds for the discharge and final payment of certain obligations of the City (described in the preamble hereof and finally identified in the Pricing Certificate and referred to herein as the "Refunded Obligations") and to pay the costs and expenses of issuance, in accordance with the authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Chapter 1207. The Bonds shall be dated (the "Bond Date") as provided in the Pricing Certificate.

SECTION 2. Fully Registered Obligations - Terms. The Bonds shall be issued as fully registered obligations, without coupons, and (other than the Initial Bonds referenced in Section 8

hereof) shall be in denominations of $5,000 or any integral multiple (within a Stated Maturity) thereof, shall be lettered "R" and numbered consecutively from one (1) upward and principal shall become due and payable on a date certain in each of the years (the "Stated Maturities") and in amounts and bear interest at the rate(s) per annum in accordance with the details of the Bonds as set forth in the Pricing Certificate.

The Bonds shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate at the rate(s) per annum shown in the Pricing Certificate (calculated on the basis of a 360-day year consisting of twelve 30-day months). Interest on the Bonds shall be payable in each year, on the dates, and commencing on the date, set forth in the Pricing Certificate.

SECTION 3. Delegation of Authority to Pricing Officer. (a) As authorized by Texas Government Code, Section 1207.007, as amended, the City Manager or Director of Finance of the City (either, the "Pricing Officer") is hereby authorized to act on behalf of the City in selling and delivering the Bonds and carrying out the other procedures specified in this Ordinance, including selection of the specific maturities or series, in whole or in part, of the Refunded Obligations to be refunded, determining the aggregate principal amount of the Bonds, the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which of the Bonds will be sold, the manner of sale (negotiated, privately placed or competitively bid), the years in which of the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the date from which interest on the Bonds will accrue, the interest payment dates, the record date, the price and terms upon and at which of the Bonds shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, determination of the use of a book-entry-only securities clearance, settlement and transfer system, the designation of a paying agent/registrar, the designation of an escrow agent, if applicable, satisfying the requirements of Chapter 1207, the terms of any bond insurance applicable to the Bonds, including any modification of the continuing disclosure undertaking contained in Section 31 hereof as may be required by the purchasers of the Bonds in connection with any amendments to Rule 15c2-12, and all other matters relating to the issuance, sale and delivery of the Bonds, all of which shall be specified in the Pricing Certificate, provided that:

(i) the aggregate original principal amount of the Bonds shall not exceed $21,500,000;

(ii) the refunding must produce a net present value debt service savings of at least 6.00%, net of any City contribution;

(iii) the maximum true interest cost for the Bonds shall not exceed 3.50%; and

(iv) the maximum maturity date of the Bonds shall not exceed March 1, 2034.

The execution of the Pricing Certificate shall evidence the sale date of the Bonds by the City to the Purchasers (hereinafter defined).

If the Pricing Officer determines that bond insurance results in a net reduction of the City's interest costs associated with the Bonds, then the Pricing Officer is authorized, in connection with effecting the sale of such series of the Bonds, to make the selection of the municipal bond

insurance company for such series of the Bonds (the "Insurer") and to obtain from the Insurer a municipal bond insurance policy or policies in support of the Bonds. The Pricing Officer shall have the authority to determine the provisions of the commitment for any such policy and to execute any documents to effect the issuance of said policy by the Insurer.

(b) In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount for the Bonds not exceeding the amount authorized in subsection (a)(i) above, which shall be sufficient in amount to provide for the purposes for which the Bonds are authorized and to pay costs of issuing the Bonds. The delegation made hereby shall expire if not exercised by the Pricing Officer within 180 days of the date hereof. The Bonds shall be sold to the purchaser(s)/underwriter(s) named in the Pricing Certificate (the "Purchasers"), at such price and with and subject to such terms as set forth in the Pricing Certificate and the Purchase Contract (hereinafter defined), and may be sold by negotiated or competitive sale or by private placement. The Pricing Officer is hereby delegated the authority to designate the Purchasers, which delegation shall be evidenced by the execution of the Pricing Certificate.

SECTION 4. Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar (as defined below), and the payment thereof shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of the paying agent/registrar for the Bonds (the "Paying Agent/Registrar") shall be as provided in the Pricing Certificate. Books and records relating to the registration, payment, exchange and transfer of the Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Pricing Officer is hereby authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Bonds. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

The Bonds shall be payable at their Stated Maturities or upon their earlier redemption, only upon the presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices provided in the Pricing Certificate (the "Designated Payment/Transfer Office"); provided, however, while a Bond is registered to Cede & Co., the payment thereof upon a partial redemption of the principal amount thereof may be accomplished without presentation and surrender of such Bond. Interest on a Bond shall be paid by the Paying Agent/Registrar to the Holders whose names appears in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and such interest payments shall be made (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying

Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on maturities of the Bonds on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such past due interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of the Bonds appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 5. Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every Holder of the Bonds issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Bond may be transferred or exchanged for Bonds of like maturity and amount and in authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar at its Designated Payment/Transfer Office for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for assignment or transfer of any Bond (other than the Initial Bonds authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, new Bonds, executed on behalf of and furnished by the City, shall be registered and issued to the assignee or transferee of the previous Holder; such Bonds to be of authorized denominations, of like Stated Maturity, and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds (other than the Initial Bonds authorized in Section 8 hereof) may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds, executed on behalf of and furnished by the City, to the Holder requesting the exchange.

All Bonds issued upon any such transfer or exchange of Bonds shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States Mail, first class postage prepaid, to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the City, evidencing the same obligation to pay and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered, and delivered in lieu thereof pursuant to the provisions of Section 11 hereof, and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

SECTION 6. Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in the applicable sections hereof relating to the payment and transfer/exchange of the Bonds, the City hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement, and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum, as amended, the Blanket Issuer Letter of Representations, by and between the City and DTC, and the Letter of Representations from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement") relating to the Bonds.

In the event the Pricing Officer elects to utilize DTC's "Book-Entry-Only" System, which election shall be made by the Pricing Officer in the Pricing Certificate, pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC and who shall hold said Bonds for its participants (the "DTC Participants"). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Bonds, the City covenants and agrees with the Holders of the Bonds to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Sections 4 and 5 hereof.

SECTION 7. Execution - Registration. The Bonds shall be executed on behalf of the City by the Mayor or the Mayor Pro Tem under the City's seal reproduced or impressed thereon and attested by the City Secretary. The signature of said officials on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officials of the City on the date of the adoption of this Ordinance shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Texas Government Code, Chapter 1201, as amended.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas, or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered, and delivered.

SECTION 8. Initial Bonds. The Bonds herein authorized shall be initially issued as fully registered Bonds as specified in the Pricing Certificate, being a single, fully registered Bond in the aggregate principal amount noted and principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1 (hereinafter called the "Initial Bond") and the Initial Bond shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond shall be the Bond submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9. Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and, with the Bonds to be completed and modified with the information set forth in the Pricing Certificate, may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends on insured Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the Pricing Officer. The Pricing Certificate shall set forth the final and controlling forms and terms of the Bonds. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds and the Initial Bond shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

(b) Form of Definitive Bonds.

REGISTERED NO. R-_____ PRINCIPAL AMOUNT $_____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF MIDLAND, TEXAS
GENERAL OBLIGATION REFUNDING BOND
TAXABLE SERIES 2020

Bond Date:	Interest Rate:	Stated Maturity:	CUSIP No.:
_____, 2020	_____%	_____, 20__	_____

Registered Owner:

Principal Amount: DOLLARS

The City of Midland (hereinafter referred to as the "City"), a body corporate and political subdivision in the Counties of Midland and Martin, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated [(or so much thereof as shall not have been paid upon prior redemption)], and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the _____) at the per annum rate of interest specified above computed on the basis of a 360 day year of twelve 30 day months; such interest being payable on _____ and _____ in each year, commencing _____, 20__, until maturity [or prior redemption]. Principal of this Bond is payable at its Stated Maturity [or upon its prior redemption] to the registered owner hereof, upon presentation and surrender, at the designated offices of the Paying Agent/Registrar executing the registration certificate appearing hereon, initially in _____, _____, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office")[; provided, however, while this Bond is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Bond]. Interest is payable to the registered owner of this Bond (or Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on

which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of $_____ (herein referred to as the "Bonds") for the purpose of providing funds for the discharge and final payment of certain outstanding obligations of the City and to pay the costs and expenses of issuance, under and in strict conformity with the Constitution and laws of the State of Texas, including Texas Government Code, Chapter 1207, as amended, and pursuant to an Ordinance adopted by the City Council of the City (herein referred to as the "Ordinance").

[The Bonds shall not be subject to redemption prior to maturity]

[The Bonds maturing on the dates hereinafter identified (the "Term Bonds") are subject to mandatory redemption prior to maturity with funds on deposit in the Interest and Sinking Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the date of redemption, and without premium, on the dates and in the principal amounts as follows:

Term Bonds due _____, 20__		Term Bonds due _____, 20__	
Redemption Date	Principal Amount	Redemption Date	Principal Amount
_____, 20__		_____, 20__	
_____, 20__*		_____, 20__*	

* Stated maturity.

The particular Term Bonds of a Stated Maturity to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Bonds for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the City, by the principal amount of Term Bonds of like Stated Maturity which, at least fifty (50) days prior to a mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.]

[The Bonds maturing on and after _____, 20__, may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part in principal amounts of $5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on _____, 20__, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to the date fixed for any redemption of Bonds, the City shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Bond to be redeemed, in whole or in part, at the address shown on the Security Register and subject to the terms and provisions relating thereto contained

in the Ordinance. If a Bond (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Bond (or the portion of its principal sum to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the principal amount of a Bond is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Bond is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such Bond to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Bond redeemed in part.

With respect to any optional redemption of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.]

The Bonds are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the owner or holder of this Bond by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its maturity [or redemption], and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal at the Stated Maturity[, or its redemption, in whole or in part], and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a Bond on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each registered owner of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and declared that the City is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the City have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Bonds do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by the levy of a tax as aforestated. In case any provision in this Bond shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be duly executed under the official seal of the City.

CITY OF MIDLAND, TEXAS

ATTEST:

_____
[Mayor][Mayor Pro Tem]

_____
City Secretary

(City Seal)

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Bond only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER	(	
OF PUBLIC ACCOUNTS	(	REGISTER NO. _____
THE STATE OF TEXAS	(	

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

_____
Comptroller of Public Accounts
of the State of Texas

(Seal)

(d) Form of Certificate of Paying Agent/Registrar to appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, as shown by the records of the Paying Agent/Registrar.

The designated office of the Paying Agent/Registrar in _____, is the Designated Payment/Transfer Office for this Bond.

_____
_____
as Paying Agent/Registrar

Registration Date:

_____

By: _____
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee): _____

_____

(Social Security or other identifying number: _____

_____) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

Signature guaranteed:

_____

_____

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular.

(f) The Initial Bond shall be in the form set forth therefor in subsection (b) of this Section, except the heading and paragraph one shall be amended to read as follows:

NO. T-1 $_____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF MIDLAND, TEXAS
GENERAL OBLIGATION REFUNDING BOND
TAXABLE SERIES 2020

Bond Date: _____, 2020

Registered Owner:

Principal Amount: DOLLARS

The City of Midland (hereinafter referred to as the "City"), a body corporate and political subdivision in the Counties of Midland and Martin, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the registered owner named above, or the registered assigns thereof, the Principal Amount hereinabove stated on _____ in the years and in principal amounts in accordance with the following schedule:

STATED MATURITY	PRINCIPAL AMOUNT	INTEREST RATE(S)

(Information to be inserted from Pricing Certificate)

[(without right of prior redemption)][(or so much principal thereof as shall not have been redeemed prior to maturity)] and to pay interest on the unpaid principal installments hereof from the _____ at the per annum rates of interest specified above computed on the basis of a 360-

day year of twelve 30-day months; such interest being payable on _____, 20__, and each _____ and _____ thereafter, until maturity [or prior redemption]. Principal installments of this Bond are payable in the year of maturity [or on a redemption date] to the registered owner hereof by _____ (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices, initially in _____, _____, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the _____ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the registered owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

SECTION 10. Levy of Taxes. To provide for the payment of the "Debt Service Requirements" of the Bonds, being (i) the interest on the Bonds and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount is the greater) there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the City, within the limitations by law prescribed, sufficient to pay such Debt Service Requirements on the Bonds as the same becomes due and payable; and such tax hereby levied on each one hundred dollars' valuation of taxable property in the City for the payment of the Debt Service Requirements of the Bonds shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Bonds while Outstanding; full allowance being made for delinquencies and costs of collection; the taxes levied, assessed, and collected for and on account of the Bonds shall be accounted for separate and apart from all other funds of the City and shall be deposited in the "SPECIAL TAXABLE SERIES 2020 GENERAL OBLIGATION REFUNDING BOND FUND", or such other fund designation as specified in the Pricing Certificate (the "Interest and Sinking Fund") to be maintained at an official depository of the City's funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Bonds.

PROVIDED, however, with regard to any payment to become due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date, if any, sufficient current funds will be available and are hereby appropriated to make such payments; and the Mayor, Mayor Pro Tem, City Manager, Director of Finance and City Secretary of the City, individually or jointly, are hereby authorized and directed to transfer and deposit in the Interest and Sinking Fund such current funds which, together with the accrued interest received from the initial purchasers, will be sufficient to pay the payments due on the Bonds prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Bond Date.

The Mayor, Mayor Pro Tem, City Manager, Director of Finance and City Secretary of the City, individually or jointly, are hereby authorized and directed to cause to be transferred to the Paying Agent/Registrar for the Bonds, from funds on deposit in the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Bonds as the same accrues or matures or comes due by reason of redemption prior to maturity; such transfers of funds to be made in such manner as will cause collected funds to be deposited with the Paying Agent/Registrar on or before each principal and interest payment date for the Bonds.

SECTION 11. Mutilated - Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, or destroyed, lost, or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond; and with respect to a lost, destroyed, or stolen Bond, a replacement Bond may be issued only upon the approval of the City and after (i) the filing by the Holder with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss, or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost, or stolen.

Every replacement Bond issued pursuant to this Section shall be a valid and binding obligation of the City, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

SECTION 12. Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance and the Pricing Certificate, then the pledge of taxes levied under this Ordinance and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting or consulting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The City covenants that no

deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

Unless otherwise provided in the Pricing Certificate, the term "Government Securities" shall mean (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations unconditionally guaranteed or insured by the agency or instrumentality and, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iv) any other then authorized securities or obligations that may be used to defease obligations such as the Bonds under the then applicable laws of the State of Texas.

The City reserves the right, subject to satisfying the requirements of (i) and (ii) above, to substitute other Government Securities for the Government Securities originally deposited, to reinvest the uninvested moneys on deposit for such defeasance and to withdraw for the benefit of the City moneys in excess of the amount required for such defeasance.

Upon such deposit as described above, such Bonds shall no longer be regarded to be outstanding or unpaid. Provided, however, the City has reserved the option, to be exercised at the time of the defeasance of the Bonds, to call for redemption, at an earlier date, those Bonds which have been defeased to their maturity date, if the City: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Bonds for redemption; (ii) gives notice of the reservation of that right to the Holders of the Bonds immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

SECTION 13. Ordinance a Contract - Amendments - Outstanding Bonds. This Ordinance, together with the Pricing Certificate, shall constitute a contract with the respective Holders of each such series from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Bond remains Outstanding except as permitted in this Section and in Section 31 hereof. The City may, without the consent of or notice to any Holders,

from time to time and at any time, amend this Ordinance or any provision in the Pricing Certificate in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Holders who own a majority of the aggregate of the principal amount of any affected Bonds then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance or any provision in the Pricing Certificate; provided that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of and interest on the Bonds, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required to be held by Holders for consent to any such amendment, addition, or rescission.

The term "Outstanding" when used in this Ordinance with respect to Bonds means, as of the date of determination, all Bonds within such series theretofore issued and delivered under this Ordinance, except:

(1) those Bonds within such series cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Bonds within such series deemed to be duly paid by the City in accordance with the provisions of Section 12 hereof; and

(3) those mutilated, destroyed, lost, or stolen Bonds within such series which have been replaced with Bonds registered and delivered in lieu thereof as provided in Section 11 hereof.

SECTION 14. Reserved.

SECTION 15. Sale of Bonds - Official Statement. The Bonds authorized by this Ordinance are to be sold by the City to the Purchasers in accordance with a bond purchase agreement in the event of a negotiated sale, letter agreement to purchase in the event of a private placement, or the successful bid form in the event of a competitive sale, as applicable (the "Purchase Contract"), the terms and provisions of which Purchase Contract are to be determined by the Pricing Officer in accordance with Section 3 hereof. The Pricing Officer is hereby authorized and directed to execute the Purchase Contract for and on behalf of the City, as the act and deed of this Council, and to make a determination as to whether the terms are in the City's best interests, which determination shall be final.

With regard to such terms and provisions of the Purchase Contract, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Bonds;
2. The details of any public offering of the Bonds by the Purchasers, if any;
3. The details of any Official Statement or similar disclosure document (and, if appropriate, any Preliminary Official Statement) relating to the Bonds and the City's Rule 15c2-12 compliance, if applicable;
4. A security deposit for the Bonds, if any;

5. The representations and warranties of the City to the Purchasers;

6. The details of the delivery of, and payment for, the Bonds;

7. The Purchasers' obligations under the Purchase Contract;

8. The certain conditions to the obligations of the City under the Purchase Contract;

9. Termination of the Purchase Contract;

10. Particular covenants of the City;

11. The survival of representations made in the Purchase Contract;

12. The payment of any expenses relating to the Purchase Contract;

13. Notices; and

14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Bonds.

The Mayor or Mayor Pro Tem and City Secretary of the City are further authorized and directed to deliver for and on behalf of the City copies of a Preliminary Official Statement and Official Statement prepared in connection with the offering of the Bonds by the Purchasers, in final form as may be required by the Purchasers, and such final Official Statement as delivered by said officials shall constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 16. Escrow Agreement. An escrow agreement (the "Escrow Agreement") by and between the City and an authorized escrow agent (the "Escrow Agent"), if any such agreement is required in connection with the issuance of the Bonds, shall be attached to and approved in the Pricing Certificate. Such Escrow Agreement is hereby authorized to be finalized and executed by the Pricing Officer for and on behalf of the City and as the act and deed of this Council; and such Escrow Agreement as executed by said Pricing Officer shall be deemed approved by this Council and constitute the Escrow Agreement herein approved. With regard to the finalization of certain terms and provisions of any Escrow Agreement, a Pricing Officer is hereby authorized to come to an agreement with the Escrow Agent on the following details, among other matters:

1. The identification of the Refunded Obligations;

2. The creation and funding of the Escrow Fund or Funds; and

3. The Escrow Agent's compensation, administration of the Escrow Fund or Funds, and the settlement of any paying agent's charges relating to the Refunded Obligations.

Furthermore, appropriate officials of the City in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the escrowed securities referenced in the Escrow Agreement, if any, and the delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Purchasers for deposit to the credit of the "CITY OF MIDLAND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2020 ESCROW FUND" (referred to herein as the "Escrow Fund"), or such other designation as specified in the Pricing Certificate; all as contemplated and provided in Chapter 1207, the Ordinance, the Pricing Certificate and the Escrow Agreement.

On or immediately prior to the date of the delivery of the Bonds to the Purchasers, the Pricing Officer, or other authorized City official listed in Section 33 hereof, shall also cause to be

deposited (and is hereby authorized to cause to be deposited) with the Escrow Agent from moneys on deposit in the debt service fund(s) maintained for the payment of the Refunded Obligations an amount which, together with the proceeds of sale of the Bonds, and the investment earnings thereon, will be sufficient to pay in full the Refunded Obligations (or the amount of accrued interest due thereon) scheduled to mature and authorized to be redeemed on the earliest date established in the Pricing Certificate for the redemption of any of the Refunded Obligations (or the earliest date of payment, to be made from moneys in the Escrow Fund(s), as established in the Pricing Certificate, of the amount of accrued interest due thereon).

SECTION 17. Refunded Obligations. (a) In order to provide for the refunding, discharge, and retirement of the Refunded Obligations as selected by the Pricing Officer, the Refunded Obligations, identified, described, and in the amounts set forth in the Pricing Certificate, are called for redemption on the first date(s) such Refunded Obligations are subject to redemption or such other date specified by the Pricing Officer in the Pricing Certificate at the price of par plus accrued interest to the redemption date, and notice of such redemption shall be given in accordance with the applicable provisions of the ordinance adopted by this Council, which authorized the issuance of the Refunded Obligations. The Pricing Officer is hereby authorized and directed to issue or cause to be issued a Notice of Redemption for the Refunded Obligations in substantially the form set forth as an exhibit to the Pricing Certificate, to the paying agent/registrar for Refunded Obligations, in accordance with the redemption provisions applicable to the Refunded Obligations.

(b) The paying agent/registrar for Refunded Obligations is hereby directed to provide the appropriate notice of redemption as required by the ordinance authorizing the issuance of the Refunded Obligations and is hereby directed to make appropriate arrangements so that the Refunded Obligations may be redeemed on the respective redemption date specified in the Pricing Certificate.

(c) The source of funds for payment of the principal of and interest on the Refunded Obligations on their respective maturity or redemption date shall be from the funds deposited with the Escrow Agent, pursuant to the Escrow Agreement, if any, or with the paying agent/registrar for the Refunded Obligations pursuant the provisions of Chapter 1207, this Ordinance and the Pricing Certificate finalized by the Pricing Officer.

SECTION 18. Control and Custody of Bonds. The Mayor or Mayor Pro Tem of the City shall be and is hereby authorized to take and have charge of all necessary ordinances, resolutions, orders and records, including the definitive Bonds and the Initial Bonds, pending the investigation and approval of the Initial Bonds by the Attorney General of the State of Texas, and the registration of the Initial Bonds to the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

SECTION 19. Proceeds of Sale. Immediately following the delivery of the Bonds, the proceeds of sale (less those proceeds of sale designated to pay costs of issuance and any accrued interest received from the Purchasers of the Bonds or additional proceeds being deposited to the Interest and Sinking Fund) shall be deposited with the Escrow Agent for application and disbursement in accordance with the provisions of the Escrow Agreement or deposited with the paying agent/registrars for the Refunded Obligations for the payment and redemption of the Refunded Obligations. The proceeds of sale of the Bonds not so deposited with the Escrow Agent (or the paying agent/registrars for the Refunded Obligations) for the refunding of the Refunded Obligations shall be disbursed for payment of costs of issuance, or deposited in the Interest and Sinking Fund for the Bonds, all in accordance with written

instructions from the City or its financial advisor. Such proceeds of sale may be invested in authorized investments and any investment earnings realized may be (with respect to the accrued interest received from the Purchasers) deposited in the Interest and Sinking Fund as shall be determined by this Council.

Additionally, the Pricing Officer shall determine the amount of any City contribution to the refunding from moneys on deposit in the interest and sinking fund(s) maintained for the payment of the Refunded Obligations.

SECTION 20. Notices to Holders - Waiver. Wherever this Ordinance or the Pricing Certificate provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case in which notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance or the Pricing Certificate provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 21. Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Bonds held by the Paying Agent/Registrar shall be returned to the City.

SECTION 22. Bond Counsel Opinion. The obligation of the Purchasers to accept delivery of the Bonds is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Attorneys, Dallas, Texas, approving the Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Bonds. A true and correct reproduction of said opinion is hereby authorized to be printed on the Bonds, or an executed counterpart thereof is hereby authorized to be either printed on definitive printed obligations or deposited with DTC along with the global certificates for the implementation and use of the Book-Entry-Only System used in the settlement and transfer of the Bonds. The City Council confirms the continuation of the engagement of Norton Rose Fulbright US LLP as the City's bond counsel.

SECTION 23. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof, and neither the City nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 24. Benefits of Ordinance. Nothing in this Ordinance or the Pricing Certificate, expressed or implied, is intended or shall be construed to confer upon any person other than the

City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof or the Pricing Certificate, this Ordinance and all of its provisions and the Pricing Certificate being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar, and the Holders.

SECTION 25. Inconsistent Provisions. All ordinances or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance or the Pricing Certificate are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 26. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 27. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

SECTION 28. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

SECTION 29. Severability. If any provision of this Ordinance or the Pricing Certificate or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the Pricing Certificate and the application thereof to other circumstances shall nevertheless be valid, and this Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 30. Incorporation of Findings and Determinations. The findings and determinations of this Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 31. Continuing Disclosure Undertaking. This Section shall apply unless the Pricing Officer determines in the Pricing Certificate that an undertaking is not required pursuant to the Rule (defined below).

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

"*Financial Obligation*" means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

"*MSRB*" means the Municipal Securities Rulemaking Board.

"*Rule*" means SEC Rule 15c2-12, as amended from time to time or officially interpreted by the SEC.

"*SEC*" means the United States Securities and Exchange Commission.

(b) Annual Reports. The City shall provide annually to the MSRB (1) within six months after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, financial information and operating data with respect to the City of the general type included in the final Official Statement approved by the Pricing Officer and described in the Pricing Certificate and (2) within twelve months after the end of each fiscal year, beginning with the year stated in the Pricing Certificate, if not provided as part of such financial information and operating data, audited financial statements of the City. If audited financial statements are not available by the required time, the City will provide unaudited financial statements by the required time, and audited financial statements when and if such audited statements become available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in the Pricing Certificate, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

(c) Notice of Certain Events. The City shall provide notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to

undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
15. Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding item 12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City and (b) the City intends the words used in the immediately preceding items 15 and 16 in this Section to have the meanings ascribed to them in SEC Release No. 34-83885, dated August 20, 2018.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB. All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section while, but only while, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give the notice required by subsection (c) hereof of any Bond calls and defeasance that cause the City to be no longer such an "obligated person."

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything to the contrary in this Ordinance, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent an underwriter of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 32. Municipal Bond Insurance. The Bonds may be sold with the principal of and interest thereon being insured by a municipal bond insurance provider authorized to transact business in the State of Texas. The Pricing Officer is hereby authorized to make the selection of municipal bond insurance (if any) for the Bonds and make the determination of the provisions of any commitment therefor.

SECTION 33. Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, City Manager, Director of Finance and City Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the City all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds, the Mayor, Mayor Pro Tem, City Manager, Director of Finance or Bond Counsel to the City are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents

authorized and approved by this Ordinance, including the Pricing Certificate: (i) in order to cure any ambiguity, formal defect or omission in this Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of this Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 34. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 35. Effective Date. In accordance with the provisions of Texas Government Code, Section 1201.028, as amended, this Ordinance shall be in force and effect from and after its passage on the date shown below and it is so ordained.

[*remainder of page intentionally left blank*]

PASSED AND ADOPTED, this August 11, 2020.

CITY OF MIDLAND, TEXAS

_____
Mayor

ATTEST:

_____
City Secretary

(City Seal)

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

PAYING AGENT/REGISTRAR AGREEMENT

PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT is entered into as of _____, 2020 (this "Agreement"), by and between _____, a banking association duly organized and existing under the laws of the United States of America (the "Bank") and the City of Midland, Texas (the "Issuer"),

RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "City of Midland, Texas General Obligation Refunding Bonds, Taxable Series 2020" (the "Securities"), dated _____, 2020, such Securities scheduled to be delivered to the initial purchasers thereof on or about _____, 2020; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE ONE
APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR

Section 1.01 Appointment. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 Compensation. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto; provided however, notwithstanding anything herein or in Annex A to the contrary, the aggregate value of this agreement shall be less than the dollar limitation set forth in Section 2271.002(a)(2) of the Texas Government Code, as amended.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

ARTICLE TWO
DEFINITIONS

Section 2.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

"Acceleration Date" on any Security means the date, if any, on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

"Authorizing Document" means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

"Bank Office" means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

"Financial Advisor" means Hilltop Securities Inc.

"Holder" and "Security Holder" each means the Person in whose name a Security is registered in the Security Register.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

"Predecessor Securities" of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

"Redemption Date", when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

"Responsible Officer", when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Security Register" means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

"Stated Maturity" means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 2.02 Other Definitions. The terms "Bank," "Issuer," and "Securities (Security)" have the meanings assigned to them in the recital paragraphs of this Agreement.

The term "Paying Agent/Registrar" refers to the Bank in the performance of the duties and functions of this Agreement.

ARTICLE THREE
PAYING AGENT

Section 3.01 Duties of Paying Agent. As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

_____
_____
_____

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder's risk and expense.

Section 3.02 Payment Dates. The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

ARTICLE FOUR
REGISTRAR

Section 4.01 Security Register - Transfers and Exchanges. The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the "Security Register") for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such other information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the Financial Industry Regulatory Authority, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 4.02 Securities. The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 4.03 Form of Security Register. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 4.04 List of Security Holders. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 4.05 Return of Cancelled Securities. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 4.06 Mutilated, Destroyed, Lost or Stolen Securities. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 4.07 Transaction Information to Issuer. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

ARTICLE FIVE
THE BANK

Section 5.01 Duties of Bank. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

Section 5.02 Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in

a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, the Financial Advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

Section 5.03 Recitals of Issuer. The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

Section 5.04 May Hold Securities. The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization. A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 5.06 Indemnification. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or willful misconduct on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 5.07 Interpleader. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

In the event the Bank becomes involved in litigation in connection with this Section, the Issuer, to the extent permitted by law, agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses, and attorney fees suffered or incurred by the Bank as a result. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in the City of _____, Texas.

Section 5.08 DTC Services. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for "Depository Trust Company" services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the "Operational Arrangements", which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

Section 5.09 Tax Reporting. The Bank shall timely obtain and retain all documents it is required to obtain and retain in connection with the requirements of the Internal Revenue Code of 1986, as amended, and the performance of its duties hereunder, including, without limitation, the obtaining and retaining, to the extent applicable, Forms W-8, W-9, furnished to the Holders. The Bank agrees that it will comply with withholding and information reporting requirements imposed on the Issuer and the Paying Agent in connection with payments on the Securities, including withholding and backup withholding requirements of the Internal Revenue Code of 1986, as amended, and the issuance of Form 1042-S and 1099 requirements. The Bank agrees to furnish the Issuer within a timely manner following written request therefore, a statement or statements showing amounts withheld, the dates of remittance to the Internal Revenue Service, the reasons for withholding and such other information or documents as the Issuer may reasonably request concerning such withholding. The Bank shall also, within a timely manner following receipt of a written request from the Issuer, furnish the Issuer with originals or copies (as specified by the Issuer in such written request) of all Internal Revenue Service forms or other documents, including, but not limited to Forms W-8, W-9, 1099, and 1042S in the possession of the Bank which relate to the Securities.

ARTICLE SIX
MISCELLANEOUS PROVISIONS

Section 6.01 Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 6.03 Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page(s) hereof.

Section 6.04 Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.05 Successors and Assigns. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 6.06 Severability. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07 Merger, Conversion, Consolidation, or Succession. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 6.08 Benefits of Agreement. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 6.09 Entire Agreement. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 6.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11 Termination. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying

Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12 Iran, Sudan or Foreign Terrorist Organizations. The Bank represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
https://comptroller.texas.gov/purchasing/docs/iran-list.pdf, or
https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Bank and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Bank understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Bank and exists to make a profit.

Section 6.13 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

[Remainder of page left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

_____ BANK

By:_____

Title:_____

Address: _____
_____

CITY OF MIDLAND, TEXAS

By: _____
Pricing Officer

Address: 300 N. Loraine
Midland, Texas 79701

City Council Meeting

Item Number: 27

Meeting Date: August 11, 2020

To: City Council / City Manager

From: Regina Stephenson, Director

Subject: **RESOLUTION APPROVING A CONTRACT WITH MUSCO SPORTS LIGHTING, LLC, THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF LED FIELD LIGHTING AT THE SCHARBAUER SPORTS COMPLEX AT A TOTAL COST OF $844,750.00; APPROVING $84,475.00 FOR CONTINGENCIES; AND APPROPRIATING $929,225.00 FOR SAID PROJECT (GENERAL SERVICES)**

Purpose:

Approval of a resolution awarding a contract to Musco Sports Lighting, LLC through Buyboard contract 592-19 for the purchase and installation of light emitting diode (LED) field lighting at the Scharbauer Sports Complex multi-purpose fields for a cost of $844,750.00 plus $84,475.00 in contingencies for a total project cost of $929,225.00.

Recommended City Council Action:

Approve

Fiscal Impact:

$844,750.00 plus $84,475.00 in contingencies for a total project cost of $929,225.00 from the Scharbauer Sports Complex Fund

Discussion:

Staff recommends awarding a contract to Musco Sports Lighting, LLC through Buyboard contract 592-19 for the purchase and installation of light emitting diode (LED) field lighting at the Scharbauer Sports Complex multi-purpose fields. Installing lighting at the fields will allow greater usage of the facility. Please see the attached memo from Tina Jauz, Community Services Director, for additional information.

Therefore, please consider a resolution awarding a contract to Musco Sports Lighting, LLC through Buyboard contract 592-19 for the purchase and installation of light emitting diode (LED) field lighting at the Scharbauer Sports Complex multi-purpose fields for a cost of $844,750.00 plus $84,475.00 in contingencies for a total project cost of $929,225.00.

Morris Williams Jr.

City Manager's Office

CITY OF MIDLAND

Community Services Department
Parks & Recreation Division
Interoffice Memorandum

Date: July 30, 2020
To: Robert Patrick, Assistant City Manager
From: Tina Jauz, Community Services Director
Subject: Purchase and Installation of a LED Field Lighting at Scharbauer Sports Complex Multi-Purpose Fields

The Community Services Department recommends the BuyBoard purchase of LED Field lights to be installed at the Scharbauer Sports Complex multi-purpose turf fields. This facility is used extensively by children and families participating in sports such as football, soccer, and lacrosse.

City staff has worked with MUSCO Lighting to plan for this anticipated improvement to these fields. During the design phase, conduit was included in the plans to accommodate future lighting. When the fields were constructed, that conduit was installed.

Since the four fields opened for play in 2016, there have been increasing numbers of teams using the facilities. Incorporating lights will afford the opportunity for greater use, and will make the facility even more attractive to groups wanting to hold tournaments at this City of Midland facility.

The BuyBoard price is $844,750 and includes all engineering, materials, freight, crane, installation, warranty and technology. Staff requests a 10% contingency added to this amount to cover any unforeseen conditions that may arise. Total funds requested for installation of lights at the four multi-purpose fields is $929,225.00.

$929,225.00 is available in the Scharbauer Sports Complex Fund

RESOLUTION NO. _____

RESOLUTION APPROVING A CONTRACT WITH MUSCO SPORTS LIGHTING, LLC, THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF LED FIELD LIGHTING AT THE SCHARBAUER SPORTS COMPLEX AT A TOTAL COST OF $844,750.00; APPROVING $84,475.00 FOR CONTINGENCIES; AND APPROPRIATING $929,225.00 FOR SAID PROJECT

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

WHEREAS, Musco Sports Lighting, LLC, has submitted a total proposed cost to the City of $844,750.00 for the purchase and installation of LED field lighting at the Scharbauer Sports Complex, through Buyboard, as shown on the quote attached hereto as Exhibit A, which is incorporated herein for all purposes; and

WHEREAS, the Council finds the price proposed by Musco Sports Lighting, LLC, through Buyboard for said field lighting to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to approve a contract with Musco Sports Lighting, LLC, for the purchase and installation of LED field lighting at the Scharbauer Sports Complex through Buyboard; and

WHEREAS, the City Council finds it to be in the public interest to approve $84,475.00 for contingencies; and

WHEREAS, the City Council finds it to be in the public interest to appropriate $929,225.00 for said project;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract for the purchase and installation of LED field lighting at the Scharbauer Sports Complex,

through Buyboard, for a total cost of $844,750.00. Said contract being attached hereto as Exhibit B and incorporated herein for all purposes.

SECTION TWO. That the sum of $84,475.00 for contingencies is hereby approved for said project.

SECTION THREE. That the sum of $929,225.00 is hereby appropriated from the unappropriated fund balance (Fund 620) to Fund 625 project account.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Musco Sports Lighting, LLC, for the purchase and installation of LED field lighting at the Scharbauer Sports Complex from funds available in Fund 625 project account upon proper receipt of invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2020, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

Quote

Date: 07/30/2020
To: Andy Cedillo

Project: Scharbauer Sports Complex Football
Midland, Texas
Ref: 172095

BuyBoard
Master Project: 196290, **Contract Number:** 592-19, **Expiration:** 09/30/2020
Commodity: Parks and Recreation Equipment and Field Lighting Products and Installation

All purchase orders should note the following:
BuyBoard purchase – Contract Number: 592-19

Quotation Price – Materials Delivered to Job Site and Installation

Football/Soccer Fields 1-4 - ..... ***$ 844,750.00***

Sales tax is not included.
Pricing furnished is effective for 60 days unless otherwise noted and is considered confidential.

Light-Structure System with Total Light Control – TLC for LED™ technology

Guaranteed Lighting Performance

- Guaranteed light levels of 30fc and uniformity of 2.5:1 for each field
- BallTracker™ technology – targeted light, optimizing visibility of the ball in play with no glare in the players typical line-of-sight

System Description

- 14 Pre-cast concrete bases with integrated lightning grounding
- 14 Galvanized steel poles
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- 14 Factory wired poletop luminaire assemblies
- 112 Factory aimed and assembled luminaires, including BallTracker™ luminaires
- UL Listed assemblies

Control Systems and Services

- Control-Link® Control and Monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

Operation and Warranty Services

- Product assurance and warranty program that covers materials and onsite labor, eliminating 100% of your maintenance costs for 25 years
- Support from Musco's Lighting Services Team – over 170 Team members dedicated to operating and maintaining your lighting system – plus a network of 1800+ contractors

Musco-Vision

- Video Quality: Stream at a 720p output resolution, this provides both a high-quality image for viewing and data cost savings for the customer.
- Warranty: All materials provided by Musco are covered under a 5 year warranty starting from date of shipment.

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Installation Services Provided

[See attached scope of work]

Payment Terms

Musco's Credit Department will provide payment details.

Email or fax a copy of the Purchase Order to Musco Sports Lighting, LLC:

Musco Sports Lighting, LLC
Attn: Amanda Hudnut
Fax: 800-374-6402
Email: musco.contracts@musco.com

All purchase orders should note the following:
BuyBoard purchase – Contract Number: 592-19

Delivery Timing

6 - 8 weeks for delivery of materials to the job site from the time of order, submittal approval, and confirmation of order details including voltage, phase, and pole locations.

Due to the built-in custom light control per luminaire, pole locations need to be confirmed prior to production. Changes to pole locations after the product is sent to production could result in additional charges.

Notes

Quote is based on:

- Shipment of entire project together to one location.
- Voltage and phasing to be confirmed prior to install.
- Structural code and wind speed = 2015 IBC, 115 mi/h, Exposure C, Importance Factor 1.0.
- Owner is responsible for getting electrical power to the site, coordination with the utility, and any power company fees.
- Includes supply and installation of Musco system including underground wiring and conduit, service entrance panel board, and controls by a licensed contractor.
- Standard soil conditions – rock, bottomless, wet or unsuitable soil may require additional engineering, special installation methods and additional cost.
- Confirmation of pole locations prior to production.

Thank you for considering Musco for your lighting needs. Please contact me with any questions or if you need additional details.

Mitchell Stockton
Musco Sales Representative
Musco Sports Lighting, LLC
Phone: (806) 474-4743
E-mail: mitchell.stockton@musco.com

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Scharbauer Sports Complex Football
Midland, TX
Turnkey Scope of Work

Customer Responsibilities:

1. Complete access to the site for construction using standard 2-wheel drive rubber tire equipment.
2. Locate existing underground utilities not covered by your local utilities. (i.e. water lines, electrical lines, irrigation systems, and sprinkler heads). Musco or Subcontractor will not be responsible for repairs to unmarked utilities.
3. Locate and mark field reference points per Musco supplied layout. (i.e. home plate, center of FB field)
4. Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.) or soils not defined in geo-technical report. Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
5. Pay any necessary power company fees and requirements.
6. Pay all permitting fees.
7. Provide area on site for disposal of spoils from foundation excavation.
8. Provide area on site for dumpsters.
9. Provide sealed Electrical Plans. (If required)

Musco Responsibilities:

1. Provide required foundations, poles, electrical enclosures, luminaires, pole harnesses, and control cabinets.
2. Provide layout of pole locations and aiming diagram.
3. Provide Project Management as required.
4. Provide stamped foundation designs based on 2500 psf soils. Geo-tech report to be provided by customer at later date.
5. Assist our installing subcontractor and ensure our responsibilities are satisfied.

Musco Subcontractor Responsibilities

General:

1. Provide labor, equipment, and materials to off load equipment at jobsite per scheduled delivery.
2. Provide storage containers for material, (including electrical components enclosures), as needed.
3. Provide necessary waste disposal and daily clean up.
4. Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
5. Obtain any required permitting.
6. Confirm the existing underground utilities and irrigation systems have been located and are clearly marked in order to avoid damage from construction equipment. Repair any such damage during construction.

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7. Keep all heavy equipment off playing fields when possible. Repair damage to grounds which exceeds that which would be expected. Indentations caused by heavy equipment traveling over dry ground would be an example of expected damage. Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair. **Contractor to provide plywood on Fields 3 & 4 to protect existing turf fields.**
8. Provide startup and aiming as required to provide complete and operating sports lighting system.
9. Installation to commence upon delivery and proceed without interruption until complete. Musco to be immediately notified of any breaks in schedule or delays.

Foundations, Poles, and Luminaires:

1. Mark and confirm pole locations per the aiming diagram provided. If there are any issues, immediately notify your Musco Project Manager.
2. Provide labor, materials, and equipment to install (14) LSS foundations as specified on Layout and per the stamped foundation drawings, if applicable.
   - Football 1 - (4 LSS foundations)
   - Football 2 - (4 LSS foundations)
   - Football 3 & 4 – (6 LSS foundations)
3. Remove spoils to owner designated location at jobsite.
4. Provide labor, materials, and equipment to assemble Musco TLC-LED luminaires, electrical component enclosures, poles, and pole harnesses.
5. Provide labor, equipment, and materials to erect (14) dressed LSS Poles and aim utilizing the pole alignment beam.
   - Football 1 - (4 LSS poles)
   - Football 2 - (4 LSS poles)
   - Football 3 & 4 – (6 LSS poles)

Electrical:

1. Provide labor, materials, and equipment to install new 480V/3phase electrical service panels as required.
2. Provide labor, materials, and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required. Conduit may exist underground, contractor to verify.
3. Provide as-built drawings on completion of installation, **(if required)**.

Control System:

1. Provide labor, equipment, and materials to install (2) Musco Control and Monitoring cabinet(s) and terminate all necessary wiring.
2. Provide a dedicated 120 V 20 A controls circuit or a step-down transformer for 120 V control circuit if not available.
3. Provide a dedicated 20 A breaker connected to all available phases for powerline communication.
4. Check all zones to make sure they work in both auto and manual mode.
5. Commission Control-Link® by contacting Control Link Central™ at 877-347-3319.

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CODE OF CONDUCT

In order to maintain a high-quality jobsite and installation, Subcontractor represents to Musco that it has the supervision necessary to, and shall train, manage, supervise, monitor, and inspect the activities of its employees for the purpose of enforcing compliance with these safety requirements. Subcontractor acknowledges that Musco does not undertake any duty toward Subcontractor's employees to train, manage, supervise, monitor, and inspect their work activities for the purpose of enforcing compliance with these safety requirements, but Subcontractor agrees to abide by any reasonable recommendations made by Musco or Musco representatives with respect to safety.

Subcontractor agrees that it is or will be familiar with and shall abide by the safety rules and regulations of Musco and the Owner, including, but not limited to the Occupational Safety and Health Act of 1970 (OSHA), all rules and regulations established pursuant thereto, and all amendments and supplements thereto.

Subcontractor further agrees to require all its employees, subcontractors, and suppliers to comply with these requirements. Subcontractor shall also observe and comply with all laws with respect to environmental protection applicable to the Project.

Subcontractor shall require all its subcontractors, employees, visitors, suppliers, and agents under its direction to comply with the following:

1. GENERAL JOBSITE SAFETY AND CLEANLINESS.
   a. Subcontractor's employees and agents shall be required to wear appropriate personal protective equipment including, but not limited to, safety glasses with side shields, work shoes, fall protection devices, and hard hats.
   b. Where a walking or working surface has an unprotected side or edge which is six feet or more above a lower level, Subcontractor shall use guardrail systems, safety net systems, or personal fall arrest systems.
   c. Jobsite shall be kept free of debris including, but not limited to, cardboard and packing materials which can become windborne.
   d. Construction equipment shall be parked during non-use in an orderly fashion so as not to create inconvenience to others using the jobsite.
   e. Subcontractor shall provide for and ensure the use of safety equipment for the Project in accordance with Musco's and Owner's safety requirements, to the extent these may be stricter than federal, state, or local standards, or generally recognized industry applicable standards.
   f. Subcontractor shall provide the Musco project manager with an "Emergency List" showing Subcontractor's designated medical doctor, hospital, insurance company, and any other health service providers, such list to be updated within 24 hours of any change in the information provided.

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g. Within eight (8) hours from the time of an accident (or such shorter period as laws may require), Subcontractor shall advise Musco of any accident resulting in injury to any person or damage to any equipment or facility. Upon request, Subcontractor shall promptly furnish Musco with a written report of any such accident as well as a copy of all insurance and worker's compensation claims involving the Project.
h. Subcontractor shall maintain and inspect all construction equipment, including cranes and other lifting equipment, prior to each use. Subcontractor warrants that all equipment operators shall be qualified for each piece of construction equipment they intend to operate. Documentation of specific training is the responsibility of the Subcontractor.
i. Jobsite shall be policed daily for compliance to the above conditions.
j. Subcontractor's employees and agents are prohibited from using drugs and alcohol on the Project property or being under the influence of alcohol or drugs while performing work on the Project. Anyone observed participating in or observed under the influence will be removed from the Project immediately and prohibited from returning, with no exceptions.

2. CONFORMANCE TO STANDARD MUSCO INSTALLATION GUIDELINES.
   a. Review and understand installation instructions are provided with every product installation.
   b. Education of installation personnel to allow for highest efficiency and lowest possibility of failure.
   c. Verify that components have been assembled per Musco installation instructions.
   d. Verify plumb of concrete foundations prior to standing of poles.

3. PROVIDING A QUALITY INSTALLATION TEAM.
   a. Subcontractor's work directly reflects the quality of the installation and may indirectly relate to the quality of the product upon which Musco's reputation is built.
   b. Provide and maintain quality installation equipment. Records of maintenance and/or calibration shall be provided upon request.
   c. Personnel shall be knowledgeable in operation of equipment as well as installation of Musco product.
   d. All personnel provided by Subcontractor shall understand the relationship developed by and between Subcontractor and Musco, also by and between Musco and the customer, and act accordingly.

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THE CITY OF MIDLAND

CONTRACT

Contract No. 20004140

THIS CONTRACT, effective the 12th day of August, 2020, by and between the City of Midland, hereinafter referred to as "City", and Musco Sports Lighting, LLC, hereinafter referred to as "Company", is made for the following considerations:

1. **Cost:** Total Proposal: $ 844,750.00 DOLLARS

2. **Scope of Work:** Company shall perform all work described for field lighting at the Scharbauer Sports Complex in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

9. **Start of Work:** Company shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 90 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

16. **Payment; Retainage:** After all work is completed by Company, including all Change Orders altering the original scope and amount of the contract are completed, and the City has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change

Orders, the City may thereafter issue payment to Company in the amount of the contract and all Change Orders. The City shall be the final judge of when the work is completed by Company. The City, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to the City's requirements.

16.1. The City may make periodic payments to Company; provided, however, such periodic payments may only be made pursuant to this section, and only after all work and all Change Orders are completed by Company and approved by the City. The approval shall be in the City's sole discretion. Requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the City or the City's representative, the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

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

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

17.2. The said amount is fixed and agreed upon by and between Company and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would

in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain and said amount shall be retained from time to time by the City from current periodical estimates.

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

a. To any preference, priority or allocation order duly issued by the Government;

b. To unforeseeable cause beyond the control and without the fault or negligence of Company, including, but not restricted to, acts of God, or of the public enemy, acts of the City, acts of another contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and

c. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

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

17.5. **COMPANY AGREES THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES MAY BE RECOVERED BY THE CITY FROM RETAINAGE HELD BY THE CITY. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING FROM THE CITY WITHHOLDING PAYMENT FROM COMPANY AS LIQUIDATED DAMAGES FOR COMPANY'S FAILURE TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED HEREIN, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.**

17.6. **COMPANY SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY**

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

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

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

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

WAIVER OF GOVERNMENTAL IMMUNITY.

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

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

21. **Insurance:**

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

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

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

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

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

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

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

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

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

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

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

24. **Governing Law and Venue:** This Contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Contract shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Contract or the performance of this Contract shall be in Midland County, Texas. The

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

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

26. **Notice of Alleged Breach; Statutory Prerequisites:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, Company or its legal representative, shall give the City Manager, or any other reasonable official of City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom

Company relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation to provide notice to Company that Company's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

28. **Termination At Will:** City may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to Company. The parties to this Contract understand and agree that it is in City's sole discretion to cancel the Contract during the term of the Contract without penalty to City. Company has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

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

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

31. **Records Retention and Production of Information.** To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, Company shall (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to City

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

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

33. **Conflict of Terms.** If a conflict of terms or language exists between (i) any of the provisions of this Contract and (ii) any of the provisions contained in Exhibit A, precedence shall be given to the provisions of this Contract. For the avoidance of any doubt, the provisions contained in this Contract shall supersede any and all conflicting provisions contained in Exhibit A.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Courtney B. Sharp, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §
§
COUNTY OF_____ §

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

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

_____
Notary Public, State of Texas

Quote

Date: 07/30/2020
To: Andy Cedillo

EXHIBIT "A"

Project: Scharbauer Sports Complex Football
Midland, Texas
Ref: 172095

BuyBoard
Master Project: 196290, **Contract Number:** 592-19, **Expiration:** 09/30/2020
Commodity: Parks and Recreation Equipment and Field Lighting Products and Installation

All purchase orders should note the following:
BuyBoard purchase – Contract Number: 592-19

Quotation Price – Materials Delivered to Job Site and Installation

Football/Soccer Fields 1-4 - ..... ***$ 844,750.00***

Sales tax is not included.
Pricing furnished is effective for 60 days unless otherwise noted and is considered confidential.

Light-Structure System with Total Light Control – TLC for LED™ technology

Guaranteed Lighting Performance

- Guaranteed light levels of 30fc and uniformity of 2.5:1 for each field
- BallTracker™ technology – targeted light, optimizing visibility of the ball in play with no glare in the players typical line-of-sight

System Description

- 14 Pre-cast concrete bases with integrated lightning grounding
- 14 Galvanized steel poles
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- 14 Factory wired poletop luminaire assemblies
- 112 Factory aimed and assembled luminaires, including BallTracker™ luminaires
- UL Listed assemblies

Control Systems and Services

- Control-Link® Control and Monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

Operation and Warranty Services

- Product assurance and warranty program that covers materials and onsite labor, eliminating 100% of your maintenance costs for 25 years
- Support from Musco's Lighting Services Team – over 170 Team members dedicated to operating and maintaining your lighting system – plus a network of 1800+ contractors

Musco-Vision

- Video Quality: Stream at a 720p output resolution, this provides both a high-quality image for viewing and data cost savings for the customer.
- Warranty: All materials provided by Musco are covered under a 5 year warranty starting from date of shipment.

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Installation Services Provided

[See attached scope of work]

Payment Terms

Musco's Credit Department will provide payment details.

Email or fax a copy of the Purchase Order to Musco Sports Lighting, LLC:

Musco Sports Lighting, LLC
Attn: Amanda Hudnut
Fax: 800-374-6402
Email: musco.contracts@musco.com

All purchase orders should note the following:
BuyBoard purchase – Contract Number: 592-19

Delivery Timing

6 - 8 weeks for delivery of materials to the job site from the time of order, submittal approval, and confirmation of order details including voltage, phase, and pole locations.

Due to the built-in custom light control per luminaire, pole locations need to be confirmed prior to production. Changes to pole locations after the product is sent to production could result in additional charges.

Notes

Quote is based on:

- Shipment of entire project together to one location.
- Voltage and phasing to be confirmed prior to install.
- Structural code and wind speed = 2015 IBC, 115 mi/h, Exposure C, Importance Factor 1.0.
- Owner is responsible for getting electrical power to the site, coordination with the utility, and any power company fees.
- Includes supply and installation of Musco system including underground wiring and conduit, service entrance panel board, and controls by a licensed contractor.
- Standard soil conditions – rock, bottomless, wet or unsuitable soil may require additional engineering, special installation methods and additional cost.
- Confirmation of pole locations prior to production.

Thank you for considering Musco for your lighting needs. Please contact me with any questions or if you need additional details.

Mitchell Stockton
Musco Sales Representative
Musco Sports Lighting, LLC
Phone: (806) 474-4743
E-mail: mitchell.stockton@musco.com

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Scharbauer Sports Complex Football
Midland, TX
Turnkey Scope of Work

Customer Responsibilities:

1. Complete access to the site for construction using standard 2-wheel drive rubber tire equipment.
2. Locate existing underground utilities not covered by your local utilities. (i.e. water lines, electrical lines, irrigation systems, and sprinkler heads). Musco or Subcontractor will not be responsible for repairs to unmarked utilities.
3. Locate and mark field reference points per Musco supplied layout. (i.e. home plate, center of FB field)
4. Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.) or soils not defined in geo-technical report. Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
5. Pay any necessary power company fees and requirements.
6. Pay all permitting fees.
7. Provide area on site for disposal of spoils from foundation excavation.
8. Provide area on site for dumpsters.
9. Provide sealed Electrical Plans. (If required)

Musco Responsibilities:

1. Provide required foundations, poles, electrical enclosures, luminaires, pole harnesses, and control cabinets.
2. Provide layout of pole locations and aiming diagram.
3. Provide Project Management as required.
4. Provide stamped foundation designs based on 2500 psf soils. Geo-tech report to be provided by customer at later date.
5. Assist our installing subcontractor and ensure our responsibilities are satisfied.

Musco Subcontractor Responsibilities

General:

1. Provide labor, equipment, and materials to off load equipment at jobsite per scheduled delivery.
2. Provide storage containers for material, (including electrical components enclosures), as needed.
3. Provide necessary waste disposal and daily clean up.
4. Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
5. Obtain any required permitting.
6. Confirm the existing underground utilities and irrigation systems have been located and are clearly marked in order to avoid damage from construction equipment. Repair any such damage during construction.

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7. Keep all heavy equipment off playing fields when possible. Repair damage to grounds which exceeds that which would be expected. Indentations caused by heavy equipment traveling over dry ground would be an example of expected damage. Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair. **Contractor to provide plywood on Fields 3 & 4 to protect existing turf fields.**
8. Provide startup and aiming as required to provide complete and operating sports lighting system.
9. Installation to commence upon delivery and proceed without interruption until complete. Musco to be immediately notified of any breaks in schedule or delays.

Foundations, Poles, and Luminaires:

1. Mark and confirm pole locations per the aiming diagram provided. If there are any issues, immediately notify your Musco Project Manager.
2. Provide labor, materials, and equipment to install (14) LSS foundations as specified on Layout and per the stamped foundation drawings, if applicable.
   - Football 1 - (4 LSS foundations)
   - Football 2 - (4 LSS foundations)
   - Football 3 & 4 – (6 LSS foundations)
3. Remove spoils to owner designated location at jobsite.
4. Provide labor, materials, and equipment to assemble Musco TLC-LED luminaires, electrical component enclosures, poles, and pole harnesses.
5. Provide labor, equipment, and materials to erect (14) dressed LSS Poles and aim utilizing the pole alignment beam.
   - Football 1 - (4 LSS poles)
   - Football 2 - (4 LSS poles)
   - Football 3 & 4 – (6 LSS poles)

Electrical:

1. Provide labor, materials, and equipment to install new 480V/3phase electrical service panels as required.
2. Provide labor, materials, and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required. Conduit may exist underground, contractor to verify.
3. Provide as-built drawings on completion of installation, **(if required)**.

Control System:

1. Provide labor, equipment, and materials to install (2) Musco Control and Monitoring cabinet(s) and terminate all necessary wiring.
2. Provide a dedicated 120 V 20 A controls circuit or a step-down transformer for 120 V control circuit if not available.
3. Provide a dedicated 20 A breaker connected to all available phases for powerline communication.
4. Check all zones to make sure they work in both auto and manual mode.
5. Commission Control-Link® by contacting Control Link Central™ at 877-347-3319.

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CODE OF CONDUCT

In order to maintain a high-quality jobsite and installation, Subcontractor represents to Musco that it has the supervision necessary to, and shall train, manage, supervise, monitor, and inspect the activities of its employees for the purpose of enforcing compliance with these safety requirements. Subcontractor acknowledges that Musco does not undertake any duty toward Subcontractor's employees to train, manage, supervise, monitor, and inspect their work activities for the purpose of enforcing compliance with these safety requirements, but Subcontractor agrees to abide by any reasonable recommendations made by Musco or Musco representatives with respect to safety.

Subcontractor agrees that it is or will be familiar with and shall abide by the safety rules and regulations of Musco and the Owner, including, but not limited to the Occupational Safety and Health Act of 1970 (OSHA), all rules and regulations established pursuant thereto, and all amendments and supplements thereto.

Subcontractor further agrees to require all its employees, subcontractors, and suppliers to comply with these requirements. Subcontractor shall also observe and comply with all laws with respect to environmental protection applicable to the Project.

Subcontractor shall require all its subcontractors, employees, visitors, suppliers, and agents under its direction to comply with the following:

1. GENERAL JOBSITE SAFETY AND CLEANLINESS.
   a. Subcontractor's employees and agents shall be required to wear appropriate personal protective equipment including, but not limited to, safety glasses with side shields, work shoes, fall protection devices, and hard hats.
   b. Where a walking or working surface has an unprotected side or edge which is six feet or more above a lower level, Subcontractor shall use guardrail systems, safety net systems, or personal fall arrest systems.
   c. Jobsite shall be kept free of debris including, but not limited to, cardboard and packing materials which can become windborne.
   d. Construction equipment shall be parked during non-use in an orderly fashion so as not to create inconvenience to others using the jobsite.
   e. Subcontractor shall provide for and ensure the use of safety equipment for the Project in accordance with Musco's and Owner's safety requirements, to the extent these may be stricter than federal, state, or local standards, or generally recognized industry applicable standards.
   f. Subcontractor shall provide the Musco project manager with an "Emergency List" showing Subcontractor's designated medical doctor, hospital, insurance company, and any other health service providers, such list to be updated within 24 hours of any change in the information provided.

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g. Within eight (8) hours from the time of an accident (or such shorter period as laws may require), Subcontractor shall advise Musco of any accident resulting in injury to any person or damage to any equipment or facility. Upon request, Subcontractor shall promptly furnish Musco with a written report of any such accident as well as a copy of all insurance and worker's compensation claims involving the Project.
h. Subcontractor shall maintain and inspect all construction equipment, including cranes and other lifting equipment, prior to each use. Subcontractor warrants that all equipment operators shall be qualified for each piece of construction equipment they intend to operate. Documentation of specific training is the responsibility of the Subcontractor.
i. Jobsite shall be policed daily for compliance to the above conditions.
j. Subcontractor's employees and agents are prohibited from using drugs and alcohol on the Project property or being under the influence of alcohol or drugs while performing work on the Project. Anyone observed participating in or observed under the influence will be removed from the Project immediately and prohibited from returning, with no exceptions.

2. CONFORMANCE TO STANDARD MUSCO INSTALLATION GUIDELINES.
   a. Review and understand installation instructions are provided with every product installation.
   b. Education of installation personnel to allow for highest efficiency and lowest possibility of failure.
   c. Verify that components have been assembled per Musco installation instructions.
   d. Verify plumb of concrete foundations prior to standing of poles.

3. PROVIDING A QUALITY INSTALLATION TEAM.
   a. Subcontractor's work directly reflects the quality of the installation and may indirectly relate to the quality of the product upon which Musco's reputation is built.
   b. Provide and maintain quality installation equipment. Records of maintenance and/or calibration shall be provided upon request.
   c. Personnel shall be knowledgeable in operation of equipment as well as installation of Musco product.
   d. All personnel provided by Subcontractor shall understand the relationship developed by and between Subcontractor and Musco, also by and between Musco and the customer, and act accordingly.

©2016, 2020 Musco Sports Lighting, LLC

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

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

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

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

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

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

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

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

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

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

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

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

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

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

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

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

General Decision Number: TX180311 09/14/2018 TX311

Superseded General Decision Number: TX20170311

State: Texas

Construction Type: Building

County: Midland County in Texas.

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

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

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

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER	$ 28.00	22.35

ENGI0178-005 06/01/2014

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

* IRON0084-011 06/01/2018

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 23.77	7.12

PLUM0404-001 07/01/2016

	Rates	Fringes
PLUMBER	$ 25.91	9.40

SUTX2014-037 07/21/2014

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

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

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

==========

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

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

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

City Council Meeting

Item Number: 28

Meeting Date: August 11, 2020

To: City Council / City Manager

From: John Ohnemiller, City Attorney

Subject: Motion regarding the Sports Agreement between the City of Midland and the Greater Midland Football League (GMFL), the use and operation of the Scharbauer Sports Complex auxiliary athletic fields, and matters related thereto (CITY ATTORNEY'S OFFICE)

Purpose:

Mr John Norman, Council Member District 2, requested that this item be placed on your agenda for consideration.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

None

City Manager's Office

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: 7/23/2020

Name: Ryan Peckham

Phone: 432-634-8673 **(Home)**

Address: 2019 Coleman CT

_____ **(Business)**

Midland TX 79705

Email: ryan.peckham@gmail.com

(City) (State) (Zip)

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 13 **years.**

Occupation: Assistant Professor - UTPB / Investment Manager

Professional and/or Community Activities:

Years ago I went through non-profit training with the nonprofit management center and have been serving on boards since that time. I also serve on the Board for the Midland YMCA and have served as the chair of their finance committee in the past. I have also volunteered at Casa De Amigos in Midland doing financial literacy training.

What is your personal vision for the City?

I have been in Midland for 13 years but I grew up in Coahoma. I would like to see others giving back to the community that has given them so much.

Please specify any time constraints you may have.

I should not have any time contraints that would impair my ability to serve on this board.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Permian Basin Community Centers for MHMR dba PermiaCare

Please tell us why you are interested in serving on this board or commission.

I grew up with a parent that was and is still very involved with MHMR at another center. I know how important these centers are for communities and the impact they have on the lives of their clients. I want to ensure these services can still be provided.

What contribution would you most like to make?

Permian Basin Community Centers is looking to strengthen the Board ability to provide financial governance and potentially serve as Treasurer to oversee Finance Committee meetings. I have a strong financial background and can provide support for these needs.

Additional pertinent information or references:

Chris Barnhill - PermiaCare CEO - 432 553-5530

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application

From:	Amy Turner
To:	Vanessa White
Subject:	FW: Application for Board of Trustee to be appointed by the City of Midland for PermiaCare
Date:	Friday, July 24, 2020 9:55:05 AM
Attachments:	20200723204517.pdf image002.png image004.png image005.png image006.png image003.png

Please place on August 11th Council Meeting.

Amy M. Turner, TRMC, MMC
City Secretary | City of Midland
O. 432-685-7430

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702
F. 432-685-7433

From: Chris Barnhill <ChrisBarnhill@Permiacare.org>
Sent: Friday, July 24, 2020 9:47 AM
To: Amy Turner <aturner@midlandtexas.gov>
Cc: Jill Stephens <JillStephens@Permiacare.org>; Amber Pyle <AmberPyle@Permiacare.org>; Joshua Alaniz <JoshuaAlaniz@Permiacare.org>
Subject: Application for Board of Trustee to be appointed by the City of Midland for PermiaCare

Good Amy,

Attached is an application for Ryan Peckham. We have had Ryan as a guest to our July 21st meeting. Ryan has good knowledge of the Texas MH/ID Community Center having grown with a parent working in the system. He has a very strong financial background that is an area we need to strengthen with the loss of one of our financial minded board members last year. Ryan also has experience serving on the board of the Midland YMCA so he understands the role of a trustee. Our board members met Ryan and believe him to be a good addition to our team. Below is a bio that Ryan provided us that has some additional information.

WHO WE ARE

Dr. Ryan Peckham is a Registered Investment Advisor (RIA) with over 15 years of financial services experience. He established Rydar Equities, Inc. in 2009 with the primary goal of helping families and business owners achieve their financial goals through improved investing strategies. Dr. Peckham established an RIA because it allows for a closer one on one fiduciary relationship and in most cases is a fiscally better choice for clients.

Dr. Peckham finished his Doctorate in Business Administration from the University of Liverpool, England in 2018 where he concentrated on Behavioral Finance. Behavioral Finance is the study of how psychology can impact the behavior of investors. Specifically, Dr. Peckham researched how critical incidents in investors past continue to impact their investment decision making. These skills allow him to not only act as a trusted advisor to investors but also as a guide through the emotional ups and downs of investing.

Dr. Peckham is also an Assistant Professor at The University of Texas – Permian Basin and has taught finance courses at Texas Christian University (TCU) in Fort Worth as well as in the Bachelor of Organizational Management program at Midland College.

In addition, he holds a MBA from the University of Texas at Dallas with concentrations in finance and management and a Bachelors of Engineering from Texas A&M University. He resides in Midland, Texas with his wife, Cheryl and their two daughters, Hannah and Zoe. In his free time he likes to exercise, travel, and spend time with his girls.



Please let me know if you have any questions.
Thanks

Chris Barnhill, CPA
Chief Executive Officer
Administration

PERMIACARE
MHMR • ECI • SUBSTANCE ABUSE

P: (432)570-3333
F: (432)570-3346
A: 401 E. Illinois Ave, Suite 401
Midland, TX 79701

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BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND
August 6, 2020

AIRPORT PLANNING AND DEVELOPMENT BOARD
(Advisory)
(Membership-10; Terms - 3 Years expiring 3-3-4.)

	Appt Date	Term Expires	Eligibility Expires
John Trischitti III	*09/13	Sept 30 2020	Sept 30 2020
Bill Dingus	09/14	Sept 30 2020	Sept 30 2020
Wes Reeves	08/15*	Sept 30 2020	Sept 30 2023
Keith Valentine	04/15*	Sept 30 2020	Sept 30 2023
Armand “Chip” Smith	09/18	Sept 30 2021	Sept 30 2024
Nick Hood	09/15	Sept 30 2021	Sept 30 2021
Earl Erdman	02/16*	Sept 30 2022	Sept 30 2022
Scooter Brown	09/16	Sept 30 2022	Sept 30 2022
Justin Kuethe	09/19	Sept 30 2022	Sept 30 2025
Nick McClure	09/19	Sept 30 2022	Sept 30 2025

Justine Ruff (Liaison)

Ex-Officio members are Earl Erdman and Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION
(Advisory)
(Membership - 7; Terms - 4 Years)

	Appt Date	Term Expires	Eligibility Expires
Leah Lewis	09/17	Sept 30 2021	Sept 30 2025
Robert “Robin” Donnelly	11/13	Sept 30 2021	Sept 30 2021
Dr. (Erickson) Lee (Veterinarian)	05/14	Sept 30 2022	Sept 30 2022
Alyson Dial	09/18	Sept 30 2022	Sept 30 2026
Dr. J. Annette Jensen (Veterinarian)	04/20	Sept 30 2024	Sept 30 2028
Tasha Sport	04/20	Sept 30 2024	Sept 30 2028
Sharla Hotchkiss	04/20	Sept 30 2024	Sept 30 2028

Leah Lewis (Liasion)

BUILDING AND FIRE CODE REVIEW COMMITTEE/CONSTRUCTION BOARD OF ADJUSTMENTS & APPEALS

(Membership – 9; Terms – 6 Years)

Shall consist of two architects, a fire protection contractor or specialist, a general contractor, an electrical contractor, a homebuilder, a plumbing and mechanical contractor, a structural engineer, a City Council Liaison

	Appt Date	Term Expires	Eligibility Expires
Ryan Almand (Electrical Contractor)	12/18	Sept 30 2024	Sept 30 2030
Jay Bradford (Architect)	12/18	Sept 30 2024	Sept 30 2030
Ron Ainsworth (Plumbing & Mechanical Contractor)	12/18	Sept 30 2024	Sept 30 2030
T.J. McClure (Architect)	12/18	Sept 30 2024	Sept 30 2030
Laurence Oeth (Structural Engineer)	12/18	Sept 30 2024	Sept 30 2030
David Hickman (Fire Protection)	12/18	Sept 30 2024	Sept 30 2030
Gary Glasscock (General Contractor)	12/18	Sept 30 2024	Sept 30 2030
Robert Anderson (Homebuilder)	12/18	Sept 30 2024	Sept 30 2030
Jeff Pinkstaff (Liaison)	12/18	Sept 30 2024	Sept 30 2030

CAPITAL IMPROVEMENT ADVISORY COMMITTEE

(Advisory)

(Membership – 7)

A minimum of 40% must be representative of real estate, development, or building industries who are not employees or officials of a political subdivision or governmental entity.)

	Appt Date
Carl Craigo	10/19
Walter Pate	06/18
Mark Payne	06/18
Courtney Black	06/18
Brian Sales	06/18
Chuck Harrington	06/18
Jose Ortiz	06/18

CITIZENS DEVELOPMENT AND HOTEL/MOTEL ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

4 2020, 3 -2021

	Appt Date	Term Expires	Eligibility Expires
Joey Hopkins	10/18	Sept 30 2020	Sept 30 2022
Ashlee Nelson	10/18	Sept 30 2020	Sept 30 2022
Alex Singh	10/18	Sept 30 2020	Sept 30 2022
Becky Wisdom	10/18	Sept 30 2020	Sept 30 2022
Ellen K. Ramsey	10/18	Sept 30 2021	Sept 30 2023
Kate Williamson	10/18	Sept 30 2021	Sept 30 2023
David Blackketter	10/18	Sept 30 2021	Sept 30 2023
Amy Turner (Liaison)			
Lori Blong (Council Liasion)			

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	Appt. Date
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh “Andy” Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.
City Nominates/Cast Vote for one Director
(Terms - 2 Years)

	Appt Date	Term Expires
Robert McNaughton	11/15	Dec 31 2021

MIDLAND DEVELOPMENT CORPORATION

(Membership - 7; Terms -3 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Chase Gardaphe	01/19	Jan 14 2022	Jan 14 2025
Wesley Bownds	07/15*	Jan 14 2022	Jan 14 2022
Barry Simpson	01/19	Jan 14 2022	Jan 14 2025
Stephen Lowery	01/17	Jan 14 2023	Jan 14 2023
P Lourcey Sams	04/20	Jan 14 2023	Jan 14 2026
Jill Pennington	04/20	Jan 14 2023	Jan 14 2026
Elaine Bedell	04/20	Jan 14 2023	Jan 14 2026

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)
(3 Non Voting Members)

	Appt Date
Wes Perry	05/12
Gary Harris	05/12
Wayne Merritt	05/12

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Steve Jones	**09/08***	**Jan 1 2010**	**Jan 1 2012**
Cathy Oestmann	**11/05***	**Jan 1 2010**	**Jan 1 2010**
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2009**	
Curt Kamradt	**11/05***	**Jan 1 2014**	**Jan 1 2014**

Sharla Hotchkiss (Liaison)

MIDLAND HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

Appointments Made by Mayor (LGC 392.031)

	Appt Date	Term Expires
Dennis Bade	09/12	Oct 2020
Marjorie McQuerry	10/16	Oct 2020
Brandon Bradley	09/17	Oct 2021
Sylvestor Cantu	09/18*	Oct 2021
Cheryl Wadley (Resident Commissioner)	11/19	Oct 2021

Isaac Garnett (Staff Liasion)

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

	Appt. Date
Vacancy	
W. L. “Scooter” Brown	09/04
Vacancy	
Richard Hatchett	11/08
Vacancy	
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)
(Membership - 6; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
VACANT (Westmoreland)	06/18*	Sept 30 2020	Sept 30 2022
E. J. Baldridge	10/18	Sept 30 2020	Sept 30 2022
Iris Foster	06/18*	Sept 30 2020	Sept 30 2022
Joseph Sanchez	12/19	Sept 30 2021	Sept 30 2023
Jack Ladd	07/20	Sept 30 2022	Sept 30 2024
John Norman	07/20	Sept 30 2022	Sept 30 2024

OIL AND GAS ADVISORY COMMITTEE

(Advisory)
(Membership – 5; Terms – 3 Years expiring 2-2-1)
2 real property developer, real estate sales, or developer; 3 Lic. petroleum engineer, engineer w/ bachelor, or geologist

	Appt Date	Term Expires	Eligibility Expires
Court Adkins (Petroleum Eng.)	09/17	Sept 30 2020	Sept 30 2023
Stephen Brumley (Petroleum Eng.)	11/15	Sept 30 2021	Sept 30 2021
Bill Lanier (Real Estate)	09/18	Sept 30 2021	Sept 30 2024
Scott Bowden (Real Estate)	10/19	Sept 30 2022	Sept 30 2025
Ross Klabon (Petroleum Eng.)	10/19	Sept 30 2022	Sept 30 2025

PARKS AND RECREATION COMMISSION

(Advisory)
(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	Appt Date	Term Expires	Eligibility Expires
Lisa Fitzgerald	09/17	Sept 30 2020	Sept 30 2023
Dal Watson (Effective October 2020)	09/20	Sept 30 2023	sept 30 2026
Michael Harris	09/14	Sept 30 2020	Sept 30 2020
Ron Stroman (Effective October 2020)	09/20	Sept 30 2023	Sept 30 2026
Shirley Howard	02/16*	Sept 30 2021	Sept 30 2024
Connie Ferguson	09/16	Sept 30 2022	Sept 30 2022
Stephanie Martin	10/16	Sept 30 2022	Sept 30 2022
Laura Smith	10/19	Sept 30 2022	Sept 30 2025
Francis Schammel	10/19	Sept 30 2022	Sept 30 2025
Susannah Prucka	04/20	Sept 30 2023	Sept 30 2026
Lynn Rogers	04/20	Sept 30 2023	Sept 30 2026

* **Indicates appointment to an unexpired term.**

Tina Juaz (Liaison)
John Norman (Council Liaison)

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION

(Decision Making)
(Membership - 2 (City); Terms - 2 Years)

	Appt Date	Term Expires
VACANT (Dettman) (City)	07/18	June 2020
Larry Edgerton (City)	07/10*	June 2021

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms. Mayor appoints.)

	Appt. Date
Scott Dufford	01/14
John B. Love III	01/14
Hugh A. "Andy" Shaffer	09/05

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 7; Terms - 3 Years)

	Appt Date	Term Expires	Eligibility Expires
Warren Ivey	10/12*	Sept 30 2020	Sept 30 2020
Joshua Sparks	01/14*	Sept 30 2020	Sept 30 2020
Diane Williams	09/17	Sept 30 2020	Sept 30 2023
Reggie Lawrence	09/14*	Sept 30 2021	Sept 30 2021
Chase Gardaphe	01/14*	Sept 30 2022	Sept 30 2022
Kevin Wilton	09/16	Sept 30 2022	Sept 30 2022
Karmen Bryant	02/19*	Sept 30 2022	Sept 30 2025
ALTERNATES:			
Stacey Jo Grosse	07/18*	Sept 30 2021	Sept 30 2024
Lucy Sisniega	09/19	Sept 30 2022	Sept 30 2025

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)
(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	Appt Date	Term Expires	Eligibility Expires
Matthew Wallace	07/15*	Sept 30 2020	Sept 30 2020
Derek Whiting	01/18*	Sept 30 2021	Sept 30 2023
E.J. Baldridge	02/18	Sept 30 2021	Sept 30 2023
VACANT (Rittenhouse)	02/19*	Sept 30 2022	Sept 30 2024
Reed Claybrook	03/19*	Sept 30 2022	Sept 30 2024

ALTERNATES: (not applicable to Airport Zoning)

James Robert Franklin	Sept 30 2021
VACANCY	**Sept 30 2020**

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION
(Decision Making; Membership - 2 (City); Terms - 2 Years)

MEMBER	TERM EXPIRES	ATTENDANCE	MEETINGS ATTENDED	TOTAL MTGS	ELIGIBLE	NOTES
Larry Edgerton (City)	June 30 2021	86%	6	7	Yes	
VACANT (Dettman) (City)	June 30 2020	14%	1	7	Yes	
Applicants Name	Additional Boards Applying to	COUNCIL NOTES				