CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
August 13, 2024 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall

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

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

OPENING ITEMS

1. Invocation – Pastor Eddy Elliott, Solid Rock Fellowship Out West

2. Pledge of Allegiance

PRESENTATIONS

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

   3a. Presentation from Planning and Development Officer Elizabeth Triggs regarding an update on permit review processes.

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

   4a. REGULAR SESSION OF JULY 23, 2024

5. 2024-122 – RESOLUTION APPROVING A CONTRACT WITH SPORTSFIELD SPECIALTIES, INC., THROUGH THE KEYSTONE PURCHASING NETWORK, FOR THE PURCHASE AND INSTALLATION OF OUTFIELD WALL PADS FOR THE SCHARBAUER SPORTS COMPLEX MOMENTUM BANK BALLPARK FOR A TOTAL COST OF $224,960.44 AND APPROVING $11,247.56 FOR CONTINGENCIES **(DISTRICT 4) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

6. 2024-123 – RESOLUTION AWARDING A CONTRACT TO TRUCLEAR WATER SOLUTIONS, INC., IN THE AMOUNT OF $1,440,000.00 FOR THE ADVANCED GROUNDWATER TREATMENT PROJECT; AND APPROPRIATING FUNDS FOR SAID PROJECT **(DISTRICT: NONE) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

7. 2024-124 – RESOLUTION AWARDING A CONTRACT TO TANKLOGIX, LLC, FOR ON-CALL SUPERVISORY CONTROL AND DATA ACQUISITION SERVICES FOR AN ANNUAL COST NOT TO EXCEED $500,000.00 **(DISTRICT: NONE) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

8. 082-2024 – MOTION AUTHORIZING THE EXECUTION OF CHANGE ORDER #1 WITH UTILIS, INC., DBA ASTERRA OF LA JOLLA, CALIFORNIA, REGARDING THE SATELLITE LEAK DETECTION SERVICES PROJECT; SAID CHANGE ORDER TO BE IN THE AMOUNT OF $53,000.00 AND TO PROVIDE FOR ADDITIONAL IDENTIFICATION OF POTENTIAL LEAKS WITHIN THE CITY OF MIDLAND WATER DISTRIBUTION SYSTEM **(DISTRICT: ALL) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

9. 083-2024 – MOTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH FOSTER & FOSTER CONSULTING ACTUARIES, INC. TO EXTEND THE TERM OF THE AGREEMENT BY ONE YEAR AND TO INCREASE THE CITY'S PAYMENT BY AN AMOUNT NOT TO EXCEED $150,000.00 **(DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

10. 084-2024 – MOTION AUTHORIZING THE MAYOR AND THE CITY ATTORNEY TO EXECUTE A FEDERAL AVIATION ADMINISTRATION GRANT IN ORDER TO RECEIVE AN ESTIMATED AMOUNT OF $3,747,275.00 FOR THE MAF RECONSTRUCT ASPHALT AIR CARRIER APRON PROJECT AT THE MIDLAND INTERNATIONAL AIR & SPACE PORT **(DISTRICT 4) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)**

11. 085-2024 – MOTION AUTHORIZING THE MAYOR AND THE CITY ATTORNEY TO EXECUTE A FEDERAL AVIATION ADMINISTRATION GRANT IN ORDER TO RECEIVE AN ESTIMATED AMOUNT OF $2,975,211.00 FOR THE MAF RUNWAY BLAST PAD IMPROVEMENT PROJECT AT THE MIDLAND INTERNATIONAL AIR & SPACE PORT **(DISTRICT 4) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)**

12. 086-2024 – MOTION AUTHORIZING THE EXECUTION OF A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND PERFORMANCE AGREEMENT AMONG THE CITY OF MIDLAND, TEXAS, THE MIDLAND DEVELOPMENT CORPORATION, AND COSTCO WHOLESALE CORPORATION **(DISTRICT: NONE) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

13. 087-2024 – MOTION AUTHORIZING THE EXECUTION OF AN HISTORICAL RESTORATION AGREEMENT WITH THE ARTS COUNCIL OF MIDLAND FOR THE PURPOSE OF RESTORING THE SCARBOROUGH-LINEBERY HOUSE COMPLEX **(DISTRICT 2) (CITY SECRETARY'S OFFICE) (QUALITY OF LIFE AND PLACE)**

14. 2024-125 – RESOLUTION CALLING AN ELECTION FOR FOUR CITY OFFICIALS; AMENDING THE BOUNDARY OF THE CITY ELECTION AND CITY COUNCIL DISTRICTS; PROVIDING FOR USE OF ACCESSIBLE VOTING SYSTEMS; ESTABLISHING ELECTION PRECINCTS FOR SAID ELECTION; AND ESTABLISHING VOTE CENTERS FOR SAID ELECTION **(DISTRICT: ALL) (CITY SECRETARY'S OFFICE) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

15. 2024-126 – RESOLUTION CALLING A SPECIAL ELECTION TO BE HELD IN THE CITY OF MIDLAND, TEXAS, REGARDING THE CONVEYANCE OF A 3.74-ACRE TRACT OF LAND OUT OF BLOCKS 29 AND 36, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, SAID TRACT BEING A PORTION OF HIDALGO PARK THAT IS MOSTLY UNIMPROVED, TO MIDLAND SOUP KITCHEN MINISTRY, A NONPROFIT ORGANIZATION, TO BE USED IN A MANNER THAT PRIMARILY PROMOTES A PUBLIC PURPOSE OF THE CITY; MAKING PROVISION FOR THE CONDUCT OF AN ELECTION; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO SUCH ELECTION **(DISTRICT: ALL) (CITY SECRETARY'S OFFICE) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

16. 2024-127 – RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO FIREBIRD ENERGY II, LLC (“OPERATOR”) TO DRILL NINE OIL AND GAS WELLS LOCATED IN SECTION 6, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 635 FEET SOUTH OF MOCKINGBIRD LANE AND BETWEEN 1,680 FEET AND 1,840 FEET EAST OF HOLIDAY HILL ROAD); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT **(DISTRICT 4) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

17. 088-2024 – MOTION AUTHORIZING THE NEGOTIATION AND EXECUTION OF A RELOCATION AND REIMBURSEMENT AGREEMENT WITH ONEOK WESTEX TRANSMISSION, LLC FOR THE RELOCATION OF A PIPELINE TO ACCOMMODATE THE EXPANSION OF FAIRGROUNDS ROAD; AUTHORIZING THE NEGOTIATION AND EXECUTION OF ALL OTHER DOCUMENTS NECESSARY FOR SAID RELOCATION; AND APPROPRIATING THE SUM OF $895,310.00 FROM THE 2017 BOND FUND TO A PROJECT FUND FOR SAID RELOCATION **(DISTRICT 1) (ENGINEERING SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

18. 2024-128 – RESOLUTION AUTHORIZING THE CITY MANAGER, THE DEPUTY CITY MANAGER, OR AN ASSISTANT CITY MANAGER (COLLECTIVELY, THE “CITY MANAGER’S OFFICE”) TO PURCHASE A 1.619-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (THE “PROPERTY”) TO BE USED FOR STREET AND PUBLIC UTILITY PURPOSES; AUTHORIZING THE CITY MANAGER’S OFFICE TO NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY TO PURCHASE SAID PROPERTY, PURCHASE A TITLE INSURANCE POLICY AND HOLD THE CLOSING; APPROPRIATING FUNDS; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE

COMPANY RECORDS, THE INSTRUMENT OF CONVEYANCE **(DISTRICT 4) (ENGINEERING SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

19. 089-2024 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF WAY LICENSE (24-495-011) WITH CIVITAS PERMIAN OPERATING, LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 12 AND 17, BLOCK C-24, ABSTRACT 1028, LOVING COUNTY AND SECTION 2, BLOCK C-24, ABSTRACT 1396, PUBLIC SCHOOL LAND SURVEY, WINKLER COUNTY TEXAS **(DISTRICT: NONE) (UTILITIES) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

SECOND READINGS

20. 10546 – AN ORDINANCE VACATING AND ABANDONING A 0.307-ACRE PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1, 2, 3 AND 4, BLOCK 1, REPLAT OF ALL GLEN ARDEN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 185 FEET WEST OF RACQUET CLUB DRIVE); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF $53,428.00; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY (FIRST READING HELD JULY 23, 2024) **(DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

21. 10547 – AN ORDINANCE VACATING AND ABANDONING A 5,036-SQUARE FOOT PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOT 1, BLOCK 1, KINGWICK PLACE ADDITION, SECTION 2 AND TRACT B, SUBDIVISION OF BLOCK 1, WARWICK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST SCHARBAUER DRIVE, APPROXIMATELY 640 FEET WEST OF NORTH I STREET); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF $22,662.00; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY (FIRST READING HELD JULY 23, 2024) **(DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

22. 10548 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,650-SQUARE FOOT PORTION OF LOT 5A, BLOCK 1, GATEWAY PLAZA, SECTION 12, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF STARBOARD DRIVE AND LIBERTY DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF BEER AND WINE IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (FIRST READING HELD JULY 23, 2024) **(DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

23. 10549 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,173-SQUARE FOOT PORTION OF LOT 7, BLOCK 58, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH PECOS STREET AND WEST WALL STREET), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (FIRST READING HELD JULY 23, 2024) **(DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE & PLACE)**

24. 10550 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 7, BLOCK 3, CORPORATE PLAZA ADDITION, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED ON THE EAST SIDE OF NORTH BIG SPRING STREET, APPROXIMATELY 355 FEET NORTH OF FIESTA 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 (FIRST READING HELD JULY 23, 2024) **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

25. 10551 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 8, BLOCK 63, PARK AVENUE HEIGHTS ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF BUNCHE STREET, APPROXIMATELY 380 FEET SOUTH OF EAST CALIFORNIA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (FIRST READING HELD JULY 23, 2024) **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

26. 10552 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 9 AND 10, BLOCK 31, 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 CALHOUN STREET, APPROXIMATELY 160 FEET SOUTH OF EAST NEW YORK 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 (FIRST READING HELD JULY

23, 2024) **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

27. 10553 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,400-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 (FIRST READING HELD JULY 23, 2024) **(DISTRICT 2) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

PUBLIC HEARINGS

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

28. 2024-129 – RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A BIRTHDAY PARTY ON LOTS 7 THROUGH 12, BLOCK 116, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF SOUTH MAIN STREET AND EAST NEW YORK AVENUE) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

29. 10555 – AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO A CERTAIN AREA ADJOINING THE PRESENT CITY LIMITS, BEING A 10.00-ACRE TRACT OF LAND OUT OF SECTION 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE BOULEVARD AND ARLINGTON ROAD); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY **(DISTRICT: NONE) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

30. 10556 – AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 10.00-ACRE TRACT OF LAND OUT OF SECTION 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AS AN RR, REGIONAL RETAIL DISTRICT; SAID TRACT BEING GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE BOULEVARD AND ARLINGTON ROAD; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION **(DISTRICT: NONE) (DEVELOPMENT SERVICES) QUALITY OF LIFE AND PLACE**

31. 10557 – AN ORDINANCE MAKING CERTAIN FINDINGS PURSUANT TO CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE; AUTHORIZING AND DIRECTING THE MAYOR OR THE CITY MANAGER TO EXECUTE ALL DOCUMENTS AND TAKE ALL ACTIONS NECESSARY TO CONVEY A 3.74-ACRE TRACT OF LAND OUT OF BLOCKS 29 AND 36, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (THE "PROPERTY"), TO MIDLAND SOUP KITCHEN MINISTRY ("GRANTEE") IN EXCHANGE FOR GRANTEE'S AGREEMENT TO USE THE PROPERTY IN A MANNER THAT PRIMARILY PROMOTES A PUBLIC PURPOSE OF THE CITY; SAID PROPERTY BEING A PORTION OF HIDALGO PARK THAT IS MOSTLY UNIMPROVED AND BEING GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF ORCHARD LANE AND CARVER STREET; SAID CONVEYANCE BEING CONDITIONED ON APPROVAL BY A MAJORITY OF VOTES RECEIVED AT AN ELECTION; AND ORDERING PUBLICATION **(DISTRICT 2) (DEVELOPMENT SERVICES) QUALITY OF LIFE AND PLACE**

MISCELLANEOUS

32. 10558 – AN ORDINANCE AMENDING TITLE I , "ADMINISTRATIVE" OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO ADD CHAPTER 14, "TERMINATION OF CAMPAIGN TREASURER APPOINTMENT"; SAID CHAPTER ESTABLISHING A PROCESS BY WHICH TO TERMINATE THE CAMPAIGN TREASURER APPOINTMENT OF AN INACTIVE CANDIDATE OR POLITICAL COMMITTEE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION **(DISTRICT: ALL) (CITY SECRETARY'S OFFICE) (TRANSPARENT & CONSISTENT COMMUNICATION)**

PUBLIC COMMENT

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

EXECUTIVE SESSION

34. Pursuant to Texas Government Code § 551.101, the City Council will hold an Executive Session, which is closed to the public, to discuss the following matters as permitted under the following sections of the Texas Government Code:

    a. Section 551.071, Consultation with Attorney

    a.1. Discuss matters in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code.

Respectfully Submitted,

Tommy Gonzalez
City Manager

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

MIDLAND CITY COUNCIL
MINUTES
July 23, 2024

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., July 23, 2024.

Council Members present:	Eric Davidson, Amy Stretcher Burkes, Robin Poole, Lori Blong, Scott Dufford, Jack Ladd, John Norman
Council Members absent:	None
Staff members present:	City Manager Tommy Gonzalez, City Attorney John Ohnemiller, Deputy City Manager Morris Williams Jr., Assistant City Manager Jose Ortiz

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

OPENING ITEMS

1. Invocation – Katie Summers, Crestview Baptist Church

2. Pledge of Allegiance

PRESENTATIONS

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

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

   4a. REGULAR SESSION OF JULY 9, 2024

7. 2024-115 – RESOLUTION APPROVING THE PURCHASE OF A CART REFUSE TRUCK FROM BOND EQUIPMENT COMPANY, INC., THROUGH BUYBOARD AT A TOTAL COST OF $425,896.00 **(DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

8. 2024-116 – RESOLUTION APPROVING THE PURCHASE OF A CATERPILLAR 836 WHEEL DOZER COMPACTOR FROM WARREN POWER & MACHINERY, INC.,

DRAFT

THROUGH SOURCEWELL FOR A TOTAL COST OF $1,579,770.00 **(DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

9. 077-2024 – MOTION APPROVING THE BUDGET FOR THE MIDLAND DEVELOPMENT CORPORATION'S 2024-2025 FISCAL YEAR **(DISTRICT: NONE) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

10. 078-2024 – MOTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES **(DISTRICT: ALL) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

13. 2024-117 – RESOLUTION AUTHORIZING THE ADOPTION OF THE CITY OF MIDLAND'S 2024-2025 FIFTH YEAR ACTION PLAN TO THE CONSOLIDATED PLAN FOR COMMUNITY DEVELOPMENT AND HOUSING FUNDS FOR THE CITY'S FISCAL YEARS 2020-2024; THE CONSOLIDATED PLAN HAVING BEEN APPROVED BY RESOLUTION NUMBER 2020-127; AND AUTHORIZING THE EXECUTION OF AN APPLICATION FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS. **(DISTRICT: ALL) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Jack Ladd moved to approve the Consent Agenda, excluding item(s) 5, 6, 11, 12, 14; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

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

5. 2024-109 – RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH ALL CITY MANAGEMENT SERVICES, INC. OF SANTA FE SPRINGS, CALIFORNIA, TO PROVIDE SCHOOL CROSSING GUARD SERVICES FOR THE ADMINISTRATIVE SERVICES DEPARTMENT AT A TOTAL COST OF $839,710.80; AND AUTHORIZING PAYMENT

City Manager Tommy Gonzalez reported there was a meeting to discuss sharing in the cost of crossing guards. MISD will take the topic to their board for discussion on July 30th. Mr. Gonzalez gave several examples from other cities.

Deputy City Manager Morris Williams reported he has met with Midland Christian and St. Ann's private schools.

DRAFT

Reagan Hignojos, 1406 Delmar, voiced his concerns/questions regarding changes that were made at the last minute to this item.

John Norman moved to approve Resolution No. 2024-109; seconded by Eric Davidson.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

6. 076-2024 – MOTION AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR ARCHITECTURAL AND ENGINEERING SERVICES ASSOCIATED WITH THE MULTIMODAL WILDCATTER TRAIL – CHAMPIONS, TRADEWINDS, AND DEAUVILLE PROJECT AND TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT FOR SAID SERVICES; PROVIDED, HOWEVER, THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL

Council Member Ladd thanked Mayor, City staff and the City of Odessa for working on this project.

Mayor Blong also thanked staff for working on this project, especially Michele Hagemann, the Grant Accountant for the City of Midland.

Jack Ladd moved to approve Motion No. 076-2024; seconded by Scott Dufford.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

11. 079-2024 – MOTION APPROVING TASK ORDER NO. 1 TO THAT CERTAIN MASTER RESEARCH AND DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE MITRE CORPORATION; SAID TASK ORDER SHALL BE FOR AN AMOUNT NOT TO EXCEED $375,000.00 AND PROVIDE FOR RESEARCH AND DEVELOPMENT, SYSTEMS ENGINEERING, AND RELATED ADVISORY SERVICES NECESSARY FOR THE FURTHERANCE OF COMMERCIAL SPACE AND HIGH-SPEED FLIGHT OPERATIONS IN THE PERMIAN BASIN

Midland Development Corporation Director Sara Harris reported on items 11 and 12. Item 11 is a Task Order that will provide direct coordination with launch operators that want to utilize the high speed aerospace corridor between Midland Spaceport and New Mexico. Item 12 is a consulting services agreement with the Hickman Group which will allow for direct connections to the possibility of destination and retail venues to come to Midland. The goal is to provide choices so that people will want to stay in Midland over the weekend for entertainment purposes.

DRAFT

Jack Ladd moved to approve Motion No. 079-2024; seconded by Eric Davidson.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

12. 080-2024 – MOTION APPROVING A CONSULTING SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND HICKMAN GROUP, LLC, IN AN AMOUNT NOT TO EXCEED $120,000.00 FOR RETAIL RECRUITMENT SERVICES

This item was discussed along with item number 11.

Jack Ladd moved to approve Motion No. 080-2024; seconded by Scott Dufford.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

14. 081-2024 – MOTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MIDLAND, THE CITY OF ABILENE, AND THE CITY OF SAN ANGELO REGARDING THE INITIAL DESIGN AND CONSTRUCTION OF AN INFRASTRUCTURE SYSTEM NECESSARY FOR THE PRODUCTION AND CONVEYANCE OF GROUNDWATER PURCHASED BY SAID CITIES FROM FORT STOCKTON HOLDINGS, L.P.

Council Member Ladd thanked Council because they worked with two other City Councils to get this project off the ground. Council Member Eric Davidson gave a brief overview of the item noting what was done to make it happen and the importance of this item.

Mayor Blong gave an example of “use it or loose it” and how the cost will be shared between other cities in Phase 1. This will provide Midland with 100 years of water security.

Council Member Eric Davidson reported this will be a 22% increase in water for Midland.

Jack Ladd moved to approve Motion No. 081-2024; seconded by John Norman.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

DRAFT

SECOND READINGS

15. 10543 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 9, BLOCK 14, WARWICK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF SEABOARD AVENUE AND NORTH L STREET), BY PERMITTING A REDUCED MINIMUM SIDE YARD SETBACK ON THE EAST SIDE OF THE PROPERTY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (FIRST READING HELD JULY 09, 2024) **(DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10543.

Robin Poole moved to approve the second and final reading of Ordinance No. 10543; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Norman
NAY: None
ABSTAIN: None
ABSENT: Ladd

16. 10544 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 16, BLOCK 13, SOUTH PARK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH FORT WORTH STREET, APPROXIMATELY 253 FEET SOUTH OF EAST NEW JERSEY STREET), BY PERMITTING A REDUCED MINIMUM REAR YARD SETBACK; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (FIRST READING HELD JULY 09, 2024) **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10544.

Mr. and Mrs. Lujan, 200 E. New Jersey Avenue, voiced concerns about this item stating a speed bump is needed in the area to slow down traffic.

Mayor Blong reported Assistant City Manager Jose Ortiz can work with them on this item.

Council Member Norman reported he has been working with Assistant City Manager Jose Ortiz on this item.

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John Norman moved to approve the second and final reading of Ordinance No. 10544; seconded by Scott Dufford.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

17. 10545 – AN ORDINANCE AMENDING THE CODE OF ETHICS OF THE CITY OF MIDLAND, TEXAS (FIRST READING HELD JULY 09, 2024) **(LEGAL)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10545.

Scott Dufford moved to approve the second and final reading of Ordinance No. 10545; seconded by Robin Poole.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

PUBLIC HEARINGS

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

18. 10546 – AN ORDINANCE VACATING AND ABANDONING A 0.307-ACRE PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1, 2, 3 AND 4, BLOCK 1, REPLAT OF ALL GLEN ARDEN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 185 FEET WEST OF RACQUET CLUB DRIVE); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF $53,428.00; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY **(DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10546.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting it is a vacation request to vacate a portion of an alley to address traffic and safety concerns.

Mayor Blong opened the public hearing at 10:31 a.m.

George Thornley, 521 N. Texas, spoke in favor of this item and is ready to get started once the ordinance is passed.

There being no one else wishing to speak, the public hearing was closed at 10:32 a.m.

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Jack Ladd moved to approve the first of two readings of Ordinance No. 10546; seconded by Eric Davidson.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

19. 10547 – AN ORDINANCE VACATING AND ABANDONING A 5,036-SQUARE FOOT PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOT 1, BLOCK 1, KINGWICK PLACE ADDITION, SECTION 2 AND TRACT B, SUBDIVISION OF BLOCK 1, WARWICK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST SCHARBAUER DRIVE, APPROXIMATELY 640 FEET WEST OF NORTH I STREET); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF $22,662.00; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY **(DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10547.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting its a vacation request to vacate a portion of an alley to address traffic and safety concerns. Staff recommends approval.

Mayor Blong opened the public hearing at 10:36 a.m.

George Thornley, 521 N. Texas, gave a brief overview of what the plans are for this area.

There being no one else wishing to speak, the public hearing was closed at 10:38 a.m.

Scott Dufford moved to approve the first of two readings of Ordinance No. 10547; seconded by Jack Ladd.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

20. 10548 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,650-SQUARE FOOT PORTION OF LOT 5A, BLOCK 1, GATEWAY PLAZA, SECTION 12, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF STARBOARD DRIVE AND LIBERTY DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF BEER AND WINE IN A RESTAURANT

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

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10548.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this item is for an SUD for alcohol sales for Marty G's Cajun restaurant. Staff recommends approval.

Mayor Blong opened the public hearing at 10:41 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10548; seconded by Scott Dufford.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

21. 10549 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,173-SQUARE FOOT PORTION OF LOT 7, BLOCK 58, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH PECOS STREET AND WEST WALL STREET), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION **(DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE & PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10549.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this is for a SUD for alcohol sales. Staff recommends approval.

Mayor Blong opened the public hearing at 10:43 a.m. There being no one present wishing

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to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10549; seconded by Eric Davidson.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

22. 10550 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 7, BLOCK 3, CORPORATE PLAZA ADDITION, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED ON THE EAST SIDE OF NORTH BIG SPRING STREET, APPROXIMATELY 355 FEET NORTH OF FIESTA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10550.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this is a rezoning request. The property owner would like to expand but first needs the property to be rezoned. Staff recommends approval.

Mayor Blong opened the public hearing at 10:46 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Scott Dufford moved to approve the first of two readings of Ordinance No. 10550; seconded by Jack Ladd.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

23. 10551 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 8, BLOCK 63, PARK AVENUE HEIGHTS ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF BUNCHE STREET, APPROXIMATELY 380 FEET SOUTH OF EAST CALIFORNIA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS

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($2,000.00); AND ORDERING PUBLICATION **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10551.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this is a rezoning request.

Mayor Blong opened the public hearing at 10:49 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10551; seconded by John Norman.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

24. 10552 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 9 AND 10, BLOCK 31, 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 CALHOUN STREET, APPROXIMATELY 160 FEET SOUTH OF EAST NEW YORK AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION **(DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10552.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this is a request for a zone change.

Mayor Blong opened the public hearing at 10:51 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10552; seconded by John Norman.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

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25. 10553 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,400-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 **(DISTRICT 2) (DEVELOPMENT SERVICES) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10553.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this is for an SUD for alcohol sales.

Mayor Blong opened the public hearing at 10:53 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. 10553; seconded by Eric Davidson.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

26. 2024-118 – RESOLUTION APPROVING THE ISSUANCE OF AN ORDER FINDING THE SINGLE-FAMILY RESIDENCE ON THE SOUTHERN 80 FEET OF LOTS 7 THROUGH 11, AND, AND THE WESTERN 10 FEET OF THE NORTHERN 50 FEET OF LOT 12, BLOCK 115, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT 510 SOUTH LORAINE STREET, MIDLAND, TEXAS 79701) TO BE A SUBSTANDARD BUILDING AND ORDERING THE OWNER(S) OF SAID BUILDING AND LIENHOLDER(S) AND MORTGAGEE(S) HAVING AN INTEREST IN SAID BUILDING, IF ANY, TO TAKE ABATEMENT ACTION AS SPECIFIED IN THE ORDER, AND, IF SAID ABATEMENT ACTION IS NOT TAKEN, AUTHORIZING THE CITY OF MIDLAND TO TAKE ABATEMENT ACTION **(DISTRICT 4) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

Planning & Development Officer Elizabeth Triggs gave a brief presentation and update of the item noting it is for abatement or demolition orders to address dangerous/substandard

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buildings within the City.

Mayor Blong clarified what types of structures will be considered so not to give the impression that the City is going after occupied structures. These are dilapidated structures that pose an eminent danger or threat to the surrounding neighborhoods.

Council Member Ladd further clarified that the owners of the property are requesting demolition.

Mrs. Triggs reported how CDBG funding is used to assist with this project.

Mayor Blong opened the public hearing at 11:03 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve Resolution No. 2024-118; seconded by John Norman.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

27. 2024-119 – RESOLUTION APPROVING THE ISSUANCE OF AN ORDER FINDING THE SINGLE-FAMILY RESIDENCE ON LOT 22, BLOCK 39, PERMIAN ESTATES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT 102 CANYON DRIVE, MIDLAND, TEXAS 79703) TO BE A SUBSTANDARD BUILDING AND ORDERING THE OWNER(S) OF SAID BUILDING AND LIENHOLDER(S) AND MORTGAGEE(S) HAVING AN INTEREST IN SAID BUILDING, IF ANY, TO TAKE ABATEMENT ACTION AS SPECIFIED IN THE ORDER, AND, IF SAID ABATEMENT ACTION IS NOT TAKEN, AUTHORIZING THE CITY OF MIDLAND TO TAKE ABATEMENT ACTION **(DISTRICT 4) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

Planning & Development Officer Elizabeth Triggs gave a brief presentation and update of the item noting it is for abatement or demolition orders to address dangerous/substandard buildings within the City similar to the previous item number 26.

Mayor Blong opened the public hearing at 11:06 a.m.

Carolyn Snider, 102 Canyon Drive, stated some information that was reported is not accurate and provided a timeline of events. Ms. Snider would like the Council to approve the cleanup and demolition of houses in order to improve the neighborhood.

There being no one else wishing to speak, the public hearing was closed at 11:10 a.m.

Jack Ladd moved to approve Resolution No. 2024-119; seconded by Robin Poole.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman

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NAY: None
ABSTAIN: None
ABSENT: None

MISCELLANEOUS

28. 10554 – DISCUSSION AND CONSIDERATION OF ALL MATTERS INCIDENT AND RELATED TO THE ISSUANCE AND SALE OF "CITY OF MIDLAND, TEXAS TAX AND LIMITED PLEDGE REVENUE CERTIFICATES OF OBLIGATION, SERIES 2024," INCLUDING THE ADOPTION OF AN ORDINANCE AUTHORIZING THE ISSUANCE OF SUCH CERTIFICATES OF OBLIGATION, ESTABLISHING PARAMETERS FOR THE SALE OF SUCH CERTIFICATES OF OBLIGATION AND DELEGATING CERTAIN MATTERS TO AN AUTHORIZED OFFICIAL OF THE CITY **(DISTRICT: NONE) (FINANCE) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

Chief Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10554.

Finance Director Christy Weakland gave a brief overview of the item noting this is setting the parameters and delegation of pricing authority of Certificates of Obligation.

City Manager Tommy Gonzalez reported the need to be competitive with regard to the golf course.

John Norman moved to approve the first and only reading of Ordinance No. 10554; seconded by Scott Dufford.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: Poole

29. 2024-120 – RESOLUTION DETERMINING A PUBLIC NECESSITY TO ACQUIRE (1) A 1.619-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (THE "PROPERTY") IN FEE SIMPLE FOR PUBLIC USE BY EMINENT DOMAIN FOR STREET AND PUBLIC UTILITY IMPROVEMENTS AND (2) A 20-FOOT-WIDE TEMPORARY CONSTRUCTION EASEMENT ABUTTING SAID PROPERTY BY EMINENT DOMAIN FOR PURPOSES OF CONSTRUCTING SAID IMPROVEMENTS; SAID PROPERTY AND TEMPORARY CONSTRUCTION EASEMENT BEING GENERALLY LOCATED ON THE WEST SIDE OF STATE HIGHWAY 158, APPROXIMATELY ONE-QUARTER OF A MILE NORTH OF STATE HIGHWAY 191; AND AUTHORIZING THE CITY MANAGER, THE DEPUTY CITY MANAGER, OR THE ASSISTANT CITY MANAGER TO TAKE ALL STEPS NECESSARY TO ACQUIRE THE NEEDED PROPERTY RIGHTS IN COMPLIANCE WITH ALL APPLICABLE LAWS **(DISTRICT 4) (ENGINEERING SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

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Scott Dufford moved that the City of Midland authorize the use of the power of eminent domain to acquire a 1.619-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas in fee simple and a 20-foot-wide temporary construction easement on all sides of the aforementioned track of land except the side abutting State Highway 158 for the construction, operation and maintenance of a water main, wastewater main, drainage facilities, street improvements, and sidewalk improvements, Resolution No. 2024-120; seconded by Eric Davidson.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

30. 2024-121 – RESOLUTION AUTHORIZING THE EXECUTION OF A PENSION OBLIGATION BOND AGREEMENT WITH THE MIDLAND FIREMEN'S RELIEF AND RETIREMENT FUND **(DISTRICT: ALL) (FINANCE) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

City Manager Tommy Gonzalez gave a presentation recap on the last discussion regarding the Midland Firement's Relief and Retirement Fund. Mr. Gonzalez reported on investments, contributions, benefits, proposed solutions and the impact on citizens/tax payers.

Mr. Gonzalez reviewed several Pension Review Board (PRB) actuary report recommendations and key findings and the taxpayer impact such as a cost estimate to increase the tax rate by 2.6 pennies on the current rate.

Mr. Gonzalez also provided an overview of all possible options such as plan freezes, a cash solution by the city and pay as you go.

Mayor Blong reported on the Tellfair statute that was set up many years ago.

All Council were able to voice their concerns regarding this situation.

Rachel Walker, 4604 Glen Eagles, voiced her concerns about this item and shared an idea from a nationwide organization called the Reason Foundation who has worked to fix pension problems.

Elizabeth Moore, 400 S. Fox Hollow Court, spoke of concerns about the Firemen's pension board makeup.

Jack Ladd moved to amend Resolution No. 2024-121 with a 5% and 2 to 1 minimum; seconded by Eric Davidson.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None

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ABSENT: None

PUBLIC COMMENT

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

    Kevin Williams, 609 N. Weatherford, wants to encourage the Council to speak with Midland ISD about the golf course.

    Mark Wagner, 2806 Ann Drive, spoke about the school board not meeting to discuss the golf course.

EXECUTIVE SESSION

32. Pursuant to Texas Government Code § 551.101, the City Council will hold an Executive Session, which is closed to the public, to discuss the following matters as permitted under the following sections of the Texas Government Code:

Mayor Blong recessed the City Council meeting to go into Executive Session at 12:56 p.m.

a. Section 551.087, Deliberate Economic Development Negotiations

a.1. Discuss business prospects that the City seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

All the business at hand having been completed, the meeting adjourned at 1:43 p.m.

PASSED AND APPROVED August 13, 2024.

_____

Lori Blong, Mayor

ATTEST:

_____

Marcia Bentley-German
City Governance Officer/City Secretary

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City Council Meeting

Item Number: 5

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION APPROVING A CONTRACT WITH SPORTSFIELD SPECIALTIES, INC., THROUGH THE KEYSTONE PURCHASING NETWORK, FOR THE PURCHASE AND INSTALLATION OF OUTFIELD WALL PADS FOR THE SCHARBAUER SPORTS COMPLEX MOMENTUM BANK BALLPARK FOR A TOTAL COST OF $224,960.44; AND APPROVING $11,247.56 FOR CONTINGENCIES (DISTRICT 4) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)

Purpose:

Resolution awarding the execution of a contract with Sportsfield Specialties through Keystone Purchasing Network contract 202001-02 for the purchase and installation of Wall Pads at Scharbauer Sports Complex Momentum Bank Ballpark for a cost of $224,960.44 plus $11,247.56 in contingencies for a total cost of $236,208.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding in the amount of $236,208.00 is available in the Scharbauer Sports Complex FY 2024 Operating Budget.

Strategic Priority:

(Strengthen and Sustain our Infrastructure)

Discussion:

Staff recommends awarding a contract for the purchase and installation of Wall Pads at Scharbauer Sports Complex Momentum Bank Ballpark through Keystone Purchasing Network contract 202001-02. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. Please see the attached memo from Laurie Williams, Interim Community Services Director, for more information.

Therefore, please consider a resolution awarding the execution of a contract with Sportsfield Specialties through Keystone Purchasing Network contract 202001-02 for the purchase and installation of Wall Pads at Scharbauer Sports Complex Momentum Bank Ballpark for a cost of $224,960.44 plus $11,247.56 in contingencies for a total cost of $236,208.00.

Morris Williams Jr.

City Manager's Office

Scharbauer Sports Complex Division
Interoffice Memorandum

Date: July 22, 2024
To: Jose Ortiz, Assistant City Manager
From: Laurie M. Williams, Parks and Recreation Director
Subject: Purchase and Installation of Wall Pads at Scharbauer Sports Complex Momentum Bank Ballpark

The Parks and Recreation Department recommends the Keystone Purchasing Network purchase of outfield wall pads from Sportsfield Specialties to be installed at the Scharbauer Sports Complex Momentum Bank Ballpark.

City staff has made ongoing repairs to the existing pads. They no longer stay adhered to the wall and are falling apart. The Midland RockHounds have expressed that they are now concerned with safety issues with the pads. Major League Baseball will be inspecting the fields in the spring, and this improvement can be completed before the 2025 season if the purchase is made at this time.

The Keystone price is $224,960.44 and includes removal of existing pads, manufacture and delivery of new pads, and installation. 5% contingency is requested to cover any unforeseen costs, making the total requested funding $236,208.00.

$236,208.00 is available in the Scharbauer Sports Complex FY 2024 Operating Budget 079620 in line item 54010, buildings and grounds.

RESOLUTION NO. _____

RESOLUTION APPROVING A CONTRACT WITH SPORTSFIELD SPECIALTIES, INC., THROUGH THE KEYSTONE PURCHASING NETWORK, FOR THE PURCHASE AND INSTALLATION OF OUTFIELD WALL PADS FOR THE SCHARBAUER SPORTS COMPLEX MOMENTUM BANK BALLPARK FOR A TOTAL COST OF $224,960.44; AND APPROVING $11,247.56 FOR CONTINGENCIES

WHEREAS, the Keystone Purchasing Network 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, Sportsfield Specialties, Inc., has submitted a total proposed cost to the City of $224,960.44 for the purchase and installation of outfield wall pads for the Scharbauer Sports Complex Momentum Bank Ballpark through the Keystone Purchasing Network; and

WHEREAS, the Council finds the price proposed by Sportsfield Specialties, Inc., through the Keystone Purchasing Network for said outfield wall pads to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to approve a contract with Sportsfield Specialties, Inc., for the purchase and installation of outfield wall pads for the Scharbauer Sports Complex Momentum Bank Ballpark through the Keystone Purchasing Network; and

WHEREAS, the City Council finds it to be in the public interest to approve $11,247.56 for contingencies;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract for the purchase and installation of outfield wall pads for the Scharbauer Sports Complex Momentum Bank Ballpark, through the Keystone Purchasing Network, for a total cost of

$224,960.44. Said contract being attached hereto as Exhibit A and incorporated herein for all purposes.

SECTION TWO. That the sum of $11,247.56 for contingencies is hereby approved.

SECTION THREE. That funding in the amount of $236,208.00 shall be available in the Scharbauer Sports Complex FY 2024 Operating Budget.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Sportsfield Specialties, Inc., in accordance with the provisions of the above-referenced contract upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

THE CITY OF MIDLAND

CONTRACT

Contract No. 24005950

THIS CONTRACT, effective the 14 day of August, 2024, by and between the City of Midland, hereinafter referred to as "CITY", and Sportsfield Specialties, Inc, hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 224,960.44 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for the purchase and installation of wall pads at the City of Midland Momentum Bank Ballpark. Said work being more particularly described in the following documents, which are attached hereto and incorporated herein for all purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. **Start of Work:** COMPANY shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 70 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

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

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

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

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

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

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

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

20. **Insurance:**

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

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

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

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

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

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

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

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

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

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

22. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT**.

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

24. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine

of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

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

25. **Notice of Alleged Breach; Statutory Prerequisites:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision to the contrary, COMPANY's failure to comply with the requirements of this Section shall perpetually bar COMPANY's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if

CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

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

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

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

29. To the extent that Sections 2271.002 and 2274.002, and 2276.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Contract, Company hereby verifies:

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

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

30. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY;

and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Tommy Gonzalez, City Manager

ATTEST

_____
Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §
§
COUNTY OF_____ §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____day of _____, 2024.

_____
Notary Public, State of

Remit To:
Sportsfield Specialties
PO Box 231
Delhi, NY 13753

Billing Questions:
Phone: 607.746.8911
Email: billing@sportsfield.com

Quote Number: 101772

QUOTE

Quote To:	**Ship To:**	
City of Midland P O Box 1152Midland TX 79702 US	City of Midland P O Box 1152 Midland, TX US KPN#202001-02	**Date:** 6/26/2024 **Expires:** 8/25/2024 **PO Num:** Midland Rockhounds - New Wall Padding **Sales Person:** Gregg Semenetz **Cell:** 607-643-1438 **Email:** gsemenetz@sportsfield.com

USD

Line	Part	Description	Qty / Sales UoM	Unit Price	Ext. Price
1	BFWPZ-NSS		71.00 EA	$420.00	$29,820.00
		BaseZone® Field Wall Pad - 3" High Impact Polyurethane Foam, UV Resistant Outdoor Vinyl Covering, 3/4" Moisture Resistant Composite Backing, Aluminum Z-Clip Wall Mounting System, 1-Year Manufacturer's Product Warranty			
		OF wall pads - Starting in LF - Stacked pads (1) 114"h x 9"w (top stack) (1) 96"h x 9"w (bottom stack) (36) 48"w x 114"h (top stack) (1) 12"w x 73"h 1b baseline z clip (24) 48"w x 24"h (top stack) 3b back of bullpen (7) 48"w x 114"h (1) 18"w x 114"h			
2	BFWPZ48		160.00 EA	$420.00	$67,200.00
		BaseZone® Field Wall Pad - Size: 4'W x 8'H x 3-3/4"D, 3" High Impact Polyurethane Foam, UV Resistant Outdoor Vinyl Covering, 3/4" Moisture Resistant Composite Backing, Aluminum Z-Clip Wall Mounting System, 1-Year Manufacturer's Product Warranty			
		OF wall pads - Starting in LF - Stacked pads (36) 48"w x 96"h (bottom stack) (84) 48"w x 96"h (bottom stack) 1b line stacked pads (7) 48"w x 96"h (bottom stack) (13) 48"w x 96"h to 31"h 3b stacked wall (7)48"w x 96"h (bottom stack) (13) 48"w x 96"h to 31"h			

3	BFWPZ-NSS	88.00	EA	$420.00	$36,960.00

BaseZone® Field Wall Pad - 3" High Impact Polyurethane Foam, UV Resistant Outdoor Vinyl Covering, 3/4" Moisture Resistant Composite Backing, Aluminum Z-Clip Wall Mounting System, 1-Year Manufacturer's Product Warranty

OF wall pads - Starting in LF - Stacked pads
(84) 48"w x 41"h (top stack)
1b baseline
(2) 47"w x 39"h gates
3b Baseline
(2) 47"w x 39"h gate

5	BFWPCL-NSS	13.00	EA	$370.00	$4,810.00

BaseZone® Field Wall Pad - 3" High Impact Polyurethane Foam, UV Resistant Outdoor Vinyl Covering, 3/4" Moisture Resistant Composite Backing, Chain-Link Bolt and Aluminum Back-up Disk Attachment, 1-Year Manufacturer's Product Warranty

RF corner bullpen area
(1) 48"w x 114"h
(1) 36"w x 114"h
(1) 48"w x 114"h
(1) 15"w x 114"h
(1) 48"w x 114"h
Back of bullpen
(7) 48"w x 114"h
(1) 23"w x 114"h

6	BFWPCL-NSS	3.00	EA	$340.00	$1,020.00

BaseZone® Field Wall Pad - 3" High Impact Polyurethane Foam, UV Resistant Outdoor Vinyl Covering, 3/4" Moisture Resistant Composite Backing, Chain-Link Bolt and Aluminum Back-up Disk Attachment, 1-Year Manufacturer's Product Warranty

RF corner bullpen area
(1) 33"w x 79"h gate
(1) 33"w x 79"h gate
(1) 80"w x 33"h above gate

7	BFWPZ43	15.00	EA	$224.00	$3,360.00

BaseZone® Field Wall Pad - Size: 4'W x 3'H x 3-3/4"D, 3" High Impact Polyurethane Foam, UV Resistant Outdoor Vinyl Covering, 3/4" Moisture Resistant Composite Backing, Aluminum Z-Clip Wall Mounting System, 1-Year Manufacturer's Product Warranty

	1b line stacked pads (7) 48"w x 36"w (top stack) 1b baseline (1) 53”w x 30”h gate 3b stacked walll (7) 48"w x 36"h (top stack)				
8	BCLPP-V	3.00	LF	$24.20	$72.60
	BaseZone® Chain Link Post Padding Vertical - 6" W x Variable Length x 3 -3/8" Thick, 3" High Impact Polyurethane Foam, UV Resistant Outdoor Vinyl Covering, 3/8" Rigid Multi-Layer Polypropylene Backing, Corrosion Resistant Attachment Hardware, 1-Year Manufacturer's Product Warranty				
	1b baseline (1) 36”h 3b Baseline (2) 36”h				
9	BFWPZ-NSS	33.00	EA	$95.00	$3,135.00
	BaseZone® Field Wall Pad - 3" High Impact Polyurethane Foam, UV Resistant Outdoor Vinyl Covering, 3/4" Moisture Resistant Composite Backing, Aluminum Z-Clip Wall Mounting System, 1-Year Manufacturer’s Product Warranty				
	1b baseline (1) 12”w x 12”h Backstop (1) 15”w x 8”h (30) 48"w x 8”h (1) 15”w x 8”h				
10	BFWPZ42	58.00	EA	$180.00	$10,440.00
	BaseZone® Field Wall Pad - Size: 4'W x 2'H x 3-3/4"D, 3" High Impact Polyurethane Foam, UV Resistant Outdoor Vinyl Covering, 3/4" Moisture Resistant Composite Backing, Aluminum Z-Clip Wall Mounting System, 1-Year Manufacturer’s Product Warranty				
	1b baseline (24) 48"w x 24"h (top stack) 3b Baseline (1) 21”w x 23”h (1) 41”w x 23”h (30) 48"w x 23”h (1) 36"w x 23”h (1) 52”w x 23”h gate				
11	BFWPZ-NSS	24.00	EA	$135.00	$3,240.00
	BaseZone® Field Wall Pad - 3" High Impact Polyurethane Foam, UV Resistant Outdoor Vinyl Covering, 3/4" Moisture Resistant Composite Backing, Aluminum Z-Clip Wall Mounting System, 1-Year Manufacturer’s Product Warranty				

	(24) 48"w x 12” (bottom stack)				
12	BCLTRPR	704.00	LF	$33.32	$23,457.28

BaseZone® Chain Link Top Rail Padding - 9" Face x 6" Return, 3" High Impact Polyurethane Foam, UV Resistant Outdoor Vinyl Covering, 3/8" Rigid Multi-Layer Polypropylene Backing, Corrosion Resistant Attachment Hardware, 1-Year Manufacturer's Product Warranty

OF Top Rail
(85) 96”
(1) 14”
(1) 76”
(1) 72”
(1) 64”
(1) 60”

13	Install-SRV	1.00	EA	$38,750.00	$38,750.00

Installation service(s) per remarks.

QUOTE - Miscellaneous Charge -

	Description	Ext. Price
1.)	Freight-NC-Direct	$2,695.56

Lines Total	$222,264.88
Total Taxes	$0.00
Line Miscellaneous	$0.00
Quote Miscellaneous	$2,695.56
Quote Total	**$224,960.44**

1. Customer is responsible for material take-off, quantities and specification compliance and/or equivalency of quoted products.
2. All prices listed are in US Dollars
3. Lead times vary by product and begin after receipt of purchase order, credit approval, and acceptance of color, material(s) and design. Please reach out to your team at Sportsfield Specialties for specific product lead times.
4. All freight is FOB Origin. **Freight rates are estimates provided at the time of quotation. Actual freight rates, include shipping & handling, will be billed at the time of shipment. The customer Is responsible for any difference between the quoted freight rate and the actual freight rate at the time of shipment.** The actual freight rates may differ from the estimates as a result of variable factors, such as the change in product quantity and/or material order, state of national economy, fuel costs, capacity and/or rate levels at the time of shipment. Split orders will require additional freight charges. Freight quoted does not include additional equipment to unload or unloading services, assembly or installation.
5. Applicable State and Local Sales Tax will be added to the final invoice unless a tax exempt or Resale Certificate is provided prior to order shipment.
6. Wire transfers, by check and established credit terms are accepted payment methods. Accepted credit cards are VISA, Mastercard and American Express.
7. Pricing assumes any electrical connections and wiring are supplied by others unless otherwise indicated.
8. Customer is responsible for approval and associated cost of any applicable local and state codes.
9. Due to the increase of steel and aluminum raw material pricing caused by increased demand, coupled with market instability and uncertainty due to the implementation of international trade tariffs, Sportsfield Specialties, Inc. will no longer be able to guarantee current product pricing after this quotation has expired in sixty (60) days. To avoid a potential product price increase, customers will need to provide Sportsfield Specialties, Inc. with a fully executed purchase order or letter of intent before this quotation expires to guarantee this product pricing. Sportsfield Specialties, Inc reserves the right to requote product pricing as necessary based on current steel and aluminum raw material pricing once this quotation has expired in sixty (60) days.
10. If your quote includes a custom item, the item(s) will not be fully released into production until all order information is verified. This information includes color choices, bench configurations and field dimensions. Custom items and items with digital graphics require a signed rendering prior to release into production. Once color selections are made and material has been ordered for custom items, the order cannot be canceled. Custom items cannot be returned.

Large Item Shipping

Please be aware that due to our limited storage capacity, we do not have much flexibility to extend ship dates for certain products. Please let us know Immediately If you need to adjust your shipment date.

Project with Install

Pricing does not Include tax.
Includes equipment rental as required.
Proposal assumes equipment (lifts, utility vehicles, etc.) can access warning track and/or construction area without field protection. SSI will not be held liable for any resulting damages If Reid protection Is not requested by the Owner /Contractor.
• If field protection Is used, SSI will not be held liable for any damages to the field, turf, warning track and/or construction area.
• Restoration of warning track, grass, turf and/or any other field surface Is not Included.
• Some wrinkles in the windscreen/vinyl are characteristic of the material and are to be expected.
Excludes permits, bonds, inspections and any associated costs.
The costs associated with union/prevailing wages are not included unless otherwise stated. Any prevailing wage schedules or certified payroll requirements must be explicitly outlined prior to bid and/or contract execution to ensure wage compliance.
The Installation of athletic equipment Includes an estimated number of mobilizations to ensure favorable cost management and utilizes the most efficient scheduling practices. Therefore, It Is the responsibility of the Contractor or Owner's Representative to mitigate unsuccessful mobilization. If additional mobilizations are necessary, there will be an additional charge subject to travel time, mileage, lodging and other associated expenses.
At the completion of the project, Sportsfield Specialties and/ or the Installer will schedule a walkthrough with the Contractor/Owner's Representative to address any Issues/concerns before leaving the job site. If the Contractor/Owner's Representative Is not available for a walkthrough, or non-warranty Issues are discovered after the Installer leaves the job site, additional remobilization charges to address the punch list may apply

RAW Material Volatility

DISCLAIMER: Due to the ongoing Increase of steel and aluminum raw material pricing caused by Increased demand, coupled with market instability and uncertainty due to the Implementation of International trade tariffs, Sportsfleld Specialties, Inc. will no longer be able to guarantee current product pricing after this quotation has expired In sixty (60) days. To avoid a potential product price Increase, customers will need to provide Sportsfleld Specialties, Inc. with a fully executed purchase order or letter of Intent before this quotation expires to guarantee this product pricing. Sportsfleld Specialties, Inc. reserves the right to requote product pricing as necessary based on current steel and aluminum raw material pricing once this quotation has expired In sixty (60) days.

Padding Notes

- $25 charge PER CUT-OUT If needed for electrical outlets, light switches, etc.
- Graphics are additional If requested by customer.
- Assumes pads and other materfa1s can be stored within facility before/during Installation.
- Assumes padding support structure (I.e. concrete wall, steel framing, block wall, etc.) Is provided by others.
- Some wrinkles in the windscreen/vinyl are characteristic of the materf11I and are to be expected.
- Proposals are typically based on available drawings, rough measurements, etc. Sportsfleld Specialties reserves the right for additional charges should discrepancies be discovered during the field verification process.
- In the event that construction delays and/ or schedule constraints necessitate the use of other trades shop drawings for pad creation (In lieu of a site visit), Sportsfteld cannot be held liable for any resulting discrepancies. If new pads must be created, additional charges may apply.

Date

Signature

Printed Name/Title

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

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

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

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

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

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

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

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

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

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

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

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

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

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

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

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

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

EXHIBIT D - Building Wage Rate rev 01/05/2024

"General Decision Number: TX20240261 01/05/2024

Superseded General Decision Number: TX20230261

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: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $17.20 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 2024.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at http://www.dol.gov/whd/govcontracts.

Modification Number | Publication Date
0 | 01/05/2024

BOIL0074-003 07/01/2023

	Rates	Fringes
BOILERMAKER	$ 37.00	24.64

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane	$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above	$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under	$ 32.35	13.10

IRON0084-011 06/01/2023

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 27.51	8.13

PLUM0404-001 09/01/2022

	Rates	Fringes
PLUMBER	$ 28.64	10.65

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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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($17.20) or 13658 ($12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

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 https://www.dol.gov/agencies/whd/government-contracts.

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) (iii)).

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 National Office because National Office has 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: 6

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: **RESOLUTION AWARDING A CONTRACT TO TRUCLEAR WATER SOLUTIONS, INC., IN THE AMOUNT OF $1,440,000.00 FOR THE ADVANCED GROUNDWATER TREATMENT PROJECT; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT: NONE) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

Purpose:

Resolution awarding a contract to TruClear Water Solutions, Inc. of Abilene, Texas for the Advanced Groundwater Treatment for a total cost of $1,440,000.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in Utilities Fund unappropriated fund balance and will be appropriated for this purpose.

Strategic Priority:

(Strengthen and Sustain our Infrastructure)

Discussion:

Staff recommends awarding a contract for the Advanced Groundwater Treatment for the Utilities Department. Twenty-two (22) requests for proposals were issued. We received three (3) proposals. Staff recommends awarding the contract to TruClear Water Solutions, Inc. This approval will empower the city to improve our water quality, achieve compliance with health

and environmental standards, and establish a sustainable water management system for our community. Please see the attached memo from Carl Craigo, Utilities Director, for additional information.

Therefore, please consider a resolution awarding a contract to TruClear Water Solutions, Inc. of Abilene, Texas for the Advanced Groundwater Treatment for a total cost of $1,440,000.00 for the Utilities Department.

Morris Williams Jr.

City Manager's Office

Memorandum

To: Carolina Jimenez, Buyer II
From: Carl Craigo, PE, Utilities Director
Date: 6/25/2024
Subject: Approval to Move Forward with TruClear's Advanced Groundwater Treatment Proposal

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Summary:

This memorandum seeks approval from the City Council to move forward with the proposal submitted by TruClear Water Solutions for the Advanced Groundwater Treatment project. After a thorough evaluation of three proposals submitted in response to RFP 24004269, TruClear's proposal has been identified as the most advantageous for the City of Midland.

Evaluation Criteria and Summary of Findings:

1. **Technical Capabilities (40%):** TruClear's Advanced Molecular Oxidation® (AMO®) technology excels in comprehensive contaminant removal, including arsenic, vanadium, PFOS, and PFOA. The technology ensures significant reductions in microbial content and chemical contaminants, providing the highest technical capability among the proposals reviewed.

2. **Cost Efficiency (20%):** TruClear offers a cost-effective operational expenditure model with a monthly cost of $120,000, totaling approximately $1,440,000 annually. This model minimizes upfront costs and includes maintenance and upgrades, ensuring predictable financial planning and reducing long-term operational expenses compared to other proposals.

3. **Vendor Experience and Reliability (20%):** TruClear has a proven track record in municipal and industrial water treatment projects. Their extensive experience demonstrates reliability and effectiveness in addressing various challenging water quality conditions, making them a trustworthy partner for this project.

4. **Innovation (20%):** TruClear's proposal stands out for its innovative, chemical-free Advanced Molecular Oxidation® technology. This approach not only efficiently reuses water without generating waste streams but also aligns with our environmental goals by reducing the risk of chemical spills and minimizing environmental impact.

Conclusion:

Based on the evaluation, TruClear's proposal offers the best technical solution, cost efficiency, vendor reliability, and innovation. Their Advanced Molecular Oxidation® technology provides comprehensive contaminant removal while ensuring operational and financial benefits for the City of Midland.

Recommendation:

It is recommended that the City Council approve moving forward with TruClear's proposal for the Advanced Groundwater Treatment project. This approval will enable us to enhance our water quality, meet health and environmental standards, and ensure a sustainable water management system for our community.

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT TO TRUCLEAR WATER SOLUTIONS, INC., IN THE AMOUNT OF $1,440,000.00 FOR THE ADVANCED GROUNDWATER TREATMENT PROJECT; AND APPROPRIATING FUNDS FOR SAID PROJECT

WHEREAS, the City Manager approved plans and specification and authorized advertisement for proposals for the Advanced Groundwater Treatment Project; and

WHEREAS, the proposals were opened on May 15, 2024, with the lowest responsible and best value proposal being submitted by Truclear Water Solutions, Inc., in the amount of $1,440,000.00 as shown on the tabulation attached hereto as Exhibit A, which is incorporated herein for all purposes; and

WHEREAS, the City Council finds the amount proposed by Truclear Water Solutions, Inc., for the Advanced Groundwater Treatment Project to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Truclear Water Solutions, Inc., for the Advanced Groundwater Treatment Project;

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

SECTION ONE. That the City Manager and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract in the amount of $1,440,000.00 with Trueclear Water Solutions, Inc., for the Advanced Groundwater Treatment Project. Said contract to be kept on file in the office of the City Secretary and referenced by the date and number of this Resolution.

SECTION TWO. That funding shall be available in the in the Utilities Fund unappropriated balance and shall be appropriated for this purpose.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Trueclear Water Solutions, Inc., pursuant to the terms of said contract upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

S:\Resolutions\Purchase\2024\Contracts\Award Contract - Advanced Groundwater Pre-Treatment.wpd

24004269 Advanced Groundwater Pre-Treatment System Bid Opening: May 15, 2024											
			TruClear Water Solutions, Inc.		Aqua Pulsar Advanced Water Treatment Solutions		Mid-West Flow Control Products				
			$1,440,000.00		$2,200,320.00		$10,702,001.00				
#	Items	Quantity Required	Monthly Rate	Total Annual Projected Cost	Monthly Rate	Total Annual Projected Cost	On-Site Demonstration/ Testing Credit	First Month	Months 2-11	Total Annual Projected Cost
#1-1	Cost of equipment, maintenance, and replacement parts for a (12) month period.	12	120,000	$1,440,000.00	$183,360.00	$2,200,320.00	$14,000.00	$6,458,000.00	$387,091.00	$10,702,001.00

Bid Summary
22 Bid requests were issued
3 Bids are listed above
0 Bid was unresponsive
1 NO BIDS were received
19 Bidders did not respond

24004269 Advanced Groundwater Treatment Scoring Criteria			
	Midwest	**TruClear**	**Clear Water Plasma**
1.Technical Capabilities (40%): Evaluate the proposed solution's ability to meet the technical requirements specified in the RFP, including its efficacy in removing arsenic and other contaminants.	5	8	7
2. Cost Efficiency (20%): Consider the total cost of ownership, including installation, operation, and maintenance. This will help assess whether a higher upfront cost may be justified by superior performance or lower long-term operational costs.	1	10	8
3. Vendor Experience and Reliability (20%): Assess the vendor's experience in implementing similar projects and their track record for reliability and service quality.	5	9	6
4. Innovation (20%): Evaluate the proposal on factors like the minimal use of chemicals and innovative reuse of reject water.	10	10	10
100 Total Points	**52**	**90**	**76**

MIDLAND

Be the Energy!

Advanced Groundwater Treatment

June 12, 2024

Visit Our Website:
MIDLANDTEXAS.GOV



Strategic Initiatives

Here's What We Are Doing:

- **Strategic Goal 6.1 Provide Reliable and Sustainable Utilities**
  - Guarantee water supply and distribution systems security and longevity.

- **Enhancing Water Quality and Safety to Get to 75 Years Water Supply**
  - Advanced treatment of T-Bar water source for more sustainable use.
  - Expand treatment to Paul Davis water supply to ensure a 75-year water supply with current assets (for additional cost).



Proposals:

- **City of Midland issued a Request for Proposals for Advanced Groundwater Treatment April 2024**
- **Three Proposals were received:**
  - Clear Water Plasma
  - TruClear
  - Midwest Flow Control
- Evaluation Committee
  - Evaluated the three proposals on May 31, 2024.
  - Rated and Determined TruClear would be the city's best choice.

Compare TruClear to Midwest Flow Control Products (MWFCP)

1. **Technology**:
   - **MWFCP**: Utilizes GreenGen E-Wave Reactor Technology, which is effective but less advanced than TruClear's AMO® technology. The E-Wave system focuses on treating contaminants like arsenic, iron, manganese, and total dissolved solids (TDS) but lacks the comprehensive contaminant removal and energy efficiency of TruClear's system.
   - **TruClear**: Employs Advanced Molecular Oxidation (AMO) technology, which uses electrolysis and electro-chemistry for a broader range of contaminant removal, including PFOS and PFOA, with minimal energy consumption and without generating secondary waste streams.
2. **Environmental Impact**:
   - **MWFCP**: Their solution involves traditional methods that may generate some waste and require chemical handling, which poses environmental and safety risks.
   - **TruClear**: Offers a chemical-free process that is environmentally friendly and safer for workers, eliminating hazardous chemical use and reducing environmental impact.
3. **Cost and Operational Efficiency**:
   - **MWFCP**: The initial cost of $6.458 million for the first month and $387,091 monthly thereafter can be burdensome. Additionally, their technology may not offer the same level of scalability and energy efficiency as TruClear's.
   - **TruClear**: Focuses on operational expenditures, offering cost-effective and predictable monthly fees without large upfront investments. Their scalable units can meet increasing demand efficiently.

Compare TruClear to Aqua Pulsar Energy Services

1. **Technology**:
   - **Aqua Pulsar**: Utilizes electro-oxidation technology, which is chemical-free and effective for specific contaminants like arsenic, manganese, iron, fluoride, and TDS. However, it does not offer the same level of comprehensive contaminant removal or energy efficiency as TruClear's AMO technology.
   - **TruClear**: Employs AMO technology, providing advanced contaminant breakdown capabilities and higher energy efficiency. This technology addresses a wider range of contaminants, including emerging concerns like PFOS and PFOA.
2. **Cost Structure**:
   - **Aqua Pulsar**: The annual cost is approximately $2.23 million, which includes maintenance and replacement parts but may involve additional costs for certain operational needs.
   - **TruClear**: Adopts an OPEX model, reducing financial risk and providing a more predictable cost structure. This model includes maintenance, regular updates, and technological upgrades, ensuring long-term operational efficiency.
3. **Experience and Track Record**:
   - **Aqua Pulsar**: Has experience in industrial and municipal water treatment but may lack the extensive track record and breadth of application seen with TruClear.
   - **TruClear**: Demonstrates a robust history of successful implementations across various sectors, including municipal and industrial applications, ensuring reliability and effectiveness in different water treatment contexts

Scoring Criteria:

Advanced Groundwater Treatment			
	Midwest	TruClear	Clear Water Plasma
1. Technical Capabilities (40%): Evaluate the proposed solution's ability to meet the technical requirements specified in the RFP, including its efficacy in removing arsenic and other contaminants.	5	8	7
2. Cost Efficiency (20%): Consider the total cost of ownership, including installation, operation, and maintenance. This will help assess whether a higher upfront cost may be justified by superior performance or lower long-term operational costs.	1	10	8
3. Vendor Experience and Reliability (20%): Assess the vendor's experience in implementing similar projects and their track record for reliability and service quality.	5	9	6
4. Innovation (20%): Evaluate the proposal on factors like the minimal use of chemicals and innovative reuse of reject water.	10	10	10
Total points 100	52	90	76

Conclusion:

- Technical Capabilities (40%): TruClear's Advanced Molecular Oxidation® (AMO®) technology provides comprehensive contaminant removal, including arsenic, vanadium, PFOS, and PFOA, with significant reductions in microbial content and chemical contaminants, making it the most technically advanced solution.

- Cost Efficiency (20%): TruClear's operational expenditure model includes a monthly cost of $120,000, totaling an annual expense of approximately $1,440,000, which minimizes upfront costs and includes maintenance and upgrades, offering a cost-effective and predictable financial solution. (There will be an upfront electrical cost TBD which would be the same for all proposals)

- Vendor Experience and Reliability (20%): TruClear has a robust track record with experience in municipal and industrial water treatment projects, demonstrating reliability and effectiveness in various challenging water quality conditions.

- Innovation (20%): TruClear excels in innovation with its chemical-free Advanced Molecular Oxidation® technology, which efficiently treats water without generating waste streams, positioning it as the most water conservation friendly option.

CITY OF MIDLAND
SERVICE CONTRACT
 # 24004269

THIS CONTRACT, effective this 14th day of August 2024, by and between the City of Midland, hereinafter referred to as the "CITY" and TruClear Water Solutions, Inc., hereinafter referred to as the "COMPANY".

Projected Annual Cost: $1,440,000.00

For and in consideration of the payments and Contracts hereinafter mentioned, COMPANY and CITY hereby agree as follows:

1. COMPANY shall perform all work as set forth in the Specifications and Instructions to Bidders, which are incorporated as part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the Specifications and addenda therefor, and the Performance Bond hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.

3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.

4. 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 and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.

5. <u>INDEMNITY:</u> 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, IT'S AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

6. COMPANY Hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Declaratory Judgment Act relating to this Contract.

7. CITY shall have the right to withhold payment for:

a. defective work not corrected;

b. completed service report not submitted;

c. failure of COMPANY to pay subcontractors or suppliers;

d. damage to other work or CITY's property or equipment; or

e. default of COMPANY in performance of this Contract.

The term of this agreement shall be for a period of one (1) year commencing on July 10, 2024, and terminating on July 9, 2025, unless sooner terminated as provided in this agreement. The City may at its option, renew this agreement for a period of five (5) additional years, not to exceed a total of twenty (20) years. In order to exercise this option, the City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this agreement.

8. Prices for the extension of the Contract described in Paragraph 7 shall be adjusted by a percentage equal to the percentage increase in the Consumer Price Index All Items, Dallas-Fort Worth SMA as of the first date of the Contract to the date of request for change, but in no case shall the price for the option period increase more than fifteen percent (15%) above the amount set forth in the proposal.

9. COMPANY shall:

a. comply with all applicable laws, rules, codes and regulations of Local, State and U.S. Governments;

b. have a designated supervisor on the job site at all times work is in progress;

c. make no changes in the scheduled work without written authorization from CITY;

e. permit and facilitate inspection of the work in progress by CITY;

f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;

g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;

h. remedy all defects in workmanship which develop within a period of one (l) year from the date of service report acceptance by CITY; and

i. not permit any worker to labor more than eight (8) hours during any one (l) calendar day or more than forty (40) hours during any one (l) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

10. In the event COMPANY is in noncompliance with any of the covenants or provisions of this Contract, and such noncompliance is not cured within thirty (30) days after receipt of written notice from CITY, CITY may terminate this Contract at the end of said thirty (30) day period, and may seek such other remedies as may be available in law or equity. Notwithstanding the above, CITY may, at its option, terminate this Contract in the event COMPANY fails on at least three (3) occasions to provide emergency services in a timely manner as required by the Specifications.

11. Failure of CITY to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive COMPANY's responsibility to rectify such default, but CITY shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

12. Any notice which may or shall be given under the terms of this Contract shall, unless otherwise provided herein, be in writing and shall be either delivered by hand or sent by United States Registered or Certified Mail, postage prepaid:

To CITY:

(If mailed) P. O. Box 1152
Midland, Texas 79702

(If hand delivered) 300 North Loraine
Suite 220
Midland, Texas 79701

To COMPANY. TruClear Water Solutions, Inc.
8496 W. Overland Trail
Abilene, Texas 79603

The above addresses may be changed at any time by providing written notice to the other party.

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

14. This obligation and undertakings of each of the parties to this Contract shall be performed in Midland County, Texas.

15. This Contract may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto.

16. This Contract and all incorporated Contract documents constitute the entire agreement among CITY and COMPANY; no prior written or contemporaneous oral promises or representations shall be binding.

17. **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.

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

19. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

20. **NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of

COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

21. **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.

22. **ASSIGNMENTS:** 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 consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

23. **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.

24. **INDEPENDENT CONTRACTOR:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and

the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

25. **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.

26. **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.

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

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

The Business Automobile Liability insurance provided by 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.

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

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

30. **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.

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

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

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

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

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

34. **Conflict of Terms.** If a conflict of terms or language exists between: (i) any of the provisions of

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Tommy Gonzalez, City Manager

ATTEST

_____
Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF_____§

§

COUNTY OF_____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 2024 personally appeared, _____, an officer of TruClear Water Solutions, Inc. known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____day of _____, 2024.

_____
Notary Public, State of _____

Date: 4/18/2024

MIDLAND
Purchasing Division

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

BID NO: 24004269

CLOSING DATE:

May 15, 2024

CLOSING TIME:

2:00 PM

BIDS WILL BE RECEIVED UNTIL **2:00 PM** on **05/15/2024** THROUGH BONFIRE FOR GOODS AND SERVICES DESCRIBED BELOW FOR THE: **Utilities Department**

DESCRIPTION
Advanced Groundwater Pre-Treatment System as specified.
TOTAL

NOTICE TO BIDDERS:

1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
2. IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON- RESPONSIVE BIDS WILL BE REJECTED. BIDDER/CONTRACTOR MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.
3. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF CONTRACT, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
4. IMPORTANT NOTICE: IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE, WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK.
5. BIDDER/CONTRACTOR/COMPANY IS RESPONSIBLE FOR ACQUIRING AND ACKNOWLEDGING ALL ADDENDA.
6. **PUBLIC INFORMATION:** To the extent that Bidder is submitting a bid for a contract described by Section 552.371 of the Texas Government Code, Bidder agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this bid, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR EMAIL PURCHASING@MIDLANDTEXAS.GOV

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

COMPANY NAME: TruClear Water Solutions, Inc.
ADDRESS: 8496 W. Overland Treal
CITY: Abiene STATE: Texas ZIP 79603
PHONE NO: (325) 695-0299 EMAIL: jaycell@truclearwater.com
DELIVERY CAN BE MADE: Two weeks after notification of award
AUTHORIZED SIGNATURE:

A Message for Our Vendors

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

Vision Statement

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

Mission Statement

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

Guiding Principles: I-FORCE

Integrity
Financial Stewardship
Outstanding Service
Respect
Collaboration
Excellence

City Council Key Focus Areas

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

Core Values

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

Vendor & Contractor Communication

In order to ensure smooth coordination and effective communication between contractors and the City of Midland**, it is imperative that contractors provide adequate advance notice before commencing work on specific projects**. The city requires ten (10) days' notice on commencement of project. This advance notice requirement serves to notify all relevant city departments, ensuring proper preparation and coordination of resources. Additionally, it facilitates timely dissemination of information to the public, if necessary, thereby minimizing potential disruptions and maximizing transparency throughout the project lifecycle. **By adhering to this protocol, contractors demonstrate their commitment to fostering productive partnerships with the City of Midland and upholding standards of efficient project management and community engagement. This commitment is a part of our strategic plan, with direct ties to Goal 4: Transparent and Consistent Communication and Strategies 4.4 and 4.5.**

Strategic Plan

1. Strong Economy with More Quality Jobs

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

2. Set the Standard for a safe and secure City

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

3. Quality of Life and Place

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

4. Transparent and Consistent Communication

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

5. Provide Sound Governance and Fiscal Management

5.1 Recruit and Retain a Skilled and Diverse Workforce: Invest in talent and diversity; grow our local pipeline of skilled employees.
5.2 Enhance Citizen Experience: Improve employee working conditions to better serve citizens.
5.3 Hone Public Servant Proficiency: Cultivate a culture of professional growth, skilled mastery, and information exchange.
5.4 Implement Cutting-Edge Practices: Harness automation and Artificial Intelligence technology for efficient resource utilization.
5.5 Promote a Well-Balanced Customer Service Philosophy: Consistently deliver excellent service to residents.
5.6 Deliver Services Timely and Efficiently: Prioritize continuous improvement.
5.7 Ensure Continued Financial Stability and Accountability: Maintain financial transparency.
5.8 Deliver Effective and Efficient Processes: Maximize value in procurement.
5.9 Ensure Reliability and Safety: Maintain existing assets and develop new city asset opportunities, including parks

and other facilities, with a standard of excellence.

5.10 Create a Work Environment that Supports Bleeding-Edge Practices: Encourage bleeding-edge practice that then cultivates an environment where employees can learn from their experiences and improve processes; thus, becoming a learning organization.

6. Strengthen and Sustain Our Infrastructure

6.1 Provide Reliable and Sustainable Utilities: Guarantee water supply and distribution systems security and longevity.

6.2 Enhance Infrastructure for Economic Growth: Improve competitiveness through infrastructure investments that includes collaboration with neighboring jurisdictions and exemplary peer agencies.

6.3 Streamline and Consolidate City Facilities: Create synergy for improved services.

6.4Standardize Infrastructure Processes Across the City: Ensure consistency, timeliness, and accountability in infrastructure development.

6.5 Implement a Funding Stream for Infrastructure: Establish reliable funding for continual improvements.

6.6 Strategize for and Monitor City Growth: Develop proactive responses to growth rather than reactive.

6.7 Develop and Implement Comprehensive Road Planning and Maintenance Initiatives: Ensure safe and maintained roads for existing and new developing areas and main thoroughfares.

Request for Proposals

RFP 24004269

for

Advanced Groundwater Pre-treatment System

Proposals for this requirement will be accepted until 2:00 P.M. on May 15, 2024

Proposals May be Mailed or Delivered to:

City Secretary
City of Midland
Suite 330
P.O. BOX 1152
Midland, Texas 79702-1153
(300 N. Loraine, Suite 330 Midland, TX 79701)

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

1. **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

2. 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.

3. **PUBLIC INFORMATION.** TO THE EXTENT THAT PROPOSER IS SUBMITTING A PROPOSAL FOR A CONTRACT DESCRIBED BY SECTION 552.371 OF THE TEXAS GOVERNMENT CODE, PROPOSER 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 PROPOSAL, 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.

See Section 1.9 for Pre-proposal Meeting Information

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SCHEDULE OF EVENTS

RFP 24004269
For
Advanced Groundwater Pre-treatment System

Event	Date*
RFP Released	4/20/2024
Non Mandatory Pre-Proposal Conference	5/01/2024
Cutoff Date for inquiries and clarification	5/10/2024
Proposal Due Date	5/15/2024
Notification of Vendor Interviews / Product Demonstrations	To Be Determined
Intended Date for Contract Award	6/11/2024

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

NOTE:

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

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

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

Conditions

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

1. Offerors electing to respond to this RFP are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by a offeror in response to this RFP.

2. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval from purchasing.

3. In case of a tie between two or more offerors, the award will be made in accordance with preferences as outlined by statute.

4. The Offeror agrees to protect the City from claims involving infringement of patents or copyrights.

5. The Offeror hereby assigns to Purchaser, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. 1973 and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).

6. No substitutions or cancellation permitted without the written approval of the City Purchasing Agent. Deliveries made pursuant to a resulting contract shall be made during normal working hours only, unless approval for late delivery has been obtained.

7. Contractor shall submit two copies of an itemized invoice to Accounts Payable, The City of Midland, Texas, P.O. Box 1152, Midland Texas 79702. Each copy of the invoice shall reference the P.O. and the RFP numbers.

8. In the event of a conflict between the standard proposal requirements and conditions and the attached detail specification, the detail specifications shall govern.

9. Governing Law & Venue: This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes or lawsuits arising from the performance of this contract shall be exclusively in Midland County, Texas. The parties agree that all performance under this contract shall take place in Midland, County, Texas. The Contractor and City agree that all payments made under this contract shall take place in Midland County, Texas.

10. This obligation and undertakings of each of the parties to this contract shall be deemed to have been performed in Midland County, Texas.

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland (Utilities Department) (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for Advanced Groundwater Pre-treatment System as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

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

1.2. INITIAL EVALUATION

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

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

1.6. TRADE SECRETS

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

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

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

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

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

1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of

the trade secret claim must be attached to each proposal containing trade secrets. In addition, offerors submitting a proposal containing trade secrets must be prepared to pay all legal costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.

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

1.7. LATE PROPOSALS

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

1.8. PREPARING A RESPONSE

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

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

1.9. PRE-PROPOSAL CONFERENCE:

A non-mandatory Pre-Proposal Conference will be conducted at City Hall Basement Conference Room located at 300 N Loraine St, Midland, TX on May 1, 2024 at 3:00 pm. Offerors may use this opportunity to notify the City of any ambiguity, inconsistency, or error, which they may discover upon examination of this RFP. All responses to questions at the Pre-Proposal Conference will be oral and in no way binding on the City.

1.10. CLARIFICATION/ INTERPRETATION

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

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

OR

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.11. FORMAT FOR INQUIRIES:

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

1.12. INTERPRETATION:

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

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

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

1.13. PROPOSAL ORGANIZATION AND SUBMISSION

Offerors must organize proposals into sections following the format of this RFP. 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 provide this RFP by utilizing their own 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 proposal through Bonfire. If bid is a Sealed Proposal 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. If a sealed bid is submitted, please be sure to label the outermost package of the RFP whether it is an envelope, box or overnight package with the RFP number, RFP description and closing date so that it is visible when received by the City.

1.16.2. Each Offeror who submits a proposal represents that:

1.16.2.1. The proposal is based upon an understanding of the specifications and requirements described in this RFP.

1.16.2.2. Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the City are entirely the responsibility of the offeror. The City is not liable for any expense incurred by the offerors in the preparation and presentation of their proposals.

1.16.2.3. All materials submitted in response to this RFP become the property of the City and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City and offeror resulting from this RFP process.

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

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

1.17. RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award a contract. Upon a determination, such actions would be in its best interests, the City in its sole discretion reserves the right to:

A) waive any formality;

b) cancel or terminate this RFP;

c) reject any or all proposals received in response to this document;

d) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal; not award, or if awarded, terminate any contract if the City determines adequate City funds are not available.

1.18. 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.

(Section 1.19 is optional based on whether or not subcontractors will be involved.)

1.19. SUBCONTRACTING

1.19.1. 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.

1.19.2. 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.

1.20. INSURANCE REQUIREMENTS

See Contract or Agreement

1.21. 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.

1.22. 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.

1.23. CONTRACT PROVISIONS AND TERMS

1.23.1. Contract Execution

1.23.1.1. 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.

1.23.2. Terms and Conditions

Contract that will be executed by the successful offeror and the City is found in Appendix A.

1.23.3. Exceptions to Contract Terms & Conditions

Offerors should notify the City of any terms within the sample contract that either precludes

them from responding to the RFP or add unnecessary cost.

1.23.4. The initial contract(s) term is for a period of one (1) year and can be negotiable. Renewals of the contract may be made at five (5) year intervals, not to exceed a total of twenty (20) years, at the City's option.

1.23.5. Contract Extension

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

1.23.6. Escalation

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

2. PROPOSAL WAIVERS:

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

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

2.3. OFFEROR IS RELYING ON ITS OWN JUDGMENT. OFFEROR HAD THE OPPORTUNITY TO DISCUSS THESE PROPOSAL DOCUMENTS WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE PROPOSAL OR EXECUTION OF THE CONTRACT.

2.4. WAIVER:

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

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

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

2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR

2.5.4. AWARD OF THE CONTRACT.

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

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

3. SCOPE OF PROJECT

Option A (Full Service): The vendor will oversee the installation, operation, and maintenance of the system.

Option B (City Operated with Vendor Maintenance): The City will manage system operation, with the vendor responsible for maintenance and support.

4. REQUIREMENTS

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

Vendors must outline their technical approach, including specifics on contaminant reduction methods, chemical usage minimization, reject water management, and potential for resource recovery. A detailed cost analysis for both operational options is desired, but a vendor may only provide Option A or Option B, alongside evidence of the vendor's experience with similar projects. Vendor must provide their experience with TCEQ approval.

Please refer to Exhibit A for a representative analysis of the groundwater source. This analysis provides essential context for the contaminants present and the water quality challenges that the proposed system must address.

5. NARRATIVE

The City of Midland invites proposals for an advanced groundwater pre-treatment system capable of treating up to 5 million gallons per day. The system should ensure significant reductions in Arsenic with a secondary goal of reducing Manganese, Iron, Fluoride, and Total Dissolved Solids (TDS) to provide the community with safer, cleaner drinking water.

Proposals will be evaluated heavily based on the projected yearly cost to the City, encompassing all necessary expenses for the operation, maintenance, and any additional services required. Vendors must provide a detailed breakdown of all annual costs associated with their proposed solution.

The selected groundwater treatment solution will initially be implemented on a trial basis for one year and can be negotiable. This trial period is intended to assess the system's performance, cost-efficiency, and suitability for the City's needs. Following the successful completion of the trial period, the City reserves the right to enter into negotiations for a longer-term contract based on the outcomes and performance metrics achieved during the trial.

6. VENDOR QUALIFICATIONS

6.1. 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.

6.2. 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.

6.3. 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):

6.3.1. References

6.3.1.1. Offeror shall provide a minimum of 3 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.

6.3.1.2. These references should include City government, water treatment facilities, and universities where the offeror, preferably within the last 5 years, has successfully completed groundwater treatment

6.3.1.3. These references should include any other desired information.

6.3.2. Vendor Stability

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

6.3.2.2. Provide financial statements, preferably audited, for the 5 consecutive years immediately preceding the issuance of this RFP.

6.3.2.3. Provide copies of any quarterly financial statements that have been prepared since the

end of the period reported by your most recent annual report.

6.3.2.4. Offerors shall specify how long the company submitting the proposal has been in business performing Groundwater Treatment.

7. EVALUATION PROCESS

7.1. EVALUATION PROCEDURE

7.1.1. Committee Actions

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

7.1.1.2. 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.

7.1.1.3. 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.

7.2. EVALUATION CRITERIA

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

7.2.1. Technical Capabilities (40%): Evaluate the proposed solution's ability to meet the technical requirements specified in the RFP, including its efficacy in removing arsenic and other contaminants.

7.2.2. Cost Efficiency (20%): Consider the total cost of ownership, including installation, operation, and maintenance. This will help assess whether a higher upfront cost may be justified by superior performance or lower long-term operational costs.

7.2.3. Vendor Experience and Reliability (20%): Assess the vendor's experience in implementing similar projects and their track record for reliability and service quality.

7.2.4. Innovation (20%): Evaluate the proposal on factors like the minimal use of chemicals and innovative reuse of reject water.

8. PROPOSAL CONTENTS

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

8.1. THE RFP

8.2. THE OFFEROR'S COST SUMMARY

8.3. REQUESTED ATTACHMENTS

8.3.1. References

8.3.2. Resumes

8.3.3. Business Plan

8.3.4. Financial Information

8.3.5. Signed Execution of Offer

9. 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.

Exhibit A
Source Water Analysis

Company:	City of Midland	Collection Date:	10/3/23
Site:	Well #48	Sample Test Date:	10/6/23
Sample ID:	Raw		

Sample Analysis

Baseline			Baseline (ppm)			Cation (ppm)		
ATP	516.42	(pg/mL)	Chlorine, Total	ND	(Cl_2)	Zinc	0.11	(Zn)
ATP	516,420	(ME/mL)	Chlorine, Free	ND	(Cl_2)	Lead	ND	(Pb)
pH	7.42		Total Alkalinity	282.96	($CaCO_3$)	Boron	2.87	(B)
Conductivity	16.88	(Ω)	Total Hardness	584.35	(Ca, Ba, Sr, Mg)	Manganese	0.18	(Mn)
Resistivity	59.30	(Ω-cm)	Ammonia, Nitrogen	51	(NH_3-N)	Iron, Ferrous	ND	(Fe^{2+})
Salinity	9.92	(‰)	Anion (ppm)			Iron, Total	0.39	(Fe)
TDS	955	(mg/L)	Bicarbonate	245.22	(HCO_3)	Magnesium	90.59	(Mg)
Turbidity	10.20	(NTU)	Carbonate	ND	(CO_3^{2-})	Aluminum	0.39	(Al)
ORP	-299.90	(mV)	Hydroxide	ND	(OH^-)	Calcium	444.08	(Ca)
Temperature	70.80	(°F)	Chlorides	731.4	(Cl^-)	Strontium	47.65	(Sr)
Density	1	(g/cm³)	Nitrate	0.07	(NO^{3-})	Barium	2.03	(Ba)
Specific Gravity	1		Fluoride	2.26	(F^-)	Sodium	260.80	(Na)
NaCl	1	(% Saturation)	Phosphorus	24.02	(P)	Lithium	1.89	(Li)
Chlorides	0.12	(%NaCl)	Sulfur	192.66	(S)	Potassium	29.36	(K)
TSS	1.06	(mg/L)	Silicon	20.39	(Si)			
H_2S	3	(H_2S)	Arsenic	0.028	(As)			
			Anion EPM Total	1216.02		Cation EPM Total	880.34	

N/A : Not Analyzed ND : Non Detect * : Possible Buffers Present

Notes:

TruClear Proposal Response

RFP 24004269
for
Advanced Groundwater Pre-treatment System

City Secretary City of Midland
Suite 330 P.O. BOX 1152
Midland, Texas 79702-1153
(300 N. Loraine, Suite 330, Midland, TX 79701)

TruClear Water Solutions
8496 W. Overland Trail
Abilene, TX 79603
325-695-0299

1. Introduction

Water scarcity is an escalating crisis in the United States and globally, with profound implications for public health, agriculture, industry, and the environment. As of 2022, approximately 2.2 billion people worldwide lack access to safely managed drinking water services, and about 4.2 billion people experience severe water scarcity at least one month per year. In the United States alone, over 2 million Americans lack access to clean, safe drinking water, and many regions face increasing challenges due to drought, pollution, and aging infrastructure. These challenges necessitate urgent action and innovative solutions to ensure equitable access to clean water while preserving this precious resource for future generations.

TruClear® is a service provider that pioneers chemical-free solutions. It treats 4.2 million gallons of water per treatment unit daily for industrial, food processing, oil and gas, waste, and freshwater. Our systems are designed for scalability, ensuring we meet diverse volume requirements without generating waste streams. TruClear units boast a compact design and operate with significantly lower energy consumption than competing technologies.

At the heart of TruClear's operations is the Advanced Molecular Oxidation® (AMO®) technology. This two-pronged approach first employs electrical currents to convert sodium chloride into a potent biocide through electrolysis, effectively eliminating harmful bacteria. Secondly, it leverages Electro-Chemistry to break down contaminants in an environmentally friendly manner, achieving molecular disassociation, creating ion transfer, and generating oxygen species with minimal energy usage.

a. RFP Summary

Midland's drinking water has been found to contain several contaminants. Most notable are vanadium, arsenic, and various perfluorinated substances like PFOS and PFOA. According to the Environmental Working Group (EWG), the levels of vanadium in the water supply exceed health guidelines. Although the city has been working to manage and reduce these contaminants to meet health standards, arsenic levels have also been a concern in the past.

The City of Midland is committed to enhancing its drinking water quality by significantly reducing contaminants such as heavy metals like Vanadium and Arsenic. The initial phase of this project aims to treat five (5) million gallons per day (GPD) of these contaminants, with plans to expand capacity to twenty (20) million GPD in future phases.

At TruClear, we are at the forefront of revolutionizing water treatment technologies. Our partnership with Midland is founded on a shared commitment to achieving the highest water purity standards for the community, both now and in the future. We have a strong track record of success in reducing heavy metals. As challenges such as perfluorooctanesulfonic acids (PFOS) and nitrates emerge, TruClear is leading the industry with our Advanced Molecular Oxidation (AMO) technology. This innovative solution eradicates PFOS and nitrates, further enhancing water safety. Together with the City of Midland, TruClear is dedicated to setting new benchmarks in water treatment, staying ahead of more stringent water quality standards to ensure safe and clean drinking water for all residents now and in the future.

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3. Company Overview

TruClear®: Redefining Water Treatment

TruClear® has distinguished itself as an innovator in water treatment, offering a chemical-free, cutting-edge solution capable of processing over 4.2 million gallons of water daily per treatment unit across various sectors, including municipal drinking and wastewater, industrial, food, oil and gas, and dairy. Our technology is designed to efficiently handle diverse volume demands without generating secondary waste streams.

Each TruClear unit has a small footprint, compact design, and low energy consumption. Units can be stacked to meet volume demands. This combination of scalability, efficiency, and low environmental impact positions TruClear® as a leader in sustainable water treatment solutions.

Technology Breakthrough

At the heart of TruClear's operations is the Advanced Molecular Oxidation® (AMO®) technology. This two-pronged approach first employs electrical currents to convert sodium chloride into a potent biocide through electrolysis, effectively eliminating harmful bacteria. Secondly, it leverages Electro-Chemistry to break down contaminants in an environmentally friendly manner, achieving molecular disassociation, creating ion transfer, and generating oxygen species with minimal energy usage.

The TruClear system represents a paradigm shift in water treatment technology, offering unparalleled performance, versatility, and efficiency in addressing complex contaminant challenges.

Milestones

- 2018: Establishment and patent acquisition.
- 2019: Launch of AMO® technology and entry into the Oil & Gas sector.
- 2020: Commercialization and regulatory approval for water treatment technologies.
- 2021: Expansion into meat and food processing water treatment, alongside significant customer acquisitions.
- 2022: Introduction of PFOS remediation and diversification into various water treatment markets.
- 2023: Catering to multiple meat and food processing customers and serving multiple municipalities.
- 2024: Over 20 Municipal Drinking Water and Wastewater Facilities in Oklahoma are in different sales/implementation phases with TruClear for THMs and Nitrate Removal. First food provider 10-year contract. PFAS Projects developing in Southeast Pennsylvania.

Compliance with industry-specific regulations

TruClear's commitment to adhering to industry-specific regulations is integral to its operations, ensuring its advanced water treatment technologies meet and often exceed the required standards. The system is designed in compliance with guidelines set forth by key regulatory bodies such as the Environmental Protection Agency (EPA) and TCEQ environmental standards, which govern the treatment and discharge of industrial and municipal wastewater. This compliance includes adherence to the Clean Water Act (CWA), which mandates the control of pollutants discharged into U.S. waters, and adherence to specific state regulations that may dictate additional treatment requirements depending on the nature of the effluent and local ecological considerations.

Additionally, TruClear's technology aligns with standards for technology-based effluent limitations (TBELs) and water quality-based effluent limitations (WQBELs), ensuring that both the technology and the processes reduce contamination levels to within safe limits as defined by the latest scientific and environmental guidelines. This regulatory compliance is supported by rigorous internal quality assurance and control processes, which include regular monitoring and reporting of water quality data to relevant authorities. TruClear's proactive approach helps maintain compliance and set a benchmark for operational excellence within the water treatment industry.

Technology Benefits

TruClear's advanced water treatment technology offers significant benefits in line with Environmental, Social, and Governance (ESG) objectives, addressing key issues such as environmental impact, safety, and operational efficiency. By eliminating the use of hazardous chemicals traditionally used in water treatment, TruClear reduces the risk of chemical spills, enhancing both environmental safety and workplace safety. Instead of dangerous or caustic chemicals, the system generates Hypochlorite, a safer alternative, which simplifies the treatment process compared to chemical injection methods.

The technology significantly improves the quality of treated water, which exhibits enhanced viscosity and reduced scaling tendencies, contributing to a longer lifespan and better performance of water handling infrastructure. Moreover, the negative scaling tendencies help lower Naturally Occurring Radioactive Materials (NORM) values, making the water safer for various uses. TruClear's system also normalizes pH levels and delivers consistently high-quality water despite variations in the raw water's quality, ensuring reliability in diverse operational contexts. Notably, the process does not involve flocculation, thus eliminating waste generation from the treatment process, which is a substantial step towards sustainable water management practices. These technological advances underscore TruClear's commitment to supporting sustainable development goals by providing a safer, more efficient, and environmentally friendly water treatment solution.

Experience

TruClear has a robust track record of successfully treating water for multiple cities across Oklahoma and Texas, demonstrating our expertise in managing complex water quality issues without using chemicals. In these regions, our technology has effectively addressed high levels of Adenosine Triphosphate (ATP), Biological Oxygen Demand (BODs), heavy metals, Trihalomethanes (THMs), and nitrates. Our innovative approach aligns with stringent

environmental standards and supports municipalities in achieving sustainable water treatment goals. This experience underscores our capability to scale and adapt our solutions to meet diverse municipal needs, ensuring safer, cleaner water in communities with varying water quality challenges.

Proposal Overview

Introduction to TruClear's Water Treatment Solutions
TruClear is pleased to present this proposal to provide advanced, chemical-free water treatment solutions for the City of Midland, Texas. The city faces challenges with high levels of heavy metals and other contaminants in its water supplies. Our innovative technology offers a sustainable alternative to traditional chemical treatments, aligning with environmental goals and public health standards.

Project Scope and Objectives
Our proposal aims to deploy TruClear's cutting-edge technology across Midlands drinking water influent where tests have indicated problematic concentrations of specific contaminants that compromise water quality and safety. The primary objective is to implement our system to significantly reduce these contaminants, enhance overall water quality, and ensure compliance with regulatory standards without harmful chemicals. This initiative addresses immediate health and environmental concerns and sets a foundation for sustainable water management practices in the future.

Technical Approach and Benefits
TruClear's approach utilizes proprietary technology that treats water through advanced electrochemical processes, eliminating the need for chemical additives. This method has been proven effective in current deployments across multiple municipalities, where it has consistently met or exceeded treatment objectives. Key benefits of our system include no capital expenditure, reduced operational costs, minimized environmental impact, and improved safety for workers and local communities. Moreover, our solution offers scalability and can be tailored to Midland's specific water quality needs, ensuring that even with variations in raw water conditions, the output remains consistently high in quality.

This proposal outlines the next steps for addressing Midland's specific needs, initiating the five (5) to twenty (20) million GPD projects, and planning a comprehensive roll-out of our water treatment units. TruClear is committed to partnering with local governments to achieve their public health and environmental goals through innovative water treatment solutions.

TruClear Management Team

TruClear's management team includes seasoned professionals with experience in the oil and gas industry, including oilfield service operations. They possess extensive experience in manufacturing/assembly, finance, technology development and protection, and research and development.

John Ayers - President, CEO, and Chairman



John is the Founder, President, and Chief Executive Officer of TruClear. He has over 30 years of experience in the oil & gas and construction industries.

John became the President of his family's oil & gas service company, expanding holdings across Texas and NM. Under his direction as CEO and President, John's companies provided total oil & gas services from site preparation to well completion for prominent oil and gas companies.

Patrick Doggett – Executive Vice President



Patrick is an experienced executive who has been with TruClear since 2019. He has a proven ability to lead diverse teams to new levels of success in highly competitive industries, cutting-edge markets, and fast-paced environments. Patrick has solid technical qualifications and a track record of over 30 years of hands-on experience in technology, strategic planning, business unit development, project and product management, and system engineering.

Jerry DeCiccio – Chief Financial Officer



Jerry DeCiccio is the CFO/Controller of TruClear Water Solutions, based in Fort Worth, TX. He has worked as a former Big 4 Supervising Senior Accountant and holds a CPA and a master's degree in accounting. With over 37 years of experience in several dozen startups, he has been COO and CFO for many multinational manufacturing and technology start-ups and the Director of Finance for a public company. Mr. DeCiccio's primary responsibilities at TruClear include overseeing accounting, treasury, and financial reporting.

4. Project Understanding and Approach

Based on the Raw data provided in 5-005 Source Water Analysis, we are confident that we can provide a solution that will exceed current requirements. Below is an overview of the critical reductions observed in the treated water compared to the raw water sample:

1. **Organic and Microbial Indicators**: There is a significant reduction in Adenosine Triphosphate (ATP), indicating a drastic decrease in microbial content, from 516,420 ME/mL in raw water to just 22,640 ME/mL in treated water, marking a 95.62% reduction.
2. **Chemical Properties**: The pH level was adjusted from 7.42 to a slightly more acidic 6.50, which can help in specific treatment contexts. Total Dissolved Solids (TDS) were nearly halved, from 955 mg/L to 463.8 mg/L, indicating improved water purity.
3. **Metals and Non-metals**: Significant reductions were observed in several key contaminants:
    - Chlorides were reduced by 55.47% from 731.4 mg/L to 325.7 mg/L.
    - Nitrate levels were effectively reduced from 0.07 mg/L to non-detectable levels, demonstrating the system's capability to handle nitrogen compounds.
    - Arsenic, a critical contaminant due to its toxicity, was reduced by 89.29%, from 0.028 mg/L to 0.003 mg/L.
4. **Physical Characteristics**: Turbidity, an indicator of water clarity, saw an 87.55% reduction, indicating clearer water. This is crucial for both aesthetic qualities and the effectiveness of other water treatment processes which may be hindered by high turbidity.
5. **Total Suspended Solids (TSS)** and **Hydrogen Sulfide (H_2S)**: TSS was dramatically reduced from 1.06 mg/L to 0.02 mg/L, and H_2S from 3 ppm to non-detectable levels, showcasing the system's capability to remove both visible particles and toxic gases effectively.

These reductions underline the TruClear system's robust performance in enhancing water quality across various parameters, making it an effective solution for municipal and industrial water treatment applications. The data indicates that the system significantly reduces harmful constituents and adjusts water chemistry to create safer, cleaner water.

Methodology and Approach

TruClear's methodology and approach to water pre-treatment operations starting at 5 million GPD and moving up to twenty (20) million GPD involve a strategic combination of advanced technological integration, scalable infrastructure planning, and rigorous operational protocols. The process begins with a comprehensive assessment of the existing water treatment facilities and the specific challenges the target contaminants pose. This assessment guides the customization of the TruClear system to meet Midland's precise needs, ensuring that the treatment capacity is optimized for current demands and scalable for future expansions.

The core of TruClear's approach is the deployment of its proprietary Advanced Molecular Oxidation (AMO) technology, which is highly efficient in breaking down complex contaminants without the use of harmful chemicals. The installation phase involves setting up modular treatment

units designed to be incrementally scalable. These units can be easily expanded or adapted, allowing for a flexible response to increasing water demands or changing regulatory requirements. Operational protocols are established to ensure consistent and efficient treatment performance. This includes continuous monitoring of treatment efficacy, regular maintenance of the equipment, and systematic training for local operators. TruClear's proactive engagement in operational oversight helps maintain high standards of water quality and compliance with environmental regulations, paving the way for the system to handle larger capacities seamlessly. This phased and flexible approach ensures that TruClear can meet its commitment to expanding treatment capabilities while maintaining the integrity and effectiveness of its water treatment solutions.

Project Requirements

Midland's drinking water has been found to contain vanadium, arsenic, and various perfluorinated substances like PFOS and PFOA. According to the Environmental Working Group (EWG), the levels of vanadium in the water supply exceed health guidelines.

To ensure the water supply meets health guidelines, vanadium, arsenic, and perfluorinated substances must be removed and reduced cost-effectively.

Example Site Setup


Municipal setup for the pre-treatment of drinking water



Municipal setup for the pre-treatment of drinking water

5. Project Execution Plan

Structure

Water Operations Field Supervisor

The Water Operations Field Supervisor is a hands-on leadership role that plans and oversees daily operations and field staff to ensure service excellence in the field. This position assists in hiring, onboarding, and training new treatment technicians and field staff. It also assists with customer relations and may serve as a point of contact with customers regarding field operations.
Paul Smith - Water Operations Field Superintendent
Jeremy Bellman - Water Operations Field Supervisor

Duties include but are not limited to:

- Oversee field operations and field staff.
- Assist with hiring, onboarding, and training new operators and field staff.
- Provide coaching, ongoing training, and performance evaluations of field staff.
- Ensure employees adhere to best practices, following safety guidelines and procedures.
- Lead employees to encourage maximum performance and dedication.
- Assessing and implementing improved processes and new technologies and collaborating with management regarding implementing these improvements.
- Leading hands-on with field operations and assuming regular duties expected of Water Treatment Techs.
- Assuming responsibility for special projects and assignments as assigned by Management.

Water Treatment Technician

The water Treatment Technician operates, monitors, and maintains water treatment equipment.
Adam Crowley - Treatment Operations Technician / Lead

Duties include but are not limited to:

- Rig up equipment on site, ensuring proper connection of all plumbing and electrical equipment.
- Monitor equipment, operating conditions, meters, and gauges and troubleshoot accordingly.
- Record readings and operational data using a laptop or handheld device.
- Collect water samples for testing and monitoring.
- Inspect equipment regularly to ensure proper working order.
- Accurately documenting and record keeping of water sampling, testing, and readings.
- Clean and maintain equipment and perform equipment maintenance as necessary.
- Observing safe working practices, rules, and regulations ensures all safety standards are met.
- Maintain a secure, safe, and clean working environment.
- Performing other duties as assigned.

Engineer

The Engineer utilizes industry knowledge and process improvement methods to research, develop, and implement best practices for providing effective and efficient water treatment. The Engineer partners with the management team to execute company initiatives and strategies efficiently.
Jarod Reynolds, P.E. – Water Engineer

Duties include but are not limited to:

- Research and recommend best practices for various water treatment applications.
- Assisted in developing technical solutions from concept selection to design development, installation, and commissioning.
- Review and critique water treatment system proposals, plans, and designs.
- Collaborate with technical staff to address design, research, and testing issues.
- Provide practical input into business development and drafting of proposals.
- Offer guidance and expertise to other departments and staff with questions and problems related to process improvement operations.
- Assess and implement improved processes and new technologies, collaborating with management and field operations to implement these improvements.
- Assumes responsibility for special projects and assignments as assigned.

HSE Field Operations Manager

Safety managers are responsible for planning, implementing, and overseeing workplace employee safety. Their primary duty is to ensure that the company complies with and adheres to Occupational Health and Safety (OHS) guidelines to reduce work-related injuries.
Carl Strauss – HSE Manager

Duties include but are not limited to:

- Monitor and document safety issues and compliance in specific job sites and operations.
- Provide site-specific safety training for employees on policies, regulations, and procedures.
- Inspect and verify company compliance with job site-relevant safety regulations.
- Maintain accurate and current records in accordance with guidelines.
- Create incident reports, report site metrics, and document injuries to institute changes that lead to a safer environment.

6. Technical Approach

Electrolysis Overview

Electrolysis is when an electric current induces a chemical change in a substance. This typically involves the movement of electrons, leading to either the loss or gain of electrons (oxidation or reduction). The process is conducted in an electrolytic cell comprising two electrodes—the cathode (negative) and the anode (positive)—immersed in a solution containing ions. These ions migrate towards the electrodes, where they either gain electrons and are reduced or lose electrons and are oxidized. The reactions can result in neutral elements or new molecules forming, sometimes involving the electrodes dissolving as they donate electrons.

The TruClear System

The TruClear system employs specialized technology to enhance this process uniquely. This development ensures the electrodes remain intact, thus extending the system's durability and operational efficiency. The system is especially adept at processing drinking and wastewater, which interacts directly with the electrodes, facilitating a more effective and thorough contaminant degradation.

The TruClear AMO technology also supports operation at higher current densities, enabling advanced electrochemistry capabilities. This system can break down larger quantities of contaminants, even those with stronger chemical bonds. Notably, the system facilitates the formation of reactive species such as Hypochlorite, Free Chlorine, Hydroxyl, and superoxide (in produced water), which are crucial for effective water treatment. Additionally, it influences the Iron redox process, affecting the colloidal and magnetic properties of the solution. Post-treatment, the particle size of contaminants is significantly reduced from 180 microns to less than one micron, demonstrating a high-efficiency level.

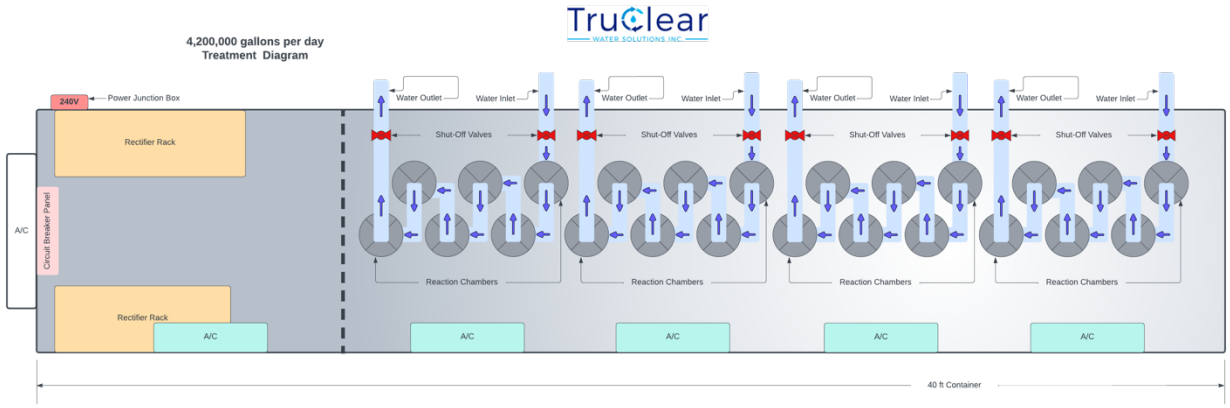
Technical Specifications

TREATMENT SYSTEM BRAND NAME:
TruClear Advanced Molecular Oxidation® (AMO®) Treatment Unit.
PRODUCT NUMBER:
FW-AMO-4.2M

ON-SITE EQUIPMENT

1) 2 – 4.2M GPD Advanced Molecular Oxidation® (AMO®) Treatment Units.
2) Above-ground EQ Tanks as needed.
3) Pumps for recirculation as needed.
4) Polyline, headers, and connections as needed.

Treatment Unit Diagram – FW-AMO-4.2M



Treatment Unit Photos - FW-AMO-4.2M







7. Cost Proposal

TruClear operates as a service-oriented company, avoiding capital expenditures (capex) in favor of operational expenditures (OPEX) for its customers. This model benefits clients by minimizing upfront investments, as they are not required to purchase or own the equipment. Instead, TruClear manages all aspects of equipment provisioning and maintenance, ensuring that clients enjoy seamless, uninterrupted service without the burden of repair or upgrade costs. This approach reduces the financial risk associated with significant capital investments and enhances client budget predictability and flexibility.

Moreover, as TruClear assumes full responsibility for maintenance, clients can focus on their core business activities without worrying about the operational reliability of their systems. This responsibility includes regular updates and technological upgrades, ensuring that services remain cutting-edge and efficient. By leveraging TruClear's expertise, clients gain access to high-quality, well-maintained equipment and services, which translates into improved operational efficiency and potentially lower overall costs. Additionally, TruClear offers volume discounts that further reduce costs as client usage increases, making this service model even more attractive to businesses looking for scalable and adaptable solutions. This approach positions TruClear as an appealing partner that facilitates operational excellence.

Treatment Costs:

Water Treatment Cost Breatdown

Daily Volume (GPD)	Cost Per Gallon	Estimmated Monthly Costs
5,000,000	$ 0.00080	$ 120,000.00

Capital Expendature	$ -
Maintenance	$ -
Employee Costs	$ -

Responsibilities

Provider will furnish labor, Water treatment materials, and equipment as needed. Provider's obligations to perform and deliver the Work include:

1. Crew, as needed.
2. Treatment Unit
3. Pumps
4. Tanks
5. Other commitments agreed to in writing.

The City of Midland agrees to provide additional equipment to support the pre-treatment of their Untreated Water, including:

1. Lights
2. Containment if needed.
3. Electrical Source for unit and pumps.
4. Bathroom
5. Trash
6. Other commitments agreed to in writing.

8. Quality Assurance Protocols

Standards

TruClear is committed to maintaining its services' highest quality and safety standards, underscored by our adherence to rigorous standards and certifications. A key aspect of our commitment to excellence is our NSF-61 certification. This certification ensures that the products and materials we use meet strict regulatory criteria for safety and are suitable for processing drinking water. NSF-61 certification is critical for companies involved in manufacturing and maintaining equipment that comes into contact with potable water, as it assures that these components do not leach harmful contaminants into the water supply.

Achieving and maintaining NSF-61 certification requires continuous compliance with stringent health effects standards, which TruClear meets through regular product testing and quality control processes. This reinforces our dedication to safety and quality and builds trust with our clients, knowing they are partnering with a service provider that prioritizes their health and regulatory compliance. For our clients, this means enhanced reliability and assurance that the services and products provided by TruClear adhere to the highest possible standards, protecting their interests and the health of their customers.

Quality

TruClear adheres to stringent quality control standards and takes pride in manufacturing our water treatment equipment in-house. This end-to-end control over our manufacturing process allows us to ensure that each piece of equipment meets our high standards of quality and efficiency. Specifically, our electrolysis reaction chambers, a critical component of our treatment systems, undergo individual pressure and connectivity tests to guarantee operational integrity and safety.

Once an electrolysis reaction chamber passes these rigorous tests, it becomes part of a larger assembly known as a skid. Each skid is tested once completed and installed, ensuring all

components function harmoniously within the integrated system. This layered approach to testing—at both the component and the system levels—assures us that our equipment will perform reliably in the field. By controlling our treatment systems' production and thorough testing, TruClear ensures that our clients receive only the most dependable and effective solutions tailored to their needs.

9. Conclusion

In conclusion, TruClear's proposal to the City of Midland represents a forward-thinking approach to tackling water quality enhancement. Our Advanced Molecular Oxidation (AMO) technology offers a powerful solution for removing harmful contaminants such as vanadium, arsenic, PFOS, and PFOA from the city's water supply. This technology ensures the water treatment meets the strictest health and environmental standards without using hazardous chemicals.

By adopting TruClear's innovative system, the City of Midland can expect a significant improvement in water quality, contributing to public health and environmental sustainability. Our solution's scalability provides the flexibility to expand and adapt to future needs, ensuring long-term viability and compliance with evolving water quality standards. Moreover, our commitment to high standards in manufacturing and maintenance, backed by our NSF-61 certification, underscores our dedication to delivering only the safest and most reliable water treatment solutions.

We are confident that our partnership with the City of Midland will set new benchmarks in municipal water treatment. TruClear is not just a service provider; we are partners in ensuring that every resident has access to safe and clean drinking water. We look forward to moving ahead with this project and are confident that together, we can achieve exceptional results for the community of Midland.

10. Appendices

Supporting Documents

Supporting site layout will be provided once Midland awards the contract and provides site information.

Detailed diagrams or blueprints

This will be added once Midland awards the contract and provides site information at the "No Trees" site.

TruClear Pricing Breakdown

RFP 24004269
for
Advanced Groundwater Pre-treatment System

City Secretary City of Midland
Suite 330 P.O. BOX 1152
Midland, Texas 79702-1153
(300 N. Loraine, Suite 330, Midland, TX 79701)

TruClear Water Solutions
8496 W. Overland Trail
Abilene, TX 79603
325-695-0299

Pricing Breakdown

Water Treatment Cost

Daily Volume (GPD)	Cost Per Gallon	Estimated Monthly Costs
5,000,000	$ 0.0008	$ 120,000.00

Cost per 1000 Gallons	Cost Per Barrel
$0.80	$0.0336

Cost Overview

TruClear primarily uses an operational expenditure (OPEX) model, which means that its clients don't have to make significant initial investments and can instead focus on minimizing upfront capital expenses. This benefits the City of Midland as it allows for greater flexibility in budgeting and financial planning. Additionally, volume-based discounts are available.

Capital Expenditure	$0.00
Maintenance	$0.00
Employee Costs	$0.00

Treatment Costs

The specifics of the treatment costs include:

- **Labor and Material**: TruClear will provide labor, water treatment materials, and equipment.
- **Service Provision**: The contract includes ongoing maintenance and updates to the equipment, which ensures high operational efficiency and reduces the likelihood of unforeseen expenses related to equipment failures or upgrades.

Responsibilities of TruClear

TruClear is responsible for:

1. Provisioning a crew as required.
2. Deploying the treatment unit.
3. Supplying necessary pumps and tanks.
4. Fulfilling other commitments as agreed upon in writing.

Responsibilities of the City of Midland

The City of Midland will provide:

1. Necessary lighting for the treatment units.
2. Containment if needed.
3. Electrical sources for the treatment unit and pumps.
4. Basic amenities such as bathroom facilities and trash disposal.
5. Other supports as agreed upon in writing.

Quality Assurance and Compliance

TruClear adheres to high quality and safety standards, as highlighted by its NSF-61 certification. This ensures that all materials and products used in the water treatment are safe and do not leach harmful contaminants into the water supply.

Financial Benefits

- **Reduced Capital Expenditure**: Since the equipment is not purchased but provided as a service, the City does not incur the high initial costs typically associated with such projects.
- **Predictable Spending**: Regular updates and maintenance are managed by TruClear, thus offering predictable operational costs.
- **Scalability**: The service model is designed to be scalable, which is crucial for future expansions as outlined in the city's plans to increase capacity from five (5) million GPD to twenty (20) million GPD.

Conclusion

TruClear has designed its pricing model and service delivery to ensure the City of Midland receives maximum efficiency and financial benefit. Our focus is on maintaining operational excellence and complying with environmental and safety standards. This approach, combined with volume-based discounts, helps to maintain predictable operational costs while ensuring that the water treatment infrastructure remains up-to-date and capable of meeting the city's evolving needs.

EXECUTION OF OFFER

Date: 5-17-24

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 18.

Offeror/ COMPANY: TruClear Water Solutions, Inc.

SIGNATURE (INK): [signature]

NAME: (TYPED/PRINTED) John Ayers

TITLE: President and CEO

STREET: 8496 W. Overland Treal

CITY/STATE/ZIP: Abilene / Texas / 79603

TELEPHONE: (325) 695-0299 FAX:

E-MAIL ADDRESS: jayers@truclearwater.com

MIDLAND

24004269

Advanced Groundwater Pre-Treatment System

Addendum # 1

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

Does the existing piping, pump capacity, and distance from Tbar to the 5 million gallon tank in Notrees. Is it possible to provide the piping layout?

The pumping/piping capacity is 20MGD. The distance from Tbar pump house to the intermediate ground storage tank is 26 miles. The piping is considered classified because it is for water delivery. It will be shared with the awarded bidders.

A bond is not required for the initial proposal but will be for the awarded bidder of the proposal.

Power for the project will be supplied by the City's infrastructure.

For the proposal, assume that any structures will need to be provided.

Work hours are 24/7 operations.

Please return the addendum with your bid by the closing date. All other terms and conditions shall remain the same.

Bidder Authorized Signature

5-13-24
Date

MIDLAND

24004269

Advanced Groundwater Pre-Treatment System

Addendum # 2

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

Please see the updated RFP:

1.23.4. The initial contract(s) term is for a period of ~~eighteen (18) months~~ one (1) year and can be negotiable. Renewals of the contract may be made at five (5) year intervals, not to exceed a total of twenty (20) years, at the City's option.

For drinking water applications, the TCEQ requires the process media and any chemicals used to be certified as American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61.

Clarification:

For any Innovative/Alternate Treatment, the City of Midland and the approved proposer will follow the TCEQ procedure for Requesting an Exception to Provide Innovative/Alternate Treatment. Here is a link to the procedure:
https://www.tceq.texas.gov/drinkingwater/technical_guidance/staff_guidance/treatment/innovative-alternative-treatment

Please return the addendum with your bid by the closing date. All other terms and conditions shall remain the same.

Bidder Authorized Signature

5-13-24
Date

MIDLAND

24004269

Advanced Groundwater Pre-Treatment System

Addendum # 3

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

Will the City or the Contractor be responsible for running the electricity from the City of Midland power source to the pre-treatment system?

The contractor will deal with running the electricity.

How many amps are available for 3-phase power at the pre-treatment site?

Regarding the T-Bar Well Field:

System Capacity: 7.9 MVA

Demand Capacity: 6.1 MVA

Available Capacity: Approximately 1.8 MVA

When do you plan to begin construction, and when would be the expected time to bring it online?

Construction will be based on the technology approved and why timeline if any it takes to get through TCEQ.

Will we be pulling from the 2MM galloon storage tank and pumping back into the 2MM gallon tank or will we be receiving directly from the wells and pumping into the 2MM galloon storage tank?

Determined by the design and technology of the contractor.

MIDLAND

If no pre-storage is currently available, is there room to construct a pre-treatment vessel?

There is room available.

Please return the addendum with your bid by the closing date. All other terms and conditions shall remain the same.

Bidder Authorized Signature

5-13-24
Date

MIDLAND

24004269

Advanced Groundwater Pre-Treatment System

Addendum # 4

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

Will the City of Midland be extending the due date?

The City will not be extending the due date.

Please return the addendum with your bid by the closing date. All other terms and conditions shall remain the same.

Bidder Authorized Signature

5-13-24
Date

City Council Meeting

Item Number: 7

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT TO TANKLOGIX, LLC, FOR ON-CALL SUPERVISORY CONTROL AND DATA ACQUISITION SERVICES FOR AN ANNUAL COST NOT TO EXCEED $500,000.00 (DISTRICT: NONE) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)

Purpose:

Resolution awarding a contract to TankLogix of Midland, Texas for on-call Supervisory Control and Data Acquisition (SCADA) consulting and support services for a yearly cost not to exceed of $500,000.00.

Recommended City Council Action:

Approve

Fiscal Impact:

$100,000 is available in the 2024 operating budget of the Utilities Fund. $400,000 will be available in the 2025 operating budget of the Utilities Fund.

Strategic Priority:

(Strengthen and Sustain our Infrastructure)

Discussion:

Staff recommends awarding a contract for on-call Supervisory Control and Data Acquisition (SCADA) consulting and support services for the Utilities Department. Twenty-one (21) requests for proposals were issued. We received seven (7) proposals. Staff recommends awarding the contract to TankLogix. Please see the attached memo from Carl Craigo, Utilities

Director, for additional information.

Therefore, please consider a resolution awarding a contract to TankLogix of Midland, Texas for on-call Supervisory Control and Data Acquisition (SCADA) consulting and support services for a yearly cost not to exceed of $500,000.00.

Morris Williams Jr.

City Manager's Office

Dear Members of the City Council,

7/30/2025

I am pleased to present for your approval a resolution to accept TankLogix as the Utilities SCADA contractor for the City of Midland. After a thorough evaluation of the proposals received in response to RFP 24004893, TankLogix has been selected based on their expertise, competitive pricing, and strong local presence.

TankLogix, a local company based between Midland and Odessa, Texas, demonstrated comprehensive knowledge and experience with SCADA systems, particularly with GE Proficy iFix, Wonderware and associated technologies, as required in the RFP. Their proposal represents the best cost to the City, as indicated in the bid tabulation, and includes services for the Water Purification Plant and the Water Reclamation Facility.

The contract with TankLogix will be for an initial term of one year, with the option to extend the agreement for up to four additional one-year terms. This flexibility allows the City to continue utilizing TankLogix's services based on performance and future needs.

We believe that TankLogix will provide exceptional SCADA consulting and support services, ensuring the efficient operation and maintenance of our water and wastewater facilities. The yearly cost to be $500,000 paid for out of the utility operation funds.

Your consideration and approval of this resolution are respectfully requested.

Sincerely,

Carl Craigo, PE
Utilities Director
City of Midland

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT TO TANKLOGIX, LLC, FOR ON-CALL SUPERVISORY CONTROL AND DATA ACQUISITION SERVICES FOR AN ANNUAL COST NOT TO EXCEED $500,000.00

WHEREAS, the City Manager approved plans and specification and authorized advertisement for proposals for on-call Supervisory Control and Data Acquisition ("SCADA") services; and

WHEREAS, the proposals were opened on June 26, 2024, with the lowest responsible and best value proposal being submitted by Tanklogix, LLC, as shown on the tabulation attached hereto as Exhibit A, which is incorporated herein for all purposes; and

WHEREAS, the City Council finds the amount proposed by Tanklogix, LLC, for said on-call SCADA services to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Tanklogix, LLC, for said on-call SCADA services;

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

SECTION ONE. That the City Manager and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract not to exceed an annual cost of $500,000.00 with Tanklogix, LLC, for the said on-call SCADA services. Said contract to be kept on file in the office of the City Secretary and referenced by the date and number of this Resolution.

SECTION TWO. That $100,000.00 shall be available in the 2024 operating budget of the Utilities Fund and that $400,000.00 shall be available in the 2025 operating budget of the Utilities Fund.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Tanklogix, LLC, pursuant to the terms of said contract upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

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24004893 SCADA On-Call Bid Opening: June 26, 2024		
Advanced Electrical Systems		
		Rates
Labor	**Any Material Purchase Markup**	15%
Labor	**On-Call SCADA Technician Hourly**	$135.00
Labor	**On-Call SCADA Technician Hourtly Overtime**	$165.00
Labor	**Electrician Hourly**	$85.00

24004893 SCADA On-Call Bid Opening: June 26, 2024		
Eversolve Technologies		
		Rates
Labor	**Automation Programmer Hourly**	$225.00
Labor	**Automation Programmer Hourly Overtime**	$337.00
Labor	**Automation Technician Hourly**	$195.00
Labor	**Automation Technician Hourly Overtime**	$292.00

24004893 SCADA On-Call Bid Opening: June 26, 2024		
NSI Engineering		
		Rates
Labor	**Any Material Purchase Markup**	10%
Familiarization	**Familiarization with the SCADA system within 4-6 weeks of NTP**	$15,000.00
Support Tools	**Maintain support tools for quick response to SCADA issues**	$6,000.00
Emergency Support	**Availability for remote support activities 24x7x365 (annually)**	$12,000.00
Emergency Support	**Availability for on-site emergency activities within 24 hours of notice (annually)**	$12,000.00
Annual PM	**Annual PM for SCADA system**	$8,000.00
Planned Services	**Hourly engineering services for planned projects or support**	$165.00
Emergency Support	**Hourly emergency remote support- Sr. Engineer at Standard Rate**	$165.00
Emergency Support	**Hourly emergency on-site support- Sr. Engineer at Standard Rate**	$225.00
Emergency Support Fee	**Per use emergency on-site support fee to be paid in addition to fixed bid and hourly rates for service**	$2,000.00
Engineering	**Standard all hours between 7 am to 7 pm during non-holiday weekdays (M-F)**	$125.00
Engineering	**Premium all hours between 7 pm to 7 am or any hours workede over (12) consecutive hours in one day**	$187.50
Engineering	**Weekend/ Holiday all hours worked during weekend or holiday between 7 pm Friday to 7 am Monday**	$250.00
Sr Engineer	**Standard all hours between 7 am to 7 pm during non-holiday weekdays (M-F)**	$165.00
Sr Engineer	**Premium all hours between 7 pm to 7 am or any hours worked over (12) consecutive hours in one day**	$225.00
Sr Engineer	**Weekend/ Holiday**	$295.00
Expense	**Resource day On-site representation to cover employee expenses incurred**	$50.00
Travel	**expenses includes lodging, flights, mileage, fuel costs, & rental fees + 10% to cover administration of accounts and reporting**	$.655/mi

24004893 SCADA On-Call Bid Opening: June 26, 2024		
Parkhill Smith & Cooper		
		Rates
Labor	**Any Material Purchase Markup**	15%
Labor	**Parkhill Hourly**	$250.00
Labor	**Parkhill Hourly Overtime**	$375.00
Labor	**Entero Automation Hourly**	$210.00
Labor	**Entero Automation Hourly Overtime**	$315.00
Labor	**Maslowski Controls Programming Services**	$180.00
Labor	**Maslowski Controls Engineering Design Services**	$216.00
Labor	**Maslowski Hourly Overtime**	$270.00
Labor	**Minimum service call time**	4 hours

24004893 SCADA On-Call Bid Opening: June 26, 2024				
Prime Controls				
		Rates		
		Straight Time	**Overtime**	**Double Time**
		All hours worked during the normal 8 hour day M- F	**All hours worked in excess of the normal 8 hours day 5pm to 8 am M-F, Sat, Sun**	**All hours worked during holidays: New Year, Easter Sunday, Memorial Day, July 4th, Labor Day, Thanksgiving Day and Day after Thanksgiving, Christmas Day**
Labor	**Any Material Purchase Markup**	25%		
Engineering	**Senior Project Engineer**	$210.00	$280.00	$378.00
Engineering	**Project Engineer**	$175.00	$233.00	$315.00
Engineering	**Senior Automation Specialist**	$200.00	$266.00	$360.00
Engineering	**Automation Specialist II**	$165.00	$220.00	$297.00
Engineering	**Automation Specialist I**	$125.00	$166.00	$225.00
Engineering	**Senior Designer**	$145.00	$193.00	$261.00
Engineering	**Designer**	$125.00	$166.00	$225.00
Engineering	**CAD Drafter**	$95.00	$127.00	$171.00
Engineering	**ICS Security Specialist**	$140.00	$186.00	$252.00
Engineering	**ICS Network Specialist**	$155.00	$206.00	$279.00
Engineering	**IT Specialist**	$160.00	$213.00	$288.00
Engineering	**Documentation Specialist**	$78.00	$104.00	$140.00
Construction	**Construction Manager**	$160.00	$213.00	$288.00
Construction	**Superintendent**	$130.00	$173.00	$234.00
Construction	**I&C Supervisor**	$145.00	$193.00	$261.00
Construction	**Technician II**	$115.00	$153.00	$207.00
Construction	**Technician I**	$105.00	$140.00	$189.00
Construction	**Electrical JIW**	$115.00	$153.00	$207.00
Construction	**Electrical Helper**	$95.00	$127.00	$171.00
Construction	**On-Site Safety Specialist**	$115.00	$153.00	$207.00
Construction	**On-Site Quality Technician**	$115.00	$153.00	$207.00
Production	**Production Management**	$180.00	$240.00	$324.00
Production	**Production Associate II**	$95.00	$127.00	$171.00
Production	**Production Associate I**	$80.00	$107.00	$144.00
Production	**Quality Technician**	$130.00	$173.00	$234.00
Project Management	**Account Manager**	$240.00	$320.00	$432.00
Project Management	**Project Manager**	$200.00	$266.00	$360.00
Project Management	**Assistant Project Manager**	$140.00	$186.00	$252.00
Project Management	**Project Coordinator**	$115.00	$153.00	$207.00
Project Management	**Office- Administrative**	$80.00	$107.00	$144.00

24004893 SCADA On-Call Bid Opening: June 26, 2024			
Signature Automation			
		Rates	
		Straight Time Hourly	**Emergency/ Overtime Hourly**
Labor	**Any material markup**	10%	
Role	**Principal**	$255.00	$305.00
Role	**Senior Professional Engineer/Project Manager**	$230.00	$280.00
Role	**Professional Engineer/Project Manager**	$205.00	$250.00
Role	**Graduate Engineer II**	$175.00	$210.00
Role	**Graduate Engineer I**	$155.00	$185.00
Role	**Senior Control System Programmer**	$200.00	$240.00
Role	**Control System Programmer II**	$160.00	$190.00
Role	**Control System Programmer I**	$150.00	$180.00
Role	**Principal IT Consultant**	$240.00	$285.00
Role	**Senior IT Consultant**	$205.00	$250.00
Role	**IT Consultant II**	$175.00	$210.00
Role	**IT Consultant I**	$150.00	$180.00
Role	**Senior Engineering Aide**	$115.00	$140.00
Role	**Engineering Aide II**	$105.00	$130.00
Role	**Engineering Aide I***	$100.00	$120.00
Role	**Senior Drafter/Designer***	$120.00	$140.00
Role	**Drafter/Designer ***	$100.00	$120.00
Role	**Engineering Intern***	$90.00	$110.00
Role	**Senior Project Administrator/Accountant**	$100.00	$120.00
Role	**Project Administrator/Accountant***	$85.00	$105.00
Travel	**Billed at Cost include airfare, rental car, parking, tolls, fuel charges, lodging, meals, and incidental expenses**		

24004893 SCADA On-Call Bid Opening: June 26, 2024 Tanklogix			
		Rates	
		Straight Time	Overtime
Labor	Any Material Purchase Markup	25%	
Labor	Engineer	$175.00	$262.50
Labor	Technician	$140.00	$210.00
Labor	Crew	$125.00	$187.50
Travel	No allowance will be made for travel time/mileage. The billing rate is based on straight time and/or regular rates. Overtime on an authorized basis only.	$0.00	$0.00

24004893 SCADA On-Call
Bid Opening: June 26, 2024

Bid Summary

21 Bid Requests were issued
7 Bids are listed above
0 NO BIDs were received
14 Bidders did not respond

CITY OF MIDLAND
SERVICE CONTRACT
 # 24004893
On-Call SCADA

THIS CONTRACT, effective this 14 day of August 2024, by and between the City of Midland, hereinafter referred to as the "CITY" and Tanklogix, LLC, hereinafter referred to as the "COMPANY".

Projected Annual Cost Not to Exceed: $500,000.00

For and in consideration of the payments and Contracts hereinafter mentioned, COMPANY and CITY hereby agree as follows:

1. COMPANY shall perform all work as set forth in the Request for Proposal, which are incorporated as part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the therefor, Specifications and addenda, hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.

3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.

4. 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 and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.

5. 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, IT'S AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

6. COMPANY Hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Declaratory Judgment Act relating to this Contract.

7. CITY shall have the right to withhold payment for:

a. defective work not corrected;

b. completed service report not submitted;

c. failure of COMPANY to pay subcontractors or suppliers;

d. damage to other work or CITY's property or equipment; or

e. default of COMPANY in performance of this Contract.

The term of this agreement shall be for a period of one (1) year unless sooner terminated as provided in this agreement. The City may at its option, renew this agreement for a period of four (4) additional one (1) year periods. In order to exercise this option, the City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this agreement.

8. Prices for the extension of the Contract described in Paragraph 7 shall be adjusted by a percentage equal to the percentage increase in the Consumer Price Index All Items, Dallas-Fort Worth SMA as of the first date of the Contract to the date of request for change, but in no case shall the price for the option period increase more than fifteen percent (15%) above the amount set forth in the proposal.

9. COMPANY shall:

a. comply with all applicable laws, rules, codes and regulations of Local, State and U.S. Governments;

b. have a designated supervisor on the job site at all times work is in progress;

c. make no changes in the scheduled work without written authorization from CITY;

e. permit and facilitate inspection of the work in progress by CITY;

f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;

g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;

h. remedy all defects in workmanship which develop within a period of one (l) year from the date of service report acceptance by CITY; and

i. not permit any worker to labor more than eight (8) hours during any one (l) calendar day or more than forty (40) hours during any one (l) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

10. In the event COMPANY is in noncompliance with any of the covenants or provisions of this Contract, and such noncompliance is not cured within thirty (30) days after receipt of written notice from CITY, CITY may terminate this Contract at the end of said thirty (30) day period, and may seek such other remedies as may be available in law or equity. Notwithstanding the above, CITY may, at its option, terminate this Contract in the event COMPANY fails on at least three (3) occasions to provide emergency services in a timely manner as required by the Specifications.

11. Failure of CITY to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive COMPANY's responsibility to rectify such default, but CITY shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

12. Any notice which may or shall be given under the terms of this Contract shall, unless otherwise provided herein, be in writing and shall be either delivered by hand or sent by United States Registered or Certified Mail, postage prepaid:

To CITY:

(If mailed) P. O. Box 1152
Midland, Texas 79702

(If hand delivered) 300 North Loraine
Suite 220
Midland, Texas 79701

To COMPANY. Tanklogix, LLC
12200 W Hwy 80 E
Odessa, Texas 79765

The above addresses may be changed at any time by providing written notice to the other party.

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

14. This obligation and undertakings of each of the parties to this Contract shall be performed in Midland County, Texas.

15. This Contract may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto.

16. This Contract and all incorporated Contract documents constitute the entire agreement among CITY and COMPANY; no prior written or contemporaneous oral promises or representations shall be binding.

17. **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.

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

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

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

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

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

20. **NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names

and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

21. **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.

22. **ASSIGNMENTS:** 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 consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

23. **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.

24. **INDEPENDENT CONTRACTOR:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondent superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a

partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

25. **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.

26. **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.

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

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

The Business Automobile Liability insurance provided by 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.

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

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

30. **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.

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

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

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

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

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

34. **Conflict of Terms.** If a conflict of terms or language exists between: (i) any of the provisions of this Contract and (ii) any of the provisions contained in any exhibit(s) attached to this Contract, precedence shall be given to the provisions of this Contract. For the avoidance of any doubt, the provisions contained

in this Contract shall supersede any and all conflicting provisions contained in any exhibit(s) attached hereto. Furthermore, the parties acknowledge and agree that any provision contained in an exhibit(s) attached to this Contract that imposes an additional express or implied obligation on CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Contract are contained in the provisions of this Contract that precede the signature page(s), which evidences the parties' execution.

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Tommy Gonzalez, City Manager

ATTEST

_____
Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF_____§

§

COUNTY OF_____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 2024 personally appeared, _____, an officer of Tanklogix, 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 _____, 2024.

_____

Notary Public, State of _____

Date: 05/20/2024

MIDLAND
Purchasing Division

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

BID NO: 24004893

CLOSING DATE:

June 26, 2024

CLOSING TIME:

2:00 PM

BIDS WILL BE RECEIVED UNTIL **2:00 PM** on **6/26/2024** THROUGH BONFIRE FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO: **Various Utility Locations**

DESCRIPTION
Soliciting proposals from qualified organizations to provide on-call Supervisory Control and Data Acquisition (SCADA) consulting and support services. Services will be provided to the City on an "as required" basis for the duration of the contract. Firms should have expert knowledge and experience with iFix SCADA and historical software by GE.
TOTAL

NOTICE TO BIDDERS:

1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
2. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF CONTRACT, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
3. IMPORTANT NOTICE: IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE, WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK.
4. BIDDER/CONTRACTOR/COMPANY IS RESPONSIBLE FOR ACQUIRING AND ACKNOWLEDGING ALL ADDENDA.
5. **PUBLIC INFORMATION:** To the extent that Bidder is submitting a bid for a contract described by Section 552.371 of the Texas Government Code, Bidder agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this bid, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR EMAIL PURCHASING@MIDLANDTEXAS.GOV

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

COMPANY NAME: TankLogix
ADDRESS: 12200 W Hwy 80 E
CITY: Odessa STATE: TX ZIP 79765
PHONE NO: 432-618-1549 EMAIL: gwilson@tanklogix.com
DELIVERY CAN BE MADE:
AUTHORIZED SIGNATURE:

RFP 24004893 On-call SCADA Consulting and Support Services

Purpose:

City of Midland is soliciting proposals from qualified organizations to provide on-call Supervisory Control and Data Acquisition (SCADA) consulting and support services. Services will be provided to the City on an "as required" basis for the duration of the contract. Firms should have expert knowledge and experience with iFix SCADA and historical software by GE.

Proposals in accordance with the specifications and scope of work below will be accepted through Bonfire until 2:00 p.m. on June 26, 2024. All proposals received after the deadline will not be accepted.

All bidders who choose to mail bid packets must address and submit the proposal to the address below:

City of Midland Purchasing Department

RFP 24004893 On-Call SCADA

300 N. Loraine St. Suite 220

Midland, TX 79701

Under general supervision, perform rehabilitation, modifications, and any necessary material and software upgrades to the City of Midland Utilities Department's SCADA system. SCADA services will be performed on systems at the Water Pollution Control Plant (WPCP), Water Purification Plant (WPP), Membrane BioReactor Facility (MBR) and all other associated locations. Organizations must be capable of implementing new SCADA installations and troubleshooting, diagnosing, and repairing existing and new installations. This includes all equipment, SCADA system hardware, software, telemetry, or other communication issues. Must be able to program or re-program the City's computerized control systems, Human Machine Interfaces (HMI) or Programmable Logic Controllers (PLC) to compensate for system equipment issues or process changes as requested by City staff in a timely manner. The existing SCADA system consists of Schneider Electric Modicon PLC equipment. Control software used is GE Proficy iFix, Unity Pro, Concept and Viejo Designer.

The selected organization shall provide various services, including, but not limited to: system integration, consulting, design, preparing reports, conducting investigations, reporting recommendations, providing after hour and onsite service and installation for the maintenance and necessary upgrades of the SCADA System.

The work, in general, shall include but not be limited to the following:

SCOPE OF SERVICES

- Ethernet/IP, DeviceNet, Profibus and Modbus SCADA network programming and troubleshooting
- Multi-Vendor HMI Support
- specification and procurement of HMI's and (Operator Interface Terminal) OIT's
- OPC Interfacing
- Development of HMI graphics, scripting, trending, alarming and Historian in iFix to match the standards created for the City of Midland
- PLC programming modifications for Modicon PLCs to integrate standard function block code to match the standards created for the City of Midland
- PLC interface support
- Develop and maintain systems documentation, reports on modifications, as-built drawings, infrastructure drawings and hardware and software inventory
- Configuration and development of use of existing XLReporter and iFix Dream Report

CONSULTANT RESPONSIBILITIES

- Familiarizing itself with the City of Midland Utilities Department's SCADA system within four (4) to six (6) weeks of issuance of a formal Notice to Proceed
- Maintain support tools allowing for a quick response to troubleshoot any SCADA issue
- Available to the City by telephone for emergency assistance 24 hours a day, 7 days a week, 365 days per year
- Available to the City, in-person for emergency response within 24 consecutive hours of initial notification by City staff
- Provide additional support to City staff as needed
- Notify city staff four (4) weeks in advance of scheduled preventive maintenance site visit
- Minimum number of scheduled preventive maintenance site visits per year: 1
- Annual preventive maintenance shall include the following at a minimum:
    - One site visit per location. Duration to be dictated by necessity.
    - Troubleshooting, diagnosing and repairing SCADA issues that do not present an immediate danger to the public's health, safety or welfare
    - Investigate any alarms or issues raised since the previous site visit
    - Perform a full system backup
    - Ensuring hard drive memory is not at full capacity
    - System cleaning
    - Checking servers and client nodes for critical errors
    - Fixed disk defragmentation
    - Install any necessary upgrades to current systems
    - Install security patches to operating systems and software

Qualifications, Experience and References:

- Describe the type of organization and business activities
- Products and services offered
- Number of employees
- Number of years providing services similar to the scope
- Identification of any sub-contractors to be used

Qualifications and Experience of Key Personnel:

Provide the names of individuals who would be directly engaged in performance of the scope of services. Identify key personnel and outline their capacity to successfully perform the desired services. City staff must be notified, in writing, of any changes of key personnel. For each of these individuals, please submit:

- The number of years of experience providing the desired services (minimum of three years)
- A summary of their experience providing similar services
- Provide resumes for proposed key personnel

Cost Proposal:

Organizations shall provide a rate schedule for the duration of the contract. Any labor cost for travel to and from the City of Midland shall be included in the hourly rate.

- No allowance will be made for travel time or mileage. Billing rate is based on straight time and/or regular rates
- Overtime pay must be authorized and listed separately
- Listing of any other costs charged by the organization in providing services
- Parts and hardware percent mark up

GENERAL INFORMATION

The City reserves the right to accept or reject any or all proposals and to accept only those proposals that are in the best interest of the City.

There is no expressed or implied obligation for the City to reimburse Proposer for any expenses incurred in preparing responses to this request.

To be considered, one proposal must be received prior to the due date and time.

During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from Proposer, or to allow corrections or omissions or errors.

The Proposer certifies by submission of their proposal that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, state or local rules or regulations.

INFORMATION/QUESTIONS

Requests and Questions for information related to this RFP should be directed to:

Questions relating to this RFP should be directed exclusively to the Purchasing Department at purchasing@midlandtexas.gov or on Bonfire. This is intended to ensure a fair and equitable review process so that there is no actual or perceived situation where Proposer secures or attempts to secure an unfair advantage over another Proposer or creates a situation where there is an appearance of impropriety.

CONTACT WITH CITY COUNCIL AND STAFF

After release of the RFP, no officer, employee, agent, or representative of the Proposer or their family members shall have any contact or discussion, verbal or written, with any members of the City Council, City Staff, or directly or indirectly seek to influence any City Council member or City Staff, except as provided herein.

If a representative of any company or party submitting an RFP violates the foregoing prohibition by contacting any of these parties, such contact will result in being disqualified from this procurement process.

REQUEST FOR PROPOSALS

Offerors must organize proposals into sections following the format of this RFP. 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.

NO INDEBTEDNESS

Proposer agrees that no payments owed by him or her of any nature whatsoever to the City, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

The City will not knowingly award contracts for goods or services to any bidder in arrears to the City for any debt, claim, demand, or account whatsoever, including taxes, penalty and interest. Proposer is responsible for ensuring that no indebtedness exists.

EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the City to recruit, employ, and to provide compensation, promotion, and other conditions of employment without regard to race, color, religion, sex, age, national origin, or disability. The City affirms that employment decisions shall be made only on the basis of bona-fide occupational qualifications.

The City shall continually review its employment practices and personnel procedures and take positive steps to assure that equality of employment opportunity in the City of Midland, Texas is a fact as well as an ideal.

VERIFICATION OF EMPLOYMENT ELIGIBILITY

Proposer must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Proposer – not City – must verify eligibility for employment as required by IRCA.

SERVICE CONTRACT

Successful Proposer shall be required to enter into a service contract with the City.

NEGOTIATION WITH SELECTED PROPOSER

The City reserves the right to enter negotiations of the revenue sharing with the highest ranked proposer using the criteria above. If an agreement on revenue sharing cannot be reached with the highest ranked proposer, the City may reject the proposal and enter revenue sharing negotiations with the other ranked proposers in the order of their rank.

PROPOSAL WAIVERS:

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

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

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

WAIVER:

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

- **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;**
- **WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;**
- **ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR**
- **AWARD OF THE CONTRACT.**

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

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.

EXECUTION OF OFFER

Date:

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

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

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

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: _____

SIGNATURE (INK): _____

NAME: (TYPED/PRINTED) _____

TITLE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

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.

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY
Date Received

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

N/A

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

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

N/A

Name of Officer

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

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

☐ Yes ☒ No

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

☐ Yes ☒ No

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

N/A

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: 6/26/24

BACKET 7.35 August 13, 2024

CITY OF MIDLAND

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

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

(1) the lowest bidder; or

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: TankLogix

Local Address (must be within the City limits): 203 W Wall Suite 620 Midland, TX 79705

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? 1
3. Year your business was established in the City of Midland: 2021
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

   Reseller Permit Number: 12735299864

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

   TankLogix, LLC
   1082 West 1700 North
   Logan, UT 84321

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:

   12200 W Hwy 80 E
   Odessa, TX 79765

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: _____

PROPOSAL

12200 W. Highway 80 E.
Odessa, TX 79765

Date June 26, 2024

To City of Midland Purchasing Department
300 N. Loraine St. Suite 220
Midland, TX 79701

From Gary Wilson

No. of pages 8

Your reference RFP 24004893 On-Call SCADA

TankLogix Proposal # 4991
Project- RFP 24004893 On-Call SCADA

Dear City of Midland,

Thank you for considering TankLogix. We are pleased to present proposal 4991. We hope this offer covers your requirements and would be pleased to receive your order.

If you have any further questions, please do not hesitate to contact me.

We look forward to working with you on this project.

Best regards,

TankLogix

The information contained in this document and attachments is confidential and intended only for the person(s) named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or any other use of the information is strictly prohibited. If you have received this document by mistake, please notify the sender immediately and destroy this document and attachments without making any copy of any kind.

Proposal for SCADA Network Programming and Support Services

1. Introduction

1.1. Company Overview

TankLogix, Inc.
TankLogix, Inc. is an industry-leading automation and control system provider dedicated to improving operational efficiencies across various industries. With an emphasis on technological excellence and client satisfaction, we specialize in designing, implementing, maintaining, programming, and troubleshooting cutting-edge Supervisory Control and Data Acquisition (SCADA), PLC programming, human-machine Interface development, and intricate network troubleshooting services.

Our expertise covers various industrial applications, such as oil and gas, manufacturing, water and wastewater systems, and power generation. Leveraging advanced automation technologies and industry best practices, we help our clients gain seamless control and monitoring of their processes for maximum performance with minimum downtime.

TankLogix's mission is to deliver reliable, innovative, cost-effective solutions uniquely tailored to each client's requirements. We take pride in comprehending the distinct challenges presented by different industries and providing solutions that optimize operational efficiency, safety, and profitability. Our highly qualified engineering and technician staff are committed to maintaining high standards of quality and service, ensuring our clients receive exceptional support and expertise.

TankLogix stays at the cutting edge of technological innovations within automation and control systems, enabling us to offer state-of-the-art solutions that meet and surpass client expectations. From installing sophisticated SCADA systems for real-time data acquisition and control to programming PLCs for complex automation tasks and creating user-friendly HMI interfaces, TankLogix Inc. is your reliable partner in driving industrial innovation and efficiency forward.

Our comprehensive service portfolio also encompasses network troubleshooting and maintenance services to ensure the optimal operation of our client automation and control systems. We recognize the significance of reliable network infrastructure for modern industrial operations and strive to offer proactive support that anticipates potential issues, offering proactive advice as necessary and rapid resolution if any arise.

1.2. Purpose of the Proposal

This proposal outlines our approach to fulfilling the SCADA network programming and support services required by the City of Midland Utilities Department. We aim to enhance the reliability and functionality of the City's SCADA system, ensuring it meets established standards and operates efficiently.

2. Scope of Services

2.1. SCADA Network Programming and Troubleshooting

- Ethernet/IP, DeviceNet, Profibus, and Modbus network programming and troubleshooting.
- Ensuring seamless integration and communication across the SCADA network.

2.2. Multi-Vendor HMI Support

- Providing support for various HMI platforms.
- Specification and procurement of HMIs and Operator Interface Terminals (OITs).

2.3. OPC Interfacing

- Developing OPC interfaces to ensure interoperability between different systems.

2.4. HMI Development in iFix

- Creating HMI graphics, scripting, trending, alarming, and Historian in iFix to match City standards.

2.5. PLC Programming for PLCs

- Modifying PLC programs to integrate standard function block code per City standards.
- Providing PLC interface support.

2.6. Systems Documentation

- Developing and maintaining comprehensive systems documentation, including reports on modifications, as-built drawings, infrastructure drawings, and hardware/software inventory.

2.7. XLReporter and iFix Dream Report

- Configuring and developing reports using XLReporter and iFix Dream Report.

3. Consultant Responsibilities

3.1. Familiarization with SCADA System

- Familiarizing with the City of Midland's SCADA system within 4-6 weeks of the formal Notice to Proceed.

3.2. Support Tools and Emergency Assistance

- Maintaining support tools for quick troubleshooting.

- Providing 24/7 emergency telephone assistance.
- Responding in person within 24 hours for emergencies.

3.3. **Preventive Maintenance**

- Notifying City staff four weeks in advance of scheduled maintenance visits.
- Conducting a minimum of one scheduled preventive maintenance site visit per year, including:
    - Troubleshooting and repairing non-emergency SCADA issues.
    - Investigating alarms or issues since the last visit.
    - Performing full system backups.
    - Ensuring hard drive memory is not complete.
    - Cleaning systems.
    - Checking for critical errors.
    - Defragmenting fixed disks.
    - Installing necessary upgrades and security patches.

4. Qualifications, Experience, and References

4.1. **Organization Overview**

- Type: Automation and control systems provider.
- Business Activities: SCADA system development, PLC programming, HMI development, network troubleshooting, and maintenance services.
- Number of Employees: 90
- Years of Service: 14 years
- Sub-Contractors: SafeGroup.

4.2. **Key Personnel**

- **Brian Cornejo, TankLogix - Senior Controls Engineer**
    - Experience: 29+ years
    - Expertise: SCADA system development, PLC programming, HMI graphics design.
    - Resume: Attached

- **John Cornejo, TankLogix - Senior Control System Engineer**
  - Experience: 21+ years
  - Expertise: SCADA system development, PLC programming, HMI graphics design.
  - Resume: Attached
- **Naveen Aleti, TankLogix - Senior Control System Engineer**
  - Experience: 15+ years
  - Expertise: SCADA system development, PLC programming, HMI graphics design.
  - Resume: Attached
- **Aarti Arumugam, TankLogix - Senior Control System Engineer**
  - Experience: 10+ years
  - Expertise: SCADA system development, PLC programming, HMI graphics design.
  - Resume: Attached
- **Crystal Gottwald, SafeGroup – Lead Engineer**
  - Experience: 16+ years
  - Expertise: Commissioning, factory acceptance testing, control system design.
  - Resume: Attached
- **Francois, SafeGroup – Principal Engineer**
  - Experience: 15+ years
  - Expertise: SCADA system development, PLC programming, HMI graphics design.
  - Resume: Attached
- **David James, SafeGroup – Senior Engineer**
  - Experience: 11+ years
  - Expertise: Project management, technical support, customer service.
  - Resume: Attached

- **Alex Benjamin, SafeGroup – Senior Control System Engineer**
  - Experience: 8+ years
  - Expertise: SCADA system development, PLC programming, HMI graphics design.
  - Resume: Attached
- **Micah Veith, SafeGroup – VIC Water Manager**
  - Experience: 8+ years
  - Expertise: SCADA system development, PLC programming, HMI graphics design.
  - Resume: Attached

Note: City staff will be notified in writing of any changes to key personnel.

6. Conclusion

TankLogix, Inc. is a team of seasoned professionals, each with a wealth of experience and technical know-how. We provide high-quality SCADA network programming and support services tailored to every client's unique requirement. Our comprehensive solutions are designed to optimize SCADA systems' performance and reliability, instilling confidence in our ability to deliver.

At TankLogix, Inc., we value your input and are committed to meeting and exceeding the City of Midland's requirements. Our approach involves thoroughly evaluating your existing infrastructure and operational goals, ensuring that our solutions are tailored to increase system efficiencies, data accuracy, and overall reliability. We prioritize open communication and collaboration, making you an integral part of the process and ensuring your needs are our top priority.

Our highly trained engineers and technicians are equipped with cutting-edge tools and knowledge, ready to face any obstacles your SCADA system might present, with minimal disruption and maximum uptime guaranteed. We recognize the criticality of data acquisition, real-time monitoring, and effective control as essential functions in municipal operations, so our focus lies in offering Midland robust yet scalable solutions.

At TankLogix, Inc., we take great pride in our proactive approach to problem-solving and ongoing commitment to improvement. Our services extend beyond mere implementation; our continuing support and maintenance ensure that your SCADA system stays in prime condition while meeting evolving requirements and technological advances.

TankLogix, Inc. looks forward to partnering with the City of Midland and demonstrating our dedication to excellence in SCADA network programming and support services. When working

together, expect a smooth integration process, increased performance levels, and long-term solutions explicitly tailored to your operations' requirements.

Attachments:

- Resumes of Key Personnel

Acceptance Form:

Date: _____

Billing Address: _____

City/State/Zip: _____

Buyers Name: (Print) _____

Buyers Signature: _____

Vendor Signature: Gary Wilcox

Title: General Manager

Date: 6/26/24

Commercial description

1.1 Validity of offer	1 month from the date of this quotation.
1.2 Payment Terms	30% Down payment prior to procurement of goods. Remainder of balance due 30 days from shipment of TankLogix warehouse.
1.3 Storage Fees	3% of the total order value per month for each month of storage after 30 days from original ship date.
1.4 Cancellation	No discounts will be given for order cancellation.
1.5 Labor	Any additional setup or labor required by the customer will be charged standard labor rates, and may be added to the initial order. Standard crew labor $125.00 per hour. Field Technician/PM labor $140.00 per hour. Electrical Engineer labor $175.00 per hour.
1.6 Changes	All additions and change orders will require written notice and payment confirmation before the work will begin.
1.7 Confidentiality	The contents of this quotation are confidential. It must not be made accessible to third parties (except approval authorities) without our written consent.
1.8 Miscellaneous	All technical data, descriptions, dimensions, material selections and the like are data for construction and do not give any warranties. In no case whatsoever shall the customer be entitled to claim damages other than compensation for costs of remedying defects in the supplies. This in particular refers, but shall not be limited, to costs of production, loss of use, loss of orders, loss of profit and other consequential damage. In any case, the compensation for costs of remedying defects in their supplies shall be limited to the contract value.
1.9 Purchase orders	Purchase orders may be sent to the following address: TankLogix Gary Wilson 1220 West Highway 80 East Odessa, TX 79765 gwilson@tanklogix.com

TANKLOGIX
Remote Management Systems

COST PROPOSAL

12200 W. Highway 80 E.
Odessa, TX 79765

Date June 26, 2024

To City of Midland Purchasing Department
300 N. Loraine St. Suite 220
Midland, TX 79701

From Gary Wilson

No. of pages 2

Your reference RFP 24004893 On-Call SCADA

TankLogix Proposal # 4991
Project- RFP 24004893 On-Call SCADA

Dear City of Midland,

Thank you for considering TankLogix. We are pleased to present proposal 4991. We hope this offer covers your requirements and would be pleased to receive your order.

If you have any further questions, please do not hesitate to contact me.

We look forward to working with you on this project.

Best regards,

TankLogix

The information contained in this document and attachments is confidential and intended only for the person(s) named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or any other use of the information is strictly prohibited. If you have received this document by mistake, please notify the sender immediately and destroy this document and attachments without making any copy of any kind.

Cost Proposal for SCADA Network Programming and Support Services

- **Hourly Rate**: $175.00 – Engineer, $140.00 – Technician, $125.00 – Crew
- **Hourly Overtime Rate**: $262.50 – Engineer, $210.00 – Technician, $187.50 – Crew
- **Other**: None
- **Parts and Hardware Mark-Up**: 25%

No allowance will be made for travel time or mileage. The billing rate is based on straight time and/or regular rates. Overtime on an authorized basis only.

Commercial description

1.1 Validity of offer	1 month from the date of this quotation.
1.2 Payment Terms	30% Down payment prior to procurement of goods. Remainder of balance due 30 days from shipment of TankLogix warehouse.
1.3 Storage Fees	3% of the total order value per month for each month of storage after 30 days from original ship date.
1.4 Cancellation	No discounts will be given for order cancellation.
1.5 Changes	All additions and change orders will require written notice and payment confirmation before the work will begin.
1.6 Confidentiality	The contents of this quotation are confidential. It must not be made accessible to third parties (except approval authorities) without our written consent.
1.7 Miscellaneous	All technical data, descriptions, dimensions, material selections and the like are data for construction and do not give any warranties. In no case whatsoever shall the customer be entitled to claim damages other than compensation for costs of remedying defects in the supplies. This in particular refers, but shall not be limited, to costs of production, loss of use, loss of orders, loss of profit and other consequential damage. In any case, the compensation for costs of remedying defects in their supplies shall be limited to the contract value.
1.8 Purchase orders	Purchase orders may be sent to the following address: TankLogix Gary Wilson 1220 West Highway 80 East Odessa, TX 79765 gwilson@tanklogix.com

Proposal #: 4991
Project: RFP 24004893 On-Call SCADA

Vendor Signature: [signature]

Title: General Manager

Date: 6/26/24

EXECUTION OF OFFER

Date:

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

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

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

This offer consists of pages number 1 through 8.

Offeror/ COMPANY: TankLogix

SIGNATURE (INK): Gary Wilson

NAME: (TYPED/PRINTED) Gary Wilson

TITLE: General Manager

STREET: 12200 W Hwy 80 E

CITY/STATE/ZIP: Odessa, TX 79765

TELEPHONE: 432-618-1549 FAX:

E-MAIL ADDRESS: gwilson@tanklogix.com

AARTI ARUMUGAM

432-701-2165, aarumugam@tanklogix.com

SUMMARY

Goal oriented Process Controls Engineer with advanced knowledge of Controls Systems and Process Engineering and with 15 years of Engineering experience in multiple industries such as Oil & Gas, Food & Beverage and Pharmaceutical industry.

SKILLS

Controls Hardware: ABB line of processors (PM58x, 57x, 56x) Allen-Bradley line of processors (ControlLogix, CompactLogix, SLC, PLC5), Ethernet Networking
Controls Packages: Redlio Crimson 3.1 & 3.0, XSPOC, Kepserver, Studio 5000, RSLogix 5000, 500, 5, RsLinx, Factory Talk View ME & SE, Panel Builder 32, RS Studio, VFD Drive Explorer, Connected Components Workbench, RS Networx, Wonderware ArchestrA IDE, Intouch, Historian Client, GE Proficy iFix (Intellution), Ignition SCADA, Thin Manager, Factory Talk Asset Center
Other: Autocad, C, C++, JMP, Minitab, Matlab, MS-Office

EXPERIENCE

Tanklogix, Odessa, Texas, US Nov 2019– Present
Senior Controls & SCADA Engineer

- Providing control solutions to Oil & Gas customers in Permian Basin of Texas and New Mexico
- Implementing PLC (programmable logic controller), HMI (human machine interface) & SCADA (supervisory control and data acquisition) system code standards and building templates to be used in various projects.
- Coordinating the installation/commissioning of process control equipment.
- Troubleshooting process control loops
- Migrating well sites to Ignition SCADA platform
- Maintaining integrity of the data in SCADA control system

Danone North America, Dallas, Texas, US (previously Whitewave Foods Company) Apr 2017– Nov 2019
Process Controls Engineer

- Manage CapEx projects that involve design and implementation of upgrades to equipment in order to improve the operational efficiencies
    - Design upgrades by developing User & Functional Requirement Specifications (URS, FRS), Statement of work, Contract Summary
    - Perform Installation Qualification (IQ), Operational Qualification (OQ), and provide automation support for Performance Qualification (PQ) of processes.
- Provide engineering and technical support for safety, quality improvement, loss reduction initiatives.
- Implement and manage the Engineering Change Management (MOC) process
- Provide training to operators on Standard Operating Procedures (SOPs) that have been modified or newly implemented for an Engineering change
- Maintain the Engineering Servers compliance with Danone standards and act as an Engineering liaison between IT and the plant
- Develop Electrical Safety standards along with the EHS team
- Manage Controls Technician group to provide 24X7 plant production (processing and packaging) support
- Program PLCs, HMIs, SCADA systems and inspection systems.
- Create and update equipment and process documentation such as Process Flow Diagrams, Piping & Instrumentation Diagrams, Network Architecture, PLC layout, IO Layout and verify Electrical drawings

Novartis Alcon, Fort Worth, Texas, US Dec 2014 – Mar 2017

Control Systems Engineer

- Design and implement modifications to the existing manufacturing equipment that will improve the operational efficiencies.
- Design and implement component conveyor system (including controls) for a new lenscare line and other CapEx projects
- Provide engineering and technical support for safety and quality improvement initiatives.
- Create User Requirement Specifications (URS), Functional Requirement Specifications (FRS), for new or upgraded utilities systems, compounding processes, sterilizing, filling and packaging equipment.
- Program PLCs, HMIs, SCADA systems, and inspection systems.
- Create and update equipment and process documentation such as Process Flow Diagrams, Piping & Instrumentation Diagrams, PLC layout, IO Layout and verify Electrical drawings
- Perform Installation Qualification (IQ), Operational Qualification (OQ), and provide automation support for Performance Qualification (PQ) of processes.
- Provide training to operators on Standard Operating Procedures (SOPs) that have been modified or newly implemented for an Engineering change.

Nestlé Product Technology Center Oct 2011 – Dec 2014

Senior Assoc. Controls & Automation Engineer, Fremont, Michigan, US

- Design and commission industrial control systems to increase reliability, standardize process control and improve production efficiency including aseptic fillers.
- Lead Controls and Automation engineering for CapEx projects and operational activities in the R&D Pilot Plant and Global Infant Meals & Drinks. Activities include defining controls and automation designs consistent with Nestle E&A standards, PLC & HMI programming and troubleshooting, Controls Validation, and Technology roll out to factories.
- Create and update equipment and process documentation such as Process Flow Diagrams, Piping & Instrumentation Diagrams, Functional Design Specifications (FDS), PLC layout, IO Layout and verify Electrical drawings
- Provide Automation Support for Installation Qualification (IQ), Operational Qualification (OQ), and Performance Qualification (PQ) of processes.
- Administrator of the Factory Automation Systems (FAS) network (workstations and servers) to ensure compliance.
- Lead Automation effort as a part of a global compliance initiative.

A few projects worked on:

- Development of Advanced Process Control (APC) that involves Heat Duty Feed forward, Cascade, Averaging Level controls. Develop PLC and HMI programming with the use of Add On Instructions (AOI)
- APC implementation in Pilot Plant level: Aseptic Particulate, Aseptic Puree;
  in Factory level: Aseptic Particulate, Aseptic Puree, Sauce heaters, Aseptic totes
- Controls Validation of Preformed Cup Filler, Aseptic Particulate line

Assoc. Automation Engineer, Marysville, Ohio, US

Implement Nestle automation standards and provide support for the Coffee & Ready to Drink (RTD) pilot plant operations and development projects by

- Primary Automation Engineer responsible for supporting RTD CapEx projects and continuous control improvements
- Lead Automation Engineer for the RTD pilot plant calibration program which passed ISO14001 & OHSAS18001 Stage 2 audit, June 2012
- Developed and led a successful process safety inspection program including spray dryers and coffee roasters.
- Programming & troubleshooting the PLC in the pilot plant
- Designing the Graphical User Interface to make it operator friendly for use in the pilot plant

A few projects worked on:

- Commissioning of the larger capacity Aseptic tank in the RTD pilot plant
- Modify the PLC code in the RTD pilot plant to comply with Pasteurized Milk Ordinance (PMO) regulations
- Commissioning of the sled upgrades to comply with PMO regulations; Reverse Osmosis skid, designed for the purification of condensate water

TECHNICAL TRAINING

Training provided by	Certificate/ course	Dates
Rockwell Automation	Logix Programmer Certificate (completed CCP146,CCP151,CCV204-A; on track for CCP143)	July2019-Sep 2019
	Tech Ed	June 2018
	Thin Manager	March 2019
Wonderware	InTouch Comprehensive	Oct 2018
	System Platform 1 – Application Server (ArchestrA IDE)	Feb 2019, Sep 2013
	System Platform 2 – Historian, Info Server	Nov 2013
Inductive Automation	Ignition Core training	July 2017
	Ignition Advanced training (Databases & Scripting)	July 2017
GE Proficy	iFix Fundamentals	Nov 2016
ShermCo	NFPA 70E, Electrical Safety for Qualified Electrical Workers	Nov 2018
International Society of Automation	Industrial Networking & Security	Feb 2014
ControlSoft Inc.	PID Loop Tuning & Advanced Process Control Strategy	April 2012
Nestlé	Nestlé Engineering Automation Toolbox (NEAT) Version 5 (includes ISA-88 standards)	April 2012

EDUCATION

The Ohio State University, Columbus, Ohio, US — Mar 2011
M. S. – Chemical Engineering GPA: **3.75** / 4.0

National Institute of Technology (REC) Trichy, Tamil Nadu, India — May 2003
B. Tech – Chemical Engineering GPA: **9.54** / 10.0



ALEX BENJAMIN

SENIOR ENGINEER

Contact

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Mulgrave, VIC

in -

Overview

Alex Benjamin is a Control Systems Engineer with a potent blend of practical expertise in electronics manufacturing and a refined specialisation in industrial automation engineering. Possessing a Bachelor in Electrical and Electronics Engineering, Alex brings over 5 years of hands-on experience to SAFEGroup Automation (SGA), having commenced his journey in July 2018.

His adeptness at interfacing with various PLC and SCADA systems, coupled with his proactive approach to learning and problem-solving, has established him as a resourceful and results-oriented member of the SGA team.

Expertise

- In-depth knowledge and hands-on experience with GeoSCADA, iFix, and Emerson (GE) PLCs.
- Proficient in Brodersen RTUs and familiar with an extensive range of ClearSCADA/GeoSCADA systems.
- Adept at comprehensive SCADA development and PLC/RTU coding.
- Skilled in the seamless transition of plant-wide SCADA systems and device standardisation.
- Accomplished in site upgrades including hardware modernisation and implementation.
- Consultative approach with clients to design tailored project and improvement solutions.

Qualifications

Bachelor of Engineering

Electrical and Electronic

Key Competencies

- Proficient in GeoSCADA, iFix, ClearSCADA/GeoSCADA systems, and Emerson GE PLCs.
- Skilled in programming and standardising Brodersen RTUs.
- Expertise in PLC/RTU coding for automation system upgrades.
- Strong command over digital radio systems and telemetry protocols.
- Experienced in site commissioning and system maintenance.
- Competent in designing automation solutions and consultancy.
- Rigorous adherence to quality, environmental, and WHS procedures.

Employment History

Control Systems Engineer → Senior Engineer | 2018 - current

SAFEgroup Automation, Melbourne VIC

- Pioneered the implementation of plant-wide SCADA systems, optimising control and data acquisition processes.
- Standardised plant-wide logic and devices to enhance system uniformity and efficiency.
- Spearheaded site upgrades, fortifying infrastructure with modern RTU and control systems.
- Collaborated closely with clients to craft and deploy bespoke automation solutions.

Junior Electronics Engineer and Electronics Technician| 2020 – 2024

Alfatron, Melbourne VIC

- Specialised in the manufacture, testing, and repair of electronic components, ensuring delivery of high-quality products and services.

Project Spotlight

South East Water | iFIX To ClearSCADA Migration

Orchestrated the transition of multiple systems from iFix to the new standard of ClearSCADA/GeoSCADA, setting a benchmark for future migrations.

ACE Electrical Infrastructure | Lakes Entrance Switchboard Upgrade

Led a critical switchboard upgrade project, integrating a new PLC and SCADA system, which included comprehensive project documentation and collaborative client workshopping.

South East Water | WRP Minor Works

Managed over 100 individual site improvement initiatives across five treatment plants, showcasing an exceptional capacity for investigative problem-solving and client engagement.



FRANCOIS KOCH

PRINCIPAL ENGINEER

Contact

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Mulgrave, VIC

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Overview

With more than 15 years' experience in the controls systems industry, Francois has a wide field of expertise, having worked in both end-user and systems integrator roles. With exposure to a wide range of control and telemetry systems over the years, Francois has a strong mix of technical knowledge to assist in all facets of automation and telemetry projects and services.

Francois is passionate about using latest technical and innovative solutions and working alongside customers to achieve their required goals. With a focus on problem solving and maintaining standards and documentation, Francois leads by example to mentor other junior engineers.

Expertise

- SCADA systems (ClearSCADA, Citect, iFIX)
- PLC systems (Schneider/Modicon, GE, Allen Bradley)
- Telemetry Networks incl. RTUs and Digital Radio systems (SCADAPack RTU, Brodersen, Kingfisher)
- Network and communication protocols such as TCP/IP, DNP3, Modbus and Profinet
- Historian & Reporting (ClearSCADA, Crystal Reports, Excel)

Qualifications

- Bachelor of Engineering (Electrical & Electronic with Computer Science)
- ClearSCADA, Citect
- Trio Data Radio
- Schneider Telemetry Certified Engineer

Experience

Control System Engineer with 10+ years of experience in all aspects of SCADA integration, telemetry and automation engineering.

- Advanced SCADA applications.
- Telemetry system architecture and concepts.
- SCADA protocols & devices.
- Automation systems.
- User Interface design including HMI screens.

Employment History

Control Systems Engineer → Lead Control Systems Engineer → Principal Engineer | Jan 2015 - current

SAFEgroup Automation, VIC

- Provide technical knowledge as main support/customer contact for various customers.
- Supervise and assist with the scheduling, allocation and completion of tasks to junior engineers.
- Provide Telemetry and Control Solutions to clients.
- Deliver complete projects from concept to commissioning.
- Work with customer to design and develop standards.
- Database interfacing.
- SCADA development.
- PLC/RTU Coding.
- System reporting.
- Communication and protocol system optimisation, troubleshooting and fault finding, incl. DNP, Modbus, Ethernet.
- SCADA and Telemetry Auditing.
- Provision of training for DNP3 and ClearSCADA.
- Co-ordination of external contractors.
- Commitment to Quality procedures and Occupation Health and Safety.

Control & Instrumentation Project Engineer | 2013 – 2015

ESKOM Hld SOC Ltd – Tutuka Power Station, South Africa

- Design Reviews and technical input for designs for a new Distributed Control System
- (DCS) and field equipment, as well as managing integration into existing systems.
- Design Reviews and technical input for designs relating to the selection and installation of field instrumentation.
- Eskom liaison for technical matters with the Principal Control and Instrumentation Contractor.
- Technical planning with regards to the live change over the New Control System.
- Witnessing and Assistance of Factory Acceptance Testing of DCS Equipment.

Control & Instrumentation Project Engineer | 2010 – 2013

ESKOM Hld SOC Ltd – Komati Power Station, South Africa

- Leading the Control & instrumentation engineering activities on three coal fired boilers, including design reviews of engineering documentation from various engineering disciplines.
- Technical and quality assurance during installation, commissioning, optimising and handover activities.

Key Competencies

- SCADAPack RTUs
- Brodersen RTUs
- Schneider/Modicon PLCs
- Emerson/GE PLCs
- Allen Bradley PLCs
- Omron PLCs
- Trio radios
- ClearSCADA
- Citect SCADA
- On call support
- Training
- SCADA Audits
- Network fault finding
- System optimisation
- Workshop facilitation and system analysis

Project Spotlight

South East Water Pakenham WRP | Water Recycling Plant SCADA Migration

South East Water primarily runs iFIX SCADA at its treatment plants. Pakenham WRP was their first plant to be migrated to ClearSCADA. Francois was the lead engineer for the project.

- Developing new ClearSCADA standards, based on the existing configurations of iFIX at their other plants.
- PLC standardisation using the latest SEW standard PLC code.
- ClearSCADA template and database development, 27000 points.
- Factory Acceptance Testing and Site Acceptance Testing.
- Seamless cutover of the PLC code and the concurrent SCADA migration.
- Training and support.

SGA | Victorian Support Engineer

During and after hours support role for VIC Customers.

As a Senior Engineer this role has involved being available for support for selected VIC customers. This role requires extensive knowledge of various PLC, RTU, and SCADA systems and the ability to fault find and provide solutions for customers at short notice. Emergency support during storm and disaster events.



MICAH VEITH

VIC WATER MANAGER

Contact

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Overview

Micah Veith is an accomplished multi-disciplinary engineer with over five years of comprehensive experience in industrial automation and control systems. He excels in PLC and SCADA system design and programming, telemetry, and advanced communication systems. Micah has demonstrated rapid proficiency in transitioning from technical roles to robust leadership positions, where he now manages complex projects and leads dynamic engineering teams.

As a manager, Micah merges deep technical expertise with strategic leadership, directing project development and operational efficiencies. He is known for his proactive management style, encouraging team collaboration and driving projects beyond their strategic goals. With a solid professional foundation and a talent for both technical and team leadership, Micah is a critical asset in driving forward the company's engineering ambitions.

Expertise

- SCADA systems (ClearSCADA, Citect SCADA)
- PLC & RTU systems (Rockwell, Schneider, Brodersen, Kingfisher)
- Telemetry Networks incl. RTUs and Digital Radio systems
- Automation and Telemetry protocols (DNP3, Modbus, OPC)
- Historian & Reporting (ClearSCADA, Crystal Reports, Excel)
- Project Management and Team Leadership
- Strategic Planning and Execution

Qualifications

Bachelor of Engineering, Electrical and Electronics Engineering

Key Competencies

- ClearSCADA and Citect.
- SCADA protocols & devices.
- PLC Systems: Rockwell (Compact Logix, MicroLogix), Schneider (Unity, ISaGRAF).
- RTU Systems: SCADAPack, Brodersen, Kingfisher, Honeywell.
- Strong technical ability.
- Knowledge of multiple PLC/SCADA and networking platforms.
- Strong interpersonal skills.
- Wide knowledge base allowing for fast understanding in unfamiliar areas.

Employment History

Control Systems Engineer → Senior Engineer → VIC Water Manager → State Manager - VIC | 2021 - current

SAFEgroup Automation, VIC

Control Systems Engineer

- PLC and process upgrade works for the water industry.
- HMI upgrade works for the oil & gas industry.
- SCADA upgrade guides for the water industry.
- Independent troubleshooting on live industrial systems and devices.
- Configuration of PLCs, RTUs, SCADA systems and other operator control interfaces.

Senior Engineer

- Assumed project management, leading technical initiatives and team deliverables.
- Guided engineering processes and mentored junior staff.

VIC Water Manager

- Directed strategic planning and operations for statewide water management projects.
- Enhanced client relations and business development for the water sector.
- Oversaw regulatory compliance and ensured adherence to safety and environmental standards.
- Managed budgets, forecasts, and performance metrics to achieve financial and operational goals.
- Facilitated cross-departmental collaboration to drive innovation and efficiency in project executions.

Project Spotlight

Wannon Water | WTP Standardisation – *Port Fairy WTP*

- Writing Function descriptions based on old SLC code.
- Workshops with clients to ensure correct operation captured.
- Development of Rockwell PLC & Magelis HMI projects.
- ClearSCADA Database and Kepserver development.
- FAT and SAT documents.
- Conducted FAT testing and on site commissioning.

Project Spotlight

South Gippsland Water | WTP Standardisation – *Leongatha WTP*

- Writing Function descriptions based on old PLC code.
- Workshops with clients to ensure correct operation captured.
- Development of PLC code.
- Citect SCADA development.
- FAT and SAT documents.
- Conducted FAT testing and on site commissioning.

GWMWater | DAF Pre-treatment Upgrade – *Willaura WTP*

- Writing Function descriptions based on process narrative.
- Workshops with clients to ensure correct operation captured.
- Development of GE PLC, Exor HMI & ClearSCADA.
- FAT and SAT documents.
- Conducted FAT testing and on site commissioning.

Central Highlands Water | ClearSCADA & RTU Redesign

- Many design workshops during the 18-month project (ongoing).
- Complete redesign of Brodersen RTU function blocks & ClearSCADA templates.
- Development of functional descriptions for RTU function blocks and SPS sites.
- FAT and SAT documents.
- Conducted FAT testing and on site commissioning.



DAVID JAMES

SENIOR ENGINEER

Contact

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Overview

David James is an accomplished Mechatronics Engineer with an eight-year track record in a variety of automation sectors. His career is marked by effective problem-solving and leadership across multiple industries, ensuring a strong blend of innovation and operational efficiency.

Expertise

Expertly trained in system integration and automation design, David has amassed extensive experience in engineering project management, characterised by his exceptional work with PLCs, SCADA systems, and mechanical design. His credentials are further solidified by gold-level certification in Ignition and expertise in OEE & Downtime processes. At NZ Controls, he broadened his knowledge base in IoT and Industry 4.0, showcasing versatility in IT/OT troubleshooting. As a project engineer at Transpower NZ, he oversaw pivotal green technology implementations, demonstrating his proficiency in operational technical support. David's dedication to safety and quality is evident through his active participation in Health & Safety leadership, while his acumen for procurement and customer service has consistently driven successful project outcomes.

Qualifications

Bachelor of Engineering (Hons.) | 2010 – 2013

Majoring in Mechatronics Engineering | University of Canterbury

Additional Certifications:

- Ignition – Gold Certified | Inductive Automation
- OEE & Downtime Certified | Sepasoft
- EEP216: Overhead Line Design (Electrical) | QUT (Postgraduate Professional Development)

Key Competencies

- PLC Programming:
  - Configuration and programming
  - Rockwell, Mitsubishi, Omron, Siemens
  - Network configuration and communication setup
  - Fault diagnostics and system troubleshooting
- RTU Configuration:
  - Knowledge of an extensive range of RTUs
  - Expert troubleshooting abilities
- Telemetry Configuration
  - DNP3
  - Modbus
  - OPC
  - EtherNet/IP
  - Serial
- SCADA systems:
  - Ignition, Intouch, System Platform, FactoryTalk, Citect, and Geo SCADA
  - Database, OPC protocols, and alarm setups

Employment History

Senior Control Systems Engineer | 2023 - current

SAFEgroup Automation, VIC

- Project scoping, estimation, and quoting.
- Development of functional descriptions, control system architecture designs, and other required project documentation.
- PLC and RTU code development and integration.
- SCADA and HMI system configuration.
- Client liaising, workshops, and design reviews.
- Working to end-user standards and industry best practices.
- Live system cutovers, commissioning, testing, and acceptance.
- Programming efficiency tools and visualisations to enable data analytics and automation.

Automation Engineer | 2021 – 2023

NZ Controls

- Responsibilities spanned across project automation, rapid fault response, and dedicated customer support. This role broadened proficiency in areas such as IoT, Industry 4.0, virtualisation, and cross-technology troubleshooting within IT/OT environments.

Engineer/Project Engineer| 2015 – 2021

Transpower NZ

- Oversaw the implementation of a new ‘green’ type of equipment (HV CO_2 circuit breakers).
- Produced high level responses and estimates for customers (internal and external).
- Designed and supported the implementation of cooling controls system for power transformers.

Design Engineer | 2013 – 2014

Vortex Engineering

- Developed and project managed a cleaning bay for the AirNZ Engine Centre primarily utilising Solidworks.

Key Competencies

- Technical Documentation
  - Functional Descriptions
  - Testing Documentation
  - Solidworks
- Project Management
  - Client Liaison
  - Time Management
  - Budgeting
- Health & Safety
  - Experience and active participation in maintaining Health & Safety on projects and callouts.
- Customer Service
  - Experience with fault response and callouts

Project Spotlight

Don KR| Brine Makeup Controls System Rectification

Redevelopment of Ignition HMI to use ISO symbols, fixing various operator issues. Fixed a punch-list of PLC (CompactLogix) issues.

GeelongPort| Solutions for SCADA Integration

Upgraded existing Citect installs to Plant SCADA 2020 R2, creating a view twin using Ignition which will be progressively cut over as the control system. Including creating centralised visibility and control.



Contact

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CRYSTAL GOTTWALD

LEAD ENGINEER

Overview

Crystal is experienced in the execution of a wide range of control systems projects as well as the modification of operational SCADA and PLC code. Offering engineering expertise throughout the project lifecycle from Concept Design through to Site Acceptance, with additional experience and capabilities in project management, administration and client/contractor liaison.

Crystals employment history as a control systems engineer, project engineer, and water treatment plant SCADA team lead has equipped her with a reliable set of capabilities that delivers high quality work.

Expertise

Crystal is a skilled engineer with expertise in a diverse range of technologies and systems. Her proficiency spans across Elpro Radios, Brodersen RTUs, Allen Bradley PLCs, Emerson/GE PLC/RTUs, AB Panelview, Schneider HMIs, Citect, ClearSCADA, iFIX, Crystal Reports, and Proficy Historian. With a keen focus on instrumentation commissioning, control system design, and development, she excels in conducting factory and site acceptance testing, managing service callouts, and effectively handling defect management.

Qualifications

Bachelor of Engineering in Mechatronics | 2008
University of Adelaide South Australia

Additional training in:

- Schneider GeoSCADA Expert Training
- Root Cause Analysis – Quality Management Systems South
- Santos Permit to Work
- Schneider Telemetry
- Australian White Card Training
- Proficy IFIX HMI/SCADA

SAFEGroup Automation

Key Competencies

- Elpro Radios
- RTUs/PLCs:
  - Brodersen
  - Allen Bradley
  - Rockwell
  - Emerson ROC
  - Kingfisher
  - GE
  - Siemens
  - IDEC OpenNet
  - Floboss
- HMIs:
  - AB Panelview
  - Schneider HMIs
- SCADA:
  - Citect
  - ClearSCADA
  - iFIX
  - Telvent
- Communication Protocols:
  - Modbus TCP/IP
  - Ethernet IP
  - DNP3
  - HART
- Radio path surveying and configuration, including desktop radio path surveys
- SAP Crystal Reports
- Proficy Historian
- Instrumentation commissioning
- Control System Design and Development

Employment History

Lead Engineer | Jan 2024 - current

SAFEgroup Automation, VIC

- Site Sentinel configuration and commissioning. Modification to in production GeoSCADA graphics.
- Online code changes to site GE PLC code.
- Alarm System Management Standardisation and Remediation Planning
- Brodersen RTU and Cybertech modem configuration, coding and commissioning. Peer to Peer RTU communications. Modifications to in production GeoSCADA graphics.
- GeoSCADA upgrades from v2020 to v2022.

SCADA Project Engineer, Acting Water Treatment Plant SCADA Team Lead | 2020 – 2024

South East Water, Melbourne VIC

- Development and modification of GeoSCADA, ClearSCADA, and iFix SCADA screens.
- Modification to site-based SCADA and PLC systems, as well as NOC SCADA systems.
- PLC and RTU Programming with configuration to wired instrumentation.
- Design and test documentation, on and off-site testing.
- Liaison with company internal stakeholders, external contractors, and intrateam communication.
- Monitoring and planning of workload and development standards with internal contractors.
- Reviews of internal documentation as well as contractor project documentation and SCADA development standards as required.

Senior Control Systems Engineer | 2012 – 2020

ATSYS PTY LTD, Melbourne VIC

Control Systems Engineer | 2008 – 2012

Logicamms, Adelaide SA

Key Competencies

- Experienced in project execution and SCADA/PLC code modification
- Provides engineering expertise from Concept Design to Site Acceptance
- Proficient in project management, administration, and client liaison
- Provides task direction for timely project delivery
- Demonstrates autonomy and teamwork in project delivery
- Achieves customer satisfaction meeting tight deadlines
- Proficient in root cause analysis and incident reporting
- Effective communication with stakeholders and team members
- Factory and Site Acceptance Testing, Service Callouts and Defect Management

Project Spotlight

Westside | Moura Compressor Station Upgrades

- Design and develop ControlLogix PlantPAx PLC code for compressor station upgrades
- Include instrumentation, manual and automatic device control, and peripheral system communications
- Conduct client witnessed testing, commissioning, and documentation of the PLC and PanelView PlantPAx system

Beach Energy | Coriolis Meters for Oil Wells

- Integrated Coriolis Meters and HART Instrumentation to existing and new oil wells
- Configured instruments and programmed Emerson RTU
- Integrated new iFIX SCADA screens into existing SCADA system
- Configured telemetry network for inter-RTU and SCADA communications
- Documented and conducted on and off-site commissioning

John Cornejo

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Career Summary

Highly skilled Controls Engineer with over twenty years of experience designing, programming, simulating, testing, and troubleshooting control systems. Proven ability to efficiently diagnose and resolve complex control system issues quickly. Eager to apply my expertise in PLC programming, process automation, and system design in an exciting position that challenges me further.

Education

University of Texas Permian Basin
Bachelor of Science in Industrial Technology
Minor: Political Science

The Victoria College, May 2022
Associate of Science
Selected to represent the college at NASA as a Texas Aerospace Scholar

Skills

- Expertise in programming and troubleshooting PLCs, specifically with ABB systems. Additional experience with Allen Bradley and Direct Logix PLCs.
- Design of SCADA systems and HMI applications.
- Knowledge of various communication protocols such as Modbus TCP/IP, Modbus RTU, Hart, etc.
- Proven ability to work with electrical schematics and AutoCAD for system designs.
- Expertise in control systems for oil production facilities, wells, pipelines, saltwater disposals, and municipal water and wastewater systems.
- Understanding of safety systems and standards, such as machine safety protocols.
- Excellent problem-solving and meticulous nature.

Professional Work Experience

June 2015 to Present TankLogix, Inc. Odessa, Texas

Controls Engineer/Senior PLC Programmer

- Collaborate with clients to design, program, and implement control systems for the oil and gas industry.
- Provide extensive system testing and debugging to ensure optimal performance of control systems.
- Provide technical support for clients, promptly address and resolve issues as quickly as possible.
- Write guidelines for operating and maintaining control systems.
- Ensure all control systems comply with industry safety standards and regulatory requirements.
- Assist with project proposals, specifications, and technical reports as needed by project management to ensure on-time completion within budget and schedule.
- Mentor and guide junior PLC programmers and automation technicians.
- Quality control to ensure SCADA data integrity.

Feb 2010 to June 2015 Mercer Controls, Inc. Edna, Texas

Sales Manager/Estimator/Controls Engineer

- Played a crucial role in taking the company from operating at a loss to profitable with a combination of new business, cost analysis to increase the company's efficiency in weak areas, and cost reductions.
- Wrote technical project specifications for civil engineering firms for water and wastewater control systems.
- Developed new estimating methods to enable the company to track project costs in both labor and material accurately. This has also enabled the company to accurately calculate final profit margins for individual projects.
- Negotiated with vendors to reduce the cost of materials by more than 30% on commonly used products, including motor starters, circuit breakers, enclosures, pilot devices, and more.
- Developed a new method for the company's control drawings to produce a more user-friendly version for our clients.
- Aided in developing the company's first proprietary pump station controller.

Jan 2007 to Feb 2009 Siemens Water Technologies Vadnais Heights, MN

Project Engineer/Controls Engineer

- Very high success rate on meeting or exceeding all project completion dates and project budgets while handling over thirty projects simultaneously ranging in size from $20,000 to as much as $1,500,000.
- Researched and implemented an alternate wire harness wrap to protect the wires between the back panel and enclosure door, saving the company approximately $50,000 annually by substantially reducing labor time.
- Assigned the task of developing a field surge protection device for sensitive equipment by the Head of Engineering, which saved the company approximately $50 per unit on a device used in tens of thousands in quantity.
- Designed the first Link2Site SCADA system, which is SCADA via cellular communication.
- Interpreted project specifications and provided process control and automation of multi-million-dollar water and wastewater treatment systems.
- Designed and implemented SCADA systems as required in the water and wastewater industry.
- Developed detailed written process descriptions and operation and maintenance manuals.
- Coordinate all project activities between internal departments, contractors, and customers for multiple projects simultaneously.
- Assisted Application Engineering in quoting new projects and project change orders.
- Create P&IDs as required.

July 2003 to Jan 2007 Mercer Controls, Inc. Edna, Texas

Project Manager/Electrical Controls Technician

- Coordinated and led the installation of water and wastewater control plants and SCADA systems in the field with direct contact with the customer.
- Prepared submittals for projects up to one million dollars in size.
- Designed control systems for lift stations, water, and wastewater plants according to project scope and specifications.
- Advanced troubleshooting of electrical control systems.
- Allen Bradley and Toshiba PLC programming field debug.
- Instrumentation installation and calibration.
- Assemble electrical control panels.

NAVEEN ALETI

Academic Qualifications

- Master of Engineering Studies (Computer Control Engineering)
- Bachelor of Technology in Electronics and Instrumentation Engineering
- Advanced Diploma in Electrical Technology (Automation& Power Systems)

Areas of Expertise

- 17+ years of experience in control systems and IT across Oil& Gas, Water/Waste water, Food Processing and Mining
- **PLC Platforms:** AB (RSLogix/Studio 5000, PlantPAx (DCS), RSLogix 500, Schneider PLCs (Unity, PL7), Omron CX-One, ABB (Control Builder Plus/CoDeSys), Siemens S7-200, Proficy Machine Edition
- **SCADA/Historian/MES Platforms:** Ignition SCADA, FactoryTalk View SE, VantagePoint, Transaction Manager, ClearSCADA, Citect SCADA, Wonderware System Platform, Wonderware Intouch, VTScada, Proficy HMI/SCADA – iFix, OSIsoft PI System
- **HMI Platforms:** FactoryTalk View ME, Redlion HMI, C-more HMI, Proface, Vijeo Designer
- **RTU Platforms:** ABB Totalflow, Emerson ROC 800, Schneider RTUs (ISaGRAF, Telepace)
- **Industrial Protocols:** OPC(Kepware), Ethernet/IP, Allen Bradley RIO/ ControlNet /DeviceNet, DNP3, Modbus RTU / TCP
- **Alarm Notification:** WIN911, Wonderware SCADAAlarm
- Project Management
- Crystal Reports, Wonderware Downtime analyst, Microsoft Access, Excel, SQL, VBA
- System Administration of Windows servers
- VMWare vSphere administration and management

Projects executed for

- **Oil& Gas:** Diamondback Energy, Concho, Callon Petroleum, Centennial Resources, Hunt Oil, SM Energy, Jetta Operating Company, Enlink Midstream, Energy Transfer Company, Brazos Midstream, SwiftWater Energy, Pioneer Natural Resources and Noble Energy
- **Water/Waste Water:** City of Midland, City of Odessa, City of Biglake, Wyong Shire Council, Gosford City Council, Port Macquarie Hastings Council, Westernport Water, South East Water, Central Highlands Water, Goulburn Valley Water, Laing O'Rourke – APLNG, QGC – QCLNG
- **Food & Beverages:** E.C.Throsby
- **Mining:** Xstrata – Ravensworth Underground Mine, Bloomfield – Rix's Creek Mine

Projects Include

- **Diamondback Energy – Midland Operations:** Lead technical resource responsible for implementing Ignition SCADA for monitoring, control and reporting, Ignition edge at SWDs. Work with customer to design, program commission control systems for downstream assets and Salt Water Disposals(SWDs.

- **Diamondback Energy – Delaware Wonderware and Win911 Integration:** Project lead responsible for Design, development, testing and integration of 85 new acquired sites (Emerson ROCs, ABB Total flows) into Kepware, Wonderware system platform, Win911 and Mobile 911 reports for monitoring and reporting. Implementation of site summery reports.
- **Jetta Operating Company – Scott field operations:** As lead technical resource, worked with the customer, contractors and project managers on adding new Salt Water Disposal (SWD) sites, new pipeline skids to existing pipeline network from concept stage to overall completion. Development and implementation of Ignition SCADA for operations& midstream team. Development and implementation of Daily volume summary reports from each site by collecting data through Kepware EFM Exporter, FT Transaction Manager from ROCs, ABB Total flows and AB PLCs.
- **SwiftWater Energy:** Project lead responsible for PLC, HMI and SCADA (Ignition) design, development and commissioning of mobile Dosing units to recycle salt water from SWD sites. Implementation of Ignition server in AWS hosted platform. Develop Quality control and Production reports.
- **Enlink Midstream – Gas plant upgrades:** Wonderware upgrades at various gas plants. Implement changes to plant control systems as part of Cause and Effect review process to bring all the gas plants in line with each other. Customer Internal Team Member Training. Integration of Plant control system Ethernet network with corporate network.
- **Brazos Midstream – Bison & Cross-V Crude Terminal, Truck Load/unload, various Production Batteries:** PLC, HMI, SCADA (VTScada) design, development, commissioning. Development of Daily production reports based on EFM Data from ROCs and VTScada historian.
- **Energy Transfer Company:** PLC, HMI development and commissioning for various compressor stations in Delaware basin.
- **Support Services for various customers (Water & Waste Water) - 2012 - 2017**
    - Test, Install and Commission telemetry, SCADA and Control systems.
    - Develop and modify Various SCADA Systems.
    - Develop and modify PLC & RTU applications.
    - Maintenance service, Optimization, and fault finding on Plant Control Systems and Telemetry networks.
    - Develop and implement Daily production and Quality control summary reports.
    - Main support/customer contact for various customers including Wyong City Council, Gosford City Council, Westernport Water, South East Water and E.C.Throsby
- **Westernport Water – August 2014 – 2017**
    - Project management
    - RTU, PLC, SCADA, HMI design, development, testing and onsite commissioning as part of process upgrades.
    - Help reduce number of alarms, interruptions to plant operation, fine tune dosing systems to improve water quality, efficiency and maintain compliance
    - Implement Alarm management, Pump efficiency and Pump statistics reports and tools

- Develop and implement RTU, PLC and SCADA Standards based on industry (Water Services Australia) guide lines.

- **South East Water:** Development and Implementation of Daily Plant production Reports and Quality control summary reports in ClearSCADA using internal SQL engine and Crystal reports. Work on GE IFIX SCADA upgrades.
- **Central Highlands Water – Alarm Management:** ClearSCADA Configuration, Development and Testing to generate Alarm management reports and Critical Control Point Alarm Reports.
- **E.C.Throsby – TSX Premium to CompactLogix upgrade and SCADA Upgrades:** Pricing, tender submission, preliminary design, Project management, detailed design of PLC, SCADA, HMI development, testing and onsite commissioning.
- **Wyong Shire Council – Plant upgrades**, **PLC & SCADA standardisation at various Water and Waste Water Treatment Plants:** PLC, SCADA design, development, testing and onsite commissioning for Inlet works, Aeration, Effluent pumps and Transfer pumps, Blowers and Belt press process upgrades, Alum Dosing, Poly dosing, Fluoride Dosing and filters process upgrades.
- **Wyong Shire Council – SCADA Upgrade:** Configuration for the upgrade of SCADA systems from Cimplicity SCADA to ClearSCADA at Mannering Park, Bateau Bay, Charmhaven, Gwandalan and Toukley Sewage Treatment Plants and Telemetry sites.
- **Gosford City Council – Pump Station & Waste Water Treatment Plant upgrades:** PLC, RTU Programing and SCADA design, development testing and onsite commissioning.
- **Bloomfield Group** - **Tailings Dewatering System:** SCADA development and onsite commissioning for Tailings Dewatering System at Rix's Creek Mine
- **Xstrata - Ravensworth Underground Mine Gas Monitoring System:** Proof-testing and rectification of gas monitoring system PLC logic and SCADA development.

Employment History

March 2018 – Present
TankLogix
Industry - Oil& Gas
Service Manager/Lead Controls Engineer

Responsibilities:

- Establish service team and implement tools to manage service requests
- Meet customer expectations, SLAs and manage schedules for service requests
- Lead programmer for PLC, HMI & SCADA systems, implementing code standards and building templates to be used throughout various projects
- Provide Telemetry and control solutions to Oil& Gas customers (Well pad, Gas lift, Production Batteries, Pipeline, SWDs, VFDs and Compressor stations)
- Work on hosted Ignition SCADA platform migration and develop reports
- Training Team members, customers and preparing training material
- Coordinate with project managers, automation and sales team members to assess potential projects, submit proposals and address day to day issues

- Work with the customer and other stakeholders to design detailed control system functionality
- Dealing with a wide variety of technical contacts, including consulting engineering firms, general contractors, customers, vendors, inspectors, and internal team members to control schedules and execute resources to deliver on commitments.

February 2017 – April 2018 (1 year 3 months)
Prime Controls
Industry - Oil & Gas, Water/Waste Water
Senior Automation Specialist

Responsibilities:

- Lead programmer for PLCs & SCADA systems, including building templates to be used throughout the project and reviewing the work of others.
- Develop Production reports from Historians/databases
- Collaborate with project managers and estimators to assess potential projects and submit proposals
- Project Management
- Work with the customer and other stakeholders to design detailed control system functionality
- Dealing with a wide variety of technical contacts, including consulting engineering firms, general contractors, customers, vendors, inspectors, and internal team members to control schedules and execute resources to deliver on commitments.
- Document the functionality with a controls narrative and/or a cause and effect
- Training documents and Customer Training
- Commitment to Quality procedures and Occupation Health and Safety

March 2012 – February 2017 (5 years)
SAFEgroup Automation
Industry – Water/Waste Water, Mining
Senior Control Systems Engineer (July 2016 – February 2017)
Control Systems Engineer (March 2012 – June 2016)

Responsibilities:

- Ensuring high quality projects are delivered which meet the customer requirements, and are delivered within budget and on schedule.
- Liaising with customers and third parties to ensure the successful completion of projects
- Provide Telemetry and Control Solutions to clients
- PLC Programming and Telemetry System Design and Implementation
- SCADA development and Implementation
- Reporting, functional design specifications and training manuals
- Multi-level process control and IT systems
- Project management

- Supervise and assist with the scheduling, allocation and completion of tasks to junior engineers
- Customer Training

September 2008 – February 2012 (3 years 6 months)
E.C.Throsby Pty Ltd
Industry – Food processing Plant
Systems Engineer

Responsibilities:
Electrical & Control Systems:

- PLC, HMI & SCADA systems programming, commissioning, troubleshooting and maintenance
- Project Management
- Development, integration, upgrade and configuration of new InTouch HMI packages as part of $5 million plant expansion project.
- Industrial Ethernet network design & installation.
- Installation, commissioning and testing of carton sorting system by handling the information from different barcode scanners and database systems.
- Operational changes to Plant refrigeration control system, Product conveyers, Chains, Box making machine and Lidding machine control systems.
- Interfacing Sick barcode scanners with CompactLogix PLCs.
- X-ray machine installation, commissioning, integration with conveyers and testing.
- E-Mech actuators and valves, VSD's (Hitachi, PDL, Zener and Power flex), Multiplexers, PID controllers and Position Encoders.
- Troubleshooting servo drives on X-ray shutters and single axis pushers.
- Interface LED screens with HMI and PLC systems

System Administration

- Installation, maintenance, upgrading, testing and troubleshooting:
    - Windows servers (Domain controller, file, Terminal server, Exchange, database server and live inventory system)
    - MS SQL server 2005&2008, MySQL, Progress database.
    - Symantec Endpoint protection& Mail security, Backup Exc 2010.
    - On floor production systems, mobile scanning devices with back office, financial,
      payroll
      system and various other software applications (Sega Micro pay, Arrow financials, OZdoc's, Biomatch, Labgen and etc).
    - Cisco routers, switches (POE, Managed and unmanaged) and access points with high gain antenna.
- Upgrading physical servers to Virtual server hosts (VMware ESXi) and setup virtual machines.
- Installation of patch panel and server racks in server room& telephone system.
- Preparing documentation on Ethernet network, Disaster recovery and backup procedures for servers.
- Preparing software requirements, testing and troubleshooting of ITP Chain software as part of Software development life cycle.
- Desktop support, remote support for remote clients& maintaining security monitoring system.
- Upgrading PABX (Communication) system and installing GSM Repeaters to meet company communication needs.

- Crystal reports XI: create and modify reports from different databases.
- Implementing Network attached storage backup solution.

Management

- Working closely with plant maintenance team to address day to day operational issues.
- Dealing with system integrators, suppliers and contractors in relation to new installations, software development, upgrades, maintenance and repairs.
- Reporting to top management on issues and resolutions.
- Ordering, Purchasing and recommending various software applications, Hardware and other equipment as needed for the company.
- Working with different software and hardware providers to maintain the service agreements.
- Parts management agreement with Rockwell automation.
- Preparing documentation on servers
- Training Plant operators and maintenance team members.

March 2007 – September 2008 (1 year 7 months)
Best International Group Pty Ltd (Industry – IT services)
Field Engineer

Customers: Dell, NCR and Fujitsu

Responsibilities:

- Performing warranty break/fix, hardware installations, troubleshooting and break/fix repairs on desktops, laptops, printers, and peripherals purchased through Dell at various customer locations throughout the Sydney.
- Installing, configuring, Administrating Microsoft Windows 2000/XP/2003 and maintain computer systems hardware and software, provide technical assistance to system users in accordance with applicable information systems policies, procedures, methods and techniques. Data Backup, Restoration & Monitoring.
- Troubleshooting LAN & WAN application issues, Local/LAN Printers, Desktop, Laptop, Servers.
- Performing pre-installation, memory upgrade, and network conversion site surveys.
- Troubleshooting and escalation of server and network issues.
- Disseminated technical knowledge, conferences and written documentation to colleagues.

References

References will be provided upon request

Brian L. Cornejo
1410 West County Road 150
Midland, Texas 77957

Mobile: (361) 235-9689
bcornejo@tanklogix.com

Career Profile

- Over 20 years of electrical controls, instrumentation, electrical and mechanical experience.
- Resourceful, creative, and pleasant person who is consistently evaluated outstanding for quality of work, use of time, technical knowledge, cooperation, and ability to work with others.
- Capable of making swift and successful decisions in stressful situations.
- Learn and apply new skills quickly – excellent problem solving and analytical skills.

Experience

Tanklogix
08/2014 – Present Automation Engineer / Senior Programmer Odessa, Tx

Responsible for the design, programming and implementation of PLC based control systems. Manager of a team including programmer, technician and subcontractors.

Significant Achievements:

- Assisted in building a highly effective team that continuously delivers quality automation services to our customers.
- Helped establish a training system that allowed significant growth of both our employees and company.

Mercer Controls Inc.
03/2008 – 08/2014 Project Engineer / Lead Programmer Edna, TX

Responsible for the design, programming and implementation of all PLC based control systems, and advanced controls and process troubleshooting. Additionally, I supervise the design of all other control systems.

Significant Achievements:

- Designed a cost effective SCADA system to meet the budget requirements for communities that were previously unable to afford them.
- Elected to the Board of Directors
- Selected be a speaker at a meeting for municipal operators covering SCADA systems, these meetings count for their continuing education requirements.

Testengeer Engineering, Inc.
11/2006-03/2008 Lead Designer Port Lavaca, TX

I&E Coordination, field research, and system analysis and design for industrial chemical plants.

Significant Achievements:

- Received several compliments from our customers and the Vice-President of the company for my value added engineering which has saved in both time and material costs.

Mercer Controls Inc.
7/2003 – 11/2006 Technical Projects Coordinator Edna, TX

I coordinated and supervised projects. I did all of the highly technical troubleshooting and repair of control systems, PLCs, and mechanical systems. Advised the technical staff when they ran into problems. Designed control systems from engineering specifications and project scope. Wrote and modified PLC code.

Significant Achievements:

- Maintained and repaired customer relations, handled the political situations that arose
- Found thermal related problems causing electrical faults in three old VFDs when the manufacturer's trained technicians could not

Victoria Machine Works
4/1998 – 5/1999 5/2000 – 7/2003 Electrical Tech A & B Victoria, TX

My responsibilities included: Advanced control system troubleshooting, PLC programming, pneumatics, hydraulics, control panel assembly, welding, and equipment maintenance.

Significant Achievements:

- Installed and assisted in the implementation of a control system upgrade on a J-Lay pipe laying machine. This was to increase its capacity from 500 to 750 kip.
- Previous to the company going bankrupt, plans were in place for the company to pay me my salary to finish my Electrical Engineering degree, as well as pay for the education. The company was intending for me to be their future electrical engineer when the current engineer retired.
- Designed a robotic welding trolley which allowed a single operator to weld at the pace of four welders.
- Researched, designed, and updated the controls of a stress relieving oven when the other controls technicians failed.

- I was sent to Florida to solve an intermittent fault in the control system for a hyperbaric chamber, which our other technicians could not find over a period of three months. I solved the problem after three days of troubleshooting.
- Modified the PLC program for a horizontal boring mill to accommodate for worn out mechanical parts, so that the mill switched from mode to mode softly and maintained production. Others had tried to do this in the past, but were unsuccessful at accomplishing both the reduction of mechanical failures while maintaining production. The company was spending an average of $10,000 a month in repairs and downtime before I made the modifications.
- I was given the task of making a 1200 Amp wielding machine out of two smaller wielding machines that were not designed to work together. I was able to couple the two power supplies together so that they produced the required current for the wielding process. This was done without damaging the machines and lead to the successful completion of the project.
- Designed and programmed controls to update the control system for our overhead crane, so that it met safety standards.
- When the need for a certified TIG and MIG welder arose, I trained for and then passed the welding test. I had zero deficiencies for the duration of the project. This was the last project that Victoria Machine Works had before going out of business. By certifying and working as a welder, it allowed the project to be completed on time.

Victoria College
9/2000 – 12/2001 Tutor Victoria, TX

I tutor college students in the math (developmental to Calculus III), science (Chemistry, Physics, and Electronics), and English

Significant Achievements:

- Tutored a student which was on their fifth attempt at College Algebra and had an average of 50, he finished the course with a B.
- I was invited to and stood on the Instrumentation and Electronics Development Board (I was the only student on the board)
- I was selected to represent Victoria College at NASA as a Texas Aerospace Scholar, where I designed the drive system for a ROVER. A NASA engineer helping with the program considered my design to be the best in the program.

Mitchell Construction
3/1997 – 2/1998 Electrical & Controls Technician Fort Hood, TX

I was responsible for electrical maintenance on three phase 480V and single phase 120/240V power circuits. I also did a variety of control circuit, troubleshooting, repairs, and installation. I assisted the HVAC technician with the heating and air conditioning repairs and the mechanics with pump and motor repairs.

Significant Achievements:

- Repaired many control systems that were beyond the capabilities of the other technicians.

Interplast-IBS
5/1996 – 2/1997 Electronic/Mechanical Technician Lolita, TX

I did electrical and mechanical troubleshooting, repairs, and installation on diverse machinery and equipment.

Significant Achievements:

- Took responsibility for the repair and modification of thirteen non-functioning production lines. Once I finished the repairs, the lines achieved and maintained a higher production level than they had ever accomplished.
- Fixed production lines that other personnel had not been able to repair prior to my employment.

United States Air force
3/1992 – 3/1996 Aircraft Armament Systems Specialist (Journeyman)

I was responsible for the loading and unloading of both nuclear and non-nuclear weapons. I did electrical, electronic, and mechanical repair of the launch system and system components, which required the use of various testing equipment and troubleshooting techniques.

Significant Achievements:

- Graduated second in my class in technical school
- My crew won the load crew of the quarter for the first two years directly out of training
- Selected to the Standardization Load Crew (Trained all other load crews on the base)
- Selected to the START Treaty Team (Showed Russian representatives the exact capabilities of the B52's load capacities to prove compliance with the START Treaty)
- Selected to a team which wrote the launch and loading procedures for new B52 munitions
- Received an Achievement Medal for developing new methods, which were both faster and safer, for installing electronic counter measures for the B52

***Awards**:* Good Conduct Medal, National Defense Medal, Outstanding Unit Award and (2) Achievement Medals.
Obtained and maintained top secret security clearance for 3 ½ years.

Education

University of Houston
Fall 2005 Electrical Engineering course work Houston, TX

Course load included: Introduction to Electrical Engineering, Probability and Statistics, and Computing for Engineers

Victoria College
1999 – 2001 Associate of Science Victoria, TX

Areas of concentration are Electronics, Physics, Chemistry and Calculus. GPA 3.2

United States Air force
1992 – 1996 E-4 Rank

Technical orders, Electronic Theory and Principals, Supply and Documentation Systems, Aerospace Ground Equipment, Loading and Unloading Nuclear and Conventional Weapons, and Systems Checkouts.

TANKLOGIX
Remote Management Systems

PROOF OF NO INDEBTEDNESS

12200 W. Highway 80 E.
Odessa, TX 79765

Date June 26, 2024

To City of Midland Purchasing Department
300 N. Loraine St. Suite 220
Midland, TX 79701

From Gary Wilson

No. of pages 2

Your reference RFP 24004893 On-Call SCADA

TankLogix Proposal # 4991
Project- RFP 24004893 On-Call SCADA

Dear City of Midland,

Thank you for considering TankLogix. We are pleased to present proposal 4991. We hope this offer covers your requirements and would be pleased to receive your order.

If you have any further questions, please do not hesitate to contact me.

We look forward to working with you on this project.

Best regards,

TankLogix

The information contained in this document and attachments is confidential and intended only for the person(s) named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or any other use of the information is strictly prohibited. If you have received this document by mistake, please notify the sender immediately and destroy this document and attachments without making any copy of any kind.

Proposal #: 4991
Project: RFP 24004893 On-Call SCADA

City of Midland, Texas

Certificate of Non-Indebtedness

This is to certify that:

TankLogix
12200 W Hwy 80 E
Odessa, TX 79765

does not have any outstanding debts, obligations, or liabilities to the City of Midland, Texas, as of the date of this certificate.

I, the undersigned, declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

Name: Gary Wilson

Title (if applicable): GM

Signature: Gary Wilson

Date: 6/26/24

This certificate is issued upon the request of the above-named individual/entity for the purpose of establishing non-indebtedness to the City of Midland, Texas.

City of Midland, Texas

Authorized Official:

Name: _____

Title: _____

Signature: _____

Date: _____

City Council Meeting

Item Number: 8

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: MOTION AUTHORIZING THE EXECUTION OF CHANGE ORDER #1 WITH UTILIS, INC., DBA ASTERRA OF LA JOLLA, CALIFORNIA, REGARDING THE SATELLITE LEAK DETECTION SERVICES PROJECT; SAID CHANGE ORDER TO BE IN THE AMOUNT OF $53,000.00 AND TO PROVIDE FOR ADDITIONAL IDENTIFICATION OF POTENTIAL LEAKS WITHIN THE CITY OF MIDLAND WATER DISTRIBUTION SYSTEM (DISTRICT: ALL) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

Motion authorizing the execution of Change Order #1 with Utilis, Inc., dba ASTERRA of La Jolla, California, regarding the Satellite Leak Detection Services Project; said change order to be in the amount of $53,000.00 and to provide for additional identification of potential leaks within the City of Midland water distribution system.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the Water & Sewer Fund operating budget

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

Resolution 2023-101 awarded a contract for a sole source contract for Satellite Leak Detection Services for one (1) year for the Utilities Department to Utilis, Inc. dba ASTERRA of La Jolla, California. Please see the attached supporting memo from Carl Craigo, Utitlites Director, for additional information.

Therefore, please consider a Motion authorizing the execution of Change Order #1 with Utilis, Inc., dba ASTERRA of La Jolla, California, regarding the Satellite Leak Detection Services Project; said change order to be in the amount of $53,000.00 and to provide for additional identification of potential leaks within the City of Midland water distribution system.

Morris Williams Jr.

City Manager's Office

Subject: Request for Contract Amendment Approval for ASTERRA Satellite Leak Detection Project

Date: 7/30/2024

To: City Council Members

From: Carl Craigo, Utilities Director

Dear City Council Members,

I am writing to request your approval for an amendment to the existing contract with ASTERRA for satellite water leak detection services. The initial contract, approved in August 2023, was set at $212,000 and has proven effective in identifying potential leaks within our water distribution system.

As part of the ongoing project, ASTERRA has identified several points of interest (POIs) indicating potential leaks. The initial scope of the project allowed for the investigation of a limited number of these POIs. However, to ensure a comprehensive assessment and to address all potential issues, it is necessary to expand the scope of the project to include a thorough investigation of all identified POIs.

Proposed Amendment Details:

1. **Original Contract Amount:** $212,000
2. **Proposed Increase:** 25% of the original contract amount, which equates to $53,000.
3. **Revised Contract Total:** $265,000
4. **Scope Expansion:** The additional funds will cover the costs associated with conducting a more comprehensive investigation of all identified POIs, thus ensuring thorough coverage and effective leak detection.

Justification:

The expansion is critical to ensuring that all potential leaks are identified and addressed, which aligns with our goals of water conservation, cost efficiency, and improved service delivery. By proactively identifying and repairing leaks, we can prevent further water loss, reduce maintenance expenses, and minimize the risk of infrastructure damage.

Request for Approval:

I respectfully request that the City Council approve the proposed contract amendment with ASTERRA, increasing the contract amount by $53,000 to a total of $265,000. This increase will enable us to cover all POIs and fully utilize the satellite technology's capabilities for the benefit of our city's water management efforts.

Thank you for your consideration of this request. Please do not hesitate to contact me if you require any further information or clarification.

Sincerely,

Carl Craigo
Utilities Director
City of Midland

CHANGE ORDER

Order No. _____

Date: 8/1/2024____
Contract Date:_____

NAME OF PROJECT: __Satellite leak detection_____

PROJECT NUMBER: _980_____

OWNER: City of Midland
CONTRACTOR: Utilis INC DBA Asterra

The following changes are hereby made to the CONTRACT DOCUMENTS: Increase amount allowed for hourly rate of manual leak detection

Justification: The Satellite leak detection found over 500 POI to investigate. There was not enough funds in original contract to investigate all points

Quantizes Changes though out the project

Change to CONTRACT PRICE:
Original UNIT PRICE CONTRACT: $212,000

Current UNIT PRICE CONTRACT adjusted by previous CHANGE ORDER: $212,000

The UNIT PRICE CONTRACT due to this CHANGE ORDER will be:
☒ (increased) ☐(decreased) by: $53,000
The new UNIT PRICE CONTRACT including this CHANGE ORDER will be: $265,000

Change to CONTRACT TIME:
The CONTRACT TIME will be: ☒ (increased) ☐(decreased) by: 60 calendar days.

Approvals Required:
To be effective this Order must be approved by the Midland City Council if it changes the scope or objective of the PROJECT, or as may otherwise be required by the GENERAL PROVISIONS AND SUPPLEMENTAL CONDITIONS.

Requested by: __Carl Craigo_____

Approved by: _____

Accepted by: _____

City Council Meeting

Item Number: 9

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: MOTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH FOSTER & FOSTER CONSULTING ACTUARIES, INC. TO EXTEND THE TERM OF THE AGREEMENT BY ONE YEAR AND TO INCREASE THE CITY'S PAYMENT BY AN AMOUNT NOT TO EXCEED $150,000.00 (DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

Motion authorizing the execution of an amendment to the professional services agreement with Foster & Foster Consulting Actuaries, Inc. to extend the term of the agreement by one year and to increase the City's payment by an amount not to exceed $150,000.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the General Fund operating budget.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

Staff recommends amending the Professional Services Agreement for Actuarial Services Amendment 1 with Foster and Foster Consulting Actuaries, Inc. of Fort Myer, Florida. Please see the attached memo from Christy Weakland, Finance Director, for additional information.

Therefore, please consider a motion authorizing the execution of an amendment to the professional services agreement with Foster & Foster Consulting Actuaries, Inc. to extend the term of the agreement by one year and to increase the City's payment by an amount not to exceed $150,000.00

Morris Williams Jr.

City Manager's Office

FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIDLAND AND FOSTER & FOSTER CONSULTING ACTUARIES, INC. FOR ACTUARIAL SERVICES

THIS AMENDMENT is made and effective August 14, 2024, by and between the CITY OF MIDLAND, TEXAS ("CITY"), a home-rule municipal corporation, and FOSTER & FOSTER CONSULTING ACTUARIES, INC. ("COMPANY").

WHEREAS, CITY and COMPANY entered into that certain Professional Services Agreement for actuarial services dated January 3, 2024 (the "Agreement"); and

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

WHEREAS, CITY and COMPANY desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

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

1) That the first sentence of Article III of the Agreement is hereby amended to read as follows:

> CITY agrees to pay COMPANY an amount not to exceed $199,750.00 for the performance of the Services.

2) That Article IV of the Agreement is hereby amended to read in its entirety as follows:

> The term of this Agreement shall be from January 3, 2024 until January 2, 2026, unless the Services are completed sooner or the Agreement is terminated as provided below.

3) That the Agreement, inclusive of this First Amendment, is hereby ratified and affirmed by CITY and COMPANY, and the Agreement shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

[Signature pages follow]

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

THE CITY OF MIDLAND, TEXAS

By:_____
Tommy Gonzalez, City Manager

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Christy Weakland, Director of Finance

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

FOSTER & FOSTER CONSULTING ACTUARIES, INC.

By: _____

Printed Name: Bradley R. Heinrichs

Title: President/CEO

THE STATE OF Florida §
§
COUNTY OF Lee §

BEFORE ME, the undersigned authority, on this 2 day of August, 2024, personally appeared Bradley R. Heinrichs, an officer of Foster & Foster Consulting Actuaries, 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 2 day of August, 2024.

Christine A. Stoker
Notary Public, State of FL

CHRISTINE A. STOKER
Notary Public - State of Florida
Commission # HH 274631
My Comm. Expires Oct 2, 2026
Bonded through National Notary Assn.

City Council Meeting

Item Number: 10

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Justine Ruff, Director

Subject: MOTION AUTHORIZING THE MAYOR AND THE CITY ATTORNEY TO EXECUTE A FEDERAL AVIATION ADMINISTRATION GRANT IN ORDER TO RECEIVE AN ESTIMATED AMOUNT OF $3,747,275.00 FOR THE MAF RECONSTRUCT ASPHALT AIR CARRIER APRON PROJECT AT THE MIDLAND INTERNATIONAL AIR & SPACE PORT (DISTRICT 4) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)

Purpose:

Motion authorizing the Mayor and City Attorney to execute Federal Aviation Administration Grant (expected to be Grant #73) in order to receive grant funds for the MAF Reconstruct Asphalt Air Carrier Apron upon receipt.

Recommended City Council Action:

Approve

Fiscal Impact:

Estimated Grant Proceeds $3,747,275.00

Strategic Priority:

(Transparent & Consistent Communication)

Discussion:

In anticipation of the receipt of FAA Grant (expected to be Federal Grant #73) in the estimated amount of $3,747,275.00, the Department of Airports is requesting City Council's approval to allow the Mayor and the City Attorney to execute this grant agreement upon receipt. These grant proceeds will be used in the MAF Reconstruct Asphalt Air Carrier Apron Project.



City Manager's Office

City Council Meeting

Item Number: 11

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Justine Ruff, Director

Subject: **MOTION AUTHORIZING THE MAYOR AND THE CITY ATTORNEY TO EXECUTE A FEDERAL AVIATION ADMINISTRATION GRANT IN ORDER TO RECEIVE AN ESTIMATED AMOUNT OF $2,975,211.00 FOR THE MAF RUNWAY BLAST PAD IMPROVEMENT PROJECT AT THE MIDLAND INTERNATIONAL AIR & SPACE PORT (DISTRICT 4) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)**

Purpose:

Motion authorizing the Mayor and City Attorney to execute Federal Aviation Administration Grant (expected to be Grant #71) in order to receive grant funds for the MAF Runway Blast Pads Improvement Project upon receipt.

Recommended City Council Action:

Approve

Fiscal Impact:

Estimated Grant Proceeds $2,975,211.00

Strategic Priority:

(Transparent & Consistent Communication)

Discussion:

In anticipation of the receipt of FAA Grant (expected to be Federal Grant #71) in the estimated amount of $2,975,211.00, the Department of Airports is requesting City Council's approval to allow the Mayor and the City Attorney to execute this grant agreement upon receipt. These grant proceeds will be used in the MAF Runway Blast Pad Improvement Project at Midland

International Air & Space Port.

City Manager's Office

City Council Meeting

Item Number: 12

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Elizabeth Triggs, Director

Subject: MOTION AUTHORIZING THE EXECUTION OF A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND PERFORMANCE AGREEMENT AMONG THE CITY OF MIDLAND, TEXAS, THE MIDLAND DEVELOPMENT CORPORATION, AND COSTCO WHOLESALE CORPORATION (DISTRICT: NONE) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)

Purpose:

Motion authorizing the execution of a Chapter 380 Economic Development Program and Performance Agreement among the City of Midland, Texas (the “City”), the Midland Development Corporation (the “MDC”), and Costco Wholesale Corporation (the “Company”). Under the terms of the Agreement, the Company will construct and operate a minimum 174,000 square foot Costco wholesale and retail general merchandise facility located on an 18.66-acre tract of undeveloped land adjacent to the northern boundary of TX-191 and west of TX-158 (the “Property”), representing a minimum $50,000,000 capital investment and creating 100 full-time equivalent employment positions, as further defined in the Agreement.

Recommended City Council Action:

Approve

Fiscal Impact:

Contingent on the Company’s performance under the terms of the Agreement, the City will provide the Company with annual rebates. The rebates include: 1) 50 percent of the ad valorem taxes paid to the City for real and personal property on the Property over 20 years; and 2) 100 percent of the sales and use tax revenue generated by the Property and paid to the City at the City’s one-percent rate over 30 years. The City will also waive development fees and extend Sinclair Avenue to provide public access to the Property and future development to the west of the Property. The MDC will reimburse the Company $6,502,544 for infrastructure

and site improvements related to the development of the facility, to be disbursed in three equal payments, with the first upon completion of construction, the second after one year of maintaining job creation metrics; and the third after two years.

Strategic Priority:

(Strong Economy with More Quality Jobs)

Discussion:

In late 2023, the Midland City Council adopted the City's Strategic Plan, focusing on economic development and quality of place. Key strategies include the continued development of west Midland and the creation of destination retail and entertainment opportunities to attract visitors, thereby promoting a strong economy and quality jobs for Midland citizens.

The proposed Agreement aligns with these strategies by facilitating the construction and operation of a Costco facility on property that will be annexed into the City of Midland. This facility will serve not only Midland residents but also those from surrounding communities. Its location in West Midland will act as a catalyst for further development along a key growth corridor, generating new tax revenue for the City and other local taxing entities.

The Agreement is performance-based, requiring the Company to make a minimum capital investment of $50,000,000 in a 174,000-square-foot Costco facility. The Company must also operate the facility and maintain at least 100 full-time equivalent positions, as defined in the Agreement, to qualify for the reimbursements and rebates provided by the City and MDC.

The MDC Board of Directors will consider authorizing the execution of the Agreement on August 12, 2024.



City Manager's Office

CITY OF MIDLAND, TEXAS,
MIDLAND DEVELOPMENT CORPORATION
AND
COSTCO WHOLESALE CORPORATION

CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND PERFORMANCE AGREEMENT

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND PERFORMANCE AGREEMENT** (hereinafter referred to as this "Agreement") is made and entered into by and among the **CITY OF MIDLAND, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the "City"), the **MIDLAND DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the "MDC"), and **COSTCO WHOLESALE CORPORATION,** a Washington corporation (hereinafter referred to as the "Company"), for the purposes and considerations stated below.

WHEREAS, the Company has agreed to construct or cause to be constructed a minimum of 174,000 square foot Costco wholesale and retail general merchandise facility (of which approximately 160,000 square feet will be the "sales floor") to be located on an approximately 812,818 square feet or 18.66 acre tract or tracts of land situated in the T&P RR Co Survey, Section 35, Abstract No. 378, City of Midland, Midland County, Texas, as more particularly described in ***Exhibit A*** attached hereto and depicted in the preliminary site plat attached hereto as ***Exhibit B***, which is attached hereto and incorporated herein for all purposes (hereinafter referred to as the "Property"); and

WHEREAS, the Company desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code an incentive to the Company to develop the Property; and

WHEREAS, the City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, the City has determined that a grant of funds to the Company will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City, and, as such, meets the requisites under Chapter 380

of the Texas Local Government Code, and further, is in the best interests of the City and the Company; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State; and

WHEREAS, the MDC is an economic development corporation operating pursuant to Chapter 504 of the Act, and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, and, as provided in Section 501.151 of the Act is a constituted authority for the purpose of financing one or more projects; and

WHEREAS, Section 501.103 of the Act, in pertinent part, defines the term "project" to mean "expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . ." (the foregoing being referred to herein as the "Qualified Infrastructure"); and

WHEREAS, the MDC's Board of Directors have determined the financial assistance provided to the Company for the costs to plan, design and construct certain Qualified Infrastructure necessary for the development, construction and operation of the Property is consistent with and meets the definition of "project" as that term is defined in Section 501.103 of the Act; and the definition of "cost" as that term is defined by Section 501.152 of the Act; and

WHEREAS, the Company agrees and understands that Section 501.073(a) of the Act requires the City Council of the City, to approve all programs and expenditures of the MDC, and accordingly this Agreement is not effective until City Council has approved this project at a City Council meeting called and held for that purpose.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the MDC, and the Company agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

(a) **Act**. The word "Act" shall mean the Development Corporation Act, Chapters 501-505, Texas Local Government Code.

(b) **Agreement.** The word "Agreement" means this Chapter 380 Economic Development Program and Performance Agreement, authorized by Chapter 380 of the Texas Local Government Code and Sections 501 and 504 of the Act, together with all exhibits and schedules attached to this Agreement from time to time, if any, and any amendments to this Agreement and/or exhibits and schedules.

(c) **Annual Compliance Verification**. The word "Annual Compliance Verification" shall have the meaning set forth in Section 4(d)(i).

(d) **Appraisal District**. The words "Appraisal District" shall mean the Midland Central Appraisal District and any successors thereto.

(e) **Capital Investment**. The words "Capital Investment" shall have the meaning set forth in Section 3(d)(ii).

(f) **Certificate of Occupancy.** The words "Certificate of Occupancy" mean a certificate of occupancy issued by the City, indicating that the Costco Facility complies with the applicable provisions of the building codes and laws of the City, including, if applicable, a temporary certificate of occupancy under which the Company is permitted to open for business within the Costco Facility. A Certificate of Occupancy shall not include a certificate issued in error, by mistake, or based upon a misrepresentation of facts by the Company.

(g) **City.** The word "City" means the City of Midland, Midland County, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City's address is 300 N. Lorraine, Midland, Texas 79701.

(h) **City Approved Permits.** The word "City Approved Permit" means the permit(s) for the Costco Facility approved by the City.

(i) **City Parties**. The words "City Parties" shall have the meaning set forth in Section 4(b)(ii).

(j) **City's Code of Ordinances.** The word "City's Code of Ordinances" means the official Municipal Code of the City of Midland.

(k) **Company.** The word "Company" means Costco Wholesale Corporation, a Washington corporation, its successors and assigns. For the purposes of this Agreement, the Company's address is 999 Lake Drive, Issaquah, Washington 98027, Attn: Legal (Property Management).

(l) **Company Fiscal Year**. The words "Company Fiscal Year" means the twelve-month accounting period that the Company uses for financial and reporting purposes, which is

currently September 1 through the last Sunday of August of each calendar year.

(m) **Conditions Satisfaction Deadline**. The words "Condition Satisfaction" means August 31, 2026, as such Conditions Satisfaction Deadline may be extended by delays caused by Force Majeure.

(n) **Costco Facility.** The words "Costco Facility" mean a wholesale and retail general merchandise facility operated by the Company and known as Costco.

(o) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the City, the MDC, and the Company.

(p) **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth below in Section 7 hereof entitled "Events of Default."

(q) **Full-Time Equivalent Employment Positions.** The words "Full-Time Equivalent Employment Position" or "Full-Time Equivalent Employment Positions" mean and include either (i) a position filled by an individual scheduled to work a minimum of Two Thousand (2,000) hours of work within a Company Fiscal Year or (ii) two or more individuals scheduled to work a minimum of Two Thousand (2,000) hours of work hours within a Company Fiscal Year collectively, with such hours in each case to also to include any vacation and sick leave. To determine the number of Full-Time Equivalent Positions the Company has had in a given Fiscal Year, the Company will divide the total number of hours employees at the Costco Facility worked in such Fiscal Year by 2,000.

(r) **Grant Payments**. The words "Grant Payments" mean any and all of (i) the Program Grant Payments, and (ii) the three payments to be made by the MDC as set forth in Section 6(a) of this Agreement.

(s) **MDC.** The term "MDC" means the Midland Development Corporation, a Type A economic development corporation, and a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 200 N. Loraine Street #610, Midland, Texas 79701.

(t) **Minimum Required Employment Hours**. The words "Minimum Required Employment Hours" mean 200,000 (2,000 x 100).

(u) **Notice**. The words "Notice" shall have the meaning set forth in Section 10(i) hereof.

(v) **Overpayment**. The word "Overpayment" shall have the meaning set forth in Section 4(c) hereof.

(w) **Permitted Closure**. The term "Permitted Closure" shall have the meaning set forth in Section 4(a)(iii) hereof.

(x) **Personal Property.** The words "Personal Property" mean the tangible taxable personal property, including furniture, fixtures, inventory, and equipment, which is added to the Property after the Effective Date of this Agreement.

(y) **Program Grant Payment.** The words "Program Grant Payment" mean the economic development grants paid by the City to the Company in accordance with Section 5(a) of this Agreement computed with reference to Sales and Use Tax revenue generated by the Property and the City ad valorem taxes paid on the Property and Personal Property.

(z) **Property.** The word "Property" shall have the meaning set forth in the Recitals.

(aa) **Qualified Expenditures.** The words "Qualified Expenditures" mean those expenditures for the construction of the minimum 174,000 square foot Costco Facility (of which approximately 160,000 square feet will be the "sales floor") located on the Property, as generally depicted in ***Exhibit B*** of this Agreement, which is attached hereto and incorporated herein for all purposes, and those expenditures which meet the definition of "project" as that term is defined in Section 501.103 of the Act, and meet the definition of "cost" as that term is defined in Section 501.152 of the Act.

(bb) **Qualified Infrastructure**. The words "Qualified Infrastructure" shall have the meaning set forth in the Recitals and shall include, without limitation, Public Road A as depicted on ***Exhibit C*** attached hereto, turn lanes, water, sewer, gas, electric and other utilities, storm water drainage lines and facilities, and site improvements, including site lighting and parking lot improvements for the Costco Facility.

(cc) **Sales and Use Tax.** The words "Sales and Use Tax" or "Sales and Use Taxes" mean the City's municipal sales and use tax, at the rate of one percent (1.0%), pursuant to section 321.103(a) of the Texas Tax Code, as amended.

(dd) **Shortage**. The word "Shortage" shall have the meaning set forth in Section 4(c) hereof.

(ee) **State Comptroller.** The words "State Comptroller" mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.

(ff) **Term.** The word "Term" means the term of this Agreement as specified in Section 3 of this Agreement.

(gg) **Type A Sales and Use Tax Revenue.** The words "Type A Sales and Use Tax Revenue" mean the economic development sales and use tax revenue, at the rate of one-quarter of one percent (0.25%), generated for use by the MDC.

3. TERM; CONDITION PRECEDENT.

(a) **Term**. This Agreement shall be effective as of the Effective Date of this Agreement, and the term (the "Term") shall begin on the Effective Date and shall continue thereafter until

the date that is thirty (30) years after the date that all of the conditions set forth in Section 3(d) below have been satisfied, unless terminated sooner under the provisions hereof.

(b) **Acquisition/Annexation Condition**. This Agreement is contingent upon the Property being annexed into the City and closing of the acquisition of the Property by the Company occurring by **May 26, 2025**. In the event the Property is not annexed into the City and the Company has not closed on the acquisition of the Property by **May 26, 2025** (as such date may be extended by Force Majeure), this Agreement shall terminate automatically without further notice to any of the parties.

(c) **Commencement of Construction Condition**. This Agreement is contingent upon the Company having commenced construction of the Costco Facility by **June 1, 2025** (as such date may be extended by Force Majeure), which condition shall be deemed satisfied upon issuance of the City-Approved Permit and the Company has commenced grading of the Property.

(d) **Additional Conditions Precedent**. The Company must satisfy all of the following conditions precedent by no later than the Conditions Satisfaction Deadline:

(i) Completion of construction of the Costco Facility containing a minimum of 174,000 square feet (of which approximately 160,000 square feet will be the "sales floor"). This condition shall be satisfied by delivery of a certificate from an architect licensed in the State of Texas to the City and the MDC certifying substantial completion of the same.

(ii) The Company shall have incurred a capital investment of not less than Fifty Million Dollars ($50,000,000), including, without limitation, the costs of acquiring the Property, hard and soft construction costs relating to the Costco Facility, including any necessary off-site improvements, and the costs of equipping the Costco Facility (collectively, the "Capital Investment"). This condition shall be satisfied by delivery from the Company to the City of a certificate in the form attached hereto as ***Exhibit D*** certifying that the Company has made a total Capital Investment of at least $50,000,000. However, under no circumstances will such Capital Investment be interpreted to be determinative for appraisal purposes or be used in any way to determine market value when assessing property for tax purposes. Further, nothing in this Agreement will limit the Company's right to contest or appeal any of the Company's ad valorem taxes. The City and MDC acknowledge and accept that the amount of the Capital Investment or any additional capital investment has no relationship to market value when assessing property for tax purposes and will cooperate with the Company if necessary to convey this message to the Appraisal District.

(iii) A Certificate of Occupancy shall have been issued for the Costco Facility.

(iv) The Costco Facility shall have been built in substantial accordance with (i) the preliminary site plan, attached hereto as ***Exhibit B*** and the City-Approved Permit, subject in each case, to changes and modifications in the course of construction, which, to the extent required, shall be subject to the review and approval of City and/or other

governmental entities with jurisdiction, as applicable, and (ii) the City's Code of Ordinances and other applicable laws. This condition shall be satisfied by the issuance of the Certificate of Occupancy.

(v) The Costco Facility shall be open for business to the general public (subject to the Company's membership policies), fully-stocked, for at least one day.

(e) **Failure to Satisfy Conditions**. A failure by the Company to satisfy all of the conditions set forth in subsections (b), (c) and (d) of this Section 3 shall not in any such case constitute a breach or default by the Company under this Agreement, but as a result of such failure, the City and the MDC shall have no obligation to pay any Grant Payments to the Company under this Agreement and this Agreement shall be terminated and the City, the MDC and the Company shall have no further rights or obligations under this Agreement.

SECTION 4. AFFIRMATIVE OBLIGATIONS OF THE COMPANY.

The Company covenants and agrees while this Agreement is in effect the Company shall comply with the following terms and conditions:

(a) **No Operating Covenant; Cessation of Operations**. Notwithstanding anything contained in this Agreement, the Company shall have no obligation to occupy or operate the Costco Facility, and if the Company fails or ceases to operate for business in the Costco Facility it shall not constitute a breach or default by the Company under this Agreement. However, the following shall apply:

(i) If at any time from and after the date that the Company opens for business to the public (subject to the Company's membership policies) in the Costco Facility, the Company ceases to occupy and operate the Costco Facility open to the public (subject to the Company's membership policies), fully stocked, for hours of operation consistent with the Company's other facilities in the State of Texas for a continuous period of 180 days, except in connection with, and to the extent of, a Permitted Closure as defined in subsection (iii) below, then at any time after such 180 day period, the City shall have the right, via written notice to the Company: (A) to cease payment of all or any of the Program Grant Payments to the Company under this Agreement from the 181st day of such cessation of occupation or operation until the Company re-opens for business to the public (subject to the Company's membership policies), fully stocked, in the Costco Facility, without any obligation for the City to pay any Program Grant Payments which would or may have accrued during such period of ceased occupation or operation; and/or demand/or (B) to terminate this Agreement with respect to the Company if the Company fails to re-open for business to the public (subject to the Company's membership policies) in the Costco Facility within 90 days from the date the Company receives the City's written notice of termination, with such termination being effective as of the 91st day without further notice. In addition, if the 180 day period provided above in this subsection occurs after the Costco Facility opened for business, the Company shall repay to MDC the amount of the Grant Payments paid by the MDC to the Company pursuant to Section 6(a) of this Agreement,

which repayments shall be paid by the Company to the MDC within thirty (30) days after receipt of written demand for the same by the MDC.

(ii) Further, if at any time from and after the date that the Company opens for business to the public (subject to the Company's membership policies) in the Costco Facility, the Company ceases to occupy and operate the Costco Facility open to the public (subject to the Company's membership policies), fully stocked, for hours of operation consistent with the Company's other facilities in the State of Texas pursuant to a Permitted Closure, as defined in subsection (iii) below, for a period of more than 365 days, then at any time after such 365 day period, the City shall have the right, via written notice to the Company: (A) to cease payment of all or any of the Program Grant Payments to the Company under this Agreement from the 366th day of such cessation of occupation or operation until the Company re-opens for business to the public (subject to the Company's membership policies) in the Costco Facility, without any obligation for the City to pay any Program Grant Payments which would or may have accrued during such period of ceased occupation or operation; and/or (B) to terminate this Agreement with respect to the Company if the Company fails to re-open for business to the public (subject to the Company's membership policies), fully stocked, in the Costco Facility within 90 days from the date the Company receives the City's written notice of termination, with such termination being effective as of the 91st day without further notice. In addition, if the 365 day period provided above in this subsection occurs after the Costco Facility opened for business, the Company shall repay to MDC the amount of the Grant Payments paid by the MDC to the Company pursuant to Section 6(a) of this Agreement, which repayments shall be paid by the Company to the MDC within thirty (30) days after receipt of written demand for the same by the MDC.

(iii) "Permitted Closure" shall mean any period in which the Costco Facility is not open for business to the public (subject to the Company's membership policies) for hours of operation consistent with the Company's other facilities in the State of Texas (A) as a result of a fire, earthquake, flood, windstorm or similar casualty that renders the Costco Facility unfit for the intended purpose, as determined by the Company in its reasonably exercised judgment, or (B) as a result of an event of Force Majeure, or (C) as a result of a condemnation or other exercise by a governmental authority of the power of eminent domain, to the extent necessary as determined by the Company in its reasonably exercised judgment for repair and restoration of the Costco Facility, or (iv) as a result of any repairs, renovations, alterations or modifications to the Costco Facility made by the Company with the intention of recommencing operations in the Costco Facility, or (v) as required by law, to the extent, and only to the extent, that the necessity of compliance is not the result of the Company's action, inaction, or failure to timely fulfill its obligations under this Agreement.

(iv) Any provision in this Agreement requiring the Costco Facility to be "open to the public" shall at all times be conditioned on the Company's right to limit the admission of any person to the Costco Facility (including use of any fueling station) to be in compliance with the Company's membership policies. At no time shall this Agreement be construed as requiring the Company to allow anyone into the Costco Facility or use the Company's

fueling facility who is not otherwise in compliance with the Company's membership policies; and failure to admit a person to the Costco Facility who is not otherwise in compliance with the Company's membership policies shall be not construed as Company's failure to be "open to the public."

(b) **Sales Tax Waiver; Confidentiality**.

(i) As a condition to obtaining any Sales Tax Grant Payment based upon Sales and Use Tax revenues, the Company shall sign and submit to the City and maintain during the term of this Agreement the Waiver of Sales Tax Confidentiality form attached as ***Exhibit E***, or other similar form required by the Texas Comptroller as may be required from time to time during the term of this Agreement to permit the release of sales tax information relating to the Costco Facility to the City. The Company also covenants and agrees to obtain any third party's consent for the State Comptroller's office to release any State audit adjustments to the City and MDC.

(ii) The City and the MDC acknowledge that the information regarding sales taxes generated by the Costco Facility is commercial or financial information, which is proprietary and confidential, the disclosure of which could cause competitive harm to the Company and/or its respective tenants, subtenants and/or licensees, as applicable. To the maximum extent permitted by law, the City and the MDC, and their respective officers, directors, and employees, and their respective agents or contractors retained to perform economic development services for the City and the MDC (herein, the "City Parties") (A) shall maintain the confidentiality of all sales tax information filed by the Company and/or its respective tenants, subtenants and/or licensees, as applicable, with the State of Texas and all other information regarding the Sales and Use Tax revenue generated by the Costco Facility at the Property; (B) shall treat as confidential any other proprietary or financial information of the Company and/or its respective tenants, subtenants, and/or licensees and shall not release any of the foregoing information to the public, unless required by law or court order. The City and the MDC shall promptly notify the Company of requests, Attorney General Opinions, and court orders to release such information, which notice shall include a copy of such request and instructions and deadline(s) for the Company to make its argument of confidentiality to the Texas Attorney General, in the Company's discretion. The City Parties shall be permitted to disclose the foregoing information to such of the City Parties as the City and the MDC, in their reasonable discretion, deem appropriate in furtherance of the purposes of this Agreement, so long as the City and the MDC make such disclosure subject to compliance by such City Parties with the terms of this Section 4(b)(ii).

(c) **Adjustments**. If the State of Texas determines (i) the City erroneously received Sales Tax and Use revenue or (ii) the amount of Sales and Use Tax paid by the Company exceeds ("Overpayment") or was less than ("Shortage") the correct amount of Sales and Use Tax for a previous year for which the Company has received a Program Grant, then the City shall notify the Company in writing specifying the amount of such Overpayment or Shortage, as applicable, and that the next Program Grant shall be adjusted by the amount

of such Overpayment or Shortage. The foregoing shall not apply if the amount of subsequent Sales and Use Tax revenue received by the City during the Term of this Agreement was already adjusted to reflect such Overpayment or Shortage. If there are no further Program Grants to be paid, the City shall pay any such Shortage to the Company within sixty (60) days of such State of Texas determination; and the Company shall pay any such Overpayment to the City not later than sixty (60) days after receipt of written demand from the City.

(d) **Job Creation.**

(i) On or before the December 31st after the first full Company Fiscal Year after the Company satisfies the conditions set forth in Section 3(d) hereof, the Company shall deliver to the City and MDC an annual compliance verification in the form attached hereto as ***Exhibit F*** signed by a duly authorized representative of the Company that shall certify that the Company has maintained Full-Time Equivalent Employment Positions working the Minimum Required Hours during such Company Fiscal Year (the "Annual Compliance Verification"). The Company shall also deliver an Annual Compliance Verification for the second full Company Fiscal Year after the Company opens for business by no later than December 31st following such second full Company Fiscal Year. The Company's failure to submit an Annual Compliance Certificate as required by this subsection on or before December 31st following the Company Fiscal Year in question shall not be a default or breach of this Agreement or cause for termination of this Agreement however, if the Company fails to deliver either such Annual Compliance Verification within thirty (30) days after a written reminder notice from the City or the MDC, the Company shall repay to the MDC all Grant Payments paid by the MDC to the Company under Section 6(a) within thirty (30) days after written demand from the MDC and the MDC shall have no further obligation to make any payments under Section 6(a) to Costco.

(ii) During the Term, the City or the MDC may make a written request for an Annual Compliance Verification from time to time with respect to any Company Fiscal Year following the first two Company Fiscal Years after the Costco Facility opens for business, provided that a request for an Annual Compliance Certificate shall not be made more frequently than once a year. The Company shall deliver an Annual Compliance Verification requested under this subsection by no later than sixty (60) days after such request. The Company's failure or inability to submit an Annual Compliance Certificate as requested under this subsection (ii) shall not be a default or breach of this Agreement or cause for termination of this Agreement but if the Company fails to submit an Annual Compliance Verification complying with this subsection (ii) within thirty (30) days after a written reminder notice from the City or the MDC, (A) the Company shall forfeit any Program Grant Payments thereafter unless and until the Company delivers an Annual Compliance Certificate, and (B) the Company shall repay to the MDC all Grant Payments paid by the MDC to the Company under Section 6(a) (not previously repaid pursuant to subsection (i) above) within thirty (30) days after written demand from the MDC.

(iii) Notwithstanding subsections (i) and (ii) of this Section 4(d), if the Company fails or is unable to submit an Annual Compliance Certificate as required thereunder due to a

Permitted Closure, then the Company's obligation to deliver such Annual Certificate shall be delayed until the Company has re-opened.

(f) **Performance.** The Company agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City, MDC, and the Company.

SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE CITY.

The City covenants and agrees while this Agreement is in effect the City shall comply with the following terms and conditions:

(a) **Program Grant Payments.**

(1) Property Tax. The City shall make annual Program Grant Payments to the Company for the ad valorem taxes paid by the Company to the City for the Property and Personal Property located on the Property for a twenty (20) year period. The first year of the Program Grant Payment pursuant to this Section 5(a)(1) of this Agreement shall be the first tax year that begins after the satisfaction of all of the conditions set forth in Section 3(d) above, and the Property and the Costco Facility is assessed by the taxing authorities. The City shall continue to pay the Company Program Grant Payments under this Section 5(a)(1) for each subsequent tax year until the earlier to occur of payment of the Program Grant Payment for twenty (20) tax years or the earlier termination of the Term of this Agreement. The Program Grant Payments shall be based upon the following percentages:

Tax Years	Percentage of Ad Valorem Taxes Reimbursed
Years 1 to 20	**50%**

The City covenants and agrees to provide each Program Grant Payment under this Section 5(a)(1) to the Company within thirty (30) days following receipt of the ad valorem taxes paid to the City for the Property.

(2) Sales and Use Tax. The City covenants and agrees to pay the Company the Program Grant Payments as provided below based upon the Sales and Use Tax Revenue received from the Property, less the State Comptroller's administrative fee. The Program Grant Payments under this Section 5(a)(2) shall be based upon the following percentages:

Tax Years	Percentage of Sales and Use Tax Revenue Reimbursed
Years 1 to 30	**100%**

Commencing after the satisfaction of all of the conditions set forth in Section 3(d) above, the City shall pay to the Company annual Program Grant Payments in the amount of **one hundred percent (100%)** of the Sales and Use Tax Revenue arising from and within the Property as received by the City from the Texas Comptroller for the previous calendar year, as reconciled with the sales and use tax information provided by the Texas Comptroller's office. The City shall make such payments annually by June 1st, commencing with the June 1st next following the satisfaction of all of the conditions set forth in Section 3(d) above. The payments shall be for sales tax-generating transactions that occurred during January 1 to December 31 of the prior calendar year. The City's obligation to pay the Company under this Section 5 shall cease upon the expiration of the Term of this Agreement. The City shall be required to issue only one (1) check or wire transfer (per wiring instructions provided by the Company) for each annual payment under this Section 5(a)(2) to the Company or the Company's designee. Nothing in this Agreement shall require the City to make payment from revenue sources other than from the Sales and Use Tax revenue. A delay in the City's payment obligation in this Section 5(a)(1) of this Agreement due to a delay in receiving the Sales and Use Tax revenues and/or sales and use tax information from the State Comptroller's office shall not be considered a default on the part of the City so long as the City uses reasonable efforts to obtain the Sales and Use Tax revenues and/or sales and use tax information and makes the annual payments to the Company within thirty (30) days after receipt of such Sales and Use Tax revenues and/or sales and use tax information.

(b) **Permit Fees.** The City covenants and agrees to waive development related fees, which includes, building permit fees, building plan review fees, and building inspection fees charged by the City in connection with the development of the Property. The fees waived do not include impact fees authorized by Chapter 395 of the Texas Local Government Code; provided, however, that the City shall provide the Company a credit against the impact fees equal to the amount the Company expends in connection with the construction of public infrastructure or infrastructure within public right of way such as utilities, turn lanes, streets and the like, and including without limitation, Public Road A as so labeled and depicted on ***Exhibit C*** attached hereto.

(c) **Public Access Infrastructure.** The City covenants and agrees to develop public access to the Property, which will encourage the development of adjacent sites, by (i) acquiring the right-of-way depicted on ***Exhibit C*** attached hereto and (ii) constructing or causing to be constructed those certain roadway improvements consisting of the extension of Sinclair Avenue west from Highway 150 to the future County Road 1250 as depicted on ***Exhibit C*** attached hereto. City agrees to acquire such right-of-way and complete construction of said extension of Sinclair Avenue roadway improvements by **June 1, 2026** (as such date may be extended by Force Majeure).

(d) **Cooperation**. The City agrees to cooperate with the Company to expeditiously and in good faith process permits, plat applications, and other approvals as required for the Property and Costco Facility. This Section does not waive any requirements of the City's Code of

Ordinances as they apply to the Company or the Property, however, the City hereby approves the elevations, designs and renderings of the Costco Facility attached hereto as ***Exhibit G***.

(e) **Performance.** The City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement, and any other agreements by and between the City, MDC, and the Company.

SECTION 6. AFFIRMATIVE OBLIGATIONS OF THE MDC.

The MDC covenants and agrees while this Agreement is in effect the MDC shall comply with the following terms and conditions:

(a) **Financial Assistance.** MDC covenants and agrees to submit reimbursement to the Company for Qualified Expenditures relating to the Qualified Infrastructure in the aggregate amount not to exceed **Six Million Five Hundred Two Thousand Five Hundred Forty-Four and No/100 Dollars ($6,502,544.00)** as follows:

(1) **Two Million One Hundred Sixty-Seven Thousand Five Hundred Fourteen and 67/100 Dollars ($2,167,514.67)** within thirty (30) days after satisfaction of the conditions set forth in Section 3(d) of this Agreement.

(2) **Two Million One Hundred Sixty-Seven Thousand Five Hundred Fourteen and 67/100 Dollars ($2,167,514.67)** within thirty (30) days of the first Annual Compliance Verification has been delivered consistent with Section 4(d) of this Agreement; and

(3) **Two Million One Hundred Sixty-Seven Thousand Five Hundred Fourteen and 66/100 Dollars ($2,167,514.66)** within thirty (30) days of second Annual Compliance Verification has been delivered consistent with Section 4(d) of this Agreement.

(b) **Performance.** The MDC agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City, the MDC, and the Company.

SECTION 7. EVENTS OF DEFAULT.

(a) **Events of Default.** Each of the following shall constitute an Event of Default under this Agreement:

(i) **General Event of Default.** Failure of the Company, the MDC, or the City to comply with or to perform any material term, obligation, or covenant contained in this Agreement that is not cured prior to the expiration of the notice and cure period set forth in Section 7(b) below, is an Event of Default by such party.

(ii) **False Statements.** A breach of a material representation under this Agreement by the Company, the MDC or the City under this Agreement that is not cured prior to the expiration of the notice and cure period set forth in Section 7(b) below is an Event of Default by such party.

(iii) **Insolvency.** The dissolution or termination of the Company's, the MDC's or the City's existence, insolvency, appointment of receiver for any part of such party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws by or against the Company, the MDC or the City and such proceedings are not dismissed within ninety (90) days after the filing thereof.is an Event of Default by such party.

(iv) **Ad Valorem Taxes.** The Company allows its ad valorem taxes owed to the City to become delinquent and fails to pay them prior to the expiration of the notice and cure period set forth in Section 7(b) below is an Event of Default by the Company, provided, however, the Company retains the right to timely and properly protest and contest any such ad valorem taxes and the same shall not be deemed delinquent during the pendency of such proceedings and so long as the Company is timely and properly following the legal procedures for protest and/or contest of such taxes.

(b) **Notice and Cure**. Upon a breach or default by the Company, the MDC or the City, as applicable, as described in Section 7(a)(i),(ii) or (iv) above, a non-defaulting party may give written notice to the other parties of such default, and the defaulting party shall have sixty (60) days thereafter to cure said breach or default or if the defaulting party is diligently pursuing the cure of such breach or default but such breach or default is not reasonably curable within sixty (60) days, then the defaulting party shall have such additional amount of time as is reasonably necessary to cure such default. Should a breach or default as described in Section 7(a)(i),(ii) or (iv) above remain uncured after such cure period it shall constitute an Event of Default by such defaulting party, and a non-defaulting party shall have the right to exercise the remedies set forth in Section 8 below

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

(a) **Remedies**.

(i) Upon the occurrence of an Event of Default by the Company, the MDC and/or the City shall have the right to terminate this Agreement by written notice to the Company, in which event the City shall have no obligation to make any further Grant Payments to the Company and the MDC shall have no obligation to make any further payments to the Company under Section 6(a) hereof; provided that Company's obligations to make the repayments set forth in Section 8(a)(v) below shall survive termination of this Agreement.

(ii) Upon the occurrence of an Event of Default by the City or the MDC, the Company

shall have the right to terminate this Agreement by written notice to the MDC and the City, in which event the Company shall have no further obligations under this Agreement and this Agreement shall terminate on the date of termination set forth in such written termination notice provided by the Company to the City and the MDC: provided that the obligations of the City and the MDC to make any Program Grant Payments relating to a period prior to the date of termination and any other Grant Payments due prior to the date of termination shall survive termination of this Agreement.

(iii) In addition, and without terminating this Agreement, any non-defaulting party shall further have the power to enforce specific performance to collect amounts owing by the default party (or parties) or to otherwise compel the defaulting party (or parties) to perform its obligations under this Agreement. Further, any non-defaulting party shall have the right to bring an action for a declaratory judgment.

(iv) Any non-defaulting party further has the right to bring an action to recover any amounts owed to it under this Agreement by a defaulting party, including without limitation, any amounts due (or relating to a period) prior to a termination of this Agreement. In addition, the Company shall have the right to seek a judicial declaration of the appropriate amount of any Program Grant Payment owing to the Company by the City under this Agreement.

(v) Under no circumstances shall the City or the MDC be entitled to a refund of any Grant Payments that have been paid to the Company, except as provided in Section 4(a)(i), Section 4(a)(ii), Section 4(c), Section 4(d) and Section 10(n) of this Agreement and the City shall be entitled to recapture any Grant Payments that were made based upon false or fraudulent information certified to or provided by the Company and for which the Company would not otherwise have been entitled.

(vi) No action shall lie for damages against the Company except that the City and the MDC, as applicable, shall be entitled to any action to recover any amounts owed by the Company as provided in Section 8(a)(v) above.

(b) **Sole Remedies**. The sole and exclusive remedies of the Company for a breach or default by the City or the MDC under this Agreement, and the sole and exclusive remedies of the City and the MDC for a breach by the Company under this Agreement, shall be those expressly provided for in this Section 8 and elsewhere in this Agreement. The Company, the MDC and the City each hereby waives any other remedies under law or in equity.

(c) **No Waiver**. Any delay for any amount of time by a non-defaulting party in providing notice of breach or default to a defaulting party shall in no event be deemed or constitute a waiver of such breach or default by such non-defaulting party of any of its rights and remedies available under this Agreement. In addition, any waiver granted by one party to another party or parties shall not be deemed or constitute a waiver of any other existing or future breach or default by such party or of a subsequent breach or default of the same act or event.

(d) **Waiver of Sovereign Immunity**. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY VOLUNTARILY WAIVES ITS RIGHT TO ASSERT

SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY THE COMPANY SEEKING ONLY THE REMEDIES FOR PAYMENT OF THE PROGRAM GRANT PAYMENTS EXPRESSLY SET FORTH IN THIS AGREEMENT AND SPECIFIC PERFORMANCE RELATING TO THE CITY'S OBLIGATIONS UNDER SECTION 5(b) and SECTION 5(c) HEREOF. THE CITY DOES NOT OTHERWISE WAIVE IMMUNITIES EXISTING UNDER APPLICABLE LAWS, AND IT IS EXPRESSLY UNDERSTOOD THAT THE WAIVER HERE GRANTED IS A LIMITED ONLY TO PAYMENT OF THE AFOREMENTIONED FINANCIAL OBLIGATIONS AND SPECIFIC PERFORMANCE OBLIGATIONS AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SUCH SPECIFIC CLAIMS UNDER THIS AGREEMENT. If by statute or otherwise it is determined that the MDC has immunity from suit or liability, then, to the fullest extent permitted under applicable law, the MDC also agrees that immunity from suit and immunity from liability are both waived with respect to any claim for breach of payment by the MDC of its obligations under Section 6(a) hereof. Upon payment by the MDC to the Company of the three payments to be made by the MDC as set forth in Section 6(a) of this Agreement, this waiver by the MDC shall be automatically released.

SECTION 9. INDEMNITY.

TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER PARTIES (AND THEIR RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION BY THIRD PARTIES FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS OF SUCH THIRD PARTIES, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS GROSSLY NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT. THE INDEMNIFYING PARTY SHALL NOT HAVE ANY LIABILITY FOR CONSEQUENTIAL, SPECIAL, PUNITIVE, INDIRECT OR OTHER DAMAGES UNDER THE FOREGOING INDEMNITY, EXCEPT TO THE EXTENT INCLUDED IN A THIRD PARTY CLAIM. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

(b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Midland County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Midland County, Texas.

(c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party, which shall not be unreasonably withheld or delayed, unless the assignment is from the Company to an affiliated entity or an entity with common control in which case such assignment is permitted without consent but with notice to the City and MDC. In addition, if the Company is sold or merged into, or transfers substantially all of its then owned assets to another entity, the City hereby consents to such sale, merger, or transfer and consents to any assignment of the sold, merged, or transferred entity's rights and obligations under this Agreement to such receiving entity as a result of such sale, merger, or transfer. The Company shall provide the City with written notice of any such assignment.

(d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The MDC warrants and represents that the individual executing this Agreement on behalf of the MDC has full authority to execute this Agreement and bind the MDC to the same. The Company warrants and represents that the individual executing this Agreement on the Company's behalf has full authority to execute this Agreement and bind the Company to the same. The City and the MDC warrant and represent that all necessary actions under applicable law have been taken to approve and authorize this Agreement.

(e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

(f) **Counterparts.** This Agreement may be executed by a pen and ink signature or by Electronic Signature (including by facsimile, pdf or another file sent by email, or by DocuSign). This Agreement may be in the form of an Electronic Record, and any Electronic Signatures shall be considered an original, having the same legal effect, validity and enforceability as a paper record. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC § 7006, as it may be amended from time to time. This Agreement may be executed by the parties in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. The signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

(g) **Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

(h) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of (a) war, riots, acts of terrorism, acts of the public enemy, insurrections, civil commotion; (b) labor disputes, a general inability to obtain labor or materials or reasonable substitutes for either, unusual delay in transportation, strikes, slowdowns or work stoppages; (c) acts of God, casualties, explosions, floods, fire, earthquake, tornado, hurricane or other severe and adverse weather conditions; (d) pandemics, epidemics, infectious disease outbreaks, public health emergencies, health and safety circumstances that require individual isolation, quarantine or quarantine-like restrictions, or other methods of social distancing, (e) delays caused by actions or inactions, or other acts or omissions on the part of any public utility or local, state, or federal government (or de facto governmental entity), government official or their respective agents or employees (including, but not limited to, any government-mandated or suggested work stoppages or slowdowns (such as, by way of example and not limitation, any reduction in the number of workers allowed to work at one time, or any limitation on the allowable working hours) and/or the closing or slowing of governmental offices or procedures (such as, by way of example and not limitation, any significant change in the time required to file or obtain permits or record documents), (f) delays caused by governmental restrictions, regulations or controls, including, without limitation, any moratoriums (i.e. zoning, platting, building or similar moratoriums), (g) a failure of the City to comply with any obligations under this Agreement, including without limitation, a failure to complete the roadway improvements described in Section 5(c) hereof, and (h). and any other cause outside the control of the party who is to perform under this Agreement, then the party so obligated shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed. An inability to obtain funds shall not be considered Force Majeure (unless directly caused by one of the events specifically described above).

(i) **Notices**. Any notice or other communication ("Notice") given under this Agreement shall be in writing, and may be given: (i) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; (ii) by personal delivery of the Notice to the Party; (iii) by depositing the notice with Federal Express or another nationally recognized courier service for next day delivery; or (iii) sent by electronic transmission confirmed by providing written confirmation at substantially the same time as such electronic transmission by one of the manners specified in (i) or (ii) above. Notice shall be effective upon receipt or refusal of delivery by the Party to be notified. For the purposes of Notice, the addresses of the Parties are, until changed as provided below, be as follows:

if to the City: City of Midland, Texas
300 N. Lorraine Street

Midland, Texas 79701
Attn: Tommy Gonzalez, City Manager
Telephone: (432) 685-7200
E-mail: tgonzalez@midlandtexas.gov

if to MDC: Midland Development Corporation
200 N. Loraine Street #610
Midland, Texas 79701
Attn: Sara Harris, Executive Director
Telephone: (432) 686-3579
E-mail: sharris@midlandtxedc.com

if to the Company: Costco Wholesale Corporation
999 Lake Drive
Issaquah, Washington 98027
Attn: Property Management Department
[*Note: E-mail may not be used as a method of giving notice to the Company*]

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

(j) **Revenue Sharing Agreement.** The Parties designate this Agreement as a revenue sharing agreement, thereby entitling the City and MDC to request Sales and Use Tax information and Type A Sales and Use Tax Revenue information from the State Comptroller, pursuant to section 321.3022 of the Texas Tax Code, as amended.

(k) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of this Agreement shall be enforced as if the invalid provision had never been included.

(l) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

(m) **Change in Law.** If, during the Term of this Agreement, State law applicable to municipal sales taxes changes and, as a result, any Grant Payments differ from the amount which would have been paid to the Company under the laws in effect as of the Effective Date, then the City and the MDC, in their sole discretion, may adjust the Grant Payments utilizing whatever discretionary taxes and revenues are legally available to the City and the MDC to be allocated to the Grant Payments. The foregoing does not require the City or the MDC to use funds from sources which are not within their discretion to allocate to the Property in order to achieve the same economic benefits to the Company, which would have resulted if the law had not changed. Should any other legal impediment arise during the Term of this Agreement, including without limitation a change in law, that prevents or prohibits the City and/or the MDC from complying with or making any payments under this Agreement,

the City, the MDC and the Company agree to terminate this Agreement; provided, however, that, to the extent feasible and permitted by applicable law, the City, the MDC and the Company agree to work together in good faith to modify this Agreement or enter into a new agreement or otherwise provide the Company with a remedy or reasonably equivalent value to otherwise accomplish the purpose of this Agreement.

(n) **Undocumented Workers Provision.** Pursuant to Chapter 2264 of the Texas Government Code, the Company certifies that as of the Effective Date of this Agreement and throughout the Term of this Agreement, the Company's business, or a branch, division, or department thereof, does not and will not knowingly employ an undocumented worker (as defined in Section 2264.001 of the Texas Government Code), and if the Company's business, or a branch, division, or department thereof, is convicted of a violation of 8 U.S.C. § 1324a(f) occurring during the Term of this Agreement, the Company shall repay to the City and the MDC the total amount of Grant Payments paid to the Company under this Agreement, plus interest at the Agreed Rate, not later than the 120th day after the date the City or the MDC notifies the Company of the violation. It is agreed that for purposes of this Section, but only if permissible under Chapter 2264 of the Texas Government Code, (i) "the Company's business, or a branch, division, or department thereof" shall be limited to the Company's business in Midland, Texas; (ii) the Company shall not be liable for a violation of Chapter 2264 of the Texas Government Code by a person or entity with whom the Company contracts; (iii) neither the Company nor its business, or branch, division, or department thereof, shall be deemed to have been "convicted of a violation" until all appeals have been exhausted and/or the time for all appeals has expired; and (iv) the date that "the City or the MDC notifies the Company of the violation" may not be earlier than the date that the Company has been "convicted of a violation" as provided above in this Section. For purposes of this Section, "Agreed Rate" shall mean shall mean the lesser of: (i) the Wall Street Journal prime rate announced by and as quoted in Wall Street Journal, from time to time, as its prime commercial rate or, if the Wall Street Journal prime rate ceases to be made available by the publisher, or any successor to the publisher, a similar reference interest rate based on the interest large United States money center commercial banks charge on short term uninsured loans to their most creditworthy borrowers and (ii) the highest lawful rate.

(o) **Non-Boycott of Israel Provision.** In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars ($100,000.00). Unless the Company is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the Company verifies that the Company does not boycott Israel and will not boycott Israel during the Term of this Agreement.

(p) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the parties covenant and agree that the Company is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

(q) **Report Agreement to Comptroller's Office.** City covenants and agrees to report this Agreement to the State Comptroller's office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Local Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).

(r) **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Company employs at least ten (10) full-time employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the City, the Company represents that: (1) the Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Company will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association. Deed restrictions against a gun store or gun range in a development in which the Company has a business shall not violate this Section 10(r).

(s) **Verification Against Discrimination Company Does Not Boycott Energy Companies.** Pursuant to Texas Government Code Chapter 2276, (as added by Texas Senate Bill 13, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Company employs at least ten (10) full-time employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the City, the Company represents that: (1) the Company does not boycott energy companies; and (2) the Company will not boycott energy companies during the Term of this Agreement.

(t) **Repeal of Law**. The Company agrees to comply with the provisions of Sections 10(n), (o), (p), (r) and (s) only so long as they remain required by applicable law.

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

Exhibit A	–	Legal Description of the Property
Exhibit B	–	Preliminary Site Plan
Exhibit C		Depiction of Public Road A, Right-Of-Way To Be Acquired By The City And Roadway Improvements To Be Constructed by the City
Exhibit D		Form of Certificate Regarding Capital Investment
Exhibit E	–	Agreement for Disclosure of Confidential Information
Exhibit F	–	Form of Annual Compliance Verification
Exhibit G	–	Elevations, Designs and Renderings

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

CITY:

CITY OF MIDLAND, TEXAS,
A Texas home-rule municipality

By: _____
Lori Merritt Blong, Mayor
Date: _____

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO FORM:

_____
John Ohnemiller, City Attorney

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me on the _____ day of _____ 2024, by Lori Merritt Blong, Mayor of the City of Midland, Texas, a Texas home-rule municipality, on behalf of said Texas municipality.

_____
Notary Public, State of Texas

MDC:

MIDLAND DEVELOPMENT CORPORATION,
A Texas non-profit corporation,

By: _____
P. Lourcey Sams, President

Date: _____

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me on the _____ day of _____ 2024, by P. Lourcey Sams, President of the Midland Development Corporation, a Texas non-profit corporation, on behalf of said Texas corporation.

_____
Notary Public, State of Texas

COMPANY:

COSTCO WHOLESALE CORPORATION,
a Washington corporation,

By: _____
Name: Margaret C. McCulla
Title: Assistant Secretary
Date: August 9, 2024

COMMONWEALTH OF VIRGINIA §
§
COUNTY OF LOUDOUN §

This instrument was acknowledged before me on the 9th day of August, 2024, by Margaret C. McCulla, Assistant Secretary of Costco Wholesale Corporation, a Washington corporation, on behalf of said corporation.

Jeremy Hilsman
Commonwealth of Virginia
Notary Public
Commission No. 00271827
My Commission Expires 8/31/2028

_____
Notary Public, Commonwealth of Virginia

Exhibit A

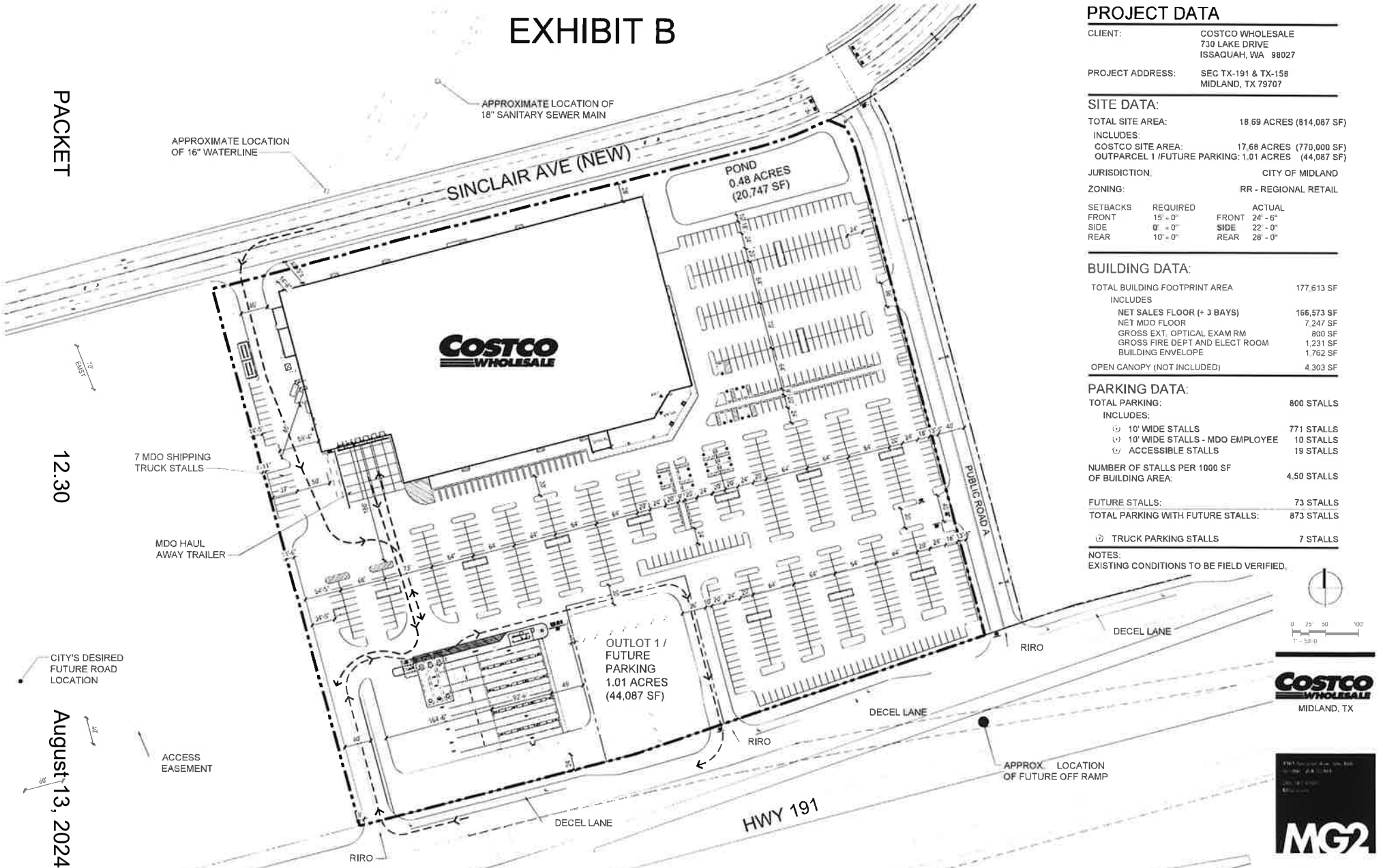
LEGAL DESCRIPTION OF THE PROPERTY

Exhibit B

PRELIMINARY SITE PLAN

PACKET 12.30 August 13, 2024

EXHIBIT B



PROJECT DATA

CLIENT:	COSTCO WHOLESALE 730 LAKE DRIVE ISSAQUAH, WA 98027
PROJECT ADDRESS:	SEC TX-191 & TX-158 MIDLAND, TX 79707

SITE DATA:

TOTAL SITE AREA:	18.69 ACRES (814,087 SF)
INCLUDES:	
COSTCO SITE AREA:	17.68 ACRES (770,000 SF)
OUTPARCEL 1 /FUTURE PARKING:	1.01 ACRES (44,087 SF)
JURISDICTION:	CITY OF MIDLAND
ZONING:	RR - REGIONAL RETAIL

SETBACKS	REQUIRED		ACTUAL
FRONT	15' - 0"	FRONT	24' - 6"
SIDE	0' - 0"	SIDE	22' - 0"
REAR	10' - 0"	REAR	28' - 0"

BUILDING DATA:

TOTAL BUILDING FOOTPRINT AREA	177,613 SF
INCLUDES	
NET SALES FLOOR (+ 3 BAYS)	166,573 SF
NET MDO FLOOR	7,247 SF
GROSS EXT. OPTICAL EXAM RM	800 SF
GROSS FIRE DEPT AND ELECT ROOM	1,231 SF
BUILDING ENVELOPE	1,762 SF
OPEN CANOPY (NOT INCLUDED)	4,303 SF

PARKING DATA:

TOTAL PARKING:	800 STALLS
INCLUDES:	
10' WIDE STALLS	771 STALLS
10' WIDE STALLS - MDO EMPLOYEE	10 STALLS
ACCESSIBLE STALLS	19 STALLS
NUMBER OF STALLS PER 1000 SF OF BUILDING AREA:	4.50 STALLS
FUTURE STALLS:	73 STALLS
TOTAL PARKING WITH FUTURE STALLS:	873 STALLS
TRUCK PARKING STALLS	7 STALLS

NOTES:
EXISTING CONDITIONS TO BE FIELD VERIFIED.

0 25' 50' 100'
1" = 50'-0"

COSTCO WHOLESALE
MIDLAND, TX

MG2

24-5711-01
AUGUST 5, 2024

PRELIMINARY SITE PLAN

DD11-02

COSTCO WHOLESALE

MIDLAND, TEXAS

PRELIMINARY SITE PLAN

AUGUST 5, 2024

Exhibit C

**DEPICTION OF PUBLIC ROAD A,
RIGHT-OF-WAY TO BE ACQUIRED BY THE CITY
AND ROADWAY IMPROVEMENTS
TO BE CONSTRUCTED BY THE CITY**

EXHIBIT C

RIGHT OF WAY (ROW)
TO BE ACQUIRED BY THE CITY

ROADWAY IMPROVEMENTS TO
BE CONSTRUCTED BY THE CITY

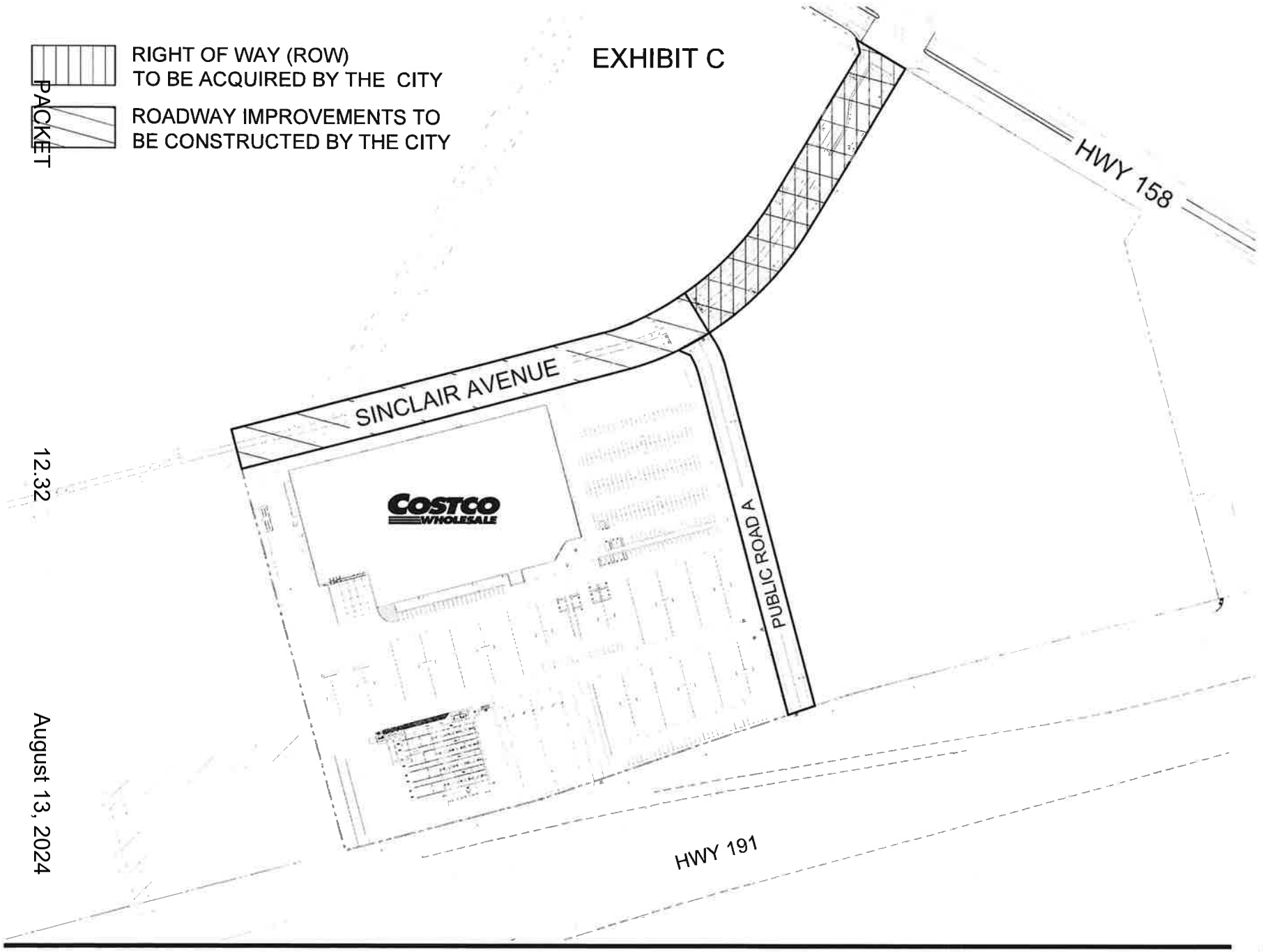


Exhibit D

FORM OF CAPITAL INVESTMENT CERTIFICATION

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

This Capital Investment Certification is being delivered by Costco Wholesale Corporation (the "Company") in connection with that certain Economic Development Program and Performance Agreement between the City of Midland, Texas (the "City"), the Midland Development Corporation (the "MDC") and the Company effective as of _____, 2024 (the "Agreement"). All terms used herein have the meanings ascribed to them in this Agreement unless otherwise defined herein.

The undersigned authorized officer of the Company hereby certifies to the City and the MDC that the Company has made a Capital Investment of not less than Fifty Million Dollars ($50,000,000) on the Property and Costco Facility, of which not less than Six Million Five Hundred Two Thousand Five Hundred Forty-Four and No/100 Dollars ($6,502,544.00) was for Qualified Infrastructure.

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

COSTCO WHOLESALE CORPORATION

BY: _____
NAME – SIGNATURE

_____
NAME – PRINTED

_____
TITLE DATE_____20___

STATE OF _____

COUNTY OF _____

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

_____
NOTARY NAME

Exhibit E

AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION

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

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

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

The City and the MDC agree that the City and the MDC will use the sales and use tax information disclosed by the Texas Comptroller pursuant to this Agreement solely and exclusively for the purposes under the Chapter 380 Economic Development Program and Performance Agreement entered into among the City, the MDC and Taxpayer, and subject to the terms thereof.

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

SIGNED AND AGREED TO on this ____ day of _____, 2024

_____

Name of Taxpayer Listed on Texas Sales Tax Permit

_____

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

_____

Taxpayer Mailing Address

_____

Physical Location of Business Permitted for Sales Tax

_____

Exhibit F

_____

FORM OF ANNUAL COMPLIANCE VERIFICATION

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

This Capital Investment Certification is being delivered by Costco Wholesale Corporation (the "Company") in connection with that certain Economic Development Program and Performance Agreement between the City of Midland, Texas (the "City"), the Midland Development Corporation (the "MDC") and the Company effective as of _____, 2024 (the "Agreement"). All terms used herein have the meanings ascribed to them in this Agreement unless otherwise defined herein.

1. The undersigned authorized officer of the Company hereby certifies to the City and the MDC that the Company has maintained Full-Time Equivalent Employment Positions who collectively worked the Minimum Required Hours during the period commencing January 1, 20__, and expiring December 31, 20__.

2. [If Costco was unable to maintain at least 100 Employment Positions during the foregoing period due to a Permitted Closure, state the dates of the Permitted Closure and a brief description of the nature of the Permitted Closure.]

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

COSTCO WHOLESALE CORPORATION

BY: _____
NAME – SIGNATURE

_____
NAME – PRINTED

_____
TITLE DATE_____20___

STATE OF _____

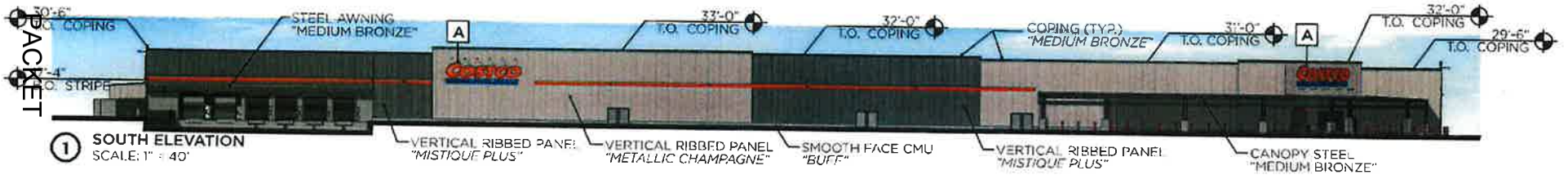
COUNTY OF _____

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

_____
NOTARY NAME

Exhibit G

ELEVATIONS, DESIGNS AND RENDERINGS

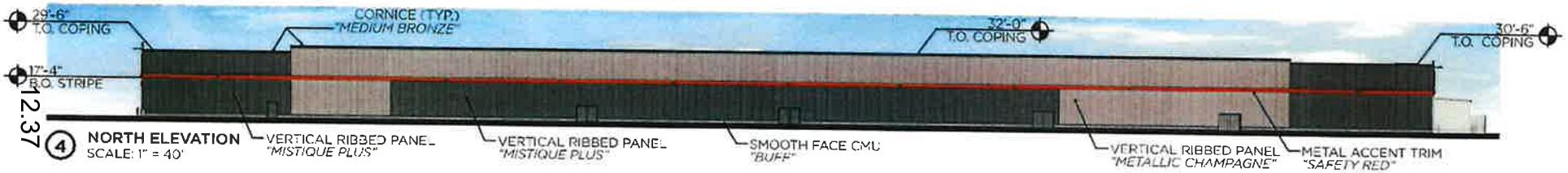


1 **SOUTH ELEVATION**
SCALE: 1" = 40'

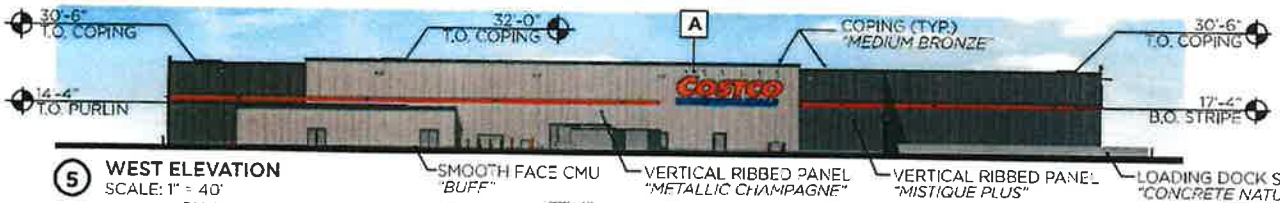


2 **EAST ELEVATION**
SCALE: 1" = 40'

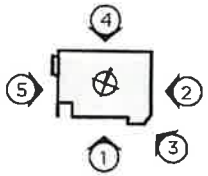
3 **ENTRY ELEVATION**
SCALE: 1" = 40'



4 **NORTH ELEVATION**
SCALE: 1" = 40'



5 **WEST ELEVATION**
SCALE: 1" = 40'

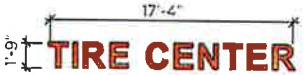




A



B



C

SIGN TABLE

IDENTITY	QUANTITY	SIGN	SIZE	AREA (EACH)	TOTAL SF
A	3	WALL SIGN/ ENTRY SIGN	6'-0" C	251 SF	*753 SF*
B	1	WALL SIGN	7'-0" C	341 SF	*341 SF*
C	1	TIRE CENTER	17'-4" X 1'-9"	30 SF	*30 SF*
			TOTAL SIGN AREA:		**1124 SF**

MG2

AUGUST, 2024
PROJECT# 24-5711-01
MIDLAND, TX

CONCEPT WAREHOUSE ELEVATIONS

COSTCO

PACKET 12.08. August 13, 2024



MG2

AUGUST, 2024
PROJECT# 24-5711-01
MIDLAND, TX

ENTRY CANOPY PERSPECTIVE

COSTCO



MG2

AUGUST, 2024
PROJECT # 24-571-01
MIDLAND, TX

ENTRY CANOPY PERSPECTIVE

Costco

PACKET 12.40 August 13, 2024



MG2

AUGUST 2024
PROJECT# 24-5711-01
MIDLAND, TX

SOUTHWEST PERSPECTIVE

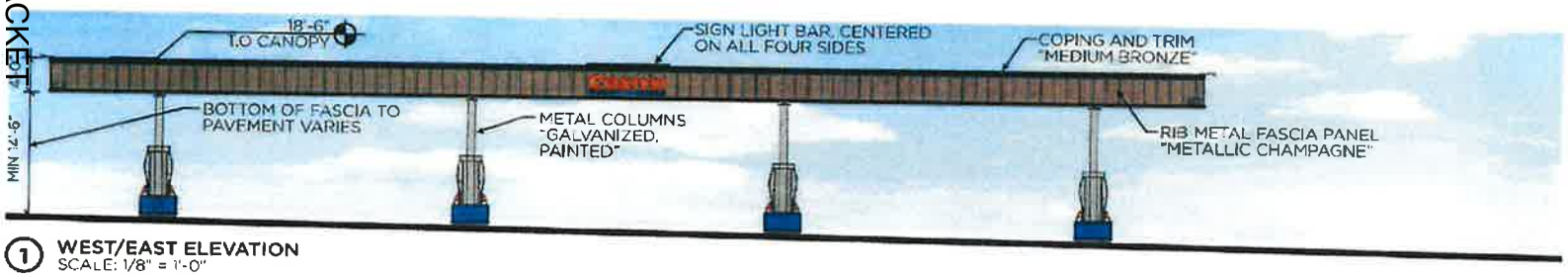
COSTCO

EAST PERSPECTIVE

COSTCO

MG2

AUGUST 2024
PROJECT# 24-5711-01
MIDLAND, TX



1 WEST/EAST ELEVATION
SCALE: 1/8" = 1'-0"



2 NORTH/SOUTH ELEVATION
SCALE: 1/8" = 1'-0"

SIGN AREA TABULATION (CANOPY SIGNS)

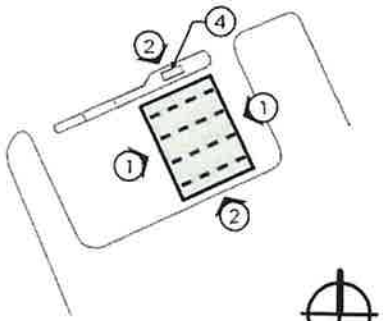
QUANTITY	SIGN	SIZE	AREA (EACH)	TOTAL SF
4	COSTCO WHOLESALE	2'-5 1/4" "C"	21 SF	**84 SF**
			TOTAL SIGNAGE AREA:	**84 SF**



3 CANOPY SIGNS
SCALE: 1/4" = 1'-0"



4 CONTROLLER ENCLOSURE ELEVATIONS
SCALE: 1/8" = 1'-0"



MG2

AUGUST, 2024
PROJECT# 24-5711-01
MIDLAND, TX

CONCEPT FUEL ELEVATIONS

COSTCO WHOLESALE

City Council Meeting

Item Number: 13

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Marcia Bentley-German, City Governance Officer/City Secretary

Subject: MOTION AUTHORIZING THE EXECUTION OF AN HISTORICAL RESTORATION AGREEMENT WITH THE ARTS COUNCIL OF MIDLAND FOR THE PURPOSE OF RESTORING THE SCARBOROUGH-LINEBERY HOUSE COMPLEX (DISTRICT 2) (CITY SECRETARY'S OFFICE) (QUALITY OF LIFE AND PLACE)

Purpose:

Historical restoration and preservation of Historical sites located within the City of Midland, Texas, that are frequented by tourists and convention delegates

Recommended City Council Action:

Approve

Fiscal Impact:
$100,000.00 per year for three years beginning October 1, 2024 not to exceed $300,000.00. Hotel/Motel Funding.

Strategic Priority:

(Quality of Life and Place)

Discussion:

Meeting Date Display

Morris Williams Jr.

City Manager's Office

HISTORICAL RESTORATION AGREEMENT

THIS Historical Restoration Agreement ("*Agreement*") is made and entered into on this ____ day of _____, 2024, between the **CITY OF MIDLAND, TEXAS**, a home-rule municipal corporation (the "*City*"), and **THE ARTS COUNCIL OF MIDLAND**, a Texas nonprofit corporation having its principal place of business in Midland, Texas ("*Owner*");

W I T N E S S E T H:

WHEREAS, City levies a tax within its corporate limits upon the occupancy of any room or space furnished by any hotel or motel, and pursuant to the provisions of Chapter 351 of the Texas Tax Code, may use such tax revenues to promote tourism and the convention and hotel industry through the historical restoration and preservation of historical sites located within the City of Midland, Texas, that are frequented by tourists and convention delegates; and

WHEREAS, Owner owns and operates the Scarborough-Linebery House Complex, which is located on an approximate 2.5-acre lot and includes the second-oldest residential home in the City of Midland, Texas, among other historical facilities (collectively, the "*Property*"); and

WHEREAS, it is the desire of the parties hereto to combine their efforts for the purpose of restoring the Property as authorized by Texas Tax Code § 351.101(a)(5);

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

RESTORATION OF THE PROPERTY

Owner agrees to complete the work associated with Phases 2, 3, 4, 6, and 7 contained in the construction and repair summary for the Property that is attached hereto as **Exhibit A** and incorporated herein for all purposes (the "*Project*").

II.

COMPENSATION

As consideration for Owner undertaking and completing the Project, City agrees to pay Owner a total of Three Hundred Thousand Dollars ($300,000.00) to be used exclusively to fund the completion of the Project. Subject to Owner's continuous compliance with the terms of this Agreement (including, but not limited to, the requirements contained in Article V), City agrees to pay the above sum in three (3) equal installments of $100,000.00, with each installment being due on October 30 of each year during the term of this Agreement.

III.

INDEMNITY

OWNER SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY AND CITY'S AGENTS, COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATHS, 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 OWNER, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF OR RESULTING FROM THE PROJECT OR OWNER'S ACTIVITIES CONTEMPLATED UNDER THIS AGREEMENT. OWNER SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS THAT MAY BE OBTAINED AGAINST CITY OR ANY OF ITS AGENTS, COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS, INCLUDING REASONABLE ATTORNEY'S FEES.

OWNER SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY AND CITY'S AGENTS, COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES,

ACCIDENTAL DEATHS, 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 CITY, CITY'S AGENTS, COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH OWNER OR OWNER'S EMPLOYEES, AGENTS OR SUBCONTRACTORS IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT. OWNER SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS THAT MAY BE OBTAINED AGAINST CITY OR CITY'S AGENTS, COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS, INCLUDING ATTORNEY'S FEES.

IV.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Owner shall construct the Project and satisfy its obligations described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Owner shall have exclusive control of and the exclusive right to control the details of the construction and repair work contemplated herein, 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 Owner, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Owner. No person performing any work and services described hereunder by Owner 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" that would give rise to vicarious liability. Owner shall be an independent contractor under this Agreement and shall assume all rights, obligations, and liabilities applicable to it as an independent contractor hereunder. City does not have the power to direct the order in which the construction and repair work is done. City shall not have the right to control the means, methods, or details of Owner's construction and repair work. Owner shall assume exclusive responsibility for the construction and repair work. Owner is entirely free to do the construction and repair work in its own way.

V.

BOOKS AND RECORDS

On a quarterly basis during the term of this Agreement, Owner shall provide City with a report that sufficiently evidence (i) the disposition of the funds provided by City under this Agreement, and (ii) that such funds were used only for the purposes stated in this Agreement. The reports required by this Article shall be filed no later than twenty (20) days following the end of each quarter (i.e., March 31, June 30, September 30, and December 31) for which the report is due. The reports shall be filed in the office of the City Secretary. All funds that remain unaccounted for or unspent at the end of the term of this Agreement shall, at City's direction, be returned to City.

Owner shall maintain books of account with correct entries of all expenditures of the funds provided under this Agreement and of funds allocated to the Project from other sources. Owner shall maintain funds provided by City in a separate account and may not commingle such funds with any other monies or maintain it in any other account. All books of account shall be open to the inspection of City, its officers, and duly authorized agents. Upon such inspection, City, its officers, or agents, as applicable, shall be afforded the opportunity to enter the Property to make photographic copies of any and all documentation of books of account relating to the disposition of funds provided by City under this Agreement and funds allocated from other sources.

Owner shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

VI.

USE OF FUNDS

The parties acknowledge and agree that the public funds granted and expended pursuant to this Agreement shall be utilized solely for purposes authorized under applicable law and the terms of this Agreement. City represents and warrants that it is authorized under applicable law to enter into this Agreement. Owner represents and warrants that said public funds shall be used exclusively for the restoration of the Property as authorized by Texas Tax Code § 351.101(a)(5).

VII.

TERM OF AGREEMENT

The term of this Agreement is for a period beginning on October 1, 2024, and ending on September 30, 2027, unless terminated earlier as contemplated herein.

VIII.

DEFAULT

If Owner fails to perform or observe an obligation contained herein and such default continues for a period of thirty (30) days following City's issuance of written notice to Owner that details the nature of said default, then City may terminate this Agreement in its entirety and at no cost by issuing twenty (20) days' written notice to Owner (the "*Termination Notice*"). The waiver by City of any breach of any term, condition, or obligation herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition, or obligation. If City terminates this Agreement pursuant this Article, all funds that remain (i) unencumbered by incurred Project costs, (ii) unaccounted for, or (iii) unspent as of the date Owner receives the Termination Notice (the "*Unencumbered Funds*") shall be returned to City. Owner shall repay the Unencumbered Funds within ten (10) days following the date of the Termination Notice.

IX.

ASSIGNMENT

Owner 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 to grant consent to an assignment is in the sole discretion of City.

X.

AMENDMENTS

This Agreement may be amended by the mutual agreement of the parties hereto in writing to be attached hereto and incorporated into this Agreement.

XI.

GOVERNMENTAL IMMUNITY

By executing this Agreement, City is not waving 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.

XII.

ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, OWNER 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, THAT IS IN ANY WAY RELATED TO THE AGREEMENT. OWNER SPECIFICALLY AGREES THAT IF OWNER COMMENCES ANY LEGAL ACTION RELATED TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, AN 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, OWNER AGREES TO ABANDON, WAIVE AND RELINQUISH ALL RIGHTS TO THE RECOVERY OF

ATTORNEY'S FEES TO WHICH OWNER MIGHT OTHERWISE BE ENTITLED.

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

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

XIII.

RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, OWNER HEREBY RELEASES, RELINQUISHES, ACQUITS, AND FOREVER DISCHARGES CITY, CITY'S AGENTS, COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ALL DEMANDS CLAIMS OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT OWNER 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.

XIV.

GOVERNING LAW AND VENUE

The laws of the State of Texas shall govern, construe, and enforce all rights and duties of the parties, including, but not limited to, tort claims and contractual claims or disputes arising from or relating in any way to the subject matter of this Agreement, without

regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement shall be in Midland County, Texas. The obligations and undertakings of the parties shall be deemed to have occurred in Midland County, Texas.

XV.

THIRD-PARTY BENEFICIARY

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

XVI.

TERMINATION

City may terminate this Agreement for any or no reason by giving at least sixty (60) days' written notice to Owner (the "*No-Cause Termination Notice*"). Immediately upon Owner's receipt of the No-Cause Termination Notice, Owner shall (i) conduct a full accounting of all Unencumbered Funds as of the date of Owner's receipt of the No-Cause Termination Notice, and (ii) immediately cease incurring further Project expenses unless Owner possesses sufficient alternative funding to satisfy such expenses. All Unencumbered Funds shall be repaid to City within ten (10) days following the date of the No-Cause Termination Notice.

XVII.

NOTICES AND PAYMENTS

All notices required to be given or made under this Agreement shall be given in writing and shall be effective when (i) actually delivered or when deposited in the United States Mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below; (ii) sent via electronic transmission to the email addresses set forth below of the party to whom the notice is to be given; or (iii) when delivered by hand-delivery. Any party may change its address for notices under this

Agreement by giving formal written notice to the other party, specifying that the purpose of the notice is to change the party's address. All payments made pursuant to this Agreement shall be delivered to or made at the addresses listed below.

If to City:	**If to Owner:**
City Manager City of Midland P.O. Box 1152 Midland Texas 79702 Email: mbentley-german@midlandtexas.gov	The Arts Council of Midland Executive Director 1506 W. Illinois Ave Midland Texas, 79701 Email: danny@acmidland.org

[Signature Pages Follow]

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

CITY OF MIDLAND, TEXAS

_____
Tommy Gonzalez, City Manager

ATTEST:

_____
Marcia Bentley-German, City Secretary

THE ARTS COUNCIL OF MIDLAND

_____
Daniel H. Holeva, Executive Director

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this _____ day of _____ personally appeared **Daniel Holeva**, Executive Director, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Arts Council of Midland.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2024.

_____
Notary Public, State of Texas

Construction & Repair Summary

Phase 1 LINEBERY HOUSE

LINEBERY HOUSE – RESTORATION/ REPAIRS

Phase One of the restoration and renovation of the Linebery House (Yellow House) has been successfully completed, marking a significant milestone in the revitalization of the property. Here is a summary of the interior renovations and improvements accomplished as of April 19, 2024:

1. Electrical System: A new electrical system has been installed, ensuring safety and reliability throughout the building.
2. Lighting: New recessed/canned lights have been installed in offices, dining room, and living room, enhancing visibility and ambiance.
3. HVAC System: The HVAC system has been repaired to provide efficient heating and cooling for year-round comfort.
4. Plumbing System: An all-new plumbing system has been implemented, addressing any potential issues and ensuring functionality.
5. Accessibility Improvements: New access hallways and ADA-compliant features have been added to enhance accessibility, including an access hallway to the main bathroom and ADA access to the bathroom itself.
6. Interior Finishes: Walls have been re-textured, primed, and painted throughout the building, while existing moldings have been primed and painted or replaced where necessary.
7. Cabinetry and Countertops: All cabinetry has been repaired, sanded, primed, and painted, with new countertops installed in the kitchen and main bathroom.
8. Flooring: New tile flooring has been installed in the kitchen and primary bathroom, while wood floors have been refinished throughout the building.
9. Architectural Features: French doors have been relocated and reused to create new openings, while new French doors have replaced old garage door openings.
10. Lighting Fixtures: Track lighting has been installed throughout the building, particularly in key areas such as dining and living rooms, hallways, and multi-purpose spaces.
11. Foundation Repairs: Necessary foundation repairs have been completed in the southwest corner of the property to ensure structural integrity.
12. Bathroom Upgrades: New fixtures and vanity have been installed in the main bathroom, along with repairs and tile work throughout.
13. Art Hanging System: An art hanging system has been purchased and installed, facilitating the display of exhibitions and artwork.
14. Technology Upgrades: A new telephone system has been purchased to replace outdated equipment, along with the installation of a security system to ensure the safety of the premises.
15. Final Touches: Final touch-ups and cleaning have been conducted in preparation for occupancy, ensuring a polished and welcoming environment.

Exhibit A

Phase 2 LINEBERY HOUSE

EXTERIOR OF LINEBERY HOUSE RESTORATIONS/ REPAIRS

The contractor will furnish the labor and materials necessary to do the following:

Scope of work to be performed:

Remove existing siding from left side of front door to right side of garage front of home, remove existing wood frame windows, interior trim, and replace with new wood windows to match existing to as close as possible, remove damaged fascia board and replace.

Install James Hardie siding across the front area, new wood windows and new fascia, paint exterior in this area to owner color choice.

Demo of existing siding, fascia and windows:	$ 4,992.00
New windows, materials: one at front room, a triple by front door and 2 other windows at den area next to fireplace:	$ 9,763.38
Siding, fascia, and trim materials:	$ 5,900.00
Labor to install new windows, siding, fascia and trim:	$ 15,148.00
Painting of exterior siding and trim, materials:	$ 1,071.00
Labor to paint new exterior:	$ 5,400.00
New trim materials for interior at new windows	$ 375.00
Paint, tape, plastic for new windows:	$ 260.00
Labor to paint new windows on interior:	$ 3,600.00
Waste materials disposal:	$ 400.00

Additional siding and windows on rest of home, remove and replace all windows, remove and replace all siding. Paint all exterior trim with a white and siding color will be decided by Arts Council, remove and replace all damaged fascia. Install house wrap over existing plywood, replace any damaged plywood in areas that the siding is rotted.

Demo of existing siding and fascia:	$ 24,960.00
Remove and replace remaining new windows:	$ 19,037.85
Siding and fascia materials:	$ 32,450.00

Painting materials:	$ 3,267.00
Painting labor:	$ 29,700.00
New trim materials for interior, prim and paint trim and windows:	$ 5,700.00
Waste materials disposal:	$ 900.00
Total:	**$ 157,931.00**

Phase 3 LH Guest House

INTERIOR OF LINEBERY HOUSE GUEST HOUSE RESTORATIONS/ REPAIRS

HVAC Splitter		$4,500
Repair and Refinish WOOD FLOORS		$4,800
REPAINT INTERIOR WALLS "GALLERY WHITE" THROUGHOUT		$1,500
CLEAN, REPAIR & REPAINT ONE (1) EXTERIOR DOORS		$200
REPAIR OR REPLACE WITH AUTHENTIC-LOOKING WINDOWS THROUGHOUT		$3,000
LIGHTING SYSTEM FOR ROOM TO HIGHLIGHT ARTWORK	..	$500
Replace bathroom with new fixtures, tile floor, and paint		$5,000

EXTERIOR OF LINEBERY GUEST HOUSE RESTORATIONS/ REPAIRS

REPLACE ROTTED WOOD	
SEAL AND PREPARE SIDING FOR PAINTING	
PAINT EXTERIOR WOOD SIDING	
RESTORE VINTAGE EXTERIOR SHUTTERS	
RESTORE WOOD – COLUMNS & BALUSTRADE	
RESTORE GUTTERS	
INSULATE LHGH BUILDING	
SUB TOTAL	$20,000
TOTAL	***$39,500.00***

Phase 4 Bathroom House

INTERIOR OF BATHROOM HOUSE RESTORATIONS/ REPAIRS

REPAIR BROKEN SCREEN DOOR TO MENS BATHROOM	$200
REPAIR LAMINATE ON COUNTERS	$500
REPAINT INTERIOR WALLS "GALLERY WHITE" THROUGHOUT	$1,200
CLEAN, REPAIR & REPAINT TWO (2) EXTERIOR DOORS	

EXTERIOR OF BATHROOM HOUSE RESTORATIONS/ REPAIRS

REPLACE SIDING	
SEAL AND PREPARE SIDING FOR PAINTING	
PAINT EXTERIOR WOOD SIDING	
RESTORE EXTERIOR SHUTTERS	
RESTORE GUTTERS	
INSULATE BH BUILDING	
SUB TOTAL	$17,000
TOTAL	***$18,900.00***

Phase 5 Exterior Restoration

EXTERIOR OF SCARBOROUGH LINEBERY HOUSE – TWO STORY HOME

REPLACE SIDING
SEAL AND PREPARE SIDING FOR PAINTING
PAINT EXTERIOR WOOD SIDING
RESTORE VINTAGE EXTERIOR SHUTTERS
RESTORE METAL ON EXTERIOR OF HOUSES – COLUMNS & GATES
RESTORE GUTTERS
RESTORE DECORATIVE WOOD TRIM THROUGHOUT

TOTAL ***$600,000.00***

Phase 6 SH GUEST HOUSE

INTERIOR OF SH GUEST HOUSE RESTORATIONS/ REPAIRS

REPAINT INTERIOR WALLS "GALLERY WHITE" THROUGHOUT	$3,000
REPAIR BATHROOM FIXTURES	$1,000
LIGHTING SYSTEM FOR ALL ROOMS TO HIGHLIGHT ARTWORK	$1,200
NEW HVAC SYSTEM	$18,000
NEW HOT WATER HEATER	$500
GARBAGE DISPOSAL	$300
REPLACE STOVE AND OVENS	$5,000
REPAIR & REFINISH HARDWOOD FLOORS	$10,000
INSULATE BUILDING	$1,500
SUB TOTAL	$40,500.00

EXTERIOR OF SH GUEST HOUSE RESTORATIONS/ REPAIRS

REPLACE ROTTED WOOD	
SEAL AND PREPARE SIDING FOR PAINTING	
PAINT EXTERIOR WOOD SIDING	
REPAIR OR REPLACE WITH AUTHENTIC-LOOKING WINDOWS THROUGHOUT	
RESTORE VINTAGE EXTERIOR SHUTTERS	
RESTORE METAL OR WOOD ON EXTERIOR OF HOUSE – COLUMNS & GATES	
RESTORE GUTTERS	
INSULATE HGH BUILDING	
SUB TOTAL	$30,000.00

TOTAL	***$70,500.00***

Phase 7 SH

INTERIOR OF SH HOUSE RESTORATIONS/ REPAIRS

DRY CLEAN DRAPERIES	IN-KIND
CLEAN CARPETING THROUGHOUT	$3000
LIGHTING SYSTEM FOR ALL ROOMS TO HIGHLIGHT ARTWORK	$25,000
RE-GLUE/ STABILIZE WALLPAPERED ROOMS THROUGHOUT	$3,500
SUB TOTAL	$31,500

The contractor will furnish the labor and materials necessary to do the following:

Scope of work to be performed:

Make repairs to ceiling in upstairs bedroom and bathroom, repairs to kitchen ceiling, and put shut off valves on plumbing lines to cut off all plumbing except kitchen.

Ceiling repairs in bedroom: move all furniture in damaged area, cover furniture and flooring and remove damaged sheetrock, insulation will come down too. Replace sheetrock and insulation, prime and paint the whole ceiling.

Materials:	$575.00
Labor:	$4200.00

Bathroom: this bathroom has wallpaper on ceiling, the easiest way to do this repair is to install ¼" sheetrock over existing ceiling, caulk the edges at the walls prime and paint ceiling.

Materials:	$490.00
Labor:	$1872.00

Kitchen ceiling: this ceiling has a tongue and groove ceiling which has been damaged, we will need to remove all damaged ceiling boards and replace with new, these boards will need to ne sanded before we install them, then prime all the ceiling boards and then paint: Note several lights in ceiling will need to be taken down then put back into place.

Materials:	$680.00
Labor:	$4500.00
Waste materials disposal:	$250.00

Plumbing: install shutoff valves on water lines that run to all bathrooms leave only the kitchen active: A valve will be placed on both hot and cold lines. All lines will have to be cut to install the valves.

Materials:	$1450.00
Labor:	$4800.00

This labor is based on plumbing lines accessible from crawl space, if we cannot get to a line and must get into a wall price will go up.

SUB TOTAL	$19817.00
TOTAL	***$51,317.00***

Phase 8 SLH Grounds

GROUNDS OF THE SCARBOROUGH LINEBERY HOUSE PROPERTY RESTORATIONS

REMOVE DEAD TREES THROUGHOUT	$15,000
REMOVE "ROVE" VEGETATION THROUGHOUT	
REPAIR CONCRETE BLOCK FENCING ON THE SOUTH AND WEST SIDES OF THE LH	$5000
REPAIR GATE BETWEEN THE LH AND THE SH YARDS	$2,500
PLANT GRASS WHERE NECESSARY	$10,000
RELOCATE 17 SCULPTURES TO SLH PROPERTY	$75,000
TOTAL	***$107,500.00***

Implement Landscape designs by Dunaway (landscape architectural firm) that include a full landscape restoration on the 2 ½ ace site of the SLH program. This project is all inclusive of the design that Dunaway has submitted in 2023.

Plans, proposal and design illustrations put this separate project budget at $1.8 million dollars. This project will not be undertaken until the entirety of the five buildings is completed.

The Project

Phase 2 LINEBERY HOUSE

EXTERIOR OF LINEBERY HOUSE RESTORATIONS/ REPAIRS

SUBTOTAL: $ 157,931.00

Phase 3 LH Guest House

INTERIOR OF LINEBERY HOUSE GUEST HOUSE RESTORATIONS/ REPAIRS

SUBTOTAL $39,500.00

Phase 4 Bathroom House

INTERIOR OF BATHROOM HOUSE RESTORATIONS/ REPAIRS

EXTERIOR OF BATHROOM HOUSE RESTORATIONS/ REPAIRS

SUBTOTAL $18,900.00

Phase 6 SH GUEST HOUSE

INTERIOR OF SH GUEST HOUSE RESTORATIONS/ REPAIRS

EXTERIOR OF SH GUEST HOUSE RESTORATIONS/ REPAIRS

SUBTOTAL Portion Contract/ Agreement with the City of Midland $32,352.00

Phase 7 SH

INTERIOR OF SH HOUSE RESTORATIONS/ REPAIRS

SUBTOTAL $51,317.00

CITY OF MIDLAND GRANT TOTAL FOR FISCAL YEAR 2024, 2025, & 2026

$300,000.00

City Council Meeting

Item Number: 14

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Marcia Bentley-German, City Governance Officer/City Secretary

Subject: RESOLUTION CALLING AN ELECTION FOR FOUR CITY OFFICIALS; AMENDING THE BOUNDARY OF THE CITY ELECTION AND CITY COUNCIL DISTRICTS; PROVIDING FOR USE OF ACCESSIBLE VOTING SYSTEMS; ESTABLISHING ELECTION PRECINCTS FOR SAID ELECTION; AND ESTABLISHING VOTE CENTERS FOR SAID ELECTION (DISTRICT: ALL) (CITY SECRETARY'S OFFICE) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

The proposed resolution calls the election to be held November 5, 2024 for two City Council Members At-Large and for City Council Members representing Districts 1 and 2. It also designates the vote centers and early voting dates and locations.

Recommended City Council Action:

Approve

Fiscal Impact:

The City's share of the cost of this joint election in Midland County is estimated at $25,000 and is handled through the master inter-local agreement with Midland County. The City's share of the cost of the joint election with Martin County is approximately $8,000.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

None

Morris Williams Jr.

City Manager's Office

City of Midland
Office Memorandum

DATE: August 5, 2024

TO: The Honorable Mayor and City Council Members

FROM: Marcia Bentley-German, City Governance Officer/City Secretary

SUBJECT: Resolution calling an election for four City Officials; amending the boundary of the City and City Council Districts: providing for use of accessible voting systems; establishing election precincts for said election; and establishing vote centers for said election

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The proposed resolution calls the election to be held November 5, 2024 for two City Council Members At-Large and for City Council Members representing Districts 1 and 2. It also designates the vote centers and early voting dates and locations.

The City's share of the cost of this joint election in Midland County is estimated at $25,000 and is handled through the master inter-local agreement with Midland County. The City's share of the cost of the joint election with Martin County is approximately $8,000.

RESOLUTION NO. _____

RESOLUTION CALLING AN ELECTION FOR FOUR CITY OFFICIALS; AMENDING THE BOUNDARY OF THE CITY ELECTION AND CITY COUNCIL DISTRICTS; PROVIDING FOR USE OF ACCESSIBLE VOTING SYSTEMS; ESTABLISHING ELECTION PRECINCTS FOR SAID ELECTION; AND ESTABLISHING VOTE CENTERS FOR SAID ELECTION

WHEREAS, the laws of the State of Texas provide that an election of City officials may be held on the first Tuesday after the first Monday in November during 2024; and

WHEREAS, it is necessary for the City Council to order that an election be held on Tuesday, November 5, 2024, and to establish election precincts and vote centers for the current election year beginning April 1, 2024;

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

SECTION ONE. That an election be, and is, hereby ordered to be held on Tuesday, November 5, 2024, during the hours of 7:00 a.m. to 7:00 p.m. for the offices of City Council Member At-Large (two positions) and City Council Members representing Districts 1 and 2.

SECTION TWO. That due to recent annexations by the City of Midland, the limits or boundaries of Single Member Districts 2 and 4 and of the City as a whole, along with the boundaries of City Election Precinct Nos. 4, 13, and 17 are hereby amended to add the additional property shown on Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION THREE. That the City hereby adopts for use in early and election day voting the ExpressVote Electronic Voting System in Midland County and the Varity Electronic Voting System in Martin County, as approved by the Secretary of State. Optical scan ballots shall be used for early voting by mail and provisional ballots, and the electronic voting systems shall be used for early voting by personal appearance and in each vote center

in the City on election day.

SECTION FOUR. That in accordance with the provisions of Texas Election Code § 42.061, the Municipal Election precincts for the voting year effective April 1, 2024, through March 31, 2025, are hereby designated as follows:

City Election Precinct No. 1, containing County Voting Precinct No. 211;

City Election Precinct No. 2, containing County Voting Precinct Nos. 308 and 310;

City Election Precinct No. 3, containing County Voting Precinct No. 306;

City Election Precinct No. 4, containing County Voting precinct No. 305;

City Election Precinct No. 5, containing County Voting Precinct No. 304;

City Election Precinct No. 6, containing County Voting Precinct No. 309;

City Election Precinct No. 7, containing County Voting Precinct No. 307;

City Election Precinct No. 8, containing County Voting Precinct No. 205;

City Election Precinct No. 9, containing County Voting Precinct No. 307A;

City Election Precinct No. 10, containing County Voting Precinct Nos. 104, 109 and 303;

City Election Precinct No. 11, containing County Voting Precinct No. 208;

City Election Precinct No. 12, containing County Voting Precinct No. 105;

City Election Precinct No. 13, containing County Voting Precinct No. 106;

City Election Precinct No. 14, containing County Voting Precinct No. 102;

City Election Precinct No. 15, containing County Voting Precinct No. 103;

City Election Precinct No. 16, containing County Voting Precinct No. 405;

City Election Precinct No. 17, containing County Voting Precinct Nos. 107 and 110;

City Election Precinct No. 18, containing County Voting Precinct No. 407;

City Election Precinct No. 19, containing County Voting Precinct No. 404;

City Election Precinct No. 20, containing County Voting Precinct No. 403;

City Election Precinct No. 21, containing County Voting Precinct No. 206;

City Election Precinct No. 22, containing County Voting Precinct No. 207;

City Election Precinct No. 23, containing County Voting Precinct No. 210;

City Election Precinct No. 24, containing County Voting Precinct No. 204;

City Election Precinct No. 25, containing County Voting Precinct Nos. 408 and 409;

City Election Precinct No. 26, containing County Voting Precinct No. 411;

City Election Precinct No. 27, containing County Voting Precinct No. 402;

City Election Precinct No. 28, containing Martin County Voting Precinct No. 1 described below:

Beginning at a point in the west R.O.W. line of State Highway 349, said point lying 72 feet west of the east section line of Section 11, Block 39, T-1-S, T&P Ry. Co. Survey, more or less;

Thence northwesterly approximately 5,097 feet along the west R.O.W. line of State Highway 349 to a point for a corner, said point lying in the west R.O.W. of State Highway 349 and on the Martin County-Midland County line;

Thence east along the Martin-Midland County Line approximately 17,250 feet to a point for a corner, said point being 660 feet east of the west section line and 491 feet north of the south section line of Section 9, Block 38, T-1-S, T&P Ry. Co. Survey;

Thence southeasterly approximately 1,151 feet along a line lying 660 feet east of and parallel to the west section lines of Sections 9 and 16, Block 38, T-1-S, T&P Ry. Co. Survey, to a point for a corner; said point being 660 feet east of the west line and 660 feet south of the north line of Section 16, Block 38, T-1-S, T&P Ry. Co. Survey;

Thence southwesterly approximately 5,280 feet along a line lying 660 feet south of and parallel to the north line of Sections 16 and 17, Block 38, T-1-S, T&P Ry. Co. Survey; to a point for a corner; said point being 660 feet east of the west line and 660 feet south of the north line of said Section 17, Block 38, T-1-S, T&P Ry. Co. Survey;

Thence northwesterly 1,320 feet along a line lying 660 feet more or less east of and parallel to the western line of Sections 17 and 8, Block 38, T-1-S, T&P Ry. Co. Survey, to a point for a corner; said point being 660 feet east of the west line and 660 feet north of the south line of Section 8, Block 38, T-1-S, T&P Ry. Co. Survey;

Thence westerly approximately 11,292 feet along a line lying 660 feet, more or less, north of and parallel to the northern line of Section 18, Block 38, T-1-S, T&P Ry. Co. Survey and Sections 11 and 12, Block "X", H. P. Hilliard Survey to the point of beginning:

And a tract of land lying in Martin County described as follows:

Beginning at a point on the City limits line of the City of Midland, said point

lying at the intersection of the west R.O.W. line of State Highway 349 and the Midland-Martin County line and located approximately 73 feet west of the east section line and 183 feet south of the north section line of Section 11, Block 39, T-1-S, T&P Ry. Co. Survey;

Thence northwesterly along the west R.O.W. line of State Highway 349 approximately 11,403 feet to a point for a corner, said point being 660 feet north of the south section line and 170.5 feet west of the east section line of Section 26, Block 39, T-1-N, T&P Ry. Co. Survey, said point lying on the west R.O.W. line of State Highway 349;

Thence northeasterly 660 feet north of and parallel to the south section lines of Sections 26 and 25, Block 39, T-1-N, T&P Ry. Co. Survey and Sections 32, 31 and 30, Block 38, T-1-N, T&P Ry. Co. Survey to a point for a corner; said point being 660 feet north of the south line and 660 feet east of the west line of said Section 30, Block 38, T-1-N, T&P Ry. Co. Survey;

Thence southeasterly a distance of approximately 15,909 feet along a line lying 660 feet east of and parallel to the west section lines of Sections 30 and 35, Block 38, T-1-N, T&P Ry. Co. Survey, and Sections 4 and 9, Block 38, T-1-S, T&P Ry. Co. Survey, to a point for a corner; said point being 660 feet east of the west line of said Section 9, and lying on the Midland-Martin County line:

Thence west along the Midland-Martin County line a distance of approximately 17,250 feet to the point of beginning;

City Election Precinct No. 29, containing County Voting Precinct No. 410.

SECTION FIVE. That in accordance with the provisions of Texas Election Code §§ 43.004, 271.002 and 271.003, the Municipal vote centers for the election to be held on Tuesday, November 5, 2024, are hereby designated as follows:

MIDLAND COUNTY

Annex Courtroom located at 2110 North A St.
Centennial Library, Meeting Room 113 located at 2503 W. Loop 250 N.
Fairmont Park Church of Christ, Classroom 2 located at 3813 N. Midland Dr.
Golf Course Church of Christ, Rooms 301 and 302 located at 3500 W. Golf Course Rd.
Greater Ideal Life Center, Samuel Evan Chapel located at 301 S. Tyler St.
Greenwood Baptist Church, Sanctuary located at 10909 FM 307
Library at the Plaza, Community Room located at 301 W. Missouri Ave.
MLK, Jr. Community Center, Activity Room located at 2300 Butternut Ln.
Odessa Country Club, Pool House located at #1 Fairway Dr.
Presence Church, Sanctuary located at 901 N. Midland Dr.
St. Paul's Methodist Church, Fellowship Hall located at 4501 Thomason Dr.
Stonegate Fellowship, Foyer of Building C located at 6000 W. Wadley Ave.

MARTIN COUNTY

Martin County Community Center located at 301 N. St. Theresa St., Stanton, Texas

SECTION SIX. That the method of voting shall be by paper ballots that are counted by a centralized optical scanner or by use of the electronic voting systems, as set out herein. Voting shall be conducted between the hours of 7:00 a.m. and 7:00 p.m. on the date of such election; and election shall be held in accordance with the constitutional laws of the State of Texas and all qualified electors of the City of Midland, Texas, shall be entitled to vote.

SECTION SEVEN. That early voting in Midland County shall be conducted at the Midland County Election Administrator's Office, in the County Annex, 2110 North A Street, Midland, Texas in accordance with the provisions of Texas Election Code § 85.002. Early voting shall be by electronic voting system, and shall be conducted during the regular office hours of 8:00 a.m. to 5:00 p.m. on October 21, 2024, through October 25, 2024; from 7:00 a.m. to 7:00 p.m on October 26, 2024; from 1:00 p.m. to 7:00 p.m. on October 27, 2024; and from 7:00 a.m. to 7:00 p.m. on October 28, 2024, through November 1, 2024. Applications for ballots by mail shall be addressed to Early Voting Clerk, P.O. Box 3434, Midland, Texas 79702. Contact information for the Midland County Elections Office is as follows: 432-688-4890, rolgin@mcounty.com, www.co.midland.tx/us/328/elections-office.

SECTION EIGHT. That early voting in Martin County shall be conducted at the Martin County Election/Voter Registrar Office, 110 W. School, Stanton, Texas 79782 in accordance with the provisions of Texas Election Code § 85.002. Early voting shall be by electronic voting system, and shall be conducted during the regular office hours of 8:00 a.m. to 5:00 p.m. on October 21, 2024, through October 25, 2024; from 7:00 a.m. to 7:00 p.m on October 26, 2024; from 12:00 p.m. to 6:00 p.m. on October 27, 2024; and from 7:00 a.m. to 7:00 p.m. on October 28, 2024, through November 1, 2024. Applications for ballots by mail shall be addressed to Helen Floyd, Martin County Election Administrator, P.O. Box 1009, Stanton, Texas 79782. Contact information for the Martin County Elections Office is as follows: 432-607-3580, hfloyd@co.martin.tx.us, helen.floyd4591@yahoo.com, www.martincountytx.com/158/Elections-Administration- Office.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Marcia Bentley-German, City Secretary

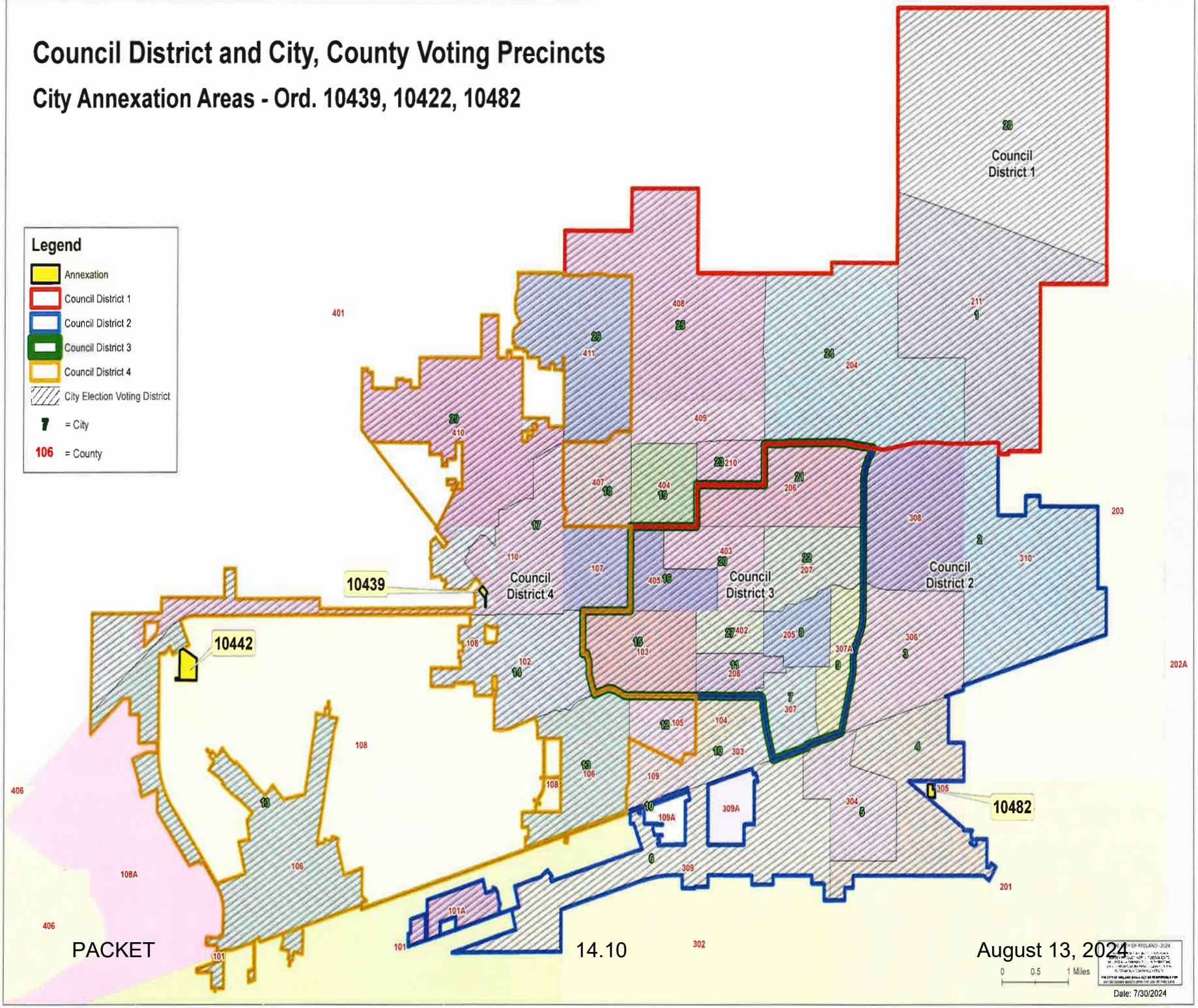
APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

Council District and City, County Voting Precincts

City Annexation Areas - Ord. 10439, 10422, 10482



City Council Meeting

Item Number: 15

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Marcia Bentley-German, City Governance Officer/City Secretary

Subject: RESOLUTION CALLING A SPECIAL ELECTION TO BE HELD IN THE CITY OF MIDLAND, TEXAS, REGARDING THE CONVEYANCE OF A 3.74-ACRE TRACT OF LAND OUT OF BLOCKS 29 AND 36, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, SAID TRACT BEING A PORTION OF HIDALGO PARK THAT IS MOSTLY UNIMPROVED, TO MIDLAND SOUP KITCHEN MINISTRY, A NONPROFIT ORGANIZATION, TO BE USED IN A MANNER THAT PRIMARILY PROMOTES A PUBLIC PURPOSE OF THE CITY; MAKING PROVISION FOR THE CONDUCT OF AN ELECTION; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO SUCH ELECTION (DISTRICT: ALL) (CITY SECRETARY'S OFFICE) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

The proposed resolution calls the election to be held November 5, 2024 for Proposition A. It also designates the vote centers and early voting dates and locations.

Recommended City Council Action:

Approve

Fiscal Impact:

The City's share of the cost of this joint election in Midland County is estimated at $25,000 and is handled through the master inter-local agreement with Midland County. The City's share of the cost of the joint election with Martin County is approximately $8,000.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

None

City Manager's Office

City of Midland
Office Memorandum

DATE: August 5, 2024

TO: The Honorable Mayor and City Council Members

FROM: Marcia Bentley-German, City Governance Officer/City Secretary

SUBJECT: Resolution calling a Special Election to be held in the City of Midland, Texas, regarding the conveyance of a 3.74-acre tract of land out of blocks 29 and 36, east Midland addition, City and County of Midland, Texas, said track being a portion of Hildago Park, to Midland Soup Kitchen Ministry, a nonprofit organization, to be used in a manner that primarily promotes a public purpose of the City; making provision for the conduct of an election; and resolving other matters incident and related to such election

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The proposed resolution calls the election to be held November 5, 2024 for Proposition A. It also designates the vote centers and early voting dates and locations.

The City's share of the cost of this joint election in Midland County is estimated at $25,000 and is handled through the master inter-local agreement with Midland County. The City's share of the cost of the joint election with Martin County is approximately $8,000.

RESOLUTION NO. _____

RESOLUTION CALLING A SPECIAL ELECTION TO BE HELD IN THE CITY OF MIDLAND, TEXAS, REGARDING THE CONVEYANCE OF A 3.74-ACRE TRACT OF LAND OUT OF BLOCKS 29 AND 36, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, SAID TRACT BEING A PORTION OF HIDALGO PARK THAT IS MOSTLY UNIMPROVED, TO MIDLAND SOUP KITCHEN MINISTRY, A NONPROFIT ORGANIZATION, TO BE USED IN A MANNER THAT PRIMARILY PROMOTES A PUBLIC PURPOSE OF THE CITY; MAKING PROVISION FOR THE CONDUCT OF AN ELECTION; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO SUCH ELECTION

WHEREAS, the City Council (the *Council*) of the City of Midland, Texas (the *City*), located in Midland County, Texas (the *County*), hereby finds and determines that a special election should be held to determine whether a 3.74-acre tract of land out of Blocks 29 and 36, East Midland Addition, City and County of Midland, Texas, said tract being a portion of Hidalgo Park that is mostly unimproved, should be conveyed to Midland Soup Kitchen Ministry, a nonprofit organization, to be used in a manner that primarily promotes a public purpose of the City (the *Election*);

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

SECTION ONE. That the Election shall be held in the City of Midland, Texas on the 5th day of November, 2024 (the *Election Day*), which is a uniform election date under the Texas Election Code, as amended, and is not less than 78 days nor more than 90 days from the date of the adoption of this resolution (the *Resolution*), for the purpose of submitting the following proposition to the qualified voters of the City:

CITY OF MIDLAND, TEXAS PROPOSITION A

Shall the City of Midland, Texas be authorized to convey to Midland Soup Kitchen Ministry, a nonprofit organization, to be used in a manner that primarily promotes a public purpose of the City of Midland, Texas a 3.74-acre tract of land, being a portion of Hidalgo Park that is mostly unimproved, and being situated in Blocks 29 and 36, along with the unopened road between said Blocks, East Midland Addition, as shown on the plat recorded in Volume 1, on Pages 51 through 56 of the Deed Records of Midland County, Texas and being a portion of the lands conveyed to the City of Midland in Volume 34 on Page 12 of said Deed Records and being more particularly described as follows:

Beginning at N.(y): 10697977.18, E.(x): 1760567.65 a one half inch iron rod with an aluminum cap marked "COM" found for the northeast corner of said Block 29, in the west line of North Carver Avenue on the south line of the Mulberry Channel (Mulberry Lane) for the northeast corner hereof;

Thence S.14°27'25"E., along said North Carver Avenue, 679.99 feet to a spike nail with whiskers found in the north line of Orchard Lane for the southeast corner hereof;

Thence S.75°31'24"W., along said Orchard Lane, 60.00 feet to a mag nail set at the southeast corner of a tract conveyed to the Midland Soup Kitchen, Inc., in a special warranty deed filed as Document Number 2814 on page 1152 on page 345 of said Deed Records for an exterior corner hereof;

Thence the following four courses and distance around said Soup Kitchen tract;

1. N.14°27'25"W., 160.02 feet to a mag nail set;
2. S.75°31'24"W., 150.00 to a one half inch iron rod with a red plastic cap marked "Maverick Firm# 10194514" (RPC) set;
3. S.14°27'25"E., 99.98 feet to an "RPC" set;
4. S.75°31'24"W., 90.00 feet to a bent one half inch iron rod found in the west line of said Block 36 for the southwest corner hereof;

Thence N.07°25'57"E., 54.57 feet to a chain link fence corner found for an interior corner hereof;

Thence N.14°34'39"W., 569.31 feet to a one half inch iron rod found in the south line of said Mulberry Channel for the northwest corner hereof;

Thence N.75°31'24"E., along said Mulberry Channel, 280.85 feet to the point of beginning, containing 162832 square feet or 3.74 acres of land?

SECTION TWO. That the election shall be conducted by the Midland County Elections Department (the *Midland County Elections Administrator*) for that portion of the City located in Midland County and the Martin County Elections Department (the *Martin County Elections Administrator* and together with the *Midland County Elections Administrator*, the "*Election Administrators*") for that portion of the City located in Martin County, in accordance with the provisions of the respective Midland County Election Contract and Martin County Election Contract (jointly, the *Contracts*).

On Election Day, the polls shall be open from 7:00 a.m. to 7:00 p.m. at the locations designated by the Election Administrators in accordance with the Contracts. In accordance with the provisions of Texas Election Code §§ 43.004, 271.002 and 271.003, the locations of such polling places on Election Day are hereby designated as follows:

MIDLAND COUNTY

Annex Courtroom located at 2110 North A St.
Centennial Library, Meeting Room 113 located at 2503 W. Loop 250 N.
Fairmont Park Church of Christ, Classroom 2 located at 3813 N. Midland Dr.
Golf Course Church of Christ, Rooms 301 and 302 located at 3500 W. Golf Course Rd.
Greater Ideal Life Center, Samuel Evan Chapel located at 301 S. Tyler St.
Greenwood Baptist Church, Sanctuary located at 10909 FM 307
Library at the Plaza, Community Room located at 301 W. Missouri Ave.
MLK, Jr. Community Center, Activity Room located at 2300 Butternut Ln.
Odessa Country Club, Pool House located at #1 Fairway Dr.
Presence Church, Sanctuary located at 901 N. Midland Dr.
St. Paul's Methodist Church, Fellowship Hall located at 4501 Thomason Dr.
Stonegate Fellowship, Foyer of Building C located at 6000 W. Wadley Ave.

MARTIN COUNTY

Martin County Community Center located at 301 N. St. Theresa St., Stanton, Texas.

SECTION THREE. That with respect to that portion of the City located in Midland County, the locations, dates and times for early voting for this election shall be as shown in **Exhibit A**, which is attached hereto and incorporated herein by reference as a part hereof for all purposes. Rosa Olgin, Midland County Elections Administrator, is hereby appointed early voting clerk and shall appoint and designate deputy clerks for early voting in accordance with the Midland County Election Contract.

With respect to that portion of the City located in Martin County, the locations, dates and times for early voting for this election shall be as shown in **Exhibit B**, which is attached hereto and incorporated herein by reference as a part hereof for all purposes. Helen Floyd, Martin County Elections Administrator, is hereby appointed as early voting clerk and shall appoint and designate deputy clerks for early voting in accordance with the Martin County Election Contract.

For purposes of processing ballots cast in early voting, the election officers for the early voting ballot board for this election shall be appointed and designated in accordance with the provisions of the Contracts.

SECTION FOUR. That with respect to voters of the City residing in Midland County, the Central Counting Station for the tabulation and counting of ballots for this election shall be located at the Office of the Elections Department, 2110 North A Street, Suite 103, Midland, Texas 79705 and the Manager, Tabulation Supervisor, Presiding Judge

and Alternate Presiding Judge at such Central Counting Station shall be determined, appointed and designated in accordance with the agreement with the Midland County Elections Department. The Manager and Presiding Judge of such Central Counting Station may appoint clerks to serve at such Station, as provided by Texas Election Code, Section 127.006, as amended.

With respect to voters of the City residing in Martin County, the Central Counting Station for the tabulation and counting of ballots for this election shall be located at the Martin County Election Department, 110 W School Street, Stanton, Texas 79782-1009 and the Manager, Tabulation Supervisor, Presiding Judge and Alternate Presiding Judge at such Central Counting Station shall be determined, appointed and designated in accordance with the agreement with the Martin County Elections Department. The Manager and Presiding Judge of such Central Counting Station may appoint clerks to serve at such Station, as provided by Section 127.006 of the Election Code, as amended.

SECTION FIVE. That a voting system or systems meeting the standards and requirements of the Texas Election Code, as amended, is hereby adopted and approved for early voting by personal appearance and by mail and for election day voting. Such voting system shall comply with Texas and federal laws establishing the requirement for a voting system that is equipped for disabled individuals. Pursuant to Section 61.012, as amended, Texas Election Code, the Elections Administrators shall provide at least one accessible voting system in each polling place used in the Election.

SECTION SIX. That the official ballot shall be prepared in accordance with the Texas Election Code, as amended, so as to permit voters to vote "FOR" or "AGAINST" the aforesaid proposition which shall appear on the ballot substantially as follows:

CITY OF MIDLAND, TEXAS PROPOSITION A

"THE CONVEYANCE BY THE CITY OF MIDLAND, TEXAS OF A 3.74-ACRE TRACT OF LAND OUT OF BLOCKS 29 AND 36, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, SAID TRACT BEING A PORTION OF HIDALGO PARK THAT IS MOSTLY UNIMPROVED, TO MIDLAND SOUP KITCHEN MINISTRY, A NONPROFIT ORGANIZATION, TO BE USED IN A MANNER THAT PRIMARILY PROMOTES A PUBLIC PURPOSE OF THE CITY OF MIDLAND, TEXAS."

SECTION SEVEN. That all resident qualified voters of the City shall be permitted to vote at the Election, and on Election Day such voters shall vote at the designated polling places. The Election shall be held and conducted in accordance with the provisions of the Texas Election Code, as amended, and as may be required by any other law. To the extent required by law, all materials and proceedings relating to the Election shall be printed in both English and Spanish.

SECTION EIGHT. That notice of election, including a Spanish translation thereof, shall be published on the same day in each of two successive weeks in a newspaper of general circulation in the City, the first of these publications to appear in such newspaper not more than 30 days, and not less than 14 days, prior to Election Day. Moreover, a substantial copy of this Resolution and the voter information document as shown in **Exhibit C**, including a Spanish translation thereof, shall be posted (i) at City Hall not less than 21 days prior to Election Day; (ii) at three additional public places within the City not less than 21 days prior to Election Day, (iii) in a prominent location at each polling place on Election Day and during early voting, and (iv) in a prominent location on the City's internet website not less than 21 days prior to Election Day. A sample ballot shall be posted on the City's internet website not less than 21 days prior to Election Day.

SECTION NINE. That the Council authorizes the Mayor, the City Manager, or their respective designee of either of such parties, to make such modifications to this Resolution that are necessary for compliance with applicable Texas or federal law or to carry out the intent of the Council, as evidenced herein. By incorporating all essential terms necessary for a joint election agreement, this Resolution is intended to satisfy Section 271.002(d) of the Texas Election Code, as amended, without further action of the Council. To the extent needed or desirable, the Election Administrators are hereby appointed as joint custodians of voted ballots in their respective County for the purposes of Section 31.096, as amended, Texas Election Code.

SECTION TEN. That the recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Council.

SECTION ELEVEN. That all ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters ordained herein.

SECTION TWELVE. That this Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and this Council hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION THIRTEEN. That it is officially found, determined, and declared that the meeting at which this Resolution 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 Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

EXHIBIT A

NOVEMBER 5, 2024, JOINT GENERAL ELECTION

VOTE EARLY AT ONE OF THE FOLLOWING LOCATIONS:

ELECTIONS OFFICE – COUNTY ANNEX BUILDING ROOM 103
2110 NORTH A STREET, 79705

MONDAY, OCTOBER 21 – FRIDAY OCTOBER 25	8:00 AM – 5:00 PM
SATURDAY, OCTOBER 26	7:00 AM – 7:00 PM
SUNDAY, OCTOBER 27	1:00 PM – 7:00 PM
MONDAY, OCTOBER 28 – FRIDAY, NOVEMBER 1	7:00 AM – 7:00 PM

CENTENNIAL LIBRARY – MEETING ROOM 113
2503 W LOOP 250 N, 79705

MONDAY, OCTOBER 21 – FRIDAY OCTOBER 25	8:00 AM – 5:00 PM
SATURDAY, OCTOBER 26	7:00 AM – 7:00 PM
SUNDAY, OCTOBER 27	1:00 PM – 7:00 PM
MONDAY, OCTOBER 28 – WEDNESDAY OCTOBER 30	8:00 AM – 6:00 PM
THURSDAY, OCTOBER 31 – FRIDAY NOVEMBER 1	8:00 AM – 7:00 PM

COGDELL LEARNING CENTER – CLASSROOM # 4
201 W FLORIDA AVE, 79701

MONDAY, OCTOBER 21 – FRIDAY OCTOBER 25	8:00 AM – 5:00 PM
SATURDAY, OCTOBER 26	7:00 AM – 7:00 PM
SUNDAY, OCTOBER 27	1:00 PM – 7:00 PM
MONDAY, OCTOBER 28 – WEDNESDAY OCTOBER 30	8:00 AM – 6:00 PM
THURSDAY, OCTOBER 31 – FRIDAY NOVEMBER 1	8:00 AM – 7:00 PM

FAIRMONT PARK CHURCH OF CHRIST – CLASSROOM # 2
3818 N MIDLAND DR, 79707

MONDAY, OCTOBER 21 – FRIDAY OCTOBER 25	8:00 AM – 5:00 PM
SATURDAY, OCTOBER 26	7:00 AM – 7:00 PM
SUNDAY, OCTOBER 27	1:00 PM – 7:00 PM
MONDAY, OCTOBER 28 – WEDNESDAY OCTOBER 30	8:00 AM – 6:00 PM
THURSDAY, OCTOBER 31 – FRIDAY NOVEMBER 1	8:00 AM – 7:00 PM

THE VILLAGE AT MANOR PARK – MARGARET COWDEN CLUBHOUSE - SPARKS GREAT ROOM
5212 SINCLAIR AVE, 79707

MONDAY, OCTOBER 21 – FRIDAY OCTOBER 25	8:00 AM – 5:00 PM
SATURDAY, OCTOBER 26	7:00 AM – 7:00 PM
SUNDAY, OCTOBER 27	1:00 PM – 7:00 PM
MONDAY, OCTOBER 28 – WEDNESDAY OCTOBER 30	8:00 AM – 6:00 PM
THURSDAY, OCTOBER 31 – FRIDAY NOVEMBER 1	8:00 AM – 7:00 PM

On Election Day Tuesday, November 5, 2024, you must vote at an election day Vote Center
Election Day Voting Hours: 7:00 AM – 7:00 PM

For sample ballots, polling locations, and other information visit the Election Office's website:
www.co.midland.tx.us/elections

EXHIBIT B

NOVEMBER 5, 2024, JOINT GENERAL ELECTION

VOTE EARLY AT ONE OF THE FOLLOWING LOCATIONS:

MARTIN COUNTY ELECTION ADMINISTRATOR'S OFFICE
110 W. SCHOOL ST., STANTON, 79782

MONDAY, OCTOBER 21 – FRIDAY OCTOBER 25	8:00 AM – 5:00 PM
SATURDAY, OCTOBER 26	7:00 AM – 7:00 PM
SUNDAY, OCTOBER 27	12:00 PM – 6:00PM
MONDAY, OCTOBER 28 – FRIDAY, NOVEMBER 1	7:00 AM – 7:00 PM

On Election Day Tuesday, November 5, 2024, you must vote at an election day Vote Center
Election Day Voting Hours: 7:00 AM – 7:00 PM

For sample ballots, polling locations, and other information visit the Election Office's website:
www.martincountytx.com/158/Elections-Administration-Office

EXHIBIT C

PROPOSITION A

□ FOR □ AGAINST	THE CONVEYANCE BY THE CITY OF MIDLAND, TEXAS OF A 3.74-ACRE TRACT OF LAND OUT OF BLOCKS 29 AND 36, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, SAID TRACT BEING A PORTION OF HIDALGO PARK THAT IS MOSTLY UNIMPROVED, TO MIDLAND SOUP KITCHEN MINISTRY, A NONPROFIT ORGANIZATION, TO BE USED IN A MANNER THAT PRIMARILY PROMOTES A PUBLIC PURPOSE OF THE CITY OF MIDLAND, TEXAS.

City Council Meeting

Item Number: 16

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: **RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO FIREBIRD ENERGY II, LLC ("OPERATOR") TO DRILL NINE OIL AND GAS WELLS LOCATED IN SECTION 6, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 635 FEET SOUTH OF MOCKINGBIRD LANE AND BETWEEN 1,680 FEET AND 1,840 FEET EAST OF HOLIDAY HILL ROAD); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT (DISTRICT 4) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

Purpose:

Resolution approving the issuance of permits to FireBird Energy II, LLC ("Operator") for the drilling of the following oil and gas wells: MBE 101H; MBE 201H; MBE 301H; MBE 302H; MBE 401H; MBE 402H; MBE 701H; MBE 702H; and MBE-803H; said wells being generally located 635 feet south of Mockingbird Lane and between 1,680 feet and 1,840 feet east of Holiday Hill Road. The required 30-day public comment has passed, and the Council may consider this request. No notices of objection received.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no cost to the City to process this application.

Strategic Priority:

(Set the Standard for a Safe and Secure City)

Discussion:

The Oil and Gas Advisory Committee has reviewed the well site in detail and recommends approval. A sound wall 24' on all sides of the pad and will be used during drilling and fracing. In the absence of an electric or quiet frac fleet, portable sound walls around frac pumps will be used. Additionally, they will be utilizing belly dump sand trucks which are significantly quieter than pneumatic sand trucks. There is a tank battery to the west of well site in the County. The location has had previously permitted wells MB-1H through MB-12H permitted in 2021 and 2022. Receiving support of the Oil & Gas Advisory Committee, FireBird Energy II, LLC is requesting the following variances:

(1) requests to allow for twenty-four-hour fracing operations.
(2) requests variance to the landscaping regulations. Stating the proposed fencing plan provides adequate screening from adjacent roads and parcels. FireBird Energy II, LLC will also work with the surface owner/developer, Loc Conchos Ventures, LLC on future screening and landscaping.
(3) request a variance for fencing. Allowing the proposed fencing plan provides fencing around the entire pad site instead of individual wellheads.
(4) requests variance for the reserve pit size. In place of individual pits for each well, a larger pit size will be used for all the proposed wells.
(5) requests variance to have the choice of following Ordinance 8769 for deep burial of drill cuttings or disposing of offsite following applicable TCEQ and TXRRC rules and regulations.

Attachments: Applications; Location maps; Exhibit - Drill site maps, Exhibit – Overall Location.

City Manager's Office

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 13, 2024, considered the application of FireBird Energy II, LLC ("Operator") dated May 1, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MBE 101H oil and gas well shall be 635 feet from the north line and 1,720 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from August 13, 2024, through August 13, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY 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 OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
3. No landscaping or irrigation is required.
4. Use of a lined and bermed reserve pit that is 350 feet x 777 feet is permitted for the drilling operations.
5. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2024.

FireBird Energy II, LLC

By: _____

Travis F. Thompson

CEO

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 13, 2024, considered the application of FireBird Energy II, LLC ("Operator") dated May 1, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MBE 201H oil and gas well shall be 635 feet from the north line and 1,780 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from August 13, 2024, through August 13, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY 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 OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
3. No landscaping or irrigation is required.
4. Use of a lined and bermed reserve pit that is 350 feet x 777 feet is permitted for the drilling operations.
5. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2024.

FireBird Energy II, LLC

By: _____

Travis F. Thompson

CEO

OIL AND GAS WELL PERMIT

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This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MBE 301H oil and gas well shall be 635 feet from the north line and 1,760 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from August 13, 2024, through August 13, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

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By: _____

Travis F. Thompson

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The location of Operator's MBE 302H oil and gas well shall be 635 feet from the north line and 1,820 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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Lori Merritt Blong, Mayor

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FireBird Energy II, LLC

By: _____

Travis F. Thompson

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The location of Operator's MBE 401H oil and gas well shall be 635 feet from the north line and 1,740 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MBE 701H oil and gas well shall be 635 feet from the north line and 1,840 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from August 13, 2024, through August 13, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

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This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY 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 OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
3. No landscaping or irrigation is required.
4. Use of a lined and bermed reserve pit that is 350 feet x 777 feet is permitted for the drilling operations.
5. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2024.

FireBird Energy II, LLC

By: _____

Travis F. Thompson

CEO

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The location of Operator's MBE 702H oil and gas well shall be 635 feet from the north line and 1,700 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2024.

FireBird Energy II, LLC

By: _____

Travis F. Thompson

CEO

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
5/1/2024	FireBird Energy II, LLC	7900 W Hwy 80 Midland, TX, 79706

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 205-2000
Travis F. Thompson	7900 W Hwy 80 Midland, TX	Rep. Fax
Fee: $4,000.00 Rec'd Yes_X_ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

Greg Hughes (432)-559-7187
7900 W Hwy 80, Midland TX, 79706

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. Attached as Exhibit "C"
2.
3.

ATTACHED AS EXHIBIT C **is (a** ***Title Opinion by*** Dawson Parrish, PC ***, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from ,*** ***a licensed Texas Attorney)*** **indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

- Existing single family residences to the north
- Undeveloped and existing oil and gas facilities to the east
- Undeveloped, existing oil and gas facilities, future single family residences to the south
- Undeveloped and existing oil and gas facilities to the west

ATTACHED AS EXHIBIT D **is Current Tax Roll from Midland Central Appraisal District), which lists**

***ATTACHED AS EXHIBIT E* is a *(map/p lat/satellite/aerial photo)* depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The *(map/p lat/satellite/aerial photo)* includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

***ATTACHED AS EXHIBIT F* is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: MBE 101H

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Attached as Exhibit V.

Legal Description of Proposed Well Site:

SHL - 1,720' FWL and 635' FNL-Situated in Section 6, A-15, Block X, H.P. Hilliard Survey, Midland County, TX

BHL - 2,084' FEL and 2,546' FNL-Situated in Section 18,A-681,Block 39,T-1-S,T& P RR Co,Midland County,TX

***ATTACHED AS EXHIBIT G* is the Location Site Plan [See § J(9)].**

***ATTACHED AS EXHIBIT H* is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

***ATTACHED AS EXHIBIT I* is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments *(also file copy of W-1 with City Secretary before commencement of drilling operations).* [See § J(16) and (20)].**

***ATTACHED AS EXHIBIT J* is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

***ATTACHED AS EXHIBIT K (if applicable)* is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].**

***ATTACHED AS EXHIBIT L* is the Fencing and Irrigation Plan. [See § J(30)].**

***ATTACHED AS EXHIBIT M* is the Road Repair Agreement and *Letter of Credit/Certificate of Deposit/Surety Bond* in the amount of at least $25,000. *Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):* Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary $75,000 *letter of credit/certificate of deposit/surety bond* in conjunction with this request. [See § J(31)].**

***ATTACHED AS EXHIBIT N* is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling:

None.

(2) Opera tions:

Electrical.

Description of water source to be used during Drilling:

Water will be stored in off-site frac ponds. Water source will be from an off-site water well or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Attached as Exhibit N

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

Attached as Exhibit O

V. Additional Required Exhibits

***ATTACHED AS EXHIBIT P* is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

***ATTACHED AS EXHIBIT Q* are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].**

***ATTACHED AS EXHIBIT R* is the required Insurance Certificate. [See § J(19) and § K(3)].**

***ATTACHED AS EXHIBIT S (if applicable)* is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].**

***ATTACHED AS EXHIBIT T* is Applicant's Emergency Action Response Plan. [See § J(22)].**

***ATTACHED AS EXHIBIT U* is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

FIREBIRD ENERGY II LLC

By: Travis F. Thompson
Its: CEO

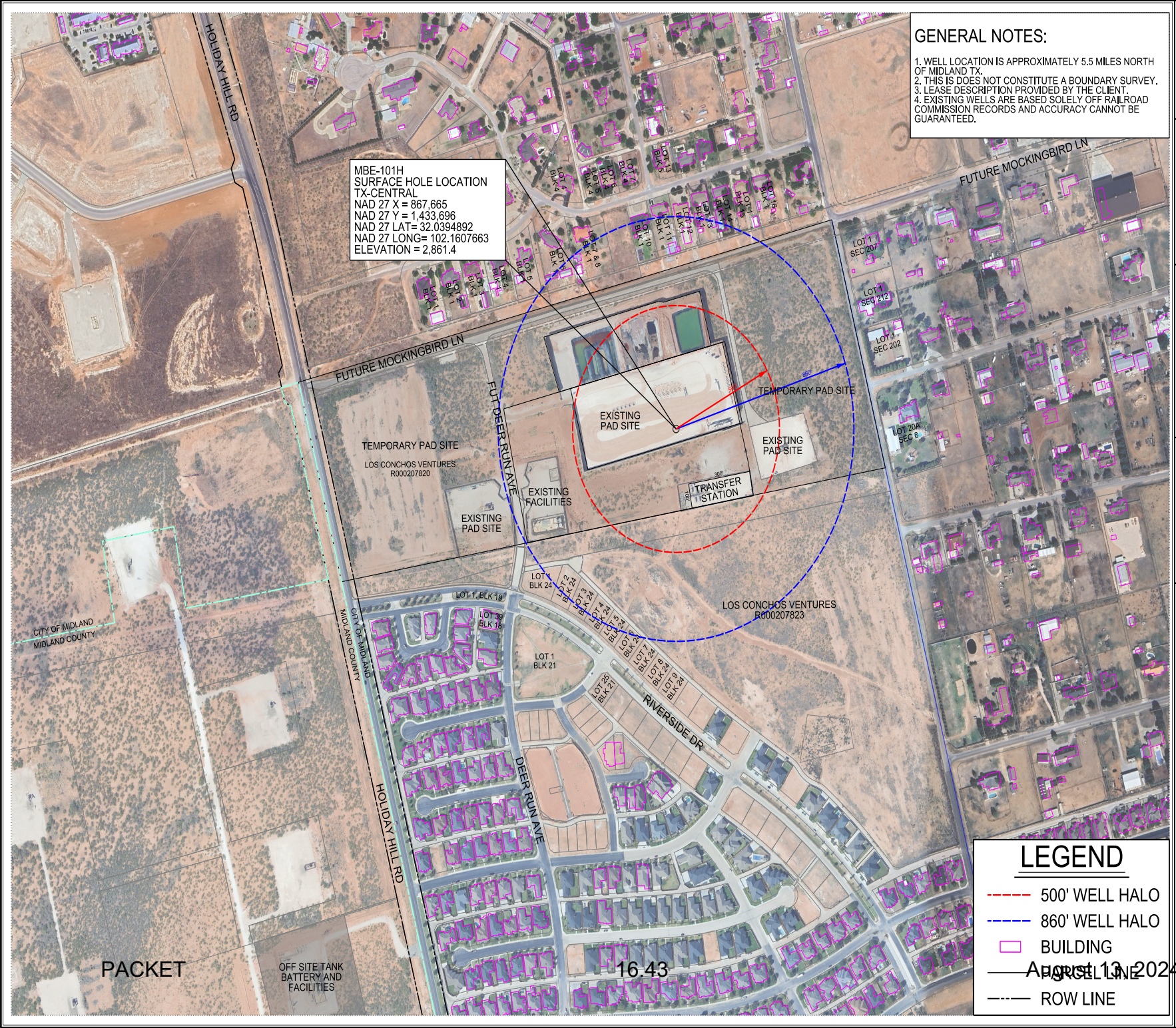
State of Texas)
)
County of Tarrant)

Travis F. Thompson, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

BRADEN WHITE
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 11/25/24
NOTARY ID 12865213-5

Notary Public, State of Texas

[SEAL]



MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:

FIREBIRD ENERGY II, LLC
7900 W HWY 80
MIDLAND, TX 79706
PHONE: (432) 205-2000

SITE PLAN PREPARED BY:

Westwood

9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350

TBPE FIRM NO. 12207
TBPLS FIRM NO. 10177700

WELLS AND PADS STAKED BY:

ARDURRA

ARDURRA
801 NAVIGATION BLVD., SUITE 300
CORPUS CHRISTI, TX 78408
PHONE: (361) 883-1984
TBPLS FIRM NO. 10194688

PROJECT NO: NI0053171.00	
FILE PATH: NI0053171.00\Planning\CAD	
DRAWN BY: JH	
REVIEWED BY: CH	
DATE: 04/24/2024	
REV:	

SHEET CONTENT

EXHIBIT 'E'

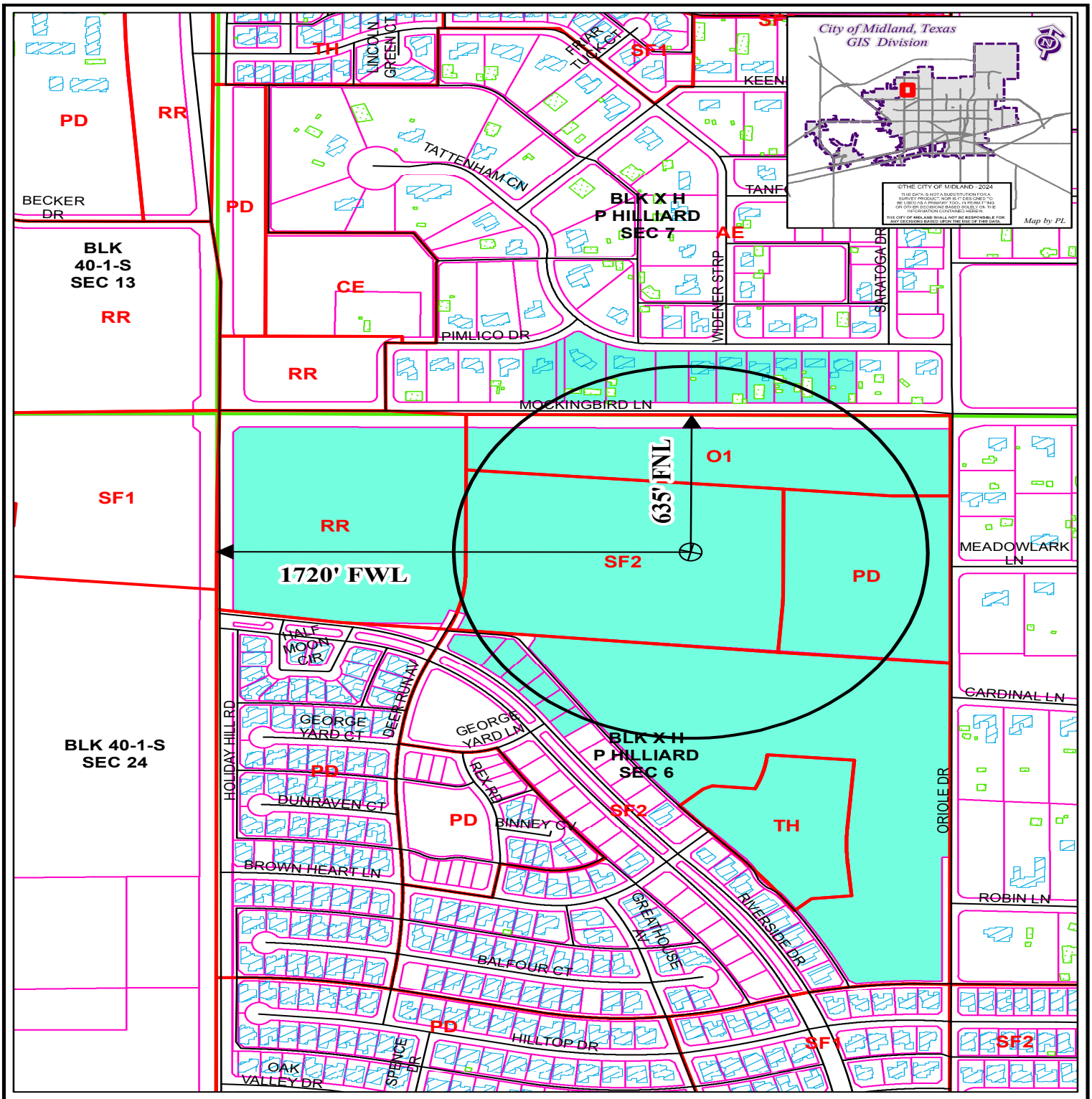
SURFACE OWNER

MOCKINGBIRD
MBE-101H

Situated in Section 6, A-15
Block X, H.P. Hilliard Survey,
Midland County, Texas

PACKET 16.43 August 13, 2024

4/25/2024 10:03:10 AM Printed by: JHHatcher



LOCATION AND ZONING MAP

Oil-060401-2024 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 635' FNL and 1,720' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 635 feet south of Mockingbird Lane and 1,720 feet west of Holiday Hill Road.

MBE 101H

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
SF1, SF2, SF3	ONE-FAMILY DWELLING	C1, C2, C3	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

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
5/1/2024	FireBird Energy II, LLC	7900 W Hwy 80 Midland, TX, 79706

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 205-2000
Travis F. Thompson	7900 W Hwy 80 Midland, TX	Rep. Fax
Fee: $4,000.00 Rec'd Yes_X_ No___	**NOTE: All attachments need to bound and put in a binder before submitting.**	**Pages 1-4**

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): No. 2 (Tele.):

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

Greg Hughes (432)-559-7187
7900 W Hwy 80, Midland TX, 79706

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. Attached as Exhibit "C"
2.
3.

ATTACHED AS EXHIBIT C **is (a** ***Title Opinion by*** Dawson Parrish, PC ***, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from ,*** ***a licensed Texas Attorney)*** **indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

- Existing single family residences to the north
- Undeveloped and existing oil and gas facilities to the east
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***ATTACHED AS EXHIBIT F* is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: MBE 201H

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Attached as Exhibit V.

Legal Description of Proposed Well Site:

SHL - 1,780' FWL and 635' FNL-Situated in Section 6, A-15, Block X, H.P. Hilliard Survey, Midland County, TX

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(2) Opera tions:

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FIREBIRD ENERGY II LLC

By: Travis F. Thompson
Its: CEO

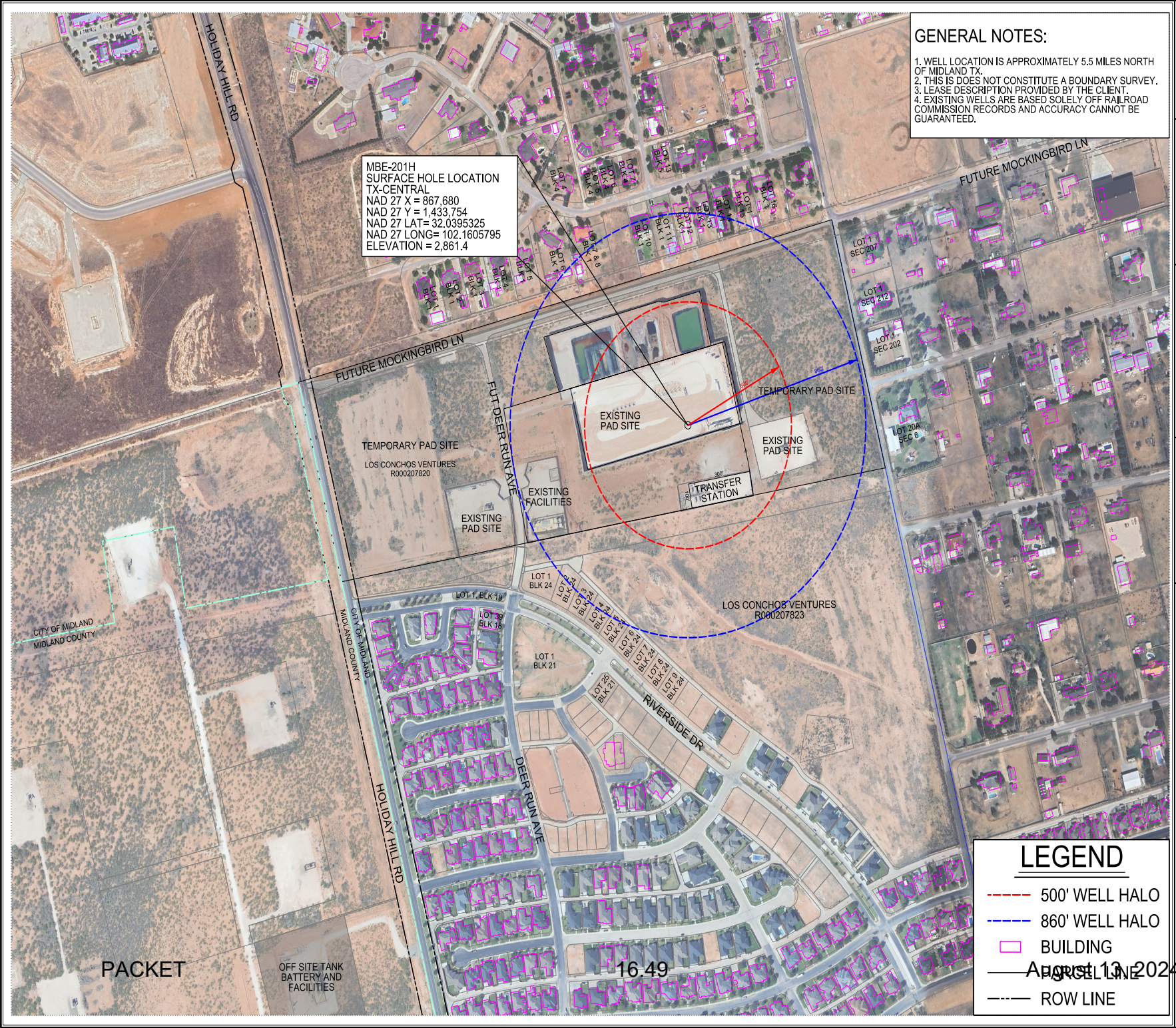
State of Texas)
)
County of Tarrant)

Travis F. Thompson, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

BRADEN WHITE
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 11/25/24
NOTARY ID 12865213-5

Notary Public, State of Texas

[SEAL]



MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:

FIREBIRD ENERGY II, LLC
7900 W HWY 80
MIDLAND, TX 79706
PHONE: (432) 205-2000

SITE PLAN PREPARED BY:

Westwood

9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350

TBPE FIRM NO. 12207
TBPLS FIRM NO. 10177700

WELLS AND PADS STAKED BY:

ARDURRA

ARDURRA
801 NAVIGATION BLVD., SUITE 300
CORPUS CHRISTI, TX 78408
PHONE: (361) 883-1984
TBPLS FIRM NO. 10194688

PROJECT NO:	NI0053171.00
FILE PATH:	NI0053171.00\Planning\CAD
DRAWN BY:	JH
REVIEWED BY:	CH
DATE:	04/24/2024
REV:	

SHEET CONTENT

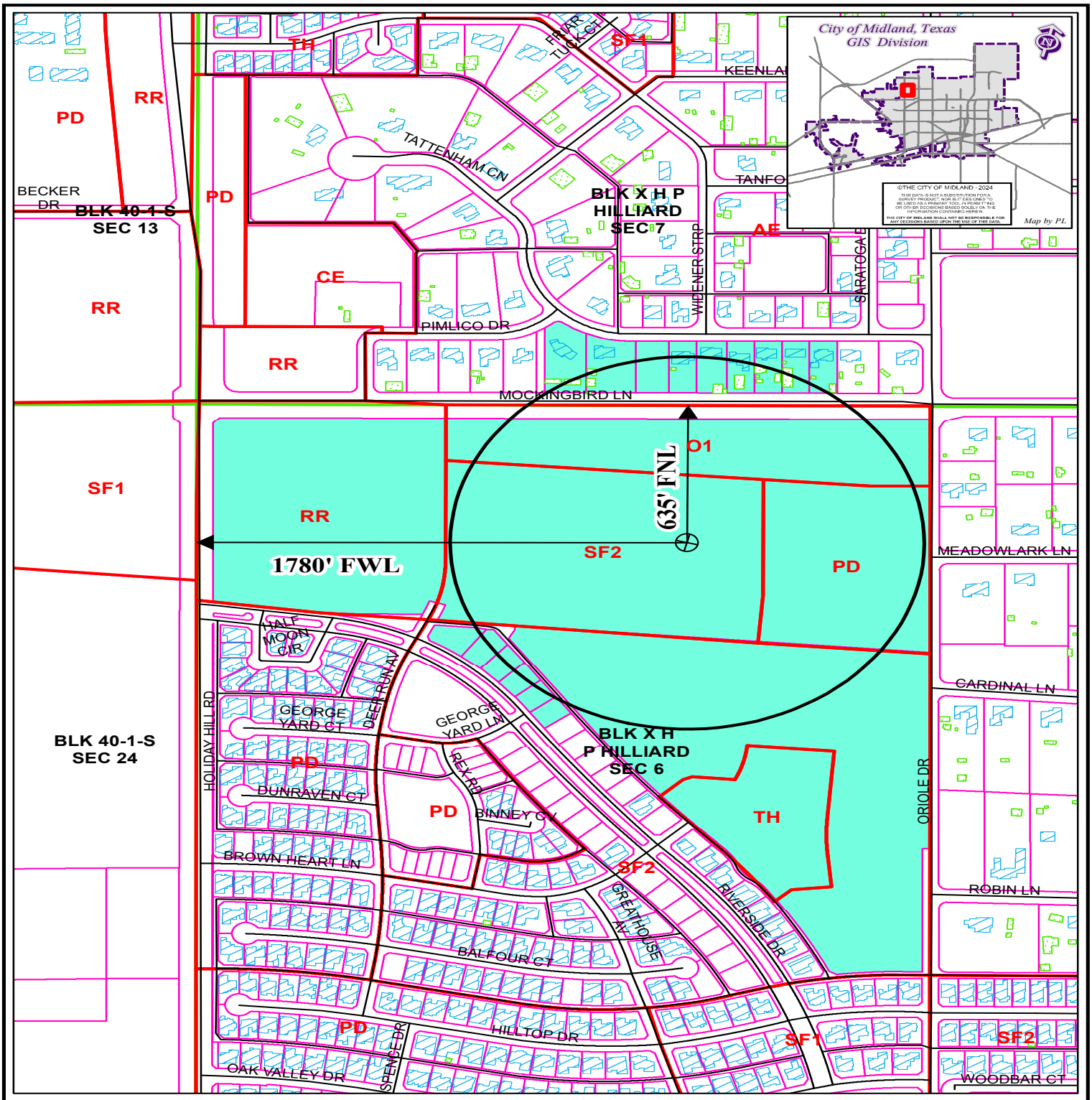
EXHIBIT 'E'

SURFACE OWNER

MOCKINGBIRD
MBE-201H

Situated in Section 6, A-15
Block X, H.P. Hilliard Survey,
Midland County, Texas

Printed by: JRHatcher
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4/25/2024



LOCATION AND ZONING MAP

Oil-060402-2024 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 635' FNL and 1,780' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 635 feet south of Mockingbird Lane and 1,780 feet west of Holiday Hill Road.

MBE 201H

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
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CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
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2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
5/1/2024	FireBird Energy II, LLC	7900 W Hwy 80 Midland, TX, 79706

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 205-2000
Travis F. Thompson	7900 W Hwy 80 Midland, TX	Rep. Fax
Fee: $4,000.00 Rec'd Yes_X_ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

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IV. Well & Operations Information

Proposed Well Name: MBE 301H

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Attached as Exhibit V.

Legal Description of Proposed Well Site:

SHL - 1,760' FWL and 635' FNL-Situated in Section 6, A-15, Block X, H.P. Hilliard Survey, Midland County, TX

BHL - 1,782' FEL and 2,546' FNL-Situated in Section 18,A-681,Block 39,T-1-S,T& P RR Co,Midland County,TX

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(1) Drilling:

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Electrical.

Description of water source to be used during Drilling:

Water will be stored in off-site frac ponds. Water source will be from an off-site water well or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

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Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

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V. Additional Required Exhibits

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FIREBIRD ENERGY II LLC

By: Travis F. Thompson
Its: CEO

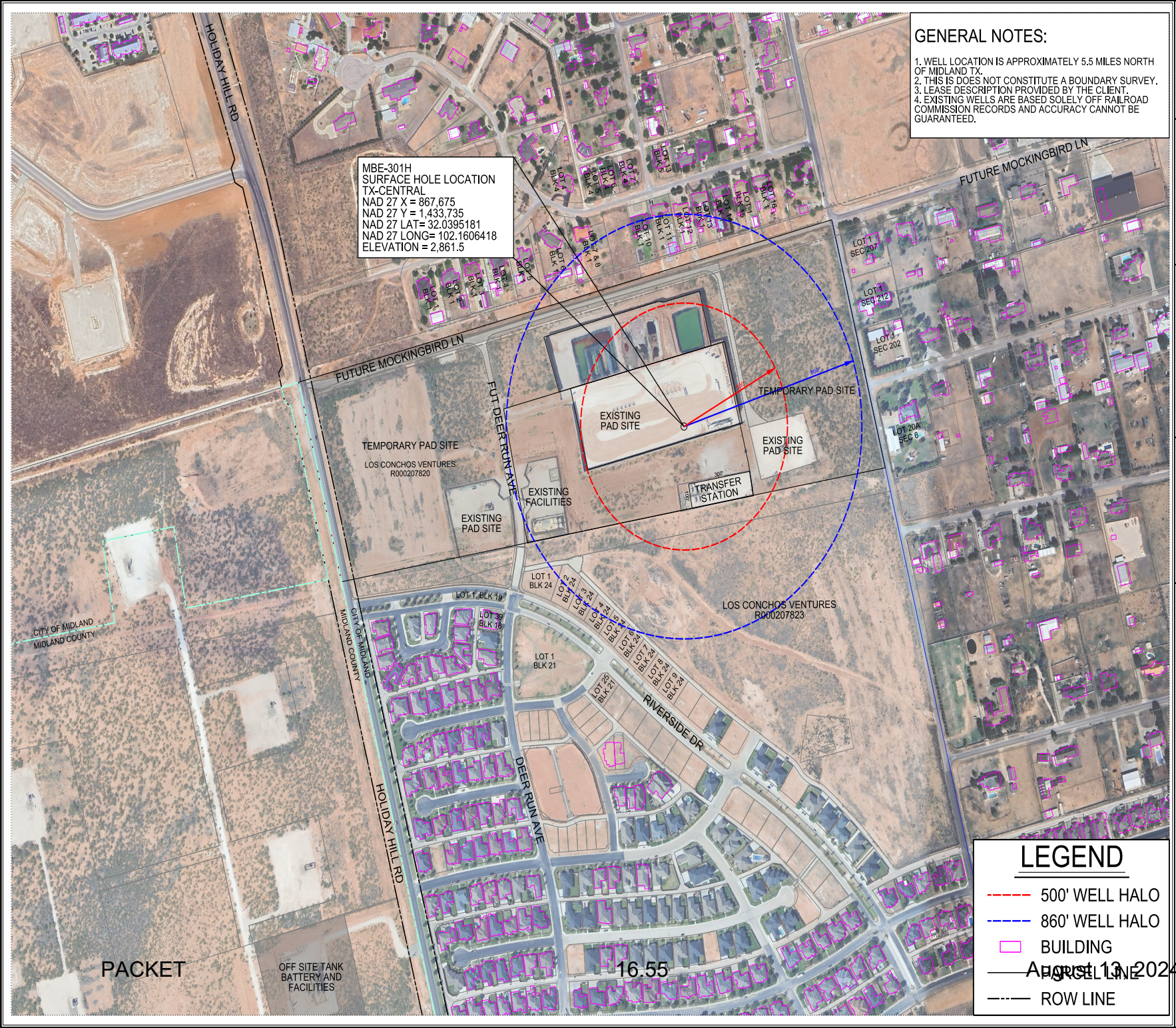
State of Texas)
)
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Travis F. Thompson, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

BRADEN WHITE
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 11/25/24
NOTARY ID 12865213-5

Notary Public, State of Texas

[SEAL]



MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:

FIREBIRD ENERGY II, LLC
7900 W HWY 80
MIDLAND, TX 79706
PHONE: (432) 205-2000

SITE PLAN PREPARED BY:

Westwood

9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350

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WELLS AND PADS STAKED BY:

ARDURRA

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801 NAVIGATION BLVD., SUITE 300
CORPUS CHRISTI, TX 78408
PHONE: (361) 883-1984
TBPLS FIRM NO. 10194688

PROJECT NO:	NI0053171.00
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DRAWN BY:	JH
REVIEWED BY:	CH
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REV:	

SHEET CONTENT

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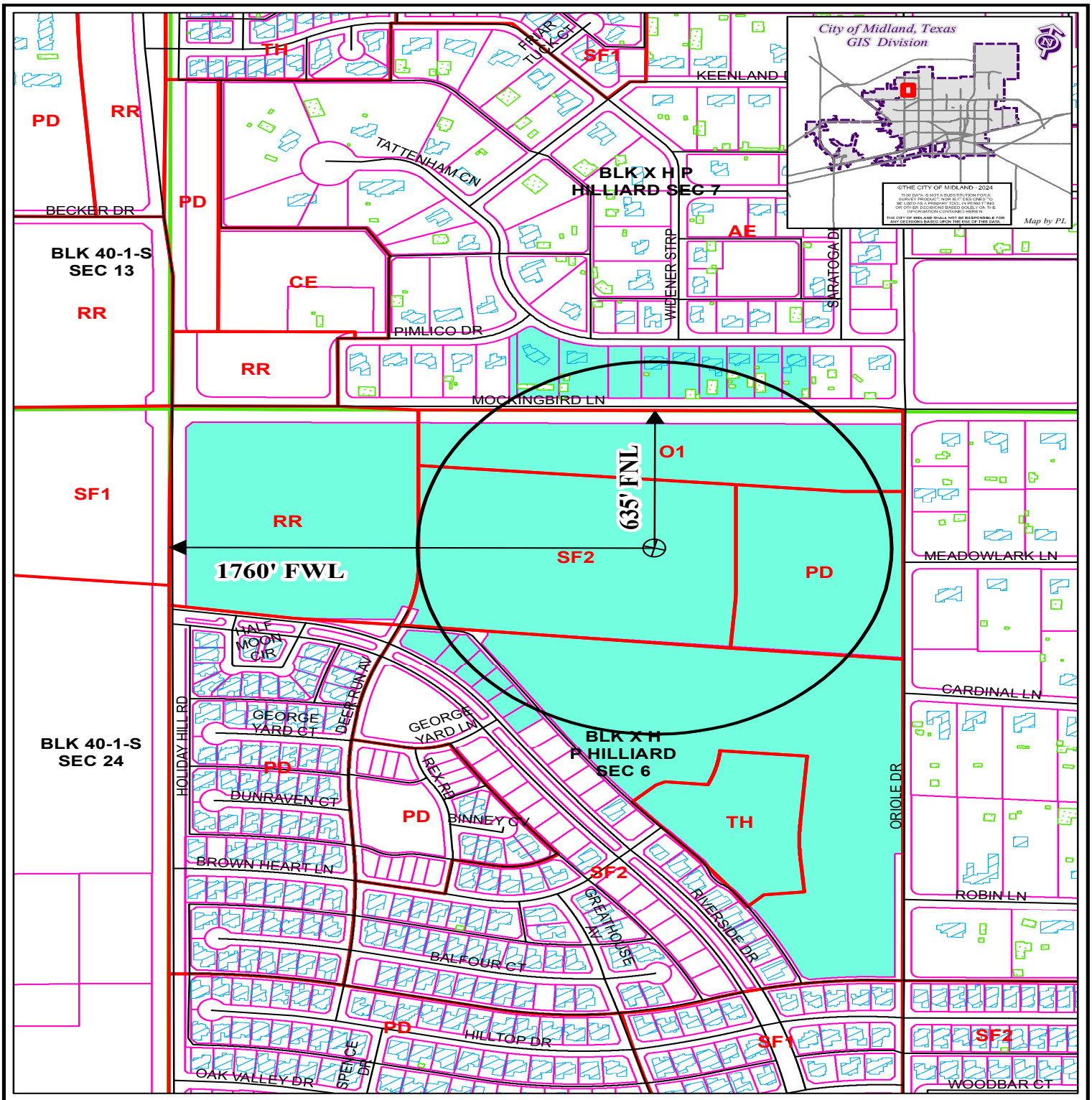
SURFACE OWNER

MOCKINGBIRD
MBE-301H

Situated in Section 6, A-15
Block X, H.P. Hilliard Survey,
Midland County, Texas

PACKET 16.55 August 13, 2024

Printed by: JHHatcher
4/25/2024 2:57:34 PM



LOCATION AND ZONING MAP

Oil-060403-2024 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 635' FNL and 1,760' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

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MBE 301H

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
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ZONING	ACCESSORY BLDGS	SURVEY SEC.

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By: Travis F. Thompson
Its: CEO

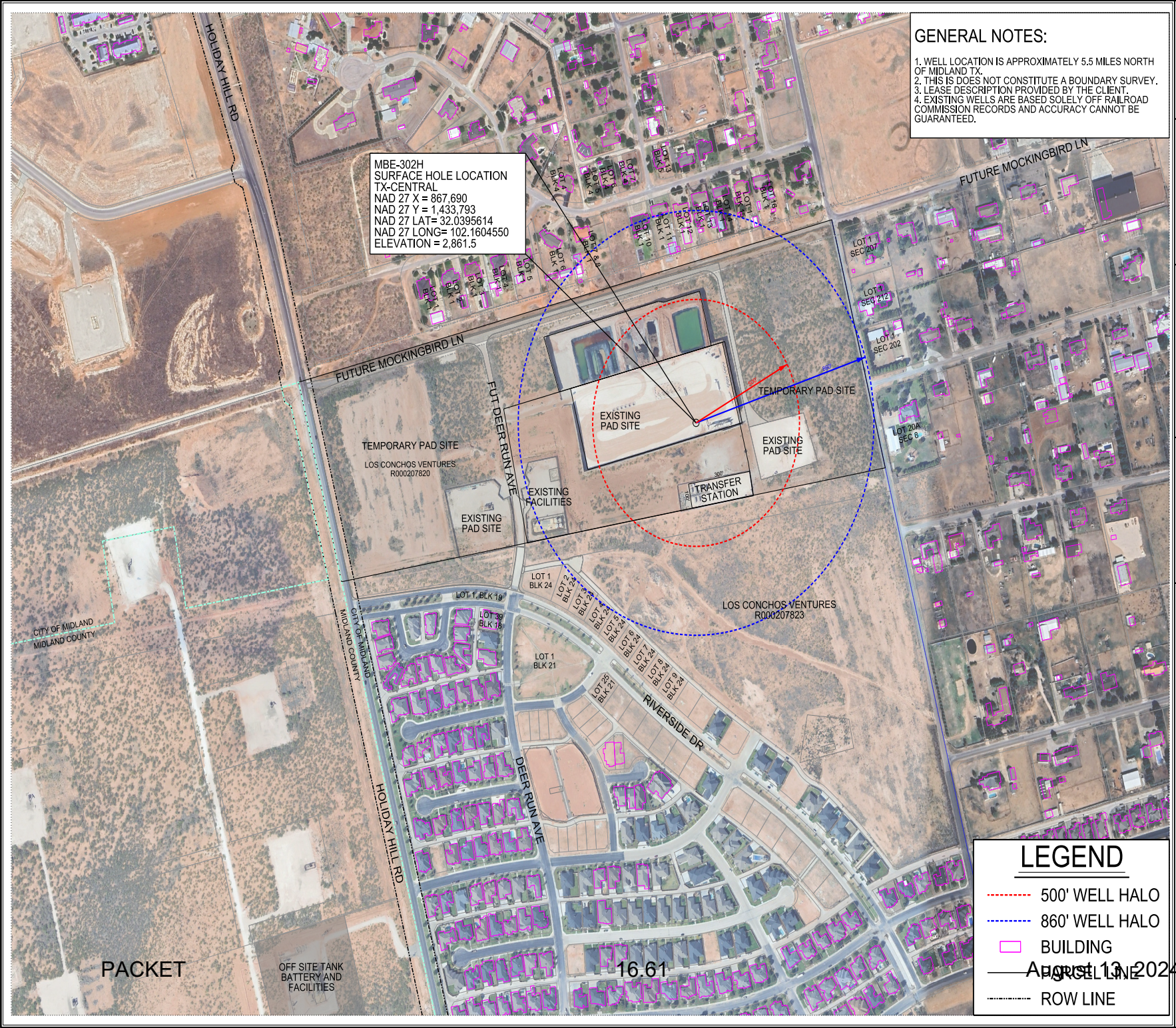
State of Texas)
)
County of Tarrant)

Travis F. Thompson, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

BRADEN WHITE
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 11/25/24
NOTARY ID 12865213-5

Notary Public, State of Texas

[SEAL]



GENERAL NOTES:

1. WELL LOCATION IS APPROXIMATELY 5.5 MILES NORTH OF MIDLAND TX.
2. THIS IS DOES NOT CONSTITUTE A BOUNDARY SURVEY.
3. LEASE DESCRIPTION PROVIDED BY THE CLIENT.
4. EXISTING WELLS ARE BASED SOLELY OFF RAILROAD COMMISSION RECORDS AND ACCURACY CANNOT BE GUARANTEED.

LEGEND

- 500' WELL HALO
- 860' WELL HALO
- BUILDING
- TRACT LINE
- ROW LINE

MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:

FIREBIRD ENERGY II, LLC
7900 W HWY 80
MIDLAND, TX 79706
PHONE: (432) 205-2000

SITE PLAN PREPARED BY:

Westwood

9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350

TBPE FIRM NO. 12207
TBPLS FIRM NO. 10177700

WELLS AND PADS STAKED BY:

ARDURRA

ARDURRA
801 NAVIGATION BLVD., SUITE 300
CORPUS CHRISTI, TX 78408
PHONE: (361) 883-1984
TBPLS FIRM NO. 10194688

PROJECT NO: NI0053171.00	
FILE PATH: NI0053171.00\Planning\CAD	
DRAWN BY: JH	
REVIEWED BY: CH	
DATE: 04/24/2024	
REV:	

NORTH

0 200' 400' 600'
GRAPHIC SCALE

SHEET CONTENT

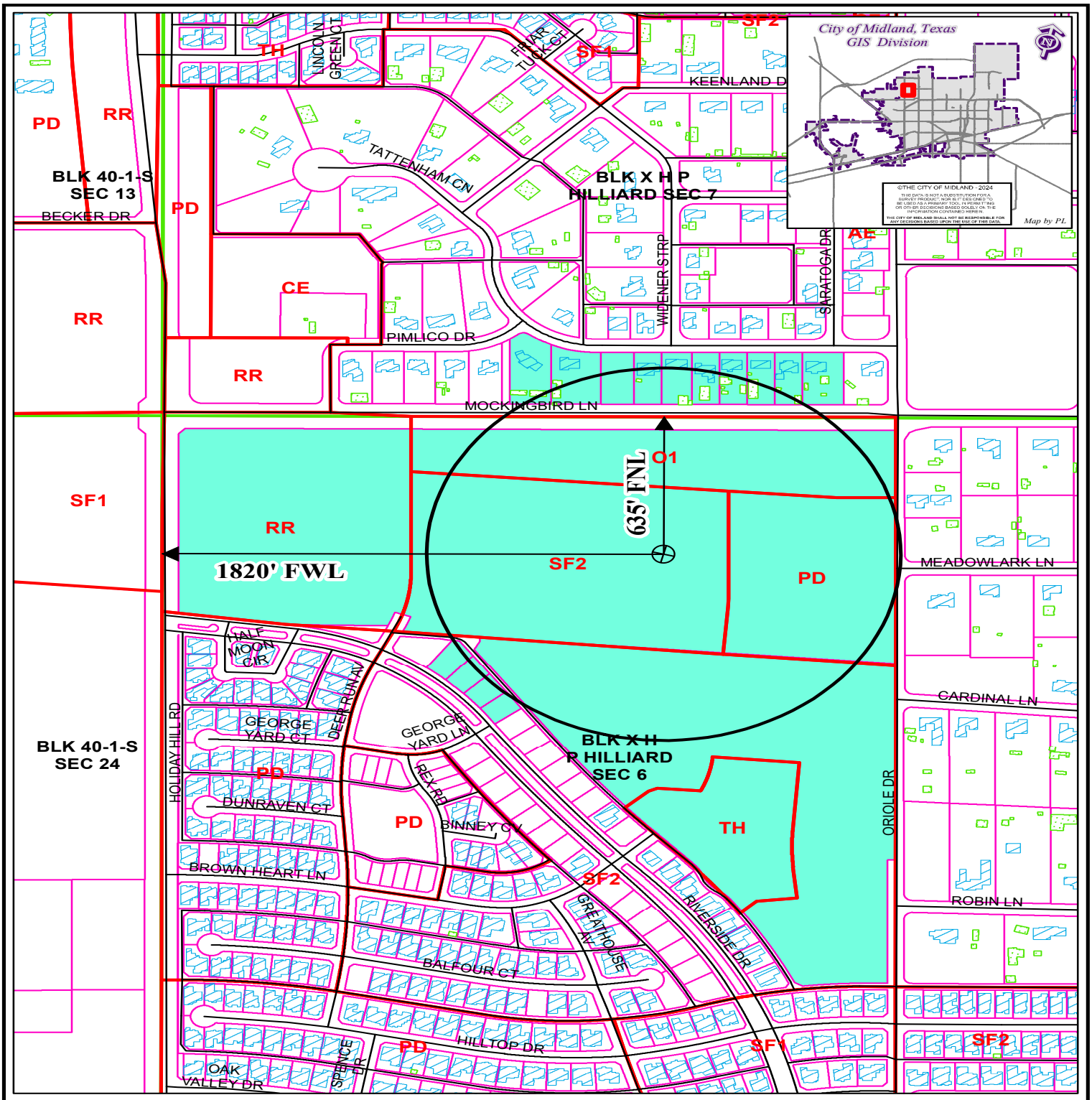
EXHIBIT 'E'

SURFACE OWNER

MOCKINGBIRD
MBE-302H

Situated in Section 6, A-15 Block X, H.P. Hilliard Survey, Midland County, Texas

Printed by: swolfson
4/25/2024 3:18:52 PM



LOCATION AND ZONING MAP

Oil-060404-2024 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 635' FNL and 1,820' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 635 feet south of Mockingbird Lane and 1,820 feet west of Holiday Hill Road.

MBE 302H

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
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CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
SF1, SF2, SF3	ONE-FAMILY DWELLING	CR, C1, C2, C3	COMMERCIAL
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MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
5/1/2024	FireBird Energy II, LLC	7900 W Hwy 80 Midland, TX, 79706

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 205-2000
Travis F. Thompson	7900 W Hwy 80 Midland, TX	Rep. Fax
Fee: $4,000.00 Rec'd Yes_X_ No___	**NOTE: All attachments need to bound and put in a binder before submitting.**	**Pages 1-4**

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): No. 2 (Tele.):

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

Greg Hughes (432)-559-7187
7900 W Hwy 80, Midland TX, 79706

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. Attached as Exhibit "C"
2.
3.

ATTACHED AS EXHIBIT C **is (a** ***Title Opinion by*** Dawson Parrish, PC ***, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from ,*** ***a licensed Texas Attorney)*** **indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

- Existing single family residences to the north
- Undeveloped and existing oil and gas facilities to the east
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ATTACHED AS EXHIBIT D **is Current Tax Roll from Midland Central Appraisal District), which lists**

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***ATTACHED AS EXHIBIT F* is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: MBE 401H

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Attached as Exhibit V.

Legal Description of Proposed Well Site:

SHL - 1,740' FWL and 635' FNL-Situated in Section 6, A-15, Block X, H.P. Hilliard Survey, Midland County, TX

BHL - 2,052' FEL and 2,546' FNL-Situated in Section 18,A-681,Block 39,T-1-S,T& P RR Co,Midland County,TX

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Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling:

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Electrical.

Description of water source to be used during Drilling:

Water will be stored in off-site frac ponds. Water source will be from an off-site water well or trucked if necessary.

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Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

Attached as Exhibit O

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FIREBIRD ENERGY II LLC

By: Travis F. Thompson
Its: CEO

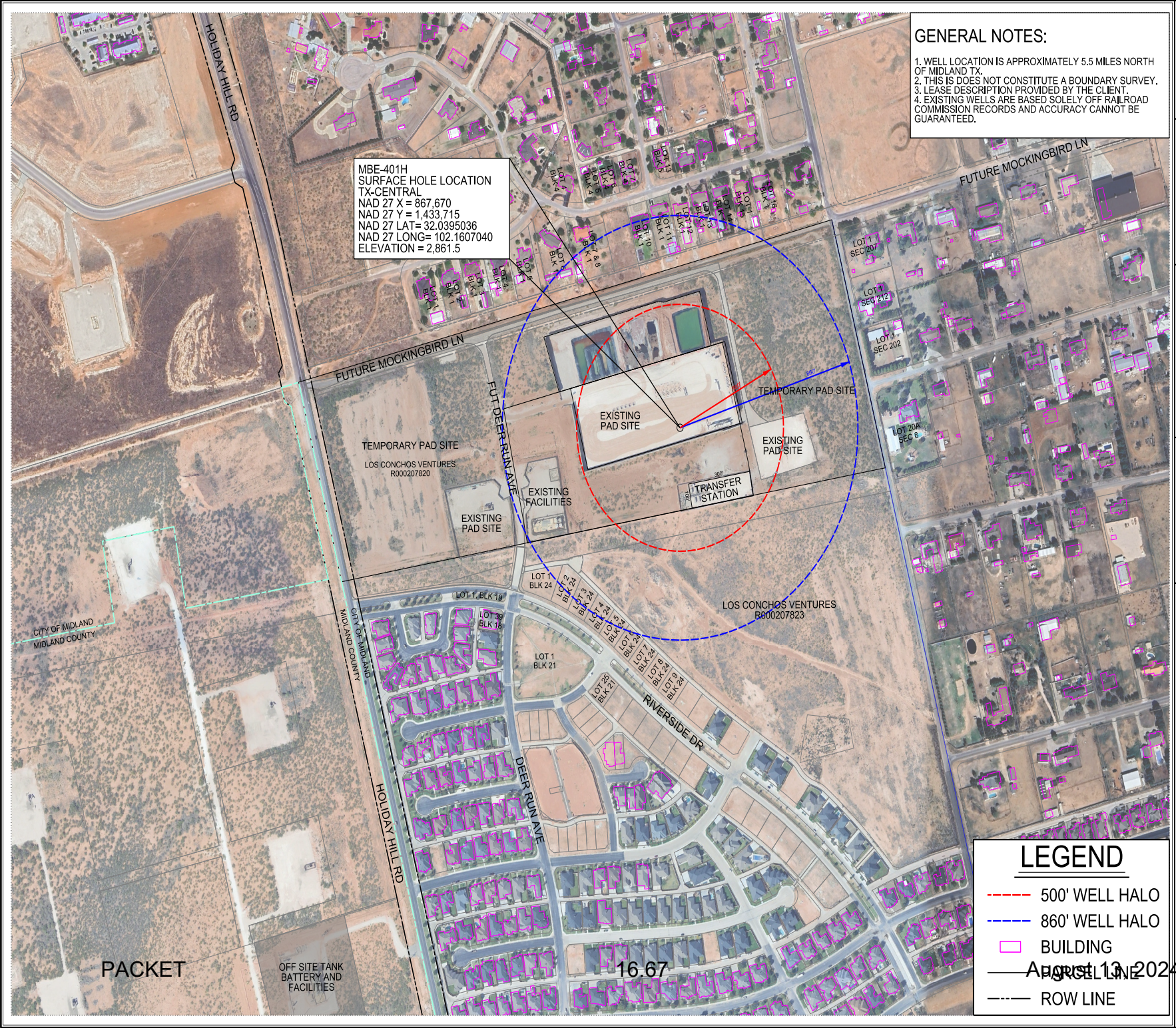
State of Texas)
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BRADEN WHITE
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 11/25/24
NOTARY ID 12865213-5

Notary Public, State of Texas

[SEAL]



MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:

FIREBIRD ENERGY II, LLC
7900 W HWY 80
MIDLAND, TX 79706
PHONE: (432) 205-2000

SITE PLAN PREPARED BY:

Westwood

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REV:	

SHEET CONTENT

EXHIBIT 'E'

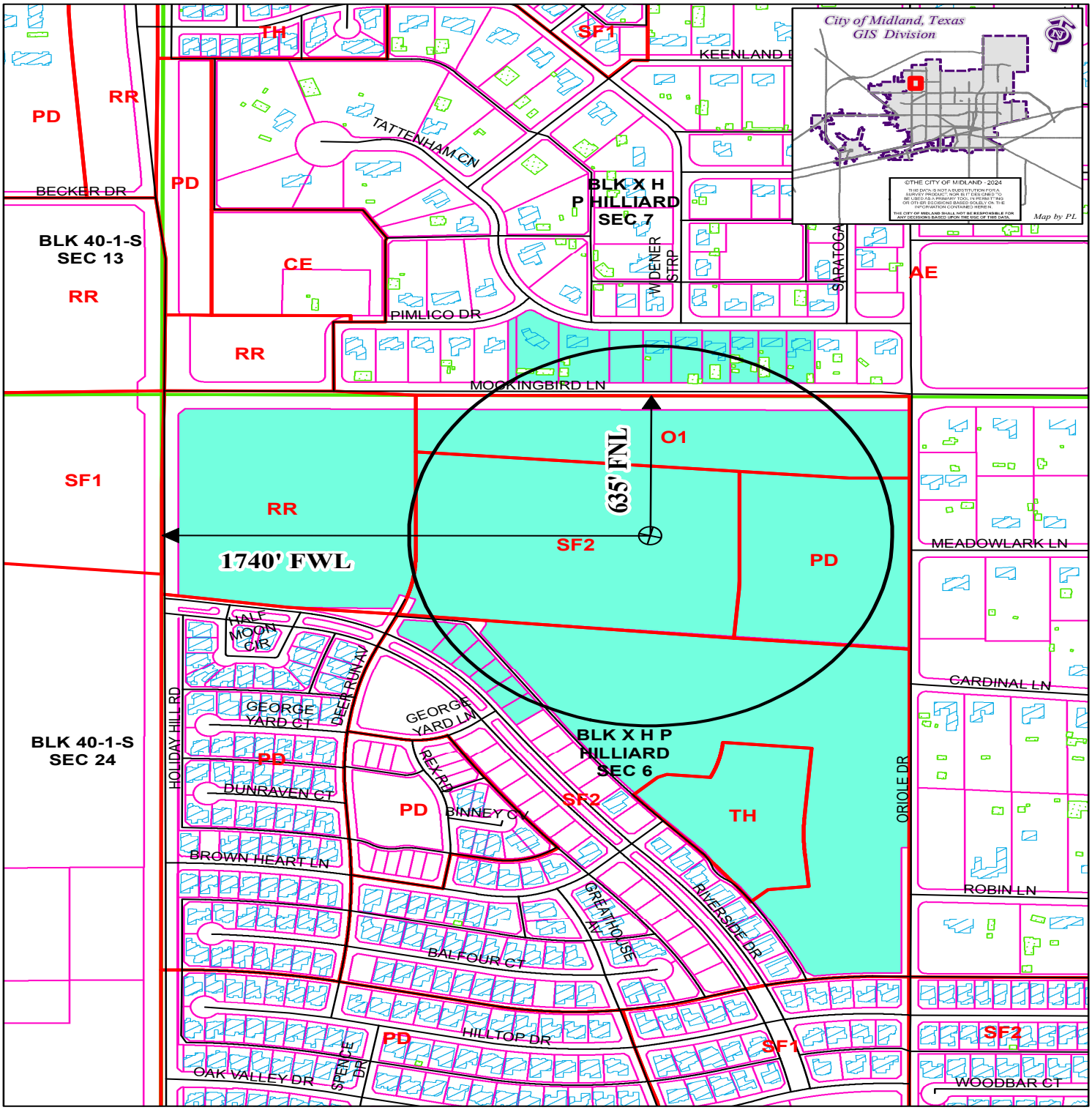
SURFACE OWNER

MOCKINGBIRD
MBE-401H

Situated in Section 6, A-15
Block X, H.P. Hilliard Survey,
Midland County, Texas

PACKET 16.67 August 13, 2024

4/25/2024 11:57:02 AM Printed by: JRHatcher



LOCATION AND ZONING MAP

Oil-060405-2024 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 635' FNL and 1,740' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 635 feet south of Mockingbird Lane and 1,740 feet west of Holiday Hill Road.

MBE 401H

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
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MF1, MF2	MULTIPLE FAMILY DWELLING		

MIDLAND
Planning Division

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(Pursuant to Midland City Ordinance No. 8769)

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Fee: $4,000.00 Rec'd Yes_X_ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

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Proposed Well Name: MBE 402H

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FIREBIRD ENERGY II LLC

By: Travis F. Thompson
Its: CEO

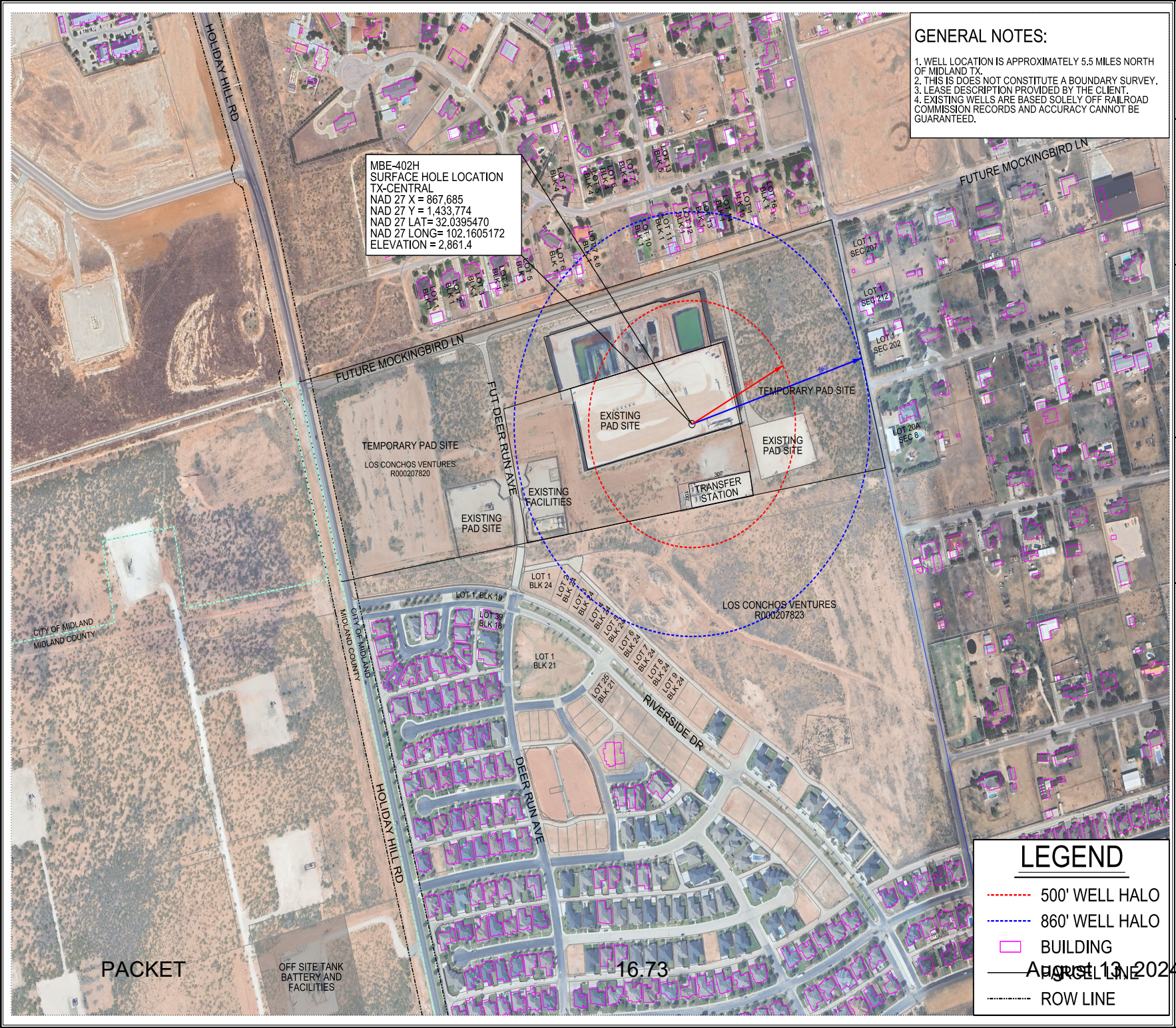
State of Texas)
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BRADEN WHITE
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 11/25/24
NOTARY ID 12865213-5

Notary Public, State of Texas

[SEAL]



GENERAL NOTES:

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LEGEND

- 500' WELL HALO
- 860' WELL HALO
- BUILDING
- PARCEL LINE
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MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:

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PHONE: (432) 205-2000

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DRAWN BY: JH	
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NORTH

0 200' 400' 600'
GRAPHIC SCALE

SHEET CONTENT

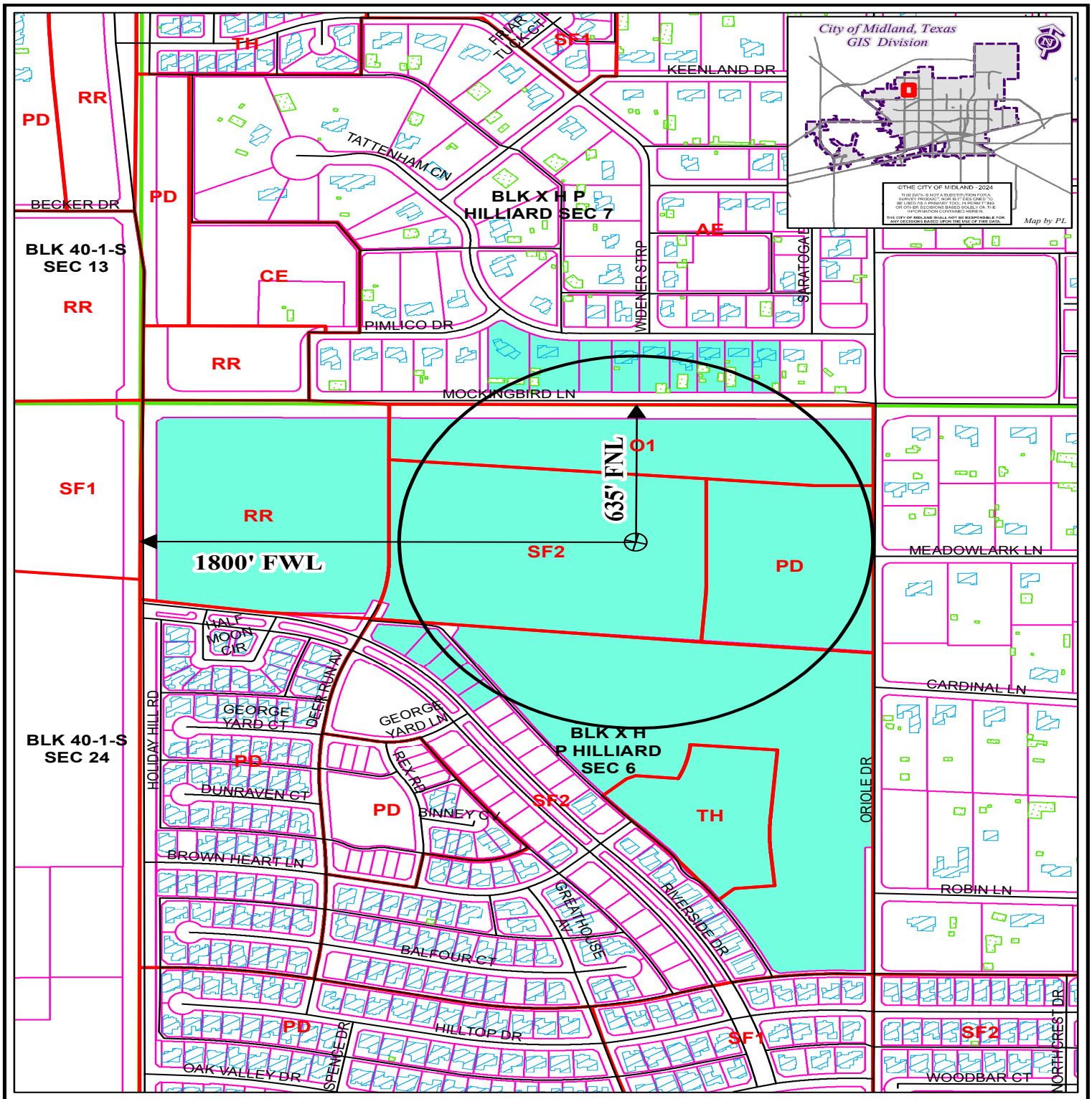
EXHIBIT 'E'

SURFACE OWNER

MOCKINGBIRD
MBE-402H

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Printed by: sewilson
4/26/2024 9:36:16 AM



LOCATION AND ZONING MAP

Oil-060406-2024 **Scale: 1" = 500'**

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MBE 402H

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MIDLAND
Planning Division

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(Pursuant to Midland City Ordinance No. 8769)

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***ATTACHED AS EXHIBIT E* is a *(map/p lat/satellite/aerial photo)* depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The *(map/p lat/satellite/aerial photo)* includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

***ATTACHED AS EXHIBIT F* is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: MBE 701H

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Attached as Exhibit V.

Legal Description of Proposed Well Site:

SHL - 1,840' FWL and 635' FNL-Situated in Section 6, A-15, Block X, H.P. Hilliard Survey, Midland County, TX

BHL - 812' FEL and 2,545' FNL-Situated in Section 18, A-681,Block 39, T-1-S,T& P RR Co, Midland County,TX

***ATTACHED AS EXHIBIT G* is the Location Site Plan [See § J(9)].**

***ATTACHED AS EXHIBIT H* is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

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***ATTACHED AS EXHIBIT M* is the Road Repair Agreement and *Letter of Credit/Certificate of Deposit/Surety Bond* in the amount of at least $25,000. *Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):* Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary $75,000 *letter of credit/certificate of deposit/surety bond* in conjunction with this request. [See § J(31)].**

***ATTACHED AS EXHIBIT N* is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling:

None.

(2) Opera tions:

Electrical.

Description of water source to be used during Drilling:

Water will be stored in off-site frac ponds. Water source will be from an off-site water well or trucked if necessary.

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Attached as Exhibit N

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

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FIREBIRD ENERGY II LLC

By: Travis F. Thompson
Its: CEO

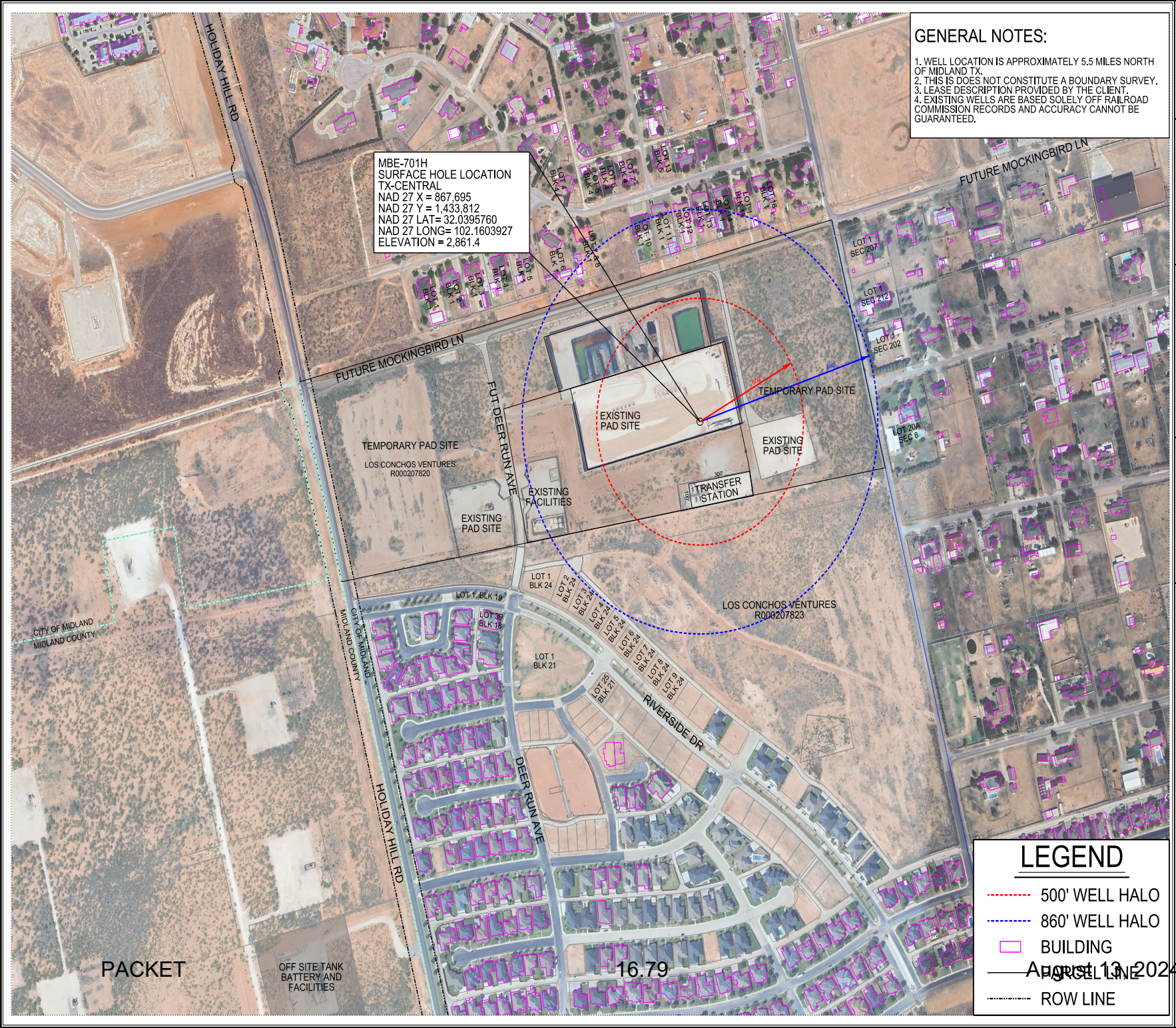
State of Texas)
)
County of Tarrant)

Travis F. Thompson, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

BRADEN WHITE
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 11/25/24
NOTARY ID 12865213-5

Notary Public, State of Texas

[SEAL]



GENERAL NOTES:

1. WELL LOCATION IS APPROXIMATELY 5.5 MILES NORTH OF MIDLAND TX.
2. THIS IS DOES NOT CONSTITUTE A BOUNDARY SURVEY.
3. LEASE DESCRIPTION PROVIDED BY THE CLIENT.
4. EXISTING WELLS ARE BASED SOLELY OFF RAILROAD COMMISSION RECORDS AND ACCURACY CANNOT BE GUARANTEED.

LEGEND

- 500' WELL HALO
- 860' WELL HALO
- BUILDING
- PARCEL LINE
- ROW LINE

MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:

FIREBIRD ENERGY II, LLC
7900 W HWY 80
MIDLAND, TX 79706
PHONE: (432) 205-2000

SITE PLAN PREPARED BY:

Westwood

9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350

TBPE FIRM NO. 12207
TBPLS FIRM NO. 10177700

WELLS AND PADS STAKED BY:

ARDURRA

ARDURRA
801 NAVIGATION BLVD., SUITE 300
CORPUS CHRISTI, TX 78408
PHONE: (361) 883-1984
TBPLS FIRM NO. 10194688

PROJECT NO:	NI0053171.00
FILE PATH:	NI0053171.00\Planning\CAD
DRAWN BY:	JH
REVIEWED BY:	CH
DATE:	04/24/2024
REV:	

NORTH

0 200' 400' 600'
GRAPHIC SCALE

SHEET CONTENT

EXHIBIT 'E'

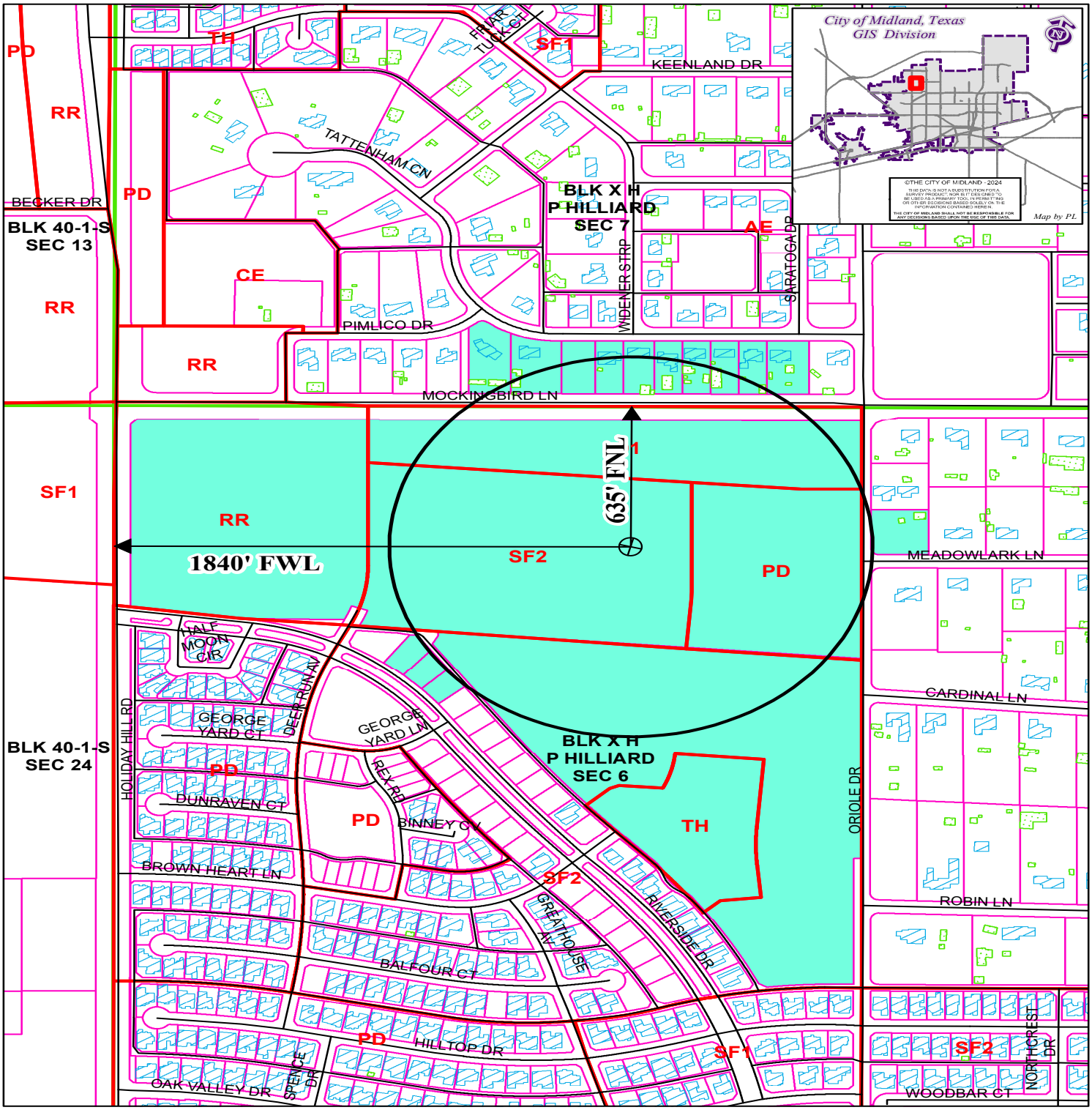
SURFACE OWNER

MOCKINGBIRD
MBE-701H

Situated in Section 6, A-15
Block X, H.P. Hilliard Survey,
Midland County, Texas

PACKET 16.79 August 13, 2024

Printed by: sewilson
5:26:04 PM
4/25/2024



LOCATION AND ZONING MAP

Oil-060408-2024 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 635' FNL and 1,840' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 635 feet south of Mockingbird Lane and 1,840 feet east of Holiday Hill Road.

MBE 701H

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	ANS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	C1, C2, C3	COMMERCIAL
MH	MOBILE HOME DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
TH	TOWNHOUSE DWELLING	LI	LIGHT INDUSTRY
2F	TWO-FAMILY DWELLING	HI	HEAVY INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING		

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
5/1/2024	FireBird Energy II, LLC	7900 W Hwy 80 Midland, TX, 79706

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 205-2000
Travis F. Thompson	7900 W Hwy 80 Midland, TX	Rep. Fax
Fee: $4,000.00 Rec'd Yes_X_ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

Greg Hughes (432)-559-7187
7900 W Hwy 80, Midland TX, 79706

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. Attached as Exhibit "C"
2.
3.

ATTACHED AS EXHIBIT C **is (a** ***Title Opinion by*** Dawson Parrish, PC ***, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from ,*** ***a licensed Texas Attorney)*** **indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

- Existing single family residences to the north
- Undeveloped and existing oil and gas facilities to the east
- Undeveloped, existing oil and gas facilities, future single family residences to the south
- Undeveloped and existing oil and gas facilities to the west

ATTACHED AS EXHIBIT D **is Current Tax Roll from Midland Central Appraisal District), which lists**

***ATTACHED AS EXHIBIT E* is a *(map/p lat/satellite/aerial photo)* depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The *(map/p lat/satellite/aerial photo)* includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

***ATTACHED AS EXHIBIT F* is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: MBE 702H

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Attached as Exhibit V.

Legal Description of Proposed Well Site:

SHL - 1700' FWL and 635' FNL-Situated in Section 6, A-15, Block X, H.P. Hilliard Survey, Midland County, TX

BHL - 2,335' FWL and 100' FSL-Situated in Section 18, A-681,Block 39,T-1-S,T& P RR Co, Midland County,TX

***ATTACHED AS EXHIBIT G* is the Location Site Plan [See § J(9)].**

***ATTACHED AS EXHIBIT H* is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

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Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling:

None.

(2) Opera tions:

Electrical.

Description of water source to be used during Drilling:

Water will be stored in off-site frac ponds. Water source will be from an off-site water well or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Attached as Exhibit N

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

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V. Additional Required Exhibits

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FIREBIRD ENERGY II LLC

By: Travis F. Thompson
Its: CEO

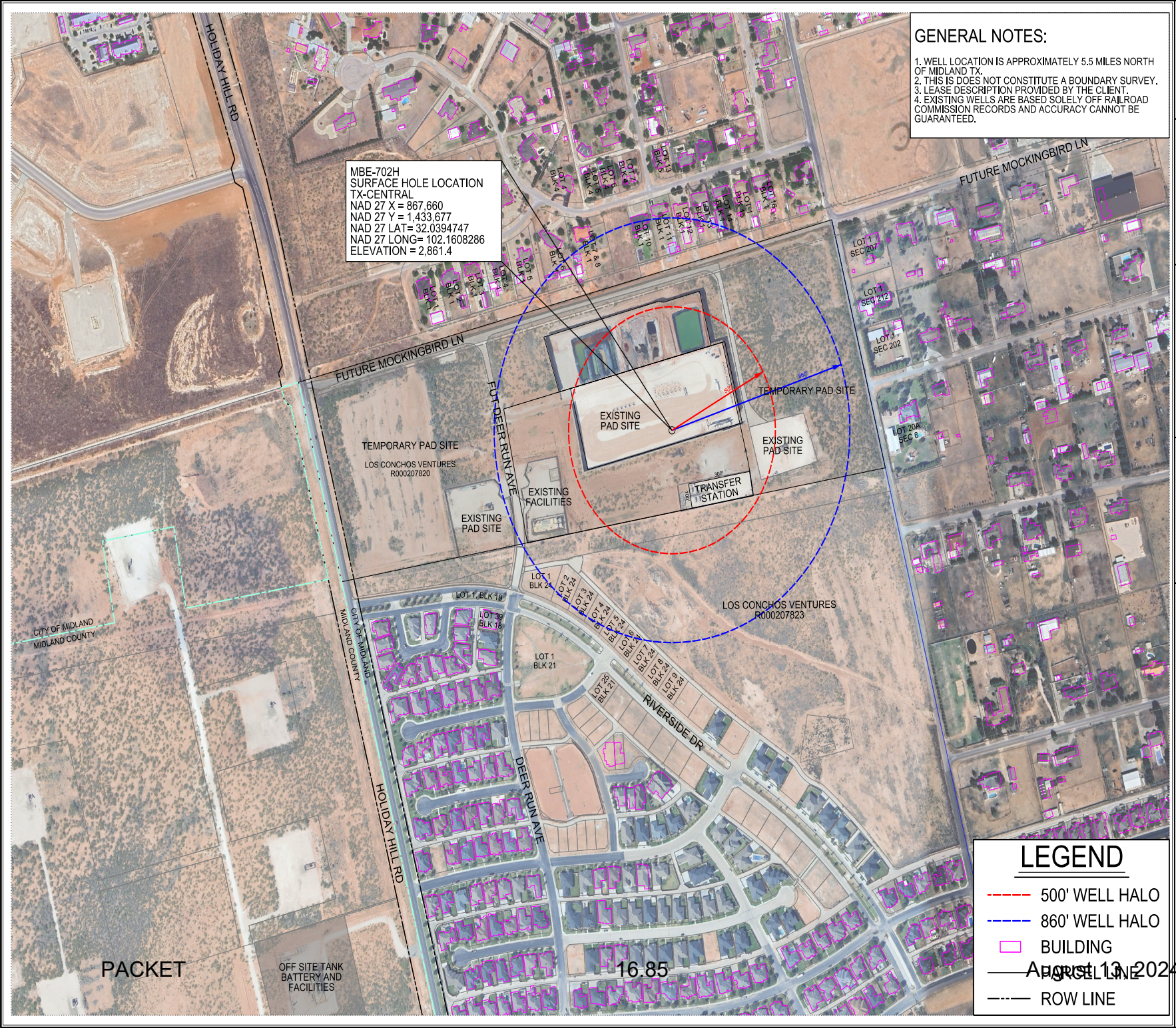
State of Texas)
)
County of Tarrant)

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BRADEN WHITE
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 11/25/24
NOTARY ID 12865213-5

Notary Public, State of Texas

[SEAL]



GENERAL NOTES:

1. WELL LOCATION IS APPROXIMATELY 5.5 MILES NORTH OF MIDLAND TX.
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LEGEND

- 500' WELL HALO
- 860' WELL HALO
- BUILDING
- PROPOSED LINE
- ROW LINE

MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:

FIREBIRD ENERGY II, LLC
7900 W HWY 80
MIDLAND, TX 79706
PHONE: (432) 205-2000

SITE PLAN PREPARED BY:

Westwood

9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350

TBPE FIRM NO. 12207
TBPLS FIRM NO. 10177700

WELLS AND PADS STAKED BY:

ARDURRA

ARDURRA
801 NAVIGATION BLVD., SUITE 300
CORPUS CHRISTI, TX 78408
PHONE: (361) 883-1984
TBPLS FIRM NO. 10194688

PROJECT NO:	NI0053171.00
FILE PATH:	NI0053171.00\Planning\CAD
DRAWN BY:	JH
REVIEWED BY:	CH
DATE:	04/24/2024
REV:	

NORTH

0 200' 400' 600'
GRAPHIC SCALE

SHEET CONTENT

EXHIBIT 'E'

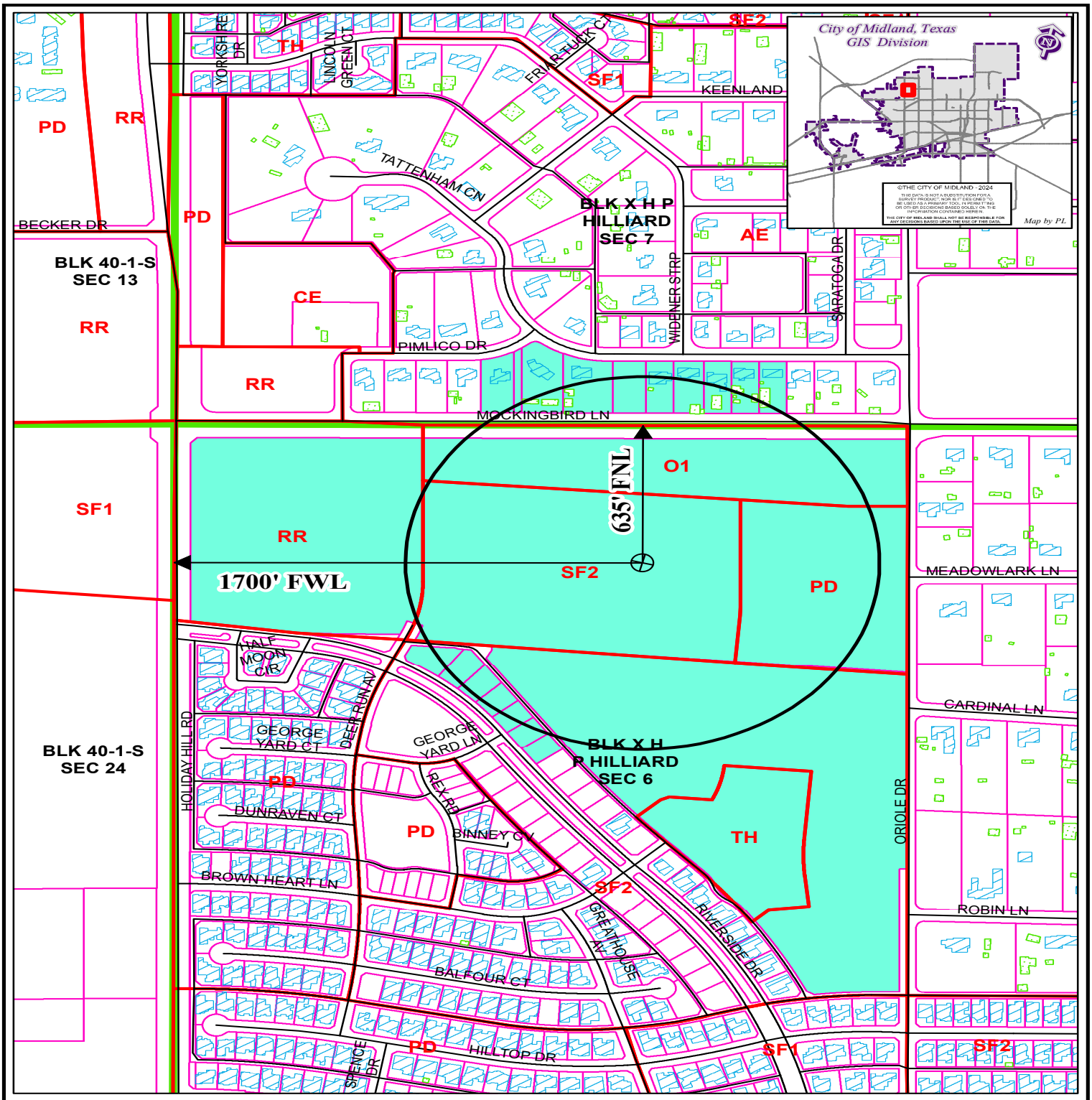
SURFACE OWNER

MOCKINGBIRD
MBE-702H

Situated in Section 6, A-15
Block X, H.P. Hilliard Survey,
Midland County, Texas

PACKET 16.85 August 13, 2024

Printed by: JRHatcher
4/26/2024 8:57:03 AM



LOCATION AND ZONING MAP

Oil-060409-2024 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 635' FNL and 1,700' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 635 feet south of Mockingbird Lane and 1,700 feet west of Holiday Hill Road.

MBE 702H

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE		NEIGHBORHOOD SERVICE
RR, SF1, SF2, SF3	ONE-FAMILY DWELLING	C1, C2, C3	COMMERCIAL
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2F	TWO-FAMILY DWELLING	HI	HEAVY INDUSTRY
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MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

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Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 205-2000
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Fee: $4,000.00 Rec'd Yes_X_ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

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Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

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Greg Hughes (432)-559-7187
7900 W Hwy 80, Midland TX, 79706

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).**

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Proposed Well Name: MBE-803H

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FIREBIRD ENERGY II LLC

By: Travis F. Thompson
Its: CEO

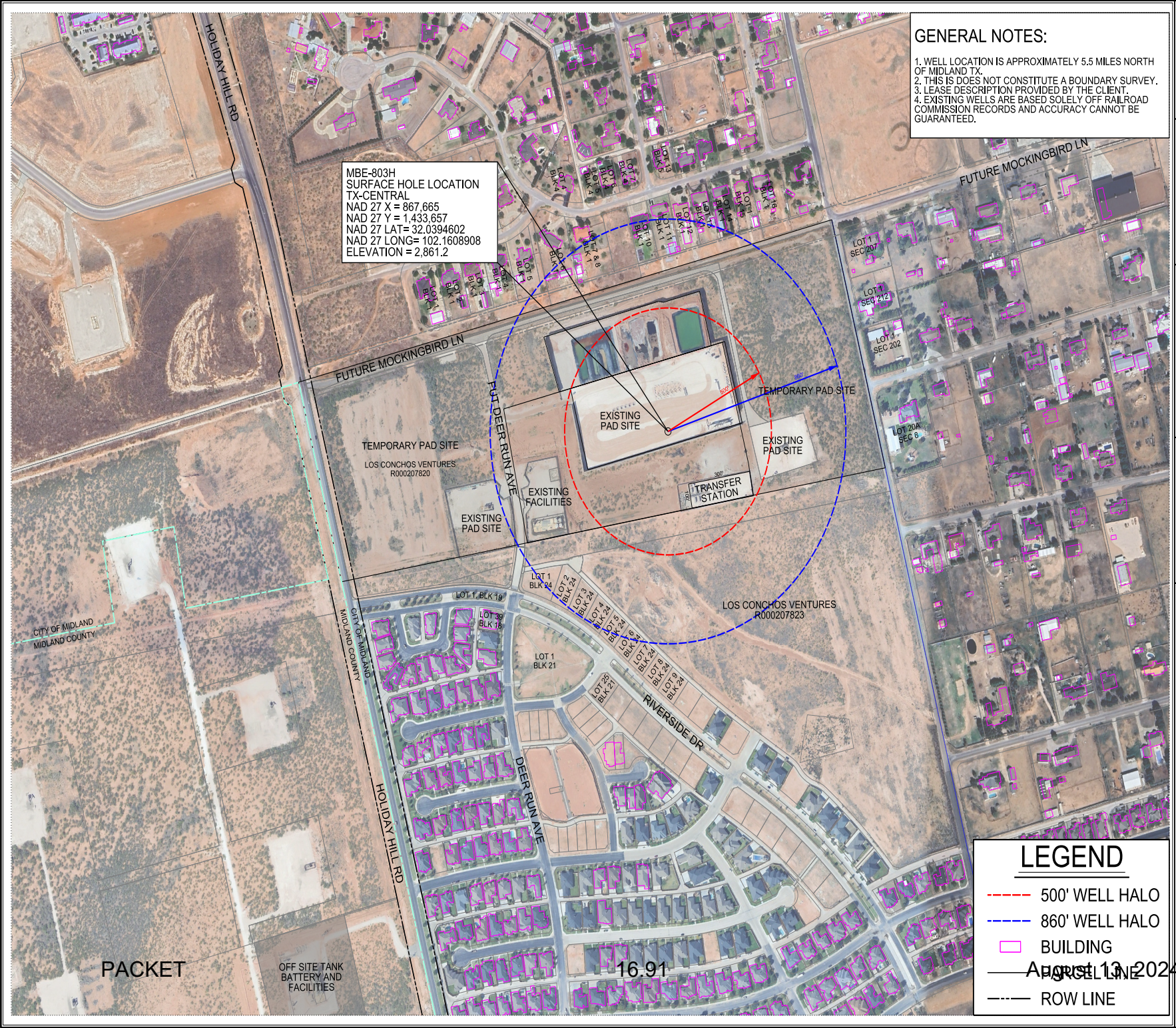
State of Texas)
)
County of Tarrant)

Travis F. Thompson, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

BRADEN WHITE
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 11/25/24
NOTARY ID 12865213-5

Notary Public, State of Texas

[SEAL]



GENERAL NOTES:

1. WELL LOCATION IS APPROXIMATELY 5.5 MILES NORTH OF MIDLAND TX.
2. THIS IS DOES NOT CONSTITUTE A BOUNDARY SURVEY.
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LEGEND

- 500' WELL HALO
- 860' WELL HALO
- BUILDING
- TRACT LINE
- ROW LINE

PACKET 16.91 August 13, 2024

MOCKINGBIRD PROSPECT

OIL AND GAS PERMIT
MIDLAND, TX

APPLICANT:

FIREBIRD ENERGY II, LLC
7900 W HWY 80
MIDLAND, TX 79706
PHONE: (432) 205-2000

SITE PLAN PREPARED BY:

Westwood

9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350

TBPE FIRM NO. 12207
TBPLS FIRM NO. 10177700

WELLS AND PADS STAKED BY:

ARDURRA

ARDURRA
801 NAVIGATION BLVD., SUITE 300
CORPUS CHRISTI, TX 78408
PHONE: (361) 883-1984
TBPLS FIRM NO. 10194688

PROJECT NO:	NI0053171.00
FILE PATH:	NI0053171.00\Planning\CAD
DRAWN BY:	JH
REVIEWED BY:	CH
DATE:	04/24/2024
REV:	

NORTH

0 200' 400' 600'
GRAPHIC SCALE

SHEET CONTENT

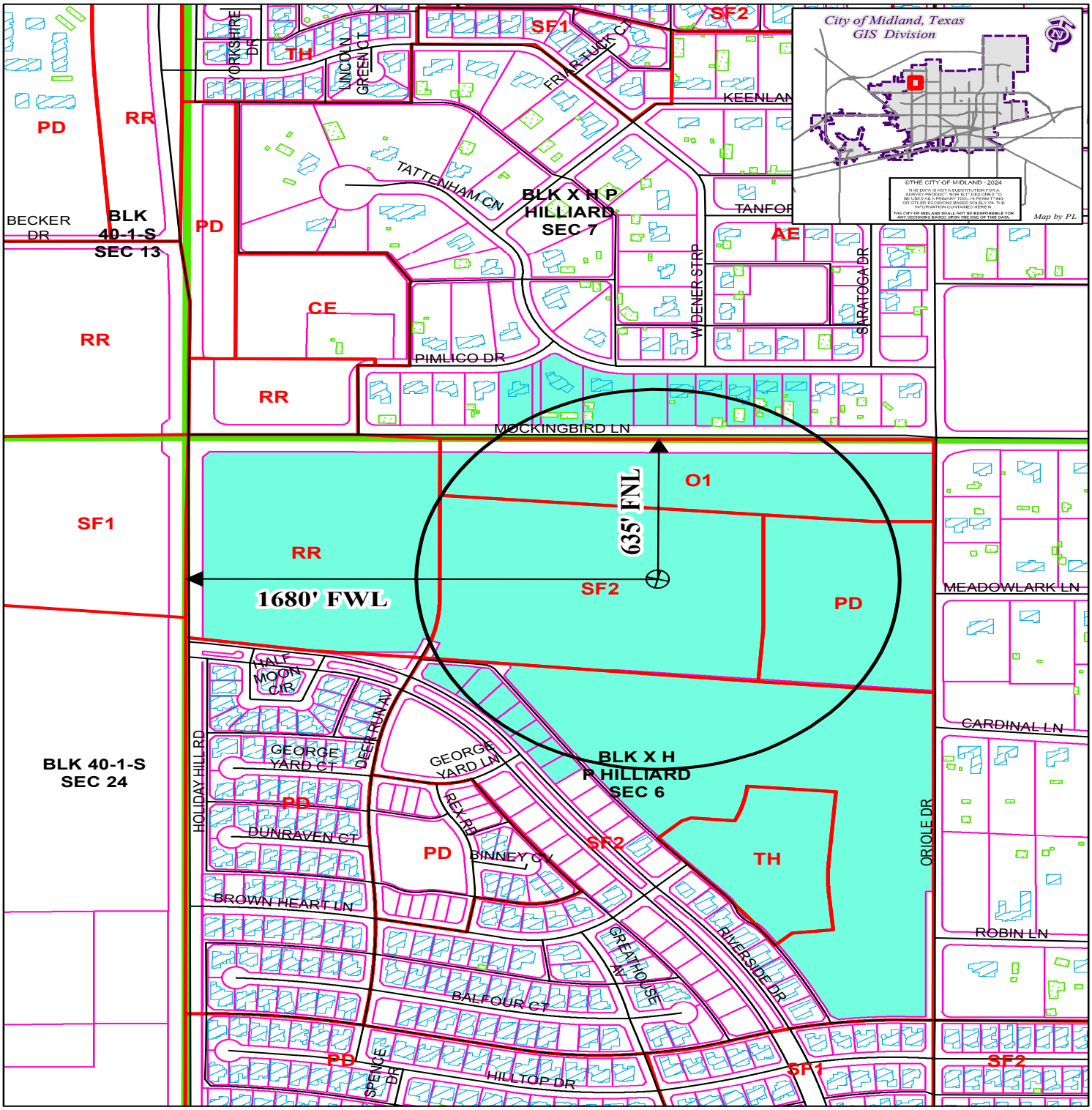
EXHIBIT 'E'

SURFACE OWNER

MOCKINGBIRD
MBE-803H

Situated in Section 6, A-15 Block X, H.P. Hilliard Survey, Midland County, Texas

Printed by: JHHatcher
9:45:04 AM
4/26/2024



LOCATION AND ZONING MAP

Oil-060410-2024 **Scale: 1" = 500'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 635' FNL and 1,680' FWL, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 635 feet south of Mockingbird Lane and 1,680 feet east of Holiday Hill Road.

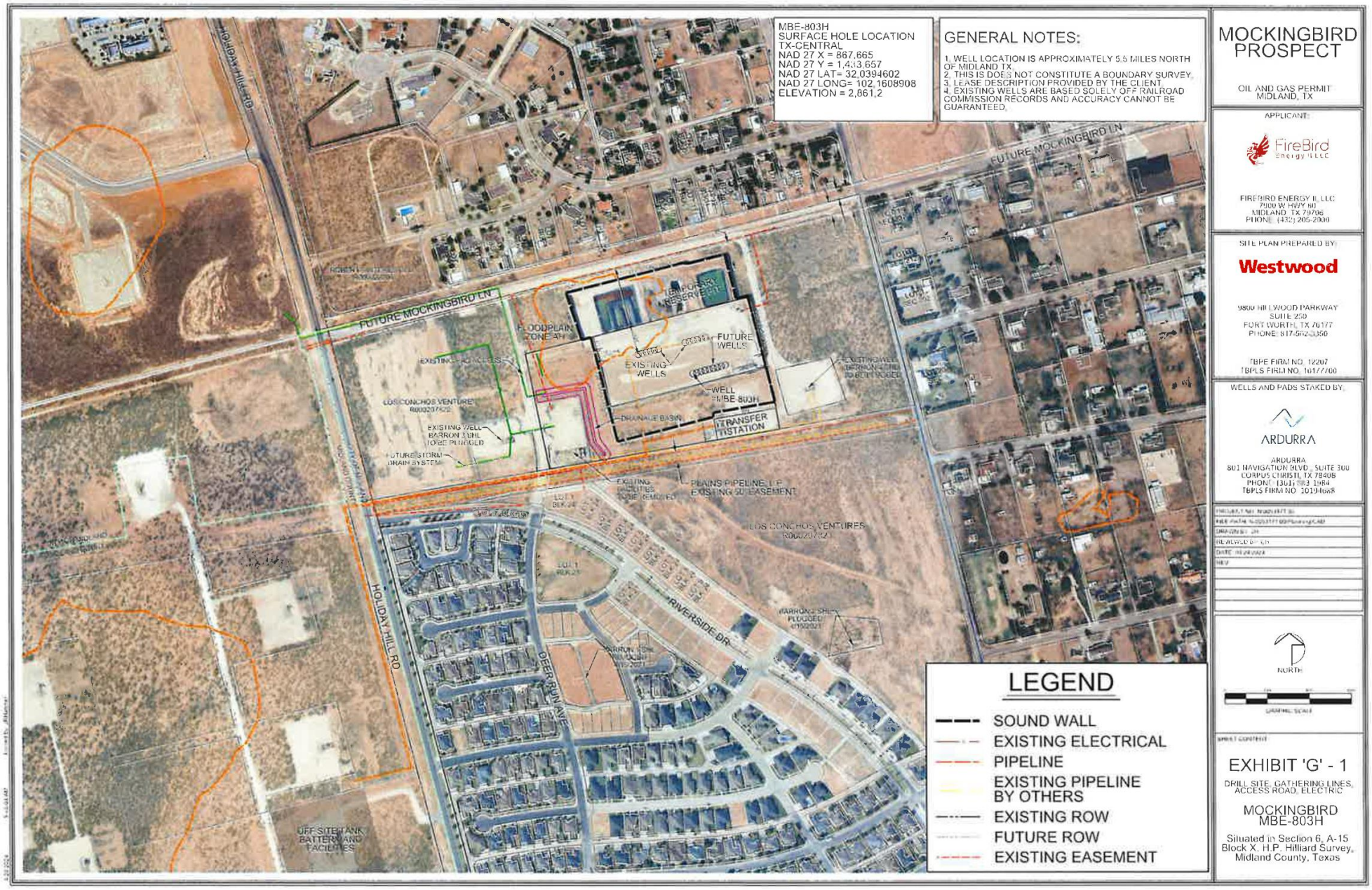
MBE-803H

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	CR	COMMUNITY 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


MBE-803H
SURFACE HOLE LOCATION
TX-CENTRAL
NAD 27 X = 867,665
NAD 27 Y = 1,433,657
NAD 27 LAT= 32.0394602
NAD 27 LONG= 102.1608908
ELEVATION = 2,861.2
GENERAL NOTES:
1. WELL LOCATION IS APPROXIMATELY 5.5 MILES NORTH OF MIDLAND TX.
2. THIS IS DOES NOT CONSTITUTE A BOUNDARY SURVEY.
3. LEASE DESCRIPTION PROVIDED BY THE CLIENT.
4. EXISTING WELLS ARE BASED SOLELY OFF RAILROAD COMMISSION RECORDS AND ACCURACY CANNOT BE GUARANTEED.
MOCKINGBIRD PROSPECT
OIL AND GAS PERMIT
MIDLAND, TX
APPLICANT:
FIREBIRD ENERGY II, LLC
7900 W HWY 80
MIDLAND, TX 79706
PHONE: (432) 205-2000
SITE PLAN PREPARED BY:
Westwood
9800 HILLWOOD PARKWAY
SUITE 250
FORT WORTH, TX 76177
PHONE: 817-562-3350
TBPE FIRM NO. 12207
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WELLS AND PADS STAKED BY:
ARDURRA
ARDURRA
801 NAVIGATION BLVD., SUITE 300
CORPUS CHRISTI, TX 78408
PHONE: (361) 882-1484
TBPLS FIRM NO. 20194668
FUTURE MOCKINGBIRD LN
HOLIDAY HILL RD
FLOODPLAIN ZONE AH
TEMPORARY RESERVE PIT
FUTURE WELLS
EXISTING WELLS
WELL #BE 803H
DRAINAGE BASIN
TRANSFER STATION
EXISTING ACCESS
LOS CONCHOS VENTURES
R000207522
EXISTING WELL BARRON 3 BHL TO BE PLUGGED
FUTURE STORM DRAIN SYSTEM
EXISTING FACILITIES TO BE REMOVED
PLAINS PIPELINE L.P.
EXISTING 50' EASEMENT
LOS CONCHOS VENTURES
R000207521
LOT 1 BLK 24
LOT 1 BLK 25
RIVERSIDE DR
DEER RUN AVE
HOLIDAY HILL RD
BARRON 3 BHL PLUGGED 4/19/2021
OFF SITE TANK BATTERY AND FACILITIES
LEGEND
SOUND WALL
EXISTING ELECTRICAL
PIPELINE
EXISTING PIPELINE BY OTHERS
EXISTING ROW
FUTURE ROW
EXISTING EASEMENT
NORTH
SHEET CONTENT:
EXHIBIT 'G' - 1
DRILL SITE, GATHERING LINES, ACCESS ROAD, ELECTRIC
MOCKINGBIRD MBE-803H
Situated in Section 6, A-15 Block X, H.P. Hilliard Survey, Midland County, Texas

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO FIREBIRD ENERGY II, LLC ("OPERATOR") TO DRILL NINE OIL AND GAS WELLS LOCATED IN SECTION 6, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 635 FEET SOUTH OF MOCKINGBIRD LANE AND BETWEEN 1,680 FEET AND 1,840 FEET EAST OF HOLIDAY HILL ROAD); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, "Police Regulations," Chapter 1, "General Offenses," of the City Code of Midland, Texas, so as to establish Section 23, "Oil and Gas Well Permits issued on or after January 1, 2010," which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted applications to the City of Midland to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on July 9, 2024; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's applications to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny permits to Operator to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of permits to Operator to drill oil and gas wells on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute permits, on behalf of the City of Midland, that will allow Operator to drill the following oil and gas wells:

> MBE 101H; MBE 201H; MBE 301H; MBE 302H; MBE 401H; MBE 402H; MBE 701H; MBE 702H; and MBE-803H;

located in Section 6, Block X, H.P. Hilliard Survey, City of Midland, Midland County, Texas. Said permits shall be in forms substantially similar to those attached hereto as Exhibits "A" through "I" and incorporated herein for all legal purposes.

SECTION THREE. That said permits do not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two

hereof.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 13, 2024, considered the application of FireBird Energy II, LLC ("Operator") dated May 1, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MBE 101H oil and gas well shall be 635 feet from the north line and 1,720 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from August 13, 2024, through August 13, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY 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 OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
3. No landscaping or irrigation is required.
4. Use of a lined and bermed reserve pit that is 350 feet x 777 feet is permitted for the drilling operations.
5. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2024.

FireBird Energy II, LLC

By: _____

Travis F. Thompson

CEO

OIL AND GAS WELL PERMIT

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The location of Operator's MBE 201H oil and gas well shall be 635 feet from the north line and 1,780 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

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3. No landscaping or irrigation is required.
4. Use of a lined and bermed reserve pit that is 350 feet x 777 feet is permitted for the drilling operations.
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In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

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GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2024.

FireBird Energy II, LLC

By: _____

Travis F. Thompson

CEO

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 13, 2024, considered the application of FireBird Energy II, LLC ("Operator") dated May 1, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MBE 302H oil and gas well shall be 635 feet from the north line and 1,820 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from August 13, 2024, through August 13, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY 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 OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
3. No landscaping or irrigation is required.
4. Use of a lined and bermed reserve pit that is 350 feet x 777 feet is permitted for the drilling operations.
5. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

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The location of Operator's MBE 401H oil and gas well shall be 635 feet from the north line and 1,740 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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By: _____

Travis F. Thompson

CEO

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The location of Operator's MBE 402H oil and gas well shall be 635 feet from the north line and 1,800 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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The location of Operator's MBE 701H oil and gas well shall be 635 feet from the north line and 1,840 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY 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 OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
3. No landscaping or irrigation is required.
4. Use of a lined and bermed reserve pit that is 350 feet x 777 feet is permitted for the drilling operations.
5. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2024.

FireBird Energy II, LLC

By: _____

Travis F. Thompson

CEO

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 13, 2024, considered the application of FireBird Energy II, LLC ("Operator") dated May 1, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MBE-803H oil and gas well shall be 635 feet from the north line and 1,680 feet from the west line, Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from August 13, 2024, through August 13, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

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GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2024.

FireBird Energy II, LLC

By: _____

Travis F. Thompson

CEO

City Council Meeting

Item Number: 17

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Bobby Wojciechowski,

Subject: **MOTION AUTHORIZING THE NEGOTIATION AND EXECUTION OF A RELOCATION AND REIMBURSEMENT AGREEMENT WITH ONEOK WESTEX TRANSMISSION, LLC FOR THE RELOCATION OF A PIPELINE TO ACCOMMODATE THE EXPANSION OF FAIRGROUNDS ROAD; AUTHORIZING THE NEGOTIATION AND EXECUTION OF ALL OTHER DOCUMENTS NECESSARY FOR SAID RELOCATION; AND APPROPRIATING THE SUM OF $895,310.00 FROM THE 2017 BOND FUND TO A PROJECT FUND FOR SAID RELOCATION (DISTRICT 1) (ENGINEERING SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

Purpose:

Motion is needed to approve the funding and execution of the relocation and reimbursement agreement with Oneok WesTex Transmission, LLC for the relocation of a pipeline for the extension of Fairgrounds Road from Loop 250 to Mockingbird Lane.

Recommended City Council Action:

Approve

Fiscal Impact:

$895,310.00

Strategic Priority:

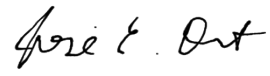
(Strengthen and Sustain our Infrastructure)

Discussion:

In February 2023 a conflict with a pipeline owned by ONEOK, Inc. was identified at the proposed Fairgrounds Road extension between Loop 250 and Mockingbird Lane. City staff quickly reached out to ONEOK to find solutions to the conflict. In late February City staff asked ONEOK to relocate their pipeline. ONEOK informed City staff that the cost to relocate the pipeline would be $921,000.00. After receiving this quote, City staff actively began discussing alternatives.

City staff contacted the engineering firm that designed the Fairgrounds Road extension in an effort to find the best solution. Several options were considered, including realigning the roadway to avoid the pipeline, however realigning the roadway was ruled out for several reasons. After much discussion and attempts to find the best solution, we determined that relocating the pipeline was the only solution. ONEOK and City staff visited, and the estimated costs were reduced to $895,310.00.

The loss of time since the conflict was identified will lead to higher construction costs. Any additional loss of time could lead to more increases in construction costs. Therefore, City staff recommends approving a Motion authorizing the negotiation and execution of a Relocation and Reimbursement Agreement with ONEOK WesTex Transmission, L.L.C. for the relocation of a pipeline to accommodate the expansion of Fairgrounds Road; authorizing the negotiation and execution of all other documents necessary for said relocation; and appropriating the sum of $895,310.00 from the 2019 CO to a project fund for said relocation.



City Manager's Office

City Council Meeting

Item Number: 18

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Gabe McClelland, Director

Subject: **RESOLUTION AUTHORIZING THE CITY MANAGER, THE DEPUTY CITY MANAGER, OR AN ASSISTANT CITY MANAGER (COLLECTIVELY, THE "CITY MANAGER'S OFFICE") TO PURCHASE A 1.619-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (THE "PROPERTY") TO BE USED FOR STREET AND PUBLIC UTILITY PURPOSES; AUTHORIZING THE CITY MANAGER'S OFFICE TO NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY TO PURCHASE SAID PROPERTY, PURCHASE A TITLE INSURANCE POLICY AND HOLD THE CLOSING; APPROPRIATING FUNDS; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, THE INSTRUMENT OF CONVEYANCE (DISTRICT 4) (ENGINEERING SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

Purpose:

To acquire the right of way in accordance with the City's Thoroughfare Plan, approved by the City Council in 2020. This right of way is necessary for the construction of a water main, wastewater main, drainage facilities, street improvements, and sidewalk improvements to support future development in the area.

Recommended City Council Action:

Approve

Fiscal Impact:

$700,000

Strategic Priority:

(Strengthen and Sustain our Infrastructure)

Discussion:

In accordance with the City's thoroughfare plan approved by City Council in 2020, this land acquisition is necessary to construct a water main, wastewater main, drainage facilities, street improvements, and sidewalk improvements for future development adjacent to SH 191. The development of this roadway will relieve traffic volume on other roadways and is a proactive approach to improving infrastructure prior to development.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY MANAGER, THE DEPUTY CITY MANAGER, OR AN ASSISTANT CITY MANAGER (COLLECTIVELY, THE "CITY MANAGER'S OFFICE") TO PURCHASE A 1.619-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (THE "PROPERTY") TO BE USED FOR STREET AND PUBLIC UTILITY PURPOSES; AUTHORIZING THE CITY MANAGER'S OFFICE TO NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY TO PURCHASE SAID PROPERTY, PURCHASE A TITLE INSURANCE POLICY AND HOLD THE CLOSING; APPROPRIATING FUNDS; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, THE INSTRUMENT OF CONVEYANCE

WHEREAS, the City's Engineering Services Department seeks to acquire a 1.619-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, said tract being more fully described in Exhibit "A", which is attached hereto and incorporated herein for all purposes (the "Property"), to be used for street and public utility purposes; and

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager, the Deputy City Manager, or an Assistant City Manager (collectively, the "City Manager's Office") to purchase the Property on behalf of the City of Midland; and

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager's Office to negotiate, execute and file all documents necessary to purchase the Property, purchase a title insurance policy and hold the closing;

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

SECTION ONE. That the City Manager's Office is hereby authorized and directed to purchase the Property on behalf of the City of Midland in an amount not to exceed $700,000.00.

SECTION TWO. That the City Manager's Office is hereby authorized and directed

to negotiate, execute and file all documents necessary to purchase the Property, as authorized in Section One hereof, purchase a title insurance policy and hold the closing.

SECTION THREE. That the sum of $700,000.00 shall be appropriated from the 2017 bond fund to a project account the purchase of the Property.

SECTION FOUR. That the City Comptroller is hereby authorized and directed (1) to pay for the Property from funds appropriated in accordance with Section Three hereof and (2) to pay for the title insurance policy and closing costs from funds available in the Engineering Services Operating Budget.

SECTION FIVE. That the City Secretary is hereby authorized and directed to file, or ensure that the title company files, the instrument of conveyance acquired in accordance with this resolution in the Deed Records of Midland County, Texas. A copy of said instrument of conveyance shall be maintained on file in the City Secretary's Office.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

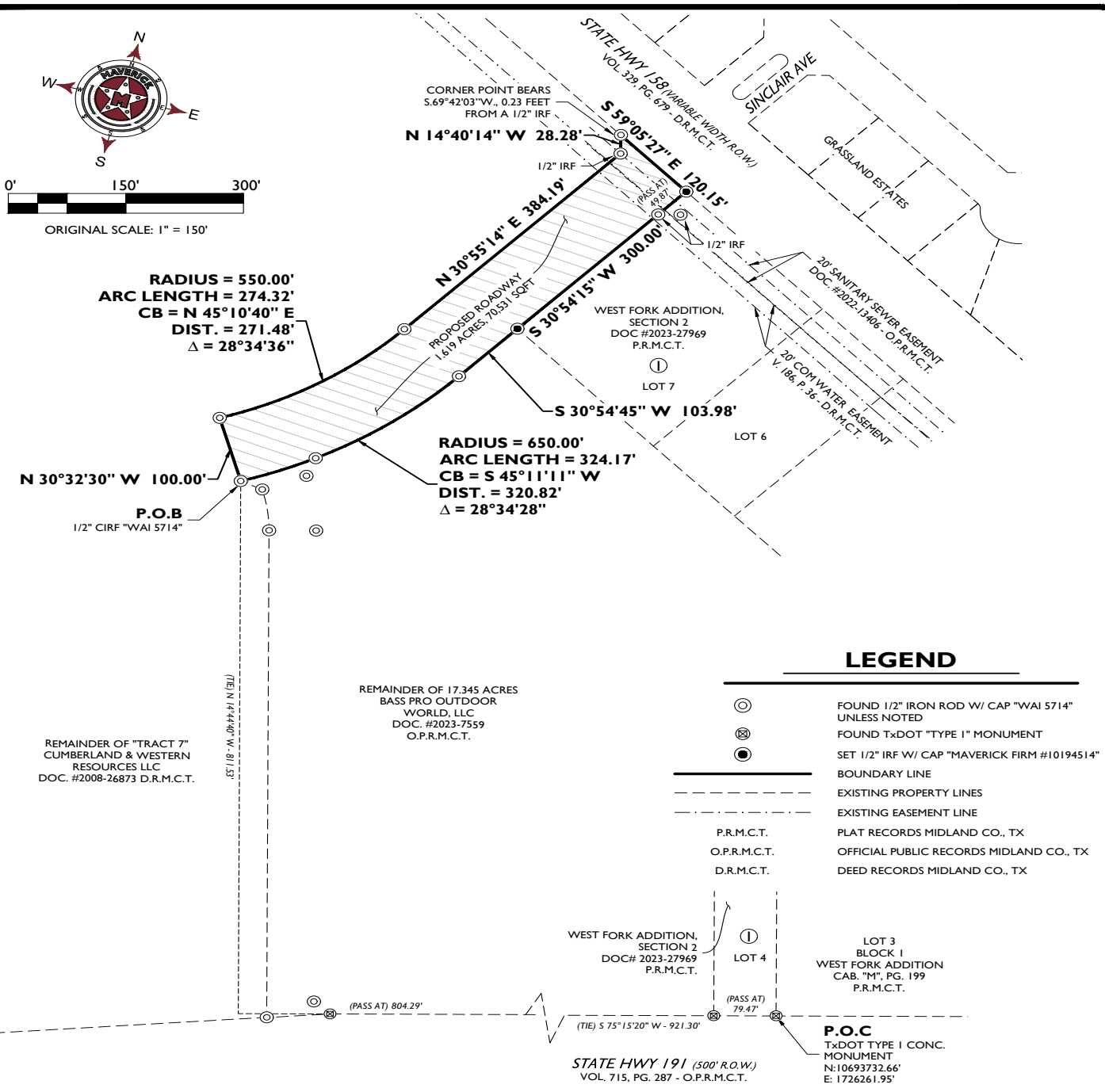
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jose Ortiz, Assistant City Manager

_____
Gabriel McClelland, Director of Engineering Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney



SURVEY NOTES:

1. *BASIS OF BEARING, COORDINATES, DISTANCES AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, CENTRAL ZONE, NORTH AMERICAN DATUM 1983, U.S. SURVEY FOOT WITH A CONVERGENCE ANGLE (theta) OF -0°56'51.02" AND A COMBINED SCALE FACTOR OF 0.999898361, AT A TxDOT ALUMINUM CAP CONTROL MARK LOCATED AT N.10693706.99, E.1726246.47, EL.2865.82.*
2. *1/2" IRON ROD WITH RED PLASTIC CAP MARKED "MAVERICK FIRM # 10194514" AT ALL SET CORNERS, UNLESS OTHERWISE SPECIFIED.*
3. *SEE DOCUMENTS OR ELECTRONIC DATA FILED IN THE OFFICE OF MAVERICK ENGINEERING FOR COMPLETE RECONSTRUCTION OF THIS SURVEY.*
4. *SEE PAGE TWO FOR METES & BOUND LEGAL DESCRIPTION*

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT THE SURVEY INFORMATION FOUND ON THIS PLAT WAS DERIVED FROM FIELD NOTES AND/OR ELECTRONIC DATA OF AN ACTUAL ON-THE-GROUND SURVEY MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT AND NO WARRANTY IS MADE OR INTENDED FOR THE LOCATION OF ANY OR ALL EASEMENTS THAT MAY EXIST WITHIN THE BOUNDS OF THIS SURVEY.

STATE OF TEXAS
REGISTERED
GREGORY W. SHOULTS
5356
PROFESSIONAL
LAND SURVEYOR

GREGORY W. SHOULTS, RPLS #5356
FIRM NO. TX #10194514

APRIL 1, 2024

"EXHIBIT A"

BOUNDARY SURVEY

OF A 1.619 ACRE TRACT OF LAND OUT OF A 17.345 ACRE TRACT OF LAND SITUATED IN SECTION 35, BLOCK 40, T-1-S, T&P RY. CO SURVEY, MIDLAND COUNTY, TEXAS

MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
ENGINEER FIRM #: F-15089
SURVEY FIRM #: 10194514
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

JOB NO.:	DRAWN BY:	REV 1:
220185	PH	04.01.24

SHEET 1 OF 2

Drawing : F:\2022\220185-HODGES ARCHITECTURE-MIDLAND 17-AC ALTA SURVEY\DRAWINGS\BOUNDARY SURVEY\220185 BNDY ROAD RESERVATION_V2.DWG Last Saved By: Paladin on 4/1/24

LEGAL DESCRIPTION

FIELD NOTE DESCRIPTION OF A 1.619 ACRE TRACT OF LAND, SITUATED IN SECTION 35, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS, BEING A PORTION OF THAT SAME 17.345 ACRE TRACT OF LAND AS DESCRIBED IN "EXHIBIT A" OF A SPECIAL WARRANTY DEED FILED AS DOCUMENT NUMBER 2023-7559 OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING *AT N.(Y):10693732.66, E.(X):1726261.95, A POINT WITHIN A TXDOT TYPE I CONCRETE MONUMENT (TYPE I) FOUND AND ACCEPTED AS BEING ON THE NORTH RIGHT-OF-WAY LINE OF STATE HIGHWAY 191, AS DESCRIBED IN VOLUME 715 ON PAGE 287 OF SAID "OPR", BEING THE SOUTHEAST CORNER OF LOT 4, BLOCK 1, WEST FORK ADDITION, SECTION 2, ACCORDING TO THE PLAT FILED AS INSTRUMENT NUMBER 2023-27969, PLAT RECORDS OF SAID MIDLAND COUNTY (PRMCT), AND THE SOUTHWEST CORNER OF LOT 3, BLOCK 1, WEST FORK ADDITION, ACCORDING TO THE PLAT FILED IN CABINET "M", ON PAGE 199, "PRMCT", WHENCE A ONE HALF INCH IRON ROD WITH A PLASTIC CAP MARKED "WAI 5714" (WAI) FOUND IN THE WEST LINE OF SAID 17.345 ACRE TRACT BEARS, S.75°15'20"W., 921.30 FEET AND N.14°44'40"W., 811.53 FEET FOR THE* ***POINT OF BEGINNING*** *AND THE SOUTHWEST CORNER HEREOF;*

THENCE *N.30°32'30"W., WITH THE WEST LINE OF SAID 17.345 ACRE TRACT 100.00 FEET TO A "WAI" FOUND FOR A POINT OF DEFLECTION FOR A CURVE TO THE LEFT HAVING A RADIUS OF 550.00 FEET AND A CHORD BEARING AND DISTANCE OF N.45°10'40"E., 271.48 FEET FOR THE NORTHWEST CORNER HEREOF;*

THENCE *ALONG THE ARC OF SAID CURVE BEING CONCAVE TO THIS TRACT, 274.32 FEET TO A "WAI" FOUND FOR A POINT OF TANGENCY HEREOF;*

THENCE *N.30°55'14"E., 384.19 FEET TO A ONE HALF INCH IRON ROD FOUND FOR A CUTBACK CORNER HEREOF;*

THENCE *N.14°40'14"W., 28.28 FEET TO A POINT ON THE SOUTHWEST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, THAT BEARS S.69°42'03"W., 0.23 FEET FROM A ONE HALF INCH IRON ROD FOUND, FOR THE NORTH NOTHWEST CORNER HEREOF;*

THENCE *S.59°05'27"E., ALONG SAID RIGHT OF WAY, A DISTANCE OF 120.15 FEET TO A ONE-HALF INCH IRON ROD WITH RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514" (RPC) SET FOR THE NORTHWEST CORNER OF LOT 7, BLOCK 1, OF SAID WEST FORK ADDITION, SECTION 2, AND FOR THE NORTHEAST CORNER HEREOF;*

THENCE *S.30°54'15"W., A DISTANCE OF 300.00 FEET TO AN "RPC" SET FOR THE SOUTHWEST CORNER OF SAID LOT 7, AND FOR AN INTERIOR CORNER IN THE EAST LINE HEREOF;*

THENCE *S.30°54'45"W., SEVERING SAID 17.345 ACRE TRACT, 103.98 FEET TO A "WAI" FOUND AT THE POINT OF DEFLECTION FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 650.00 FEET, AND A CHORD BEARING AND DISTANCE OF S.45°11'11"W., 320.82 FEET;*

THENCE *ALONG THE ARC OF SAID CURVE BEING CONVEX TO THIS TRACT, 324.17 FEET TO THE* ***POINT OF BEGINNING,*** *CONTAINING 1.619 ACRES, OR 70,531 SQUARE FEET OF LAND.*

SURVEY NOTES:

1. *BASIS OF BEARING, COORDINATES, DISTANCES AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, CENTRAL ZONE, NORTH AMERICAN DATUM 1983, U.S. SURVEY FOOT WITH A CONVERGENCE ANGLE (theta) OF -0°56'51.02" AND A COMBINED SCALE FACTOR OF 0.999898361, AT A TxDOT ALUMINUM CAP CONTROL MARK LOCATED AT N.10693706.99, E.1726246.47, EL.2865.82.*
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3. *SEE DOCUMENTS OR ELECTRONIC DATA FILED IN THE OFFICE OF MAVERICK ENGINEERING FOR COMPLETE RECONSTRUCTION OF THIS SURVEY.*
4. *SEE PAGE TWO FOR METES & BOUND LEGAL DESCRIPTION*

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STATE OF TEXAS
REGISTERED
GREGORY W. SHOULTS
5356
PROFESSIONAL
LAND SURVEYOR

GREGORY W. SHOULTS, RPLS #5356
FIRM NO. TX #10194514

APRIL 1, 2024

"EXHIBIT A"

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OF A 1.619 ACRE TRACT OF LAND OUT OF A 17.345 ACRE TRACT OF LAND SITUATED IN SECTION 35, BLOCK 40, T-1-S, T&P RY. CO SURVEY, MIDLAND COUNTY, TEXAS

MAVERICK
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1909 West Wall Street, Suite "K"
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ENGINEER FIRM #: F-15089
SURVEY FIRM #: 10194514
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

JOB NO.:	DRAWN BY:	REV 1:
220185	PH	04.01.24

PACKET 18.7 August 13, 2024

Drawing : F:\2022\220185-HODGES ARCHITECTURE-MIDLAND 17-AC ALTA SURVEY\DRAWINGS\BOUNDARY SURVEY\220185 BNDY ROAD RESERVATION_V2.DWG Last Saved By: Paladin on 4/1/24

City Council Meeting

Item Number: 19

Meeting Date: August 13, 2024

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF WAY LICENSE (24-495-011) WITH CIVITAS PERMIAN OPERATING, LLC REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 12 AND 17, BLOCK C-24, ABSTRACT 1028, LOVING COUNTY AND SECTION 2, BLOCK C-24, ABSTRACT 1396, PUBLIC SCHOOL LAND SURVEY, WINKLER COUNTY TEXAS (DISTRICT: NONE) (UTILITIES) (STRONG ECONOMY WITH MORE QUALITY JOBS)

Purpose:

This motion will provide the applicant a 30’ wide right of way to place an overhead 22 kV, Phase to ground power line on the City of Midland-owned T-Bar Ranch.

The applicant will need a 60’ wide temporary workspace in construction places.

This Right-of-Way License is proposed for a single ten (10) year period, Terms are consistent with the City’s standard license for facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

The following fees will be collected:

Application fee (one time): $1,000

10-year ROW License,

22 kV: 723.26 rods x $70 per rod ($50,628.20)

Total Collected: $51,628.20

Strategic Priority:

(Strong Economy with More Quality Jobs)

Discussion:

This private use, overhead power line is approximately 2 miles from any City of Midland water infrastructure and will not interfere with the T-Bar Ranch water operations in this area.

Certificates of Insurance (COI) with the City of Midland named as additional insured and a waiver of subrogation in favor of the City of Midland have been collected and are on file.

City Secretary to record completed License Agreement in Loving and Winkler Counties

City Manager's Office

RIGHT OF WAY LICENSE

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

Date:	August 14, 2024
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Tommy Gonzalez, City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	**Civitas Permian Operating, LLC**
Licensee's Representative:	**Greg Geist**
Licensee's Mailing Address:	6301 Holiday Hill Road, Suite 201 Midland, Texas 79707
Property:	As described in Article III below
License Number:	**24-495-011**

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

W I T N E S S E T H:

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

I. Term

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

B. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to terminate this License during the term of this License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of this License. All work and services under this License shall be suspended upon termination of this License.

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

II. Financial Consideration

A. License Fee. A license fee in the amount of FIFTY THOUSAND SIX HUNDRED TWENTY-EIGHT and 20/100 Dollars ($50,628.20) ("License Fee") shall be due and payable on or prior to the Commencement Date.

In the event Licensor terminates this License pursuant to the provisions of Section I.B., Licensor agrees to refund to Licensee a pro rata share of the License Fee actually paid by Licensee to Licensor for that portion of the remaining term that is being terminated. For the avoidance of doubt, the amount of any refund payable to Licensee pursuant to this paragraph shall be determined net of any costs or expenses incurred by Licensor in connection with Licensee's unfulfilled obligations under this License (if any).

B. Application Fee. On or prior to the Commencement Date of this License, Licensee shall pay a non-refundable one-time fee of One Thousand and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for this License.

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

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

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being ninety (90) feet in width of the locations with operations limited to areas as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described locations, a overhead 22Kv phase to ground power line and to have the right of ingress and egress at convenient points for such purpose and said construction width shall revert to thirty (30) feet after the power line is completed (the "Property"). **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the power line described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the power line described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

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

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

D. Pipeline Depth. Intentionally omitted.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, Licensee shall first obtain written approval of the specifications therefor from Licensor's Representative, which approval shall be at Licensor's Representative's sole discretion.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S POWER LINE OR OTHER PERMITTED FACILITIES ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If Licensor

requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances associated with the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically terminate and revert to Licensor, its successors or assigns, free and clear of any right, title, or interest of Licensee.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, alter, replace or remove any power line or other permitted facilities built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her prior written approval, which approval shall be at Licensor's Representative's sole discretion. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor workday. If not on a workday, Licensee shall notify Licensor's Representative on the first workday after repairs have begun.

J. Gates and Fences. Without altering or expanding the limitations on ingress, egress and access to the Property set forth in Paragraph A. of Article III above, Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed". Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

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

provision shall survive the termination or expiration of this License.

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

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

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

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace on, below or above the land covered by this License for any purpose allowed by law and deemed necessary or proper by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through any portion of the Property. In the event of such work in connection with said purposes it shall be deemed necessary or proper by Licensor, at Licensor's sole discretion, to alter, change, or relocate any power line or property of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor without any claim for reimbursement for the cost of the alteration, change or relocation or damages against Licensor. The relocation, change, or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration, change or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments. Without limiting the foregoing, Licensor expressly reserves the full right to grant other licenses, easements and/or rights-of-way in, on, across, along, over, under or through all or any portion of the Property. Licensor expressly reserves the right to use and grant to third parties the right to use all or any portion of the Property and the surface, subsurface or airspace on, below or above the Property for any purpose.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

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

Workers' Compensation: Statutory limits

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

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

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

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

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

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

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

Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LICENSEE, ITS SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S REPRESENTATIVES, AGENTS, ATTORNEYS, EMPLOYEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, PERSONAL INJURIES, PROPERTY DAMAGE, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION THEREWITH (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ALL ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY OR RESULTING FROM (IN WHOLE OR IN PART) THIS LICENSE, LICENSEE'S USE OF OR ACTIVITIES ON THE PROPERTY OR ANY OTHER PROPERTY OWNED BY LICENSOR, OR ANY ACT OR OMISSION OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER (COLLECTIVELY, "LIABILITIES"), EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF ANY INDEMNITEE. LICENSEE SHALL PROMPTLY ADVISE LICENSOR OF ANY ACTION, ADMINISTRATIVE OR LEGAL PROCEEDING OR INVESTIGATION TO WHICH THIS INDEMNIFICATION MAY APPLY, AND OF WHICH LICENSEE HAS RECEIVED NOTICE, AND LICENSEE, AT LICENSEE'S EXPENSE, SHALL ASSUME ON BEHALF OF LICENSOR (AND THE OTHER INDEMNITEES) AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE THEREOF WITH COUNSEL REASONABLY SATISFACTORY TO LICENSOR; PROVIDED, HOWEVER, THAT ANY INDEMNITEE SHALL HAVE THE RIGHT, AT ITS OPTION, TO BE REPRESENTED THEREIN BY COUNSEL OF ITS OWN SELECTION AND AT ITS OWN EXPENSE. IN THE EVENT OF FAILURE BY LICENSEE TO ASSUME THE DEFENSE OF LICENSOR IN ACCORDANCE WITH THIS INDEMNIFICATION, LICENSOR, AT ITS OPTION, AND WITHOUT RELIEVING LICENSEE OF ITS OBLIGATION HEREUNDER, MAY ASSUME SUCH DEFENSE, AFTER WRITTEN NOTICE THEREOF TO LICENSEE AND LICENSEE'S FAILURE TO RESPOND THERETO WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT OF SUCH NOTICE (SAID TEN (10) DAY PERIOD SHALL NOT APPLY IN ANY CASE WHERE IMMEDIATE ANSWERS, RESPONSES, OR OTHER AFFIRMATIVE ACTION IS REQUIRED TO PRESERVE THE RIGHTS OF LICENSOR) BUT ALL REASONABLE COSTS AND EXPENSES SO INCURRED BY LICENSOR IN THAT EVENT SHALL BE REIMBURSED BY LICENSEE TO LICENSOR, TOGETHER WITH INTEREST ON THE SAME FROM THE DATE ANY SUCH EXPENSE WAS PAID BY LICENSOR UNTIL REIMBURSED BY LICENSEE, AT THE RATE OF INTEREST PROVIDED TO BE PAID ON JUDGMENTS, BY THE LAWS OF THE STATE OF TEXAS.

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

WITHOUT LIMITING ANY OF THE FOREGOING, LICENSEE SHALL INDEMNIFY, PROTECT AND HOLD HARMLESS AND DEFEND EACH INDEMNITEE FROM ALL LIABILITIES, SUITS, ACTIONS, CLAIMS, DAMAGES, CAUSES OF ACTION, CHARGES, JUDGMENTS, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF ANY INDEMNITEE, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', REPRESENTATIVES', AGENTS', CONTRACTORS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE, INCLUDING, WITHOUT LIMITATION, SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S POWER LINE OR PERMITTED FACILITIES ON LICENSOR'S PROPERTY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY INDEMNITEE, INCLUDING RELATED ATTORNEY'S FEES.

WITHOUT LIMITING ANY OF THE FOREGOING, LICENSEE, ITS SUCCESSORS AND ASSIGNS, SHALL INDEMNIFY, PROTECT, DEFEND AND HOLD INDEMNITEES HARMLESS FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, PERSONAL INJURIES, PROPERTY DAMAGE, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION THEREWITH (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ALL ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY OR RESULTING FROM (IN WHOLE OR IN PART) (i) FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER (COLLECTIVELY, THE

"INDEMNIFYING PARTIES"), TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY INDEMNIFYING PARTY'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR (ii) ANY INDEMNIFYING PARTY'S HANDLING, STORING, RELEASING OR TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

IT IS THE INTENTION OF THE PARTIES HERETO THAT THE PROVISIONS OF THIS INDEMNIFICATION SHALL APPLY TO AND PROTECT EACH INDEMNITEE FROM THE CONSEQUENCES OF STRICT LIABILITY IMPOSED OR THREATENED TO BE IMPOSED ON SUCH INDEMNITEE, AS WELL AS FROM THE CONSEQUENCES OF THE NEGLIGENCE OF ANY INDEMNITEE, WHETHER OR NOT THAT NEGLIGENCE IS A CONTRIBUTING OR CONCURRING CAUSE OF ANY LIABILITY INDEMNIFIED AGAINST IN THIS ARTICLE IV.B.

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

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

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

Licensee shall be an independent contractor under this License and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way. The provisions of this subparagraph (D.) shall not be deemed or construed as contradicting, limiting or conflicting with the provisions of subparagraph (M.) below.

E. Attorney Fees. SHOULD LICENSOR BE REQUIRED TO RESORT TO EMPLOYMENT OF ATTORNEYS TO ENFORCE THIS LICENSE, OR ANY OF ITS RIGHTS UNDER THIS LICENSE, LICENSOR SHALL BE ENTITLED TO REIMBURSEMENT FROM LICENSEE FOR LICENSOR'S ATTORNEYS' FEES. LICENSEE SHALL REIMBURSE LICENSOR FOR LICENSOR'S ATTORNEYS' FEES INCURRED IN CONNECTION WITH THE PREPARATION AND NEGOTIATION OF THIS LICENSE. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS LICENSE, OR THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE. WITHOUT LIMITING THE FOREGOING, LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, OR TO THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

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

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

F. Governing Law & Venue. All performance and payments made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License, or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License

shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

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

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

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

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

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

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

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

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties hereto agree that this License does not constitute a "Contract" for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the maximum extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties hereto expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third-party lacking privity to this License.

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

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

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

Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

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

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

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

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

[Signature Pages Follow]

LICENSOR:
CITY OF MIDLAND, TEXAS

By: _____
Tommy Gonzalez, City Manager

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Carl Craigo, Director of Utilities

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
CIVITAS PERMIAN OPERATING, LLC

By: _____
Printed Name: Greg Geist
Title: Vice President, Land - Permian

THE STATE OF Texas §
§
COUNTY OF Midland §

BEFORE ME, the undersigned authority, on this 25th day of July, 2024 personally appeared Greg Geist an officer of Civitas Permian Operating, LLC, known to me to be the person and official whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 25th day of July, 2024.

GLEN MORRISON
Notary Public, State of Texas
Comm. Expires 02-16-2025
Notary ID 131008005

_____
Notary Public, State of Texas

EXHIBIT "A"

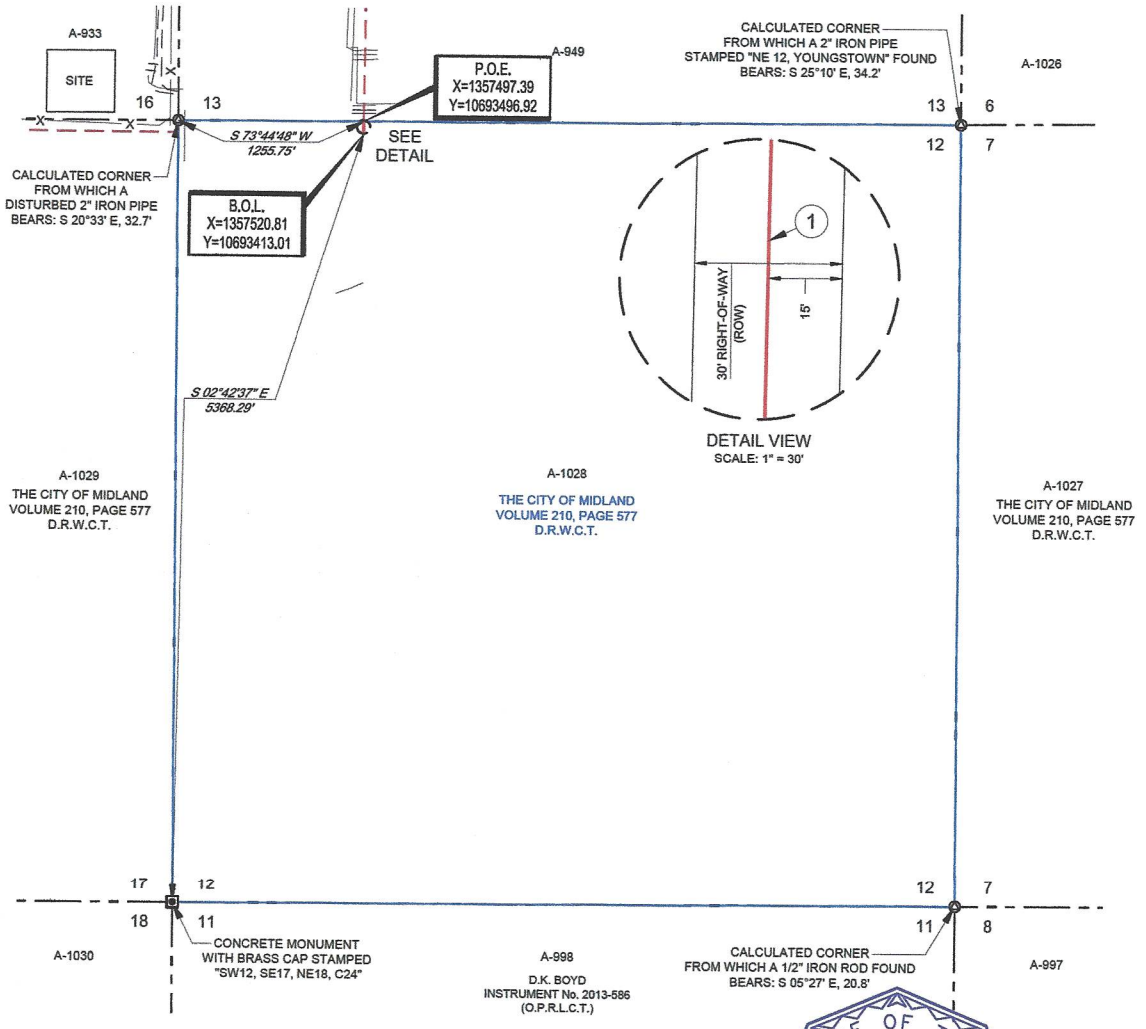
SECTION 12, BLOCK C-24,
PUBLIC SCHOOL LAND SURVEY, A-1028
LOVING COUNTY, TEXAS

TOTAL LENGTH: 87.12 FEET OR 5.28 RODS
RIGHT-OF-WAY: 0.06 ACRES

CIVITAS

SCALE: 1" = 1000'
0' 500' 1000'

LEGEND
- SECTION LINE
- SURVEYED BASELINE
- CONTINUED BASELINE
- EDGE OF RIGHT-OF-WAY
- TRACT BORDER
- ROAD WAY
- FENCE LINE
- EXISTING OIL PIPELINE
- OHE OVERHEAD ELECTRIC
- MONUMENT
- POINT OF INTERSECTION
- CALCULATED CORNER



LINE TABLE

LINE	BEARING	DISTANCE
1	N 15°35'39" W	87.12'

STATE OF TEXAS
REGISTERED
JOHN R. ANDERSON
6442
PROFESSIONAL
LAND SURVEYOR

TOPOGRAPHIC
LOYALTY INNOVATION LEGACY
481 WINSCOTT ROAD, Ste. 200 • BENBROOK, TEXAS 76126
TELEPHONE: (817) 744-7512 • FAX (817) 744-7554
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

John R. Anderson 6/20/2024
John R. Anderson, R.P.L.S. No. 6442
SURVEYED ON THE GROUND: December 15, 2022
Field note description of even date accompanies this plat.

CONNIE MACK OVERHEAD ELCTRIC	REVISION: INT	DATE
	JRA	2/7/2023
DATE: 01/10/2023		
FILE: EP_CONNIE_MACK_OHE_SEC_12_REV2		
DRAWN BY: CSG		
SHEET: 1 OF 2		

NOTES:
1. ORIGINAL DOCUMENT SIZE: 8.5" X 14"
2. ALL BEARINGS, DISTANCES, ACREAGES AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE (4203), U.S. SURVEY FEET, NORTH AMERICAN DATUM 1983 (NAD83).
3. CERTIFICATION IS MADE ONLY TO THE LOCATION OF THIS RIGHT-OF-WAY, IN RELATION TO THE EVIDENCE FOUND DURING A FIELD SURVEY, MADE ON THE GROUND, UNDER MY SUPERVISION, AND USING DOCUMENTATION PROVIDED BY CIVITAS RESOURCES LLC. ONLY UTILITIES/RIGHT-OF-WAYS THAT WERE VISIBLE ON THE DATE OF THIS SURVEY, WITHIN/ADJOINING THIS RIGHT-OF-WAY, HAVE BEEN LOCATED AS SHOWN HEREON OF WHICH I HAVE KNOWLEDGE. THIS CERTIFICATION IS LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS PLAT AND IS NON-TRANSFERABLE, AND MADE FOR THIS TRANSACTION ONLY.
4. ADJOINER INFORMATION SHOWN FOR INFORMATIONAL PURPOSES ONLY.
5. B.O.L./P.O.B. = BEGINNING OF LINE/POINT OF BEGINNING
6. E.O.L./P.O.E. = END OF LINE/POINT OF EXIT
7. D.R.W.C.T. = DEED RECORDS, WINKLER COUNTY, TEXAS
8. O.P.R.L.C.T. = OFFICIAL PUBLIC RECORDS, LOVING COUNTY, TEXAS

S:\SURVEY\CIVITAS\CONNIE_MACK_1_WELL_PAD\FINAL_PRODUCTS\EP_CONNIE_MACK_OHE_SEC_12_REV2.DWG 6/20/2024 10:20:57 AM janderson2

CIVITAS

EXHIBIT "A"
LOVING COUNTY, TEXAS
30 FOOT WIDE RIGHT-OF-WAY DESCRIPTION

January 10, 2023
Sheet 2 of 2

A 30 foot wide Right-of-Way (ROW),15 feet each side of a surveyed baseline as shown on sheet 1 of 2 of this Exhibit "A", being located in Section 12, Block C-24, Public School Land Survey, Abstract No. 1028, Loving County, Texas, and being located in a tract of land described in deed to The City of Midland, recorded in Volume 210, Page 577, Deed Records, Winkler County, Texas (D.R.W.C.T.), said 30 foot wide Right-of-Way being more particularly described along said surveyed baseline by centerline description as follows:

BEGINNING (P.O.B.) at a point within said Section 12, from which a concrete monument with brass cap stamped "SW 12, SE 17, NE 18, C 24" found for the Southwest corner of said Section 12 bears: South 02°42'37" East, a distance of 5,368.29;

THENCE North 15°35'39" West, a distance of 87.12 feet to a point on the North line of said Section 12, being the POINT OF EXIT (P.O.E.) and the END OF THIS DESCRIPTION, from which the Northwest corner of said Section 12 bears: South 73°44'48" West, a distance of 1,255.75 feet, from said Northwest corner a disturbed 2" iron pipe bears: S 20°33' E, 32.7 feet.

The above surveyed baseline traverses the said Section 12 for a total distance of 87.12 feet or 5.28 rods.

All bearings, distances, acreages and coordinates values contained herein are grid, based upon the Texas State Plain Coordinate System, Central Zone (4203), in U.S. Survey Feet, North American Datum 1983 (NAD83).

Plat of even date accompanies this field note description.

STATE OF TEXAS
REGISTERED
JOHN R. ANDERSON
6442
PROFESSIONAL
LAND SURVEYOR

John R. Anderson 6/20/2024

John R. Anderson, R.P.L.S. No. 6442
SURVEYED ON THE GROUND: December 15, 2022

Topographic, Co.
481 Winscott Road
Suite 200
Benbrook, TX 76126

S:\SURVEY\CIVITAS\CONNIE_MACK_1_WELL_PAD\FINAL_PRODUCTS\EP_CONNIE_MACK_ONE_SEC_12_REV2.DWG 6/20/2024 10:20:57 AM janderson2

EXHIBIT "A"

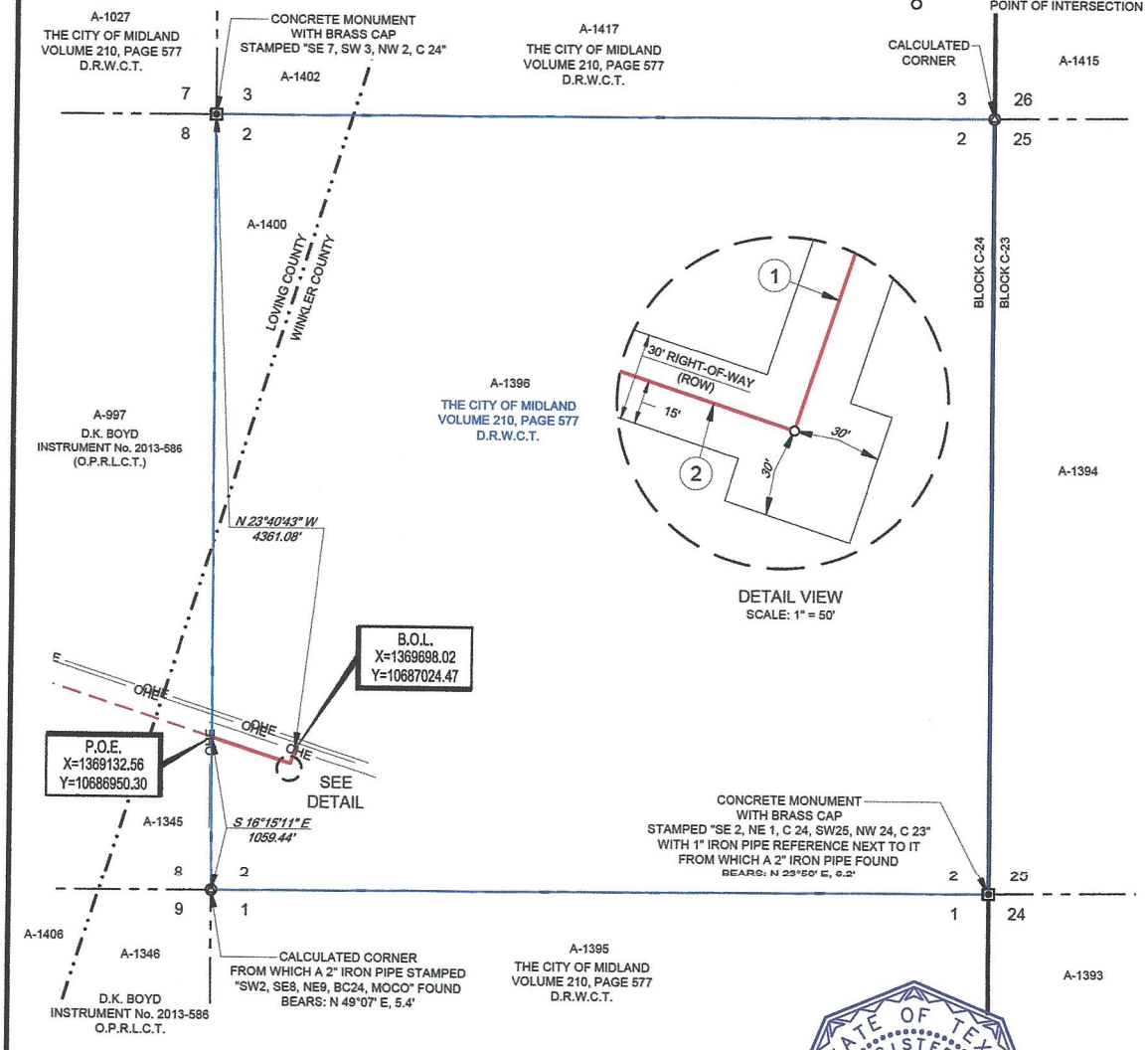
SECTION 2, BLOCK C-24,
PUBLIC SCHOOL LAND SURVEY, A1396
WINKLER COUNTY, TEXAS

TOTAL LENGTH: 656.28 FEET OR 39.77 RODS
RIGHT-OF-WAY: 0.48 ACRES

CIVITAS

SCALE: 1" = 1000'
0' 500' 1000'

LEGEND
- BLOCK LINE
- SECTION LINE
- COUNTY LINE
- SURVEYED BASELINE
- CONTINUED BASELINE
- EDGE OF RIGHT-OF-WAY
- TRACT BORDER
- ROAD WAY
- FENCE LINE
- EXISTING OIL PIPELINE
- OHE OVERHEAD ELECTRIC
- MONUMENT
- CALCULATED CORNER
- POINT OF INTERSECTION



LINE TABLE

LINE	BEARING	DISTANCE
1	S 01°59'11" W	93.73'
2	N 88°00'49" W	562.55'

STATE OF TEXAS
REGISTERED
JOHN R. ANDERSON
6442
PROFESSIONAL
LAND SURVEYOR

TOPOGRAPHIC
LOYALTY INNOVATION LEGACY

481 WINSCOTT ROAD, Ste. 200 • BENBROOK, TEXAS 76126
TELEPHONE: (817) 744-7512 • FAX (817) 744-7554
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

John R. Anderson 6/20/2024

John R. Anderson, R.P.L.S. No. 6442
SURVEYED ON THE GROUND: December 19, 2022
Field note description of even date accompanies this plat.

QUEEN ROBYN OVERHEAD ELECTRIC	REVISION: INT	DATE
	JRA	2/7/2023
DATE: 01/05/23		
FILE: EP_QUEEN_ROBYN_OHE_SEC2_REV2		
DRAWN BY: GJU		
SHEET: 1 OF 2		

NOTES:
1. ORIGINAL DOCUMENT SIZE: 8.5" X 14"
2. ALL BEARINGS, DISTANCES, ACREAGES AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE (4203), U.S. SURVEY FEET, NORTH AMERICAN DATUM 1983 (NAD83).
3. CERTIFICATION IS MADE ONLY TO THE LOCATION OF THIS RIGHT-OF-WAY, IN RELATION TO THE EVIDENCE FOUND DURING A FIELD SURVEY, MADE ON THE GROUND, UNDER MY SUPERVISION, AND USING DOCUMENTATION PROVIDED BY CIVITAS RESOURCES LLC. ONLY UTILITIES/RIGHT-OF-WAYS THAT WERE VISIBLE ON THE DATE OF THIS SURVEY, WITHIN/ADJOINING THIS RIGHT-OF-WAY, HAVE BEEN LOCATED AS SHOWN HEREON OF WHICH I HAVE KNOWLEDGE. THIS CERTIFICATION IS LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS PLAT AND IS NON-TRANSFERABLE, AND MADE FOR THIS TRANSACTION ONLY.
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6. E.O.L./P.O.E. = END OF LINE/POINT OF EXIT
7. D.R.W.C.T. = DEED RECORDS, WINKLER COUNTY, TEXAS
8. O.P.R.L.C.T. = OFFICIAL PUBLIC RECORDS, LOVING COUNTY, TEXAS

S:\SURVEY\CIVITAS\QUEEN_ROBYN\FINAL_PRODUCTS_OHE\EP_QUEEN_ROBYN_OHE_SEC2_REV2.DWG 6/20/2024 10:13:20 AM janderson2

CIVITAS

EXHIBIT "A"
LOVING COUNTY, TEXAS
30 FOOT WIDE RIGHT-OF-WAY DESCRIPTION

January 5, 2023
Sheet 2 of 2

A 30 foot wide Right-of-Way (ROW),15 feet each side of a surveyed baseline as shown on sheet 1 of 2 of this Exhibit "A", being located in Section 2, Block C-24, Public School Land Survey, Abstract No. 1396, Winkler County, Texas, and being located in a tract of land described in deed to The City of Midland, recorded in Volume 210, Page 577, Deed Records, Winkler County, Texas (D.R.W.C.T.), said 30 foot wide Right-of-Way being more particularly described along said surveyed baseline by centerline description as follows:

BEGINNING (B.O.L.) at a point within said Section 2, from which a concrete monument with brass cap stamped "SE 7, SW 3, NW 2, C 24" found for the Northwest corner of said ection 2, bears: North 23°40'43" West, a distance of 4,361.08 feet;

THENCE South 01°59'11" West, a distance of 93.73 feet;

THENCE North 88°00'49" West, a distance of 562.55 feet to a point on the West line of said Section 2, being the POINT OF EXIT (P.O.E.) and the END OF THIS DESCRIPTION, from which the Southwest corner of said Section 2 bears: South 16°15'11" East, a distance of 1,059.44 feet, from said Southwest corner a 2" iron pipe stamped "SW2, SE8, NE9, BC24, MOCO" found bears: North 49°07' East, a distance of 5.4 feet.

The above surveyed baseline traverses the said Section 2 for a total distance of 656.28 feet or 39.77 rods.

All bearings, distances, acreages and coordinates values contained herein are grid, based upon the Texas State Plain Coordinate System, Central Zone (4203), in U.S. Survey Feet, North American Datum 1983 (NAD83).

Plat of even date accompanies this field note description.

STATE OF TEXAS
REGISTERED
JOHN R. ANDERSON
6442
PROFESSIONAL
LAND SURVEYOR

John R. Anderson 6/20/2024
John R. Anderson, R.P.L.S. No. 6442
SURVEYED ON THE GROUND: December 19, 2022

Topographic, Co.
481 Winscott Road
Suite 200
Benbrook, TX 76126

S:\SURVEY\CIVITAS\QUEEN_ROBYN\FINAL_PRODUCTS_OHE\EP_QUEEN_ROBYN_OHE_SEC2_REV2.DWG 6/20/2024 10:13:20 AM janderson2

EXHIBIT "A"

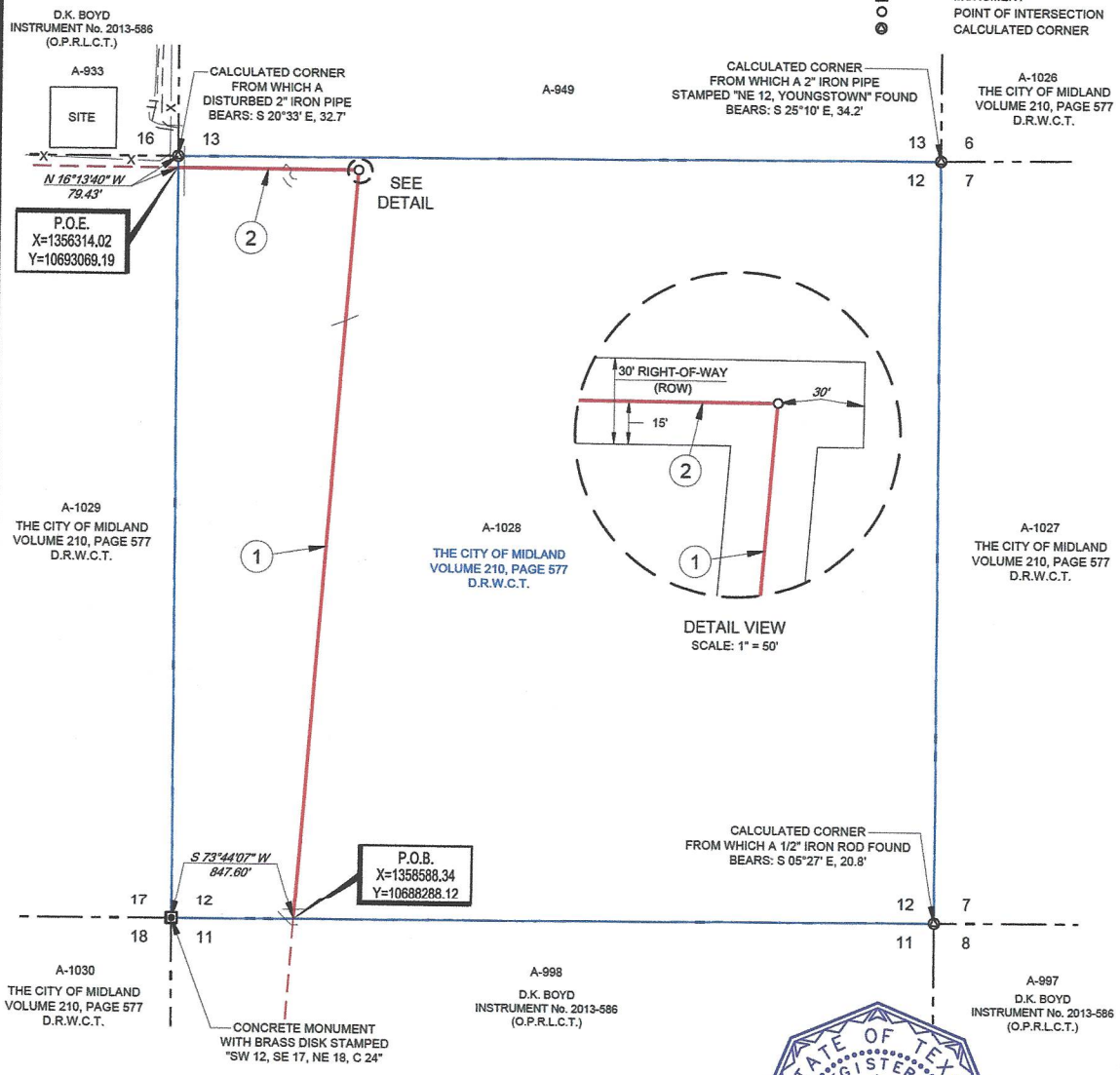
SECTION 12, BLOCK C-24,
PUBLIC SCHOOL LAND SURVEY, A-1028
LOVING COUNTY, TEXAS

TOTAL LENGTH: 6489.71 FEET OR 393.32 RODS
RIGHT-OF-WAY: 4.48 ACRES

CIVITAS

SCALE: 1" = 1000'
0' 500' 1000'

LEGEND
- SECTION LINE
- SURVEYED BASELINE
- CONTINUED BASELINE
- EDGE OF RIGHT-OF-WAY
- TRACT BORDER
- ROAD WAY
- FENCE LINE
- EXISTING OIL PIPELINE
- OHE OVERHEAD ELECTRIC
- MONUMENT
- POINT OF INTERSECTION
- CALCULATED CORNER



LINE TABLE

LINE	BEARING	DISTANCE
1	N 11°46'00" W	5234.90'
2	S 74°05'51" W	1254.81'

STATE OF TEXAS
REGISTERED
JOHN R. ANDERSON
6442
PROFESSIONAL
LAND SURVEYOR

TOPOGRAPHIC
LOYALTY INNOVATION LEGACY
481 WINSCOTT ROAD, Ste. 200 • BENBROOK, TEXAS 76126
TELEPHONE: (817) 744-7512 • FAX (817) 744-7554
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

John R. Anderson 6/20/2024
John R. Anderson, R.P.L.S. No. 6442
SURVEYED ON THE GROUND: December 21 & 22, 2022
Field note description of even date accompanies this plat.

QUEEN ROBYN OVERHEAD ELECTRIC	REVISION: INT	DATE
	JRA	2/7/2023
DATE: 01/05/23		
FILE: EP_QUEEN_ROBYN_OHE_SEC12_REV2		
DRAWN BY: GJU		
SHEET: 1 OF 2		

NOTES:
1. ORIGINAL DOCUMENT SIZE: 8.5" X 14"
2. ALL BEARINGS, DISTANCES, ACREAGES AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE (4203), U.S. SURVEY FEET, NORTH AMERICAN DATUM 1983 (NAD83).
3. CERTIFICATION IS MADE ONLY TO THE LOCATION OF THIS RIGHT-OF-WAY, IN RELATION TO THE EVIDENCE FOUND DURING A FIELD SURVEY, MADE ON THE GROUND, UNDER MY SUPERVISION, AND USING DOCUMENTATION PROVIDED BY CIVITAS RESOURCES LLC. ONLY UTILITIES/RIGHT-OF-WAYS THAT WERE VISIBLE ON THE DATE OF THIS SURVEY, WITHIN/ADJOINING THIS RIGHT-OF-WAY, HAVE BEEN LOCATED AS SHOWN HEREON OF WHICH I HAVE KNOWLEDGE. THIS CERTIFICATION IS LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS PLAT AND IS NON-TRANSFERABLE, AND MADE FOR THIS TRANSACTION ONLY.
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6. E.O.L./P.O.E. = END OF LINE/POINT OF EXIT
7. D.R.W.C.T. = DEED RECORDS, WINKLER COUNTY, TEXAS
8. O.P.R.L.C.T. = OFFICIAL PUBLIC RECORDS, LOVING COUNTY, TEXAS

S:\SURVEY\CIVITAS\QUEEN_ROBYN\FINAL_PRODUCTS_OHE\EP_QUEEN_ROBYN_OHE_SEC12_REV2.DWG 6/20/2024 10:15:11 AM janderson2

CIVITAS

EXHIBIT "A"
LOVING COUNTY, TEXAS
30 FOOT WIDE RIGHT-OF-WAY DESCRIPTION

January 5, 2023
Sheet 2 of 2

A 30 foot wide Right-of-Way (ROW),15 feet each side of a surveyed baseline as shown on sheet 1 of 2 of this Exhibit "A", being located in Section 12, Block C-24, Public School Land Survey, Abstract No. 1028, Loving County, Texas, and being located in a tract of land described in deed to The City of Midland, recorded in Volume 210, Page 577, Deed Records, Winkler County, Texas (D.R.W.C.T.), said 30 foot wide Right-of-Way being more particularly described along said surveyed baseline by centerline description as follows:

BEGINNING (P.O.B.) at a point on the South line of said Section 12, from which a concrete monument with brass cap stamped "SW 12, SE 17, NE 18, C 24" found for the Southwest corner of said Section 12 bears: South 73°44'07" West, a distance of 847.60;

THENCE North 11°46'00" West, a distance of 5,234.90 feet;

THENCE South 74°05'51" West, a distance of 1,254.81 feet to a point on the North line of said Section 12, being the POINT OF EXIT (P.O.E.) and the END OF THIS DESCRIPTION, from which the Northwest corner of said Section 12 bears: North 16°13'40" West, a distance of 79.43 feet, from said Northwest corner a disturbed 2" iron pipe bears: S 20°33' E, a distance of 32.7 feet.

The above surveyed baseline traverses the said Section 12 for a total distance of 6,489.71 feet or 393.32 rods.

All bearings, distances, acreages and coordinates values contained herein are grid, based upon the Texas State Plain Coordinate System, Central Zone (4203), in U.S. Survey Feet, North American Datum 1983 (NAD83).

Plat of even date accompanies this field note description.

STATE OF TEXAS
REGISTERED
JOHN R. ANDERSON
6442
PROFESSIONAL
LAND SURVEYOR

John R. Anderson 6/20/2024
John R. Anderson, R.P.L.S. No. 6442
SURVEYED ON THE GROUND: December 21 & 22, 2022

Topographic, Co.
481 Winscott Road
Suite 200
Benbrook, TX 76126

S:\SURVEY\CIVITAS\QUEEN_ROBYN\FINAL_PRODUCTS_OH-EXP_QUEEN_ROBYN_ONE_SEC12_REV2.DWG 6/20/2024 10:16:11 AM janderson2

EXHIBIT "A"

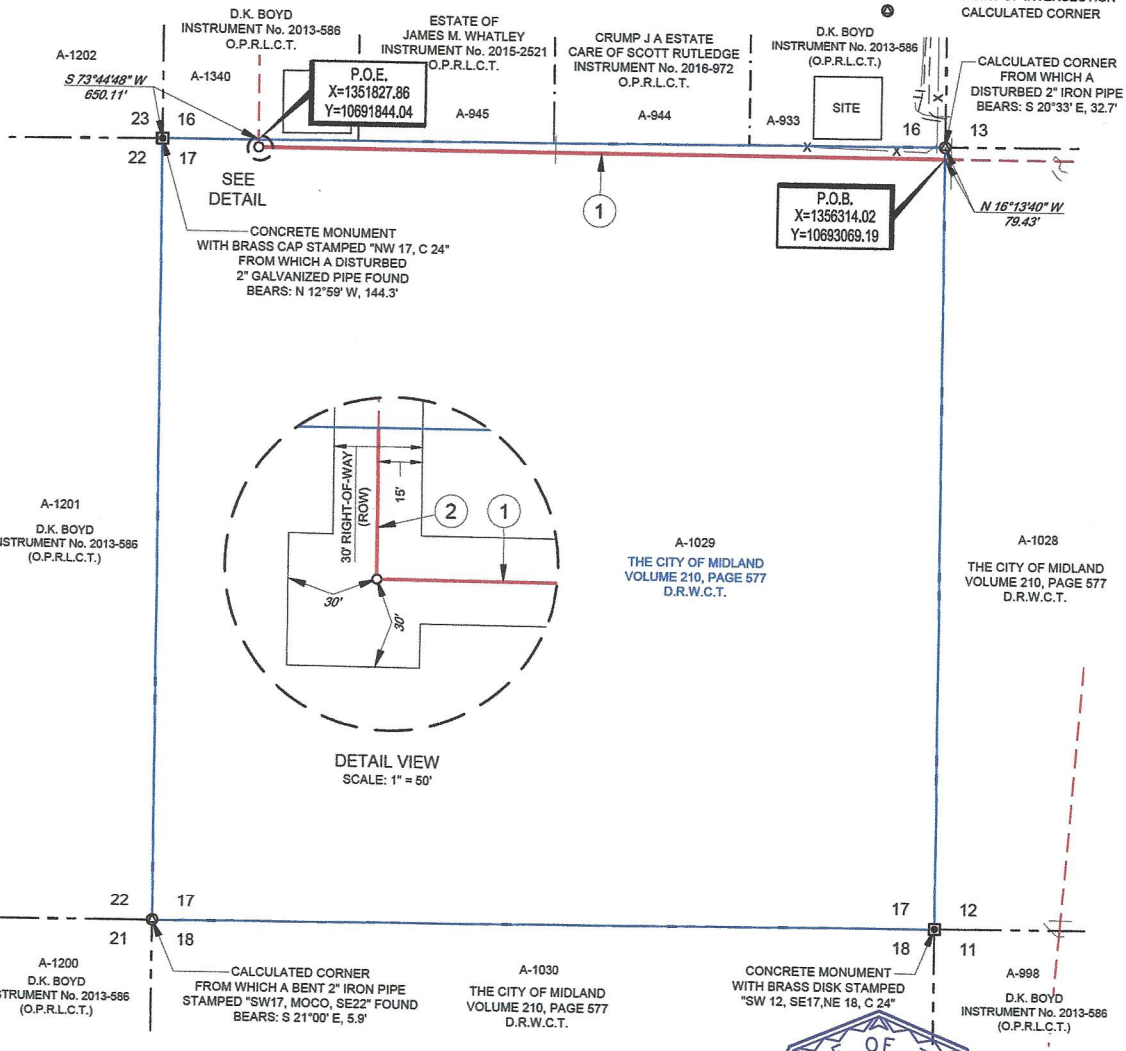
SECTION 17, BLOCK C-24,
PUBLIC SCHOOL LAND SURVEY, A-1029
LOVING COUNTY, TEXAS

TOTAL LENGTH: 4700.63 FEET OR 284.89 RODS
RIGHT-OF-WAY: 3.26 ACRES

CIVITAS

SCALE: 1" = 1000'
0' 500' 1000'

LEGEND
- SECTION LINE
- ABSTRACT LINE
- SURVEYED BASELINE
- CONTINUED BASELINE
- EDGE OF RIGHT-OF-WAY
- TRACT BORDER
- ROAD WAY
- FENCE LINE
- EXISTING OIL PIPELINE
- OHE OVERHEAD ELECTRIC
- MONUMENT
- POINT OF INTERSECTION
- CALCULATED CORNER



DETAIL VIEW
SCALE: 1" = 50'

LINE TABLE

LINE	BEARING	DISTANCE
1	S 74°05'51" W	4649.66'
2	N 16°28'23" W	50.97'

TOPOGRAPHIC
LOYALTY INNOVATION LEGACY
481 WINSCOTT ROAD, Ste. 200 • BENBROOK, TEXAS 76126
TELEPHONE: (817) 744-7512 • FAX (817) 744-7554
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

STATE OF TEXAS
REGISTERED
JOHN R. ANDERSON
6442
PROFESSIONAL
LAND SURVEYOR

John R. Anderson 6/20/2024
John R. Anderson, R.P.L.S. No. 6442
SURVEYED ON THE GROUND: December 28, 2022
Field note description of even date accompanies this plat.

QUEEN ROBYN OVERHEAD ELECTRIC	REVISION:	
	INT	DATE
	JRA	2/7/2023
DATE: 01/05/23		
FILE: EP_QUEEN_ROBYN_OHE_SEC17_REV2		
DRAWN BY: GJU		
SHEET: 1 OF 2		

NOTES:
1. ORIGINAL DOCUMENT SIZE: 8.5" X 14"
2. ALL BEARINGS, DISTANCES, ACREAGES AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE (4203), U.S. SURVEY FEET, NORTH AMERICAN DATUM 1983 (NAD83).
3. CERTIFICATION IS MADE ONLY TO THE LOCATION OF THIS RIGHT-OF-WAY, IN RELATION TO THE EVIDENCE FOUND DURING A FIELD SURVEY, MADE ON THE GROUND, UNDER MY SUPERVISION, AND USING DOCUMENTATION PROVIDED BY CIVITAS RESOURCES LLC. ONLY UTILITIES/RIGHT-OF-WAYS THAT WERE VISIBLE ON THE DATE OF THIS SURVEY, WITHIN/ADJOINING THIS RIGHT-OF-WAY, HAVE BEEN LOCATED AS SHOWN HEREON OF WHICH I HAVE KNOWLEDGE. THIS CERTIFICATION IS LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS PLAT AND IS NON-TRANSFERABLE, AND MADE FOR THIS TRANSACTION ONLY.
4. ADJOINER INFORMATION SHOWN FOR INFORMATIONAL PURPOSES ONLY.
5. B.O.L./P.O.B. = BEGINNING OF LINE/POINT OF BEGINNING
6. E.O.L./P.O.E. = END OF LINE/POINT OF EXIT
7. D.R.W.C.T. = DEED RECORDS, WINKLER COUNTY, TEXAS
8. O.P.R.L.C.T. = OFFICIAL PUBLIC RECORDS, LOVING COUNTY, TEXAS

S:\SURVEY\CIVITAS\QUEEN_ROBYN\FINAL_PRODUCTS_OHE\EP_QUEEN_ROBYN_OHE_SEC17_REV2.DWG 6/20/2024 10:17:07 AM janderson2

EXHIBIT "A"
LOVING COUNTY, TEXAS
30 FOOT WIDE RIGHT-OF-WAY DESCRIPTION

January 5, 2023
Sheet 2 of 2

A 30 foot wide Right-of-Way (ROW),15 feet each side of a surveyed baseline as shown on sheet 1 of 2 of this Exhibit "A", being located in Section 17, Block C-24, Public School Land Survey, Abstract No. 1029, Loving County, Texas, and being located in a tract of land described in deed to The City of Midland, recorded in Volume 210, Page 577, Deed Records, Winkler County, Texas, (D.R.W.C.T.), said 30 foot wide Right-of-Way being more particularly described along said surveyed baseline by centerline description as follows:

BEGINNING (P.O.B.) at a point on the East line of said Section 17, from which the Northeast corner of said Section 17 bears: North 16°13'40" West, a distance of 79.43 feet, from said Northeast corner a disturbed 2" iron pipe bears: S 20°33' E, a distance of 32.7 feet;

THENCE South 74°05'51" West, a distance of 4,649.66 feet;

THENCE North 16°28'23" West, a distance of 50.97 feet to a point on the North line of said Section 17, being the POINT OF EXIT (P.O.E.) and the END OF THIS DESCRIPTION, from which a concrete monument with brass cap stamped "NW 17, C 24" found for the Northwest corner of said Section 17 bears: South 73°44'48" West, a distance of 650.11 feet, from which a 2" galvanized pipe found for reference bears: North 12°59' West, a distance of 144.3 feet.

The above surveyed baseline traverses the said Section 17 for a total distance of 4,700.63 feet or 284.89 rods.

All bearings, distances, acreages and coordinates values contained herein are grid, based upon the Texas State Plain Coordinate System, Central Zone (4203), in U.S. Survey Feet, North American Datum 1983 (NAD83).

Plat of even date accompanies this field note description.

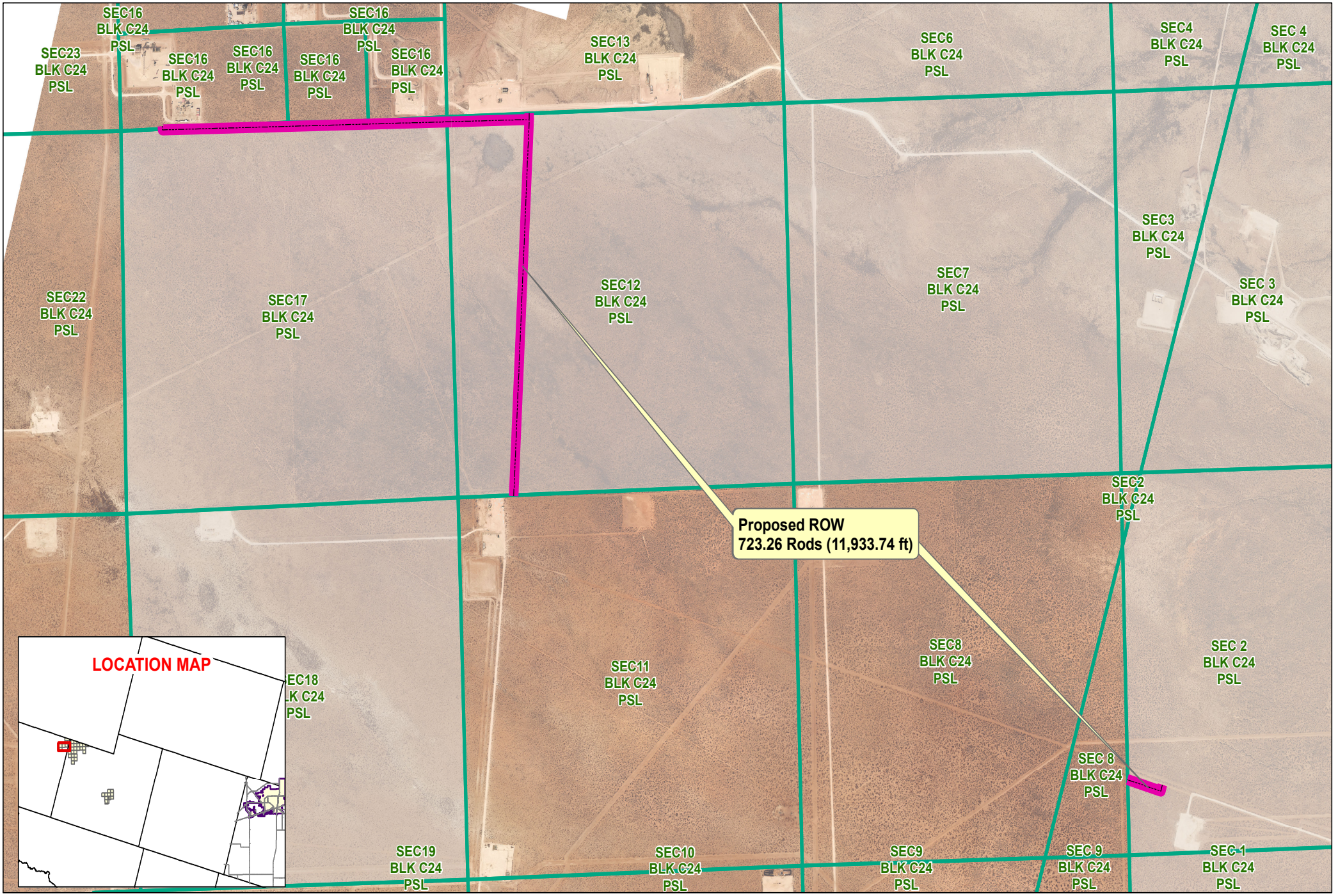
STATE OF TEXAS
REGISTERED
JOHN R. ANDERSON
6442
PROFESSIONAL
LAND SURVEYOR

John R. Anderson 6/20/2024

John R. Anderson, R.P.L.S. No. 6442
SURVEYED ON THE GROUND: December 28, 2022

Topographic, Co.
481 Winscott Road
Suite 200
Benbrook, TX 76126

S:\SURVEY\CIVITAS\QUEEN_ROBYN\FINAL_PRODUCTS_OHE\EP_QUEEN_ROBYN_OHE_SEC17_REV2.DWG 6/20/2024 10:17:08 AM janderson2



Date: 7/1/2024

Legend

- Proposed ROW
- Survey Section
- City Owned Property

PACKET

19.26

Civitas Proposed ROW

August 13, 2024

0 500 1,000 Feet

©THE CITY OF MIDLAND - 2024
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/1/2024 6/21/2024

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 LOCKTON COMPANIES 3657 BRIARPARK DRIVE, SUITE 700 HOUSTON TX 77042 866-260-3538	**CONTACT NAME:** **PHONE (A/C, No, Ext):** **FAX (A/C, No):** **E-MAIL ADDRESS:**
INSURED 1540938 Civitas Resources, Inc. 555 17th Street, Ste 3700 Denver CO 80202	**INSURER(S) AFFORDING COVERAGE** — **NAIC #** **INSURER A :** The Travelers Indemnity Company of America — 25666 **INSURER B :** The Charter Oak Fire Insurance Company — 25615 **INSURER C :** Travelers Property Casualty Company of America — 25674 **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 20688929 **REVISION NUMBER:** XXXXXXX

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 GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC OTHER:	Y	N	H-660-0W135212-TIA-23	11/1/2023	11/1/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ 2,000,000 $ 1,000,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY	Y	N	810-3X271167-23-N4-G	11/1/2023	11/1/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ 1,000,000 $ XXXXXXX $ XXXXXXX $ XXXXXXX $ XXXXXXX
C	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE X DED X RETENTION $ 10,000	Y	N	CUP-9T007541-23-N4	11/1/2023	11/1/2024	EACH OCCURRENCE AGGREGATE 	$ 25,000,000 $ 25,000,000 $ XXXXXXX
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N: N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	N	UB-0W135039-23-N4-G	11/1/2023	11/1/2024	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)

CERTIFICATE HOLDER

20688929
City of Midland
300 N. Loraine
Midland TX 79701

CANCELLATION See Attachment

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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All policies (except Workers' Compensation/EL) include a blanket automatic additional insured [provision] that confers additional insured status to the certificate holder only if there is a written contract between the named insured and the certificate holder that requires the named insured to name the certificate holder as an additional insured. In the absence of such a contractual obligation on the part of the named insured, the certificate holder is not an additional insured under the policy.

CIVITAS RESOURCES, INC. - Controlled Disbursement Account CHECK NO. 88217

2407-AP-1021 07/05/24 CKREQ070524	50628.20	0.00		50628.20
Eddie R Scott and Queen Robyn OHE Line Damages				

67374 CITY OF MIDLAND TEXAS 07/11/24 50,628.20

Safeguard LITHO USA 11/22 Y10SF009768M REORDER FROM YOUR LOCAL SAFEGUARD DISTRIBUTOR AT 661-872-2993

DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER. THIS DOCUMENT CONTAINS HEAT SENSITIVE INK.

CIVITAS

CIVITAS RESOURCES, INC.
CONTROLLED DISBURSEMENT ACCOUNT
555 17th Street, Suite 3700 • Denver, CO 80202
PH: 303-293-9100

WARNING
DO NOT CASH UNLESS YOU CAN VERIFY A THERMOCHROMIC INSIGNIA ADJACENT TO SIGNATURE LINE AND A SECURITY WATERMARK IN THE BACK. HOLD AT A 45% ANGLE TOWARDS OR AWAY FROM THE LIGHT

JPMORGAN CHASE BANK, N.A.
Dallas, TX
88-88/1113

88217

DATE 07/11/24

CONTROL NUMBER 517201

AMOUNT Fifty thousand six hundred twenty-eight dollars and 20 cents

AMOUNT

$**********50,628.20

VOID AFTER 90 DAYS

PAY TO THE ORDER OF

CITY OF MIDLAND TEXAS
ATTN JOHN SIMMONS
RIGHT OF WAY MANAGER
300 N LORAINE
MIDLAND, TX 79701

SAFEGUARD SECURE

⑈00000882 17⑈ ⑆111300880⑆ 123938851⑈

City Council Meeting

Item Number: 20

Meeting Date: July 23, 2024, August 13, 2024

To: City Council / City Manager

From: Diana Geerts, Senior Planner

Subject: AN ORDINANCE VACATING AND ABANDONING A 0.307-ACRE PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1, 2, 3 AND 4, BLOCK 1, REPLAT OF ALL GLEN ARDEN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 185 FEET WEST OF RACQUET CLUB DRIVE); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF $53,428.00; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, LCA, is requesting to vacate a 0.307-acre portion of alley right-of-way, located adjacent to Lots 1,2, 3 and 4, Block 1, Replat of all Glen Arden, City and County of Midland, Texas, to create a utility and access easement for residents and address safety concerns.

Recommended City Council Action:

Approve

Fiscal Impact:

The 2023 appraised value of the right-of-way is a total value of $53,428.00.

Strategic Priority:

(Quality of Life and Place)

Discussion:

The applicant is seeking to vacate a 0.307-acre (13,357 square feet) of the alley right-of-way to block access to the alley from W Wadley Ave. The access point is currently unsightly, dangerous and allows children from the Racquet Club to wander on to it while reckless drivers use it as a cut through street making this a hazardous pathway. The alleyway will be retained as a general utility and access easement for residents to enter and exit onto Racquet Club Drive at the south end making it more appealing for the neighborhood and club.

The Midland Central Appraisal District's appraisal of this land at a total of $53,428.00 using the formula of 13,357 SF x $4.00 SF.

The property owner will replat between Lot 1, 2, 3, and 4, Block 1, Replat of all Glen Arden to include the .307-acre right-of-way being vacated.

This request has been circulated and reviewed by all pertinent City departments and franchise utility companies. Their comments, conditions, and requests are as follows:

Oil & Gas: (Approved)

No oil and gas issues.

Building Code: (Approved)

No objections.

Engineering: (Approved)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

Fire: (Approved)

No comment or objections.

Transportation: (Approved)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

GIS: (Approved)

No comments.

AT&T: (Approved)

We have copper cable going down that alleyway feeding the houses on the east side of the alley. Since we can't feed them any other way we would still need an easement to be there. Vacation approved.

Atmos: (Approved)

Atmos Energy currently has facilities located within the above referenced Right of Way. Our existing facilities are currently located in the alley ROW west of Racquet Club between Wadley and Deerfield within the proposed vacate area. Vacation approved.

Astound: (Approved)

It looks like we are underground in this section of the alley way, on the east side of the alley closer to the houses along the fence line. Vacation approved.

Oncor: (Approved)

The Racquet Club Alley Abandonment is ready to be approved by Oncor and can be moved forward with the City of Midland vacation approval process.

Altice USA: (Approve)

Altice/OBA "Optimum" is okay with vacating the alley way at, Racquet Club as discussed with, Mr. George Thornley & Mr. Johnny Heins, as long as we retain the easement rights as they described that it would be notated on the plat. This is so that they can fence of the alley entrance off Wadley Ave.

Planning:

Pertinent City departments and franchise utility companies have reviewed this vacation request and have approved the request.

Therefore, staff recommends approval of this vacation subject to conditions A through B.

Conditions:

A. **That the value of the property shall be $53, 428.00.**

B. **That a replat of the Property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County, Texas.**

Letters of Objection:

As of July 12, 2024, staff has not received any letters of objection to this request.

Attachments:

Metes & Bounds (Exhibit A)
Vacation Survey (Exhibit B)
Application
Maps
Responses from Franchise Utility Companies

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE VACATING AND ABANDONING A 0.307-ACRE PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1, 2, 3 AND 4, BLOCK 1, REPLAT OF ALL GLEN ARDEN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 185 FEET WEST OF RACQUET CLUB DRIVE); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF $53,428.00; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.307-acre portion of alley right-of-way located adjacent to Lots 1, 2, 3 and 4, Block 1, Replat of all Glen Arden Addition, City and County of Midland, Texas, as described in Exhibits "A" and "B" attached hereto and made a part hereof for all legal purposes (the "Property"), is no longer needed for public use; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, an application for vacating the Property has been received by the City from the abutting property owner; and

WHEREAS, the Assistant City Manager has appraised the value of the City's property interest in the Property at $53,428.00, as shown in Exhibit "C" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the Property;

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

SECTION ONE. That the Property is hereby vacated and abandoned for all public

purposes. Provided, however, that the City is hereby abandoning only the public interest in the Property, and this ordinance in no way affects any private easement or access easement which abutting property owners may have in the Property.

SECTION TWO. That this ordinance shall not be effective until:

A. the City of Midland has received from the abutting property owner(s) the sum of $53,428.00; and

B. a replat of the Property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County, Texas.

SECTION THREE. That the City herein retains an accessible nonexclusive utility easement across, through, over, under, on and along the Property until all entities that were using the Property for utility purposes as of the date of approval of this ordinance have abandoned their uses of the Property.

SECTION FOUR. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LCA

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

lca@lcaodessa.com
521 N. Texas Ave. • Odessa, Texas 79761
(432) 332-5058 or 580-8812 • Fax (432) 332-8812
Engineering Firm# 001363 • Surveying Firm# 10034300

EXHIBIT "A"
METES & BOUNDS DESCRIPTION
OF A 0.307-ACRE ALLEY ABANDONMENT
LOCATED BETWEEN LOT 1 AND LOTS 2 THRU 4, BLOCK 1
REPLAT OF ALL GLEN ARDEN
CABINET B PAGE 187
MIDLAND COUNTY PLAT RECORDS
LOCATED IN SECTION 22 BLOCK 39, T-1-S
T&P RR CO. SURVEY
MIDLAND, MIDLAND COUNTY, TEXAS

BEING A 0.307-ACRE ALLEY ABANDONMENT, SAID ALLEY BEING 30-FEET WIDE, LOCATED BETWEEN LOT 1 AND LOTS 2 THRU 4, BLOCK 1, REPLAT OF ALL GLEN ARDEN, CABINET B PAGE 187, MIDLAND COUNTY PLAT RECORDS, LOCATED IN SECTION 22 BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at (Y= 10,704,540.63' & X= 1,748,079.69') a ½" Iron Rod with cap marked "RPLS 4170" (Control Monument) found at the northwest corner of said Lot 2, Block 1on the south right-of-way line of W. Wadley Road, a dedicated 90-foot public right-of-way, and the east line of said 30-foot alley, whence a ½" Iron Rod with cap marked "RPLS 4170" (Control Monument) found at the Point of Curvature of said Lot 1, Block 1 bears North 75°53'52" East, a distance of 97.02 feet, and from said ½" Iron Rod with cap marked "RPLS 4170" the northwest corner of said Section 22 bears North 14°18'29" West, a distance of 45 feet and South 75°43'56" West, a distance of 1,679.5 feet;

THENCE South 14°18'29" East with the west line of said Lots 2 thru 4, Block 1 and the east line of said 30-foot alley, a distance of 445.13 feet to a ½" Iron Rod with cap marked "RPLS 4170" (Control Monument) found at the southwest corner of said Lot 4, Block 1 at the intersection of said alley and the north line of Deerfield Dr., a 60-foot dedicated public right-of-way for the southeast corner of this Alley Abandonment, whence a ½" Iron Rod with cap marked "LCA ODESSA TX" (Control Monument) found at the Point of Curvature of said Lot 4 Block 1 bears North 75°42'04" East, a distance of 97.07 feet;

THENCE South 75°42'04" West with the north right-of-way line of said Deerfield Dr., a distance of 30.00 feet to a ½" Iron Rod with cap marked "LCA ODESSA TX" set at the southeast corner of said Lot 1, Block 1 for the southwest corner of this Alley Abandonment, whence the City of Midland's GPS Control Monument "GARWAD" bears North 89°41'10" West, a distance of 1,748.12 feet;

THENCE North 14°18'29" West with the west line of said 30-foot alley and the east line of said Lot 1, a distance of 455.22 feet to a ½" Iron Rod with cap marked "LCA ODESSA TX" set at the northeast corner of said Lot 1, Block 1 on the south right-of-way line of said W. Wadley Dr. for the northwest corner of this Alley Abandonment, whence a ½" Iron Rod (Control Monument) found at the northwest corner of said Lot 1 bears South 75°43'56" West, a distance of 624.69 feet;

THENCE North 75°53'52" East with the south right-of-way line of said W. Wadley Road, a distance of 30.00 feet to the Point of the Beginning containing 0.307 surface acres (13,357 surface square feet) as depicted on the attached **EXHIBIT "B"**. Bearings, distances, and coordinates are relative to the Texas Coordinate System, 1983 NAD, Central Zone, based on the City of Midland GPS Control Monument "GARWAD" (No. 4209) (Y=10,704,111.49' and X=1,746,412.52' with a theta angle of -00°54'51" with a combined grid factor of 0.9999070708 as published in US Survey feet.

LCA

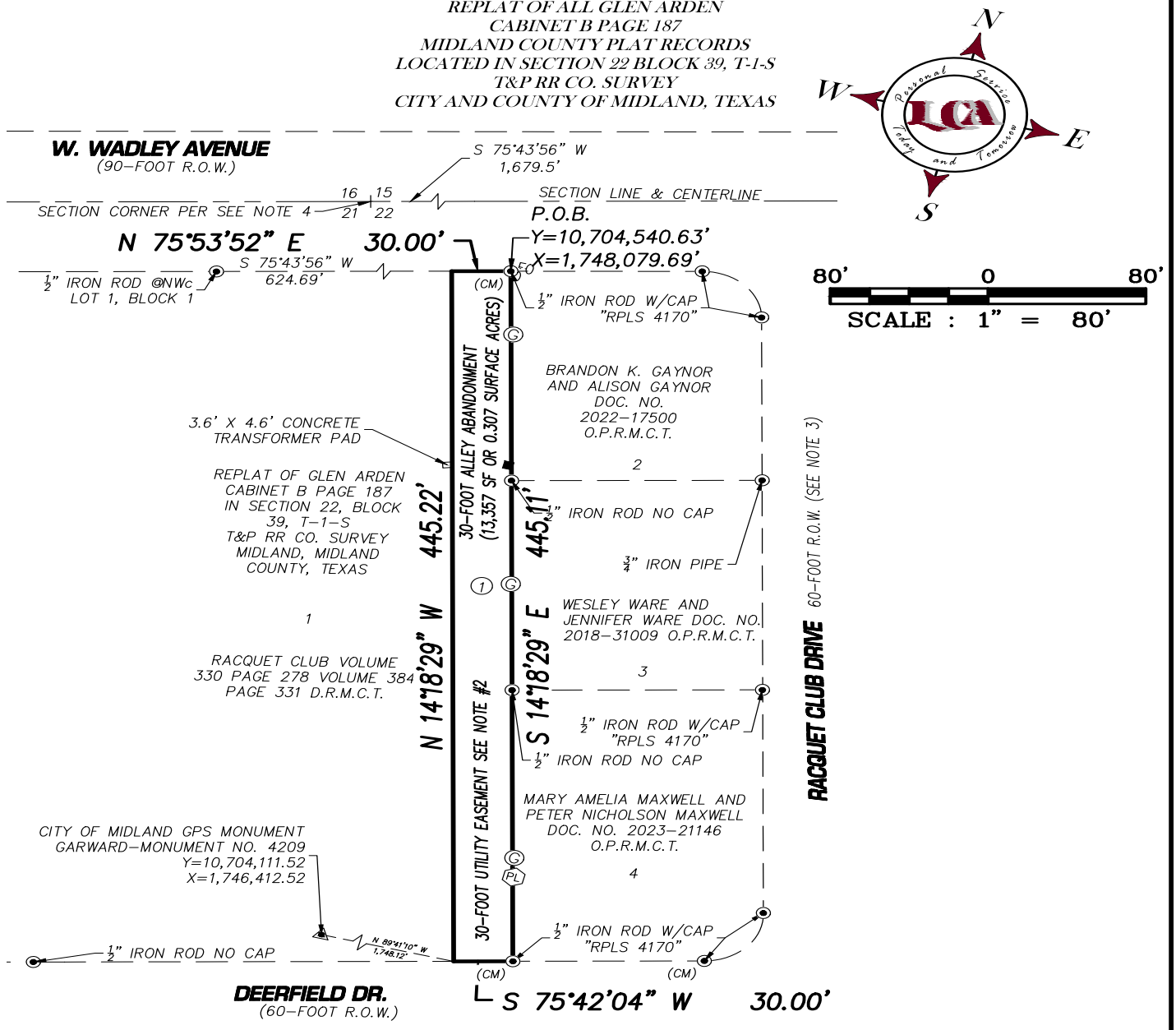
John F. Landgraf, RPLS 2410
19 March 2024

STATE OF TEXAS
REGISTERED
JOHN F. LANDGRAF
2410
PROFESSIONAL
LAND SURVEYOR

LCA Project No. 2024-008

EXHIBIT "B"

SURVEY OF
A 0.307-ACRE ALLEY ABANDOMENT
LOCATED BETWEEN LOT 1 AND LOTS 2 THRU 4, BLOCK 1
REPLAT OF ALL GLEN ARDEN
CABINET B PAGE 187
MIDLAND COUNTY PLAT RECORDS
LOCATED IN SECTION 22 BLOCK 39, T-1-S
T&P RR CO. SURVEY
CITY AND COUNTY OF MIDLAND, TEXAS



LEGEND

(G)	EXISTING GAS RISER
(PL)	EXISTING PIPELINE MARKER
FO	EXISTING FIBER OPTIC MARKER
⊙	FOUND 1/2" I.R. W/CAP "LCA ODESSA TX" UNLESS OTHERWISE NOTED
○	SET 1/2" I.R. W/CAP UNLESS OTHERWISE NOTED
■	EXISTING ONCOR PED.
M.C.P.R.	MIDLAND COUNTY PLAT RECORDS
O.P.R.M.C.T.	OFFICIAL PUBLIC RECORDS MIDLAND COUNTY TEXAS
D.R.M.C.T.	DEED RECORDS MIDLAND COUNTY TEXAS

NOTES:

1. BEARINGS, DISTANCES, AND COORDINATES ARE RELATIVE TO THE TEXAS COORDINATE SYSTEM, 1983 NAD, CENTRAL ZONE, BASED ON THE CITY OF MIDLAND CONTROL MONUMENT "GARWAD" (NO.4209), Y=10,704,111.49' AND X=1,746,412.52 WITH A THETA ANGLE OF -00°54'51" WITH A COMBINED GRID FACTOR OF 0.9999070708 AS PUBLISHED IN US SURVEY FEET.
2. THE SAME AREA OF THE ALLEY ABANDOMENT WILL BECOME A 30-FOOT GENERAL UTILITY EASEMENT AND ACCESS EASEMENT FOR RESIDENTS TO ENTER/EXIT ONTO DEERFIELD DRIVE AT THE SOUTH END, AND FOR UTILITY COMPANY USE WILL BE RETAINED. THE EASEMENT WILL ALSO BE SHOWN ON ANY RE-PLAT OF THE SUBJECT AREA.
3. RACQUET CLUB DRIVE WAS ORIGINALLY PLATTED AS N. "M" STREET PER CABINET B PAGE 187, M.C.P.R.
4. THE SECTON CORNER TIE IS BASED UPON THE RECORDED PLAT IN CABINET B 187, M.C.P.R.

ENG. _____ E.T. _____
SVY. _____ PM _____
LCA JOB No. 2024-008

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
321 North Texas, Odessa Tx. 79761 F-001363 F-10034300
Phone # (432) 332-5058 E-mail: ...a@lcaodessa.com
Personal Service, Today and Tomorrow

E:\2024\2024-008\DWG\Drafting\2024-008 SURVEY EXHIBIT (REVISED).dwg, 6/24/2024 1:27:04 PM, AutoCAD PDF (General Documentation).pc3
PACKET Page 36 of 40 August 13, 2024

MIDLAND
Feel the Energy!

Office of the City Manager

June 26, 2024

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.307-acre portion of alley right-of-way located adjacent to Lots 1, 2, 3 and 4, Block 1, Replat of all Glen Arden Addition, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is $53,428.00. Upon the City's receipt of this sum from the adjoining property owner(s), the ordinance vacating and abandoning the City's interest in the property may be recorded in the Midland County Clerk's office.

Very truly yours,

Jose Ortiz
Assistant City Manager

EXHIBIT "C"

300 N. Loraine, Midland TX 79701 • 432-685-7202 • Fax 432-686-1600

LCA

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

lca@lcaodessa.com
521 N. Texas Ave. • Odessa, Texas 79761
(432) 332-5058 or 580-8812 • Fax (432) 332-8812
Engineering Firm# 001363 • Surveying Firm# 10034300

EXHIBIT "A"
METES & BOUNDS DESCRIPTION
OF A 0.307-ACRE ALLEY ABANDONMENT
LOCATED BETWEEN LOT 1 AND LOTS 2 THRU 4, BLOCK 1
REPLAT OF ALL GLEN ARDEN
CABINET B PAGE 187
MIDLAND COUNTY PLAT RECORDS
LOCATED IN SECTION 22 BLOCK 39, T-1-S
T&P RR CO. SURVEY
MIDLAND, MIDLAND COUNTY, TEXAS

BEING A 0.307-ACRE ALLEY ABANDONMENT, SAID ALLEY BEING 30-FEET WIDE, LOCATED BETWEEN LOT 1 AND LOTS 2 THRU 4, BLOCK 1, REPLAT OF ALL GLEN ARDEN, CABINET B PAGE 187, MIDLAND COUNTY PLAT RECORDS, LOCATED IN SECTION 22 BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at (Y= 10,704,540.63' & X= 1,748,079.69') a ½" Iron Rod with cap marked "RPLS 4170" (Control Monument) found at the northwest corner of said Lot 2, Block 1on the south right-of-way line of W. Wadley Road, a dedicated 90-foot public right-of-way, and the east line of said 30-foot alley, whence a ½" Iron Rod with cap marked "RPLS 4170" (Control Monument) found at the Point of Curvature of said Lot 1, Block 1 bears North 75°53'52" East, a distance of 97.02 feet, and from said ½" Iron Rod with cap marked "RPLS 4170" the northwest corner of said Section 22 bears North 14°18'29" West, a distance of 45 feet and South 75°43'56" West, a distance of 1,679.5 feet;

THENCE South 14°18'29" East with the west line of said Lots 2 thru 4, Block 1 and the east line of said 30-foot alley, a distance of 445.13 feet to a ½" Iron Rod with cap marked "RPLS 4170" (Control Monument) found at the southwest corner of said Lot 4, Block 1 at the intersection of said alley and the north line of Deerfield Dr., a 60-foot dedicated public right-of-way for the southeast corner of this Alley Abandonment, whence a ½" Iron Rod with cap marked "LCA ODESSA TX" (Control Monument) found at the Point of Curvature of said Lot 4 Block 1 bears North 75°42'04" East, a distance of 97.07 feet;

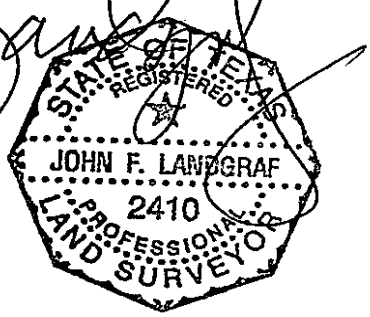
THENCE South 75°42'04" West with the north right-of-way line of said Deerfield Dr., a distance of 30.00 feet to a ½" Iron Rod with cap marked "LCA ODESSA TX" set at the southeast corner of said Lot 1, Block 1 for the southwest corner of this Alley Abandonment, whence the City of Midland's GPS Control Monument "GARWAD" bears North 89°41'10" West, a distance of 1,748.12 feet;

THENCE North 14°18'29" West with the west line of said 30-foot alley and the east line of said Lot 1, a distance of 455.22 feet to a ½" Iron Rod with cap marked "LCA ODESSA TX" set at the northeast corner of said Lot 1, Block 1 on the south right-of-way line of said W. Wadley Dr. for the northwest corner of this Alley Abandonment, whence a ½" Iron Rod (Control Monument) found at the northwest corner of said Lot 1 bears South 75°43'56" West, a distance of 624.69 feet;

THENCE North 75°53'52" East with the south right-of-way line of said W. Wadley Road, a distance of 30.00 feet to the Point of the Beginning containing 0.307 surface acres (13,357 surface square feet) as depicted on the attached **EXHIBIT "B"**. Bearings, distances, and coordinates are relative to the Texas Coordinate System, 1983 NAD, Central Zone, based on the City of Midland GPS Control Monument "GARWAD" (No. 4209) (Y=10,704,111.49' and X=1,746,412.52' with a theta angle of -00°54'51" with a combined grid factor of 0.9999070708 as published in US Survey feet.

LCA

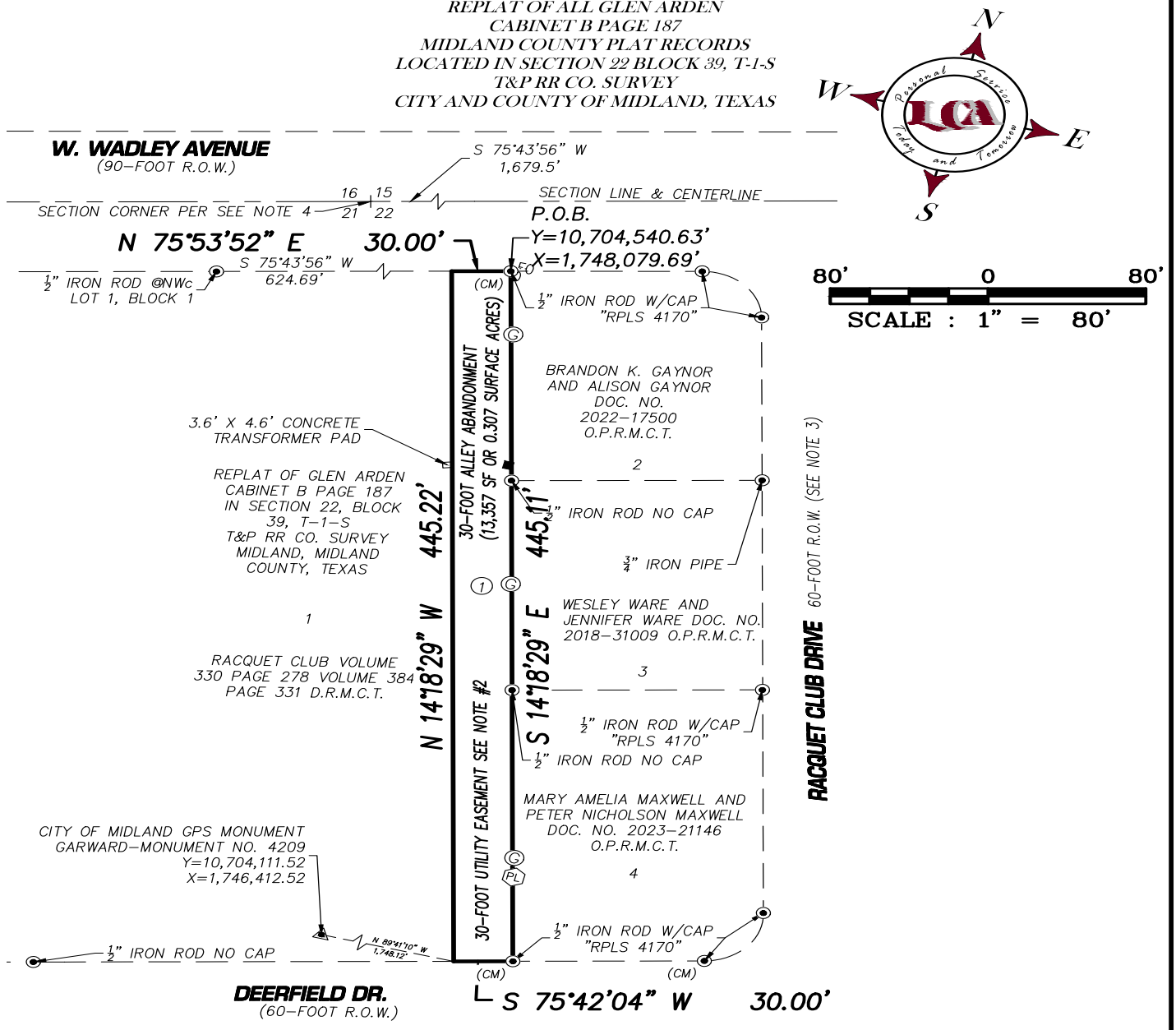
John F. Landgraf, RPLS 2410
19 March 2024



LCA Project No. 2024-008

EXHIBIT "B"

SURVEY OF
A 0.307-ACRE ALLEY ABANDOMENT
LOCATED BETWEEN LOT 1 AND LOTS 2 THRU 4, BLOCK 1
REPLAT OF ALL GLEN ARDEN
CABINET B PAGE 187
MIDLAND COUNTY PLAT RECORDS
LOCATED IN SECTION 22 BLOCK 39, T-1-S
T&P RR CO. SURVEY
CITY AND COUNTY OF MIDLAND, TEXAS



LEGEND

(G)	EXISTING GAS RISER
(PL)	EXISTING PIPELINE MARKER
FO	EXISTING FIBER OPTIC MARKER
◉	FOUND 1/2" I.R. W/CAP "LCA ODESSA TX" UNLESS OTHERWISE NOTED
○	SET 1/2" I.R. W/CAP UNLESS OTHERWISE NOTED
■	EXISTING ONCOR PED.
M.C.P.R.	MIDLAND COUNTY PLAT RECORDS
O.P.R.M.C.T.	OFFICIAL PUBLIC RECORDS MIDLAND COUNTY TEXAS
D.R.M.C.T.	DEED RECORDS MIDLAND COUNTY TEXAS

NOTES:

1. BEARINGS, DISTANCES, AND COORDINATES ARE RELATIVE TO THE TEXAS COORDINATE SYSTEM, 1983 NAD, CENTRAL ZONE, BASED ON THE CITY OF MIDLAND CONTROL MONUMENT "GARWAD" (NO.4209), Y=10,704,111.49' AND X=1,746,412.52 WITH A THETA ANGLE OF -00°54'51" WITH A COMBINED GRID FACTOR OF 0.9999070708 AS PUBLISHED IN US SURVEY FEET.
2. THE SAME AREA OF THE ALLEY ABANDOMENT WILL BECOME A 30-FOOT GENERAL UTILITY EASEMENT AND ACCESS EASEMENT FOR RESIDENTS TO ENTER/EXIT ONTO DEERFIELD DRIVE AT THE SOUTH END, AND FOR UTILITY COMPANY USE WILL BE RETAINED. THE EASEMENT WILL ALSO BE SHOWN ON ANY RE-PLAT OF THE SUBJECT AREA.
3. RACQUET CLUB DRIVE WAS ORIGINALLY PLATTED AS N. "M" STREET PER CABINET B PAGE 187, M.C.P.R.
4. THE SECTON CORNER TIE IS BASED UPON THE RECORDED PLAT IN CABINET B 187, M.C.P.R.

ENG. _____ E.T. _____
SVY. _____ DWG. _____
LCA JOB No. 2024-008

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
321 North Texas, Odessa Tx. 79761 F-001363 F-10034300
Phone # (432) 332-5058 E-mail: lca@lcaodessa.com
Personal Service, Today and Tomorrow

E:\2024\2024-008\DWG\Drafting\2024-008 SURVEY EXHIBIT (REVISED).dwg, 6/24/2024 1:27:04 PM, AutoCAD PDF (General Documentation).pc3
PACKET Page 14 August 13, 2024

LCA Job # 2024-008

MIDLAND Planning Division

Vacate Right-of-Way/Public Utility Easement/Land/Street Application

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)*			
Printed Name: Brandon Gaynor (Owner) / LCA Agent		Phone (432) 266-8382 Email LCA@LCAODESSA.COM brandon.gaynor@permianres.com	
Address 3205 Racquet Club Drive	City Midland	State TX	Zip 79705

Application is hereby made to the City Council to vacate the following:

- ☒ Right-of-Way
- ☐ Public Utility Easement
- ☐ Land
- ☐ Street

Description of Address: The alley between Lot 1 and Lots 2 thru 4, Block 1, Replat of all Glen Arden, Cabinet B Page 187, M.C.P.R., and being behind 3205, 3203,3201 & 3009 Racquet Club Drive, Midland, Texas

Reason for Request: We would like to have the city abandon the alley so that we can block access from Wadley to the alley. This access point is currently unsightly and dangerous. Children from the Racquet Club often wander into the alley which is often used as a cut through by reckless drivers. We would like to make it safer and more appealing for the neighborhood and the club. General access to and from Wadley should be obtained via Racquet Club Drive. Please see attached for clarity.

Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way: Abandoning the alley and closing the access to W. Wadley will allow the adjacent owners to create a safer atmosphere and will enhance the neighborhood without the cut-through traffic. The alley way will be retained as a General Utility Easement & Access Easement for residents to enter/exit onto Racquet Club Drive at the south end. Please see attached for clarity.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Sealed metes and bounds description of the property to be vacated (included on the map) and total square feet of vacation. Include ownership, legal and deed information for adjacent property owners
- Digital Copies of Site Plan (PDF/JPEG)

Utility Company Approval

Clearance is needed from the following utility companies:

- City of Midland
- AT&T
- Atmos Energy
- Suddenlink Cable TV Co.
- Sharyland Utilities
- Grande Communications
- Oncor Electric

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained to resolve any issues that may arise.

Policies

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.

2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:

   a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.

   b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.

   c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signatures

Applicant (signature):		Date: 3/24/24
Affected Property Owners:		
Signature:	Print: The Racquet Club	Date: 4/2/2024
Signature:	Print: Brandon Gaynor	Date 3/21/24
Signature:	Print: Wesley Ware	Date 3/21/24
Signature:	Print: Nick Maxwell	Date 3/22/24

The Vacation of right-of-way/public utility easement/land/street shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

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

FOR OFFICE USE ONLY

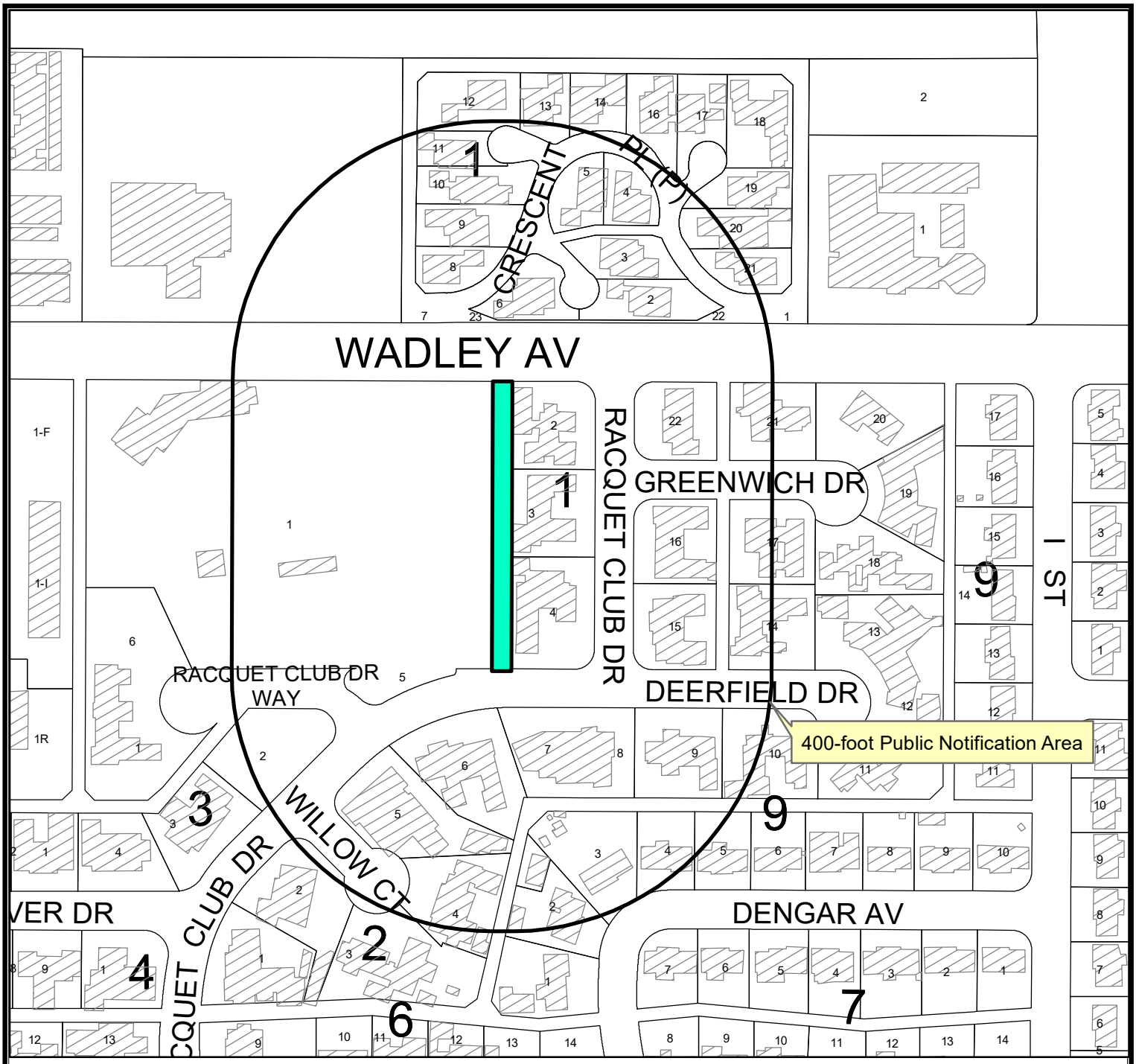
☑ 1 FOLDED Copy of Survey Plat ☒ Plans in Digital Format (PDF/JPEG)

☑ Application Fee

Check # 42181

Received By: Date: RECEIVED APR 10 2024

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



Location Map

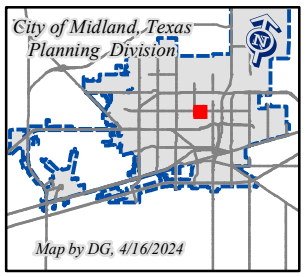
V-24-0063 **Scale: 1" = 600'**

Consider a request by LCA for a vacation of a 0.307-acre portion of alley right-of-way, located adjacent to Lot 1, 2, 3, and 4, Block 1, Replat of all Glen Arden, City and County of Midland, Texas.

Generally located on the south side of W Wadley Avenue, approximately 185-feet west of Racquet Club Drive. (District 3)

LEGEND

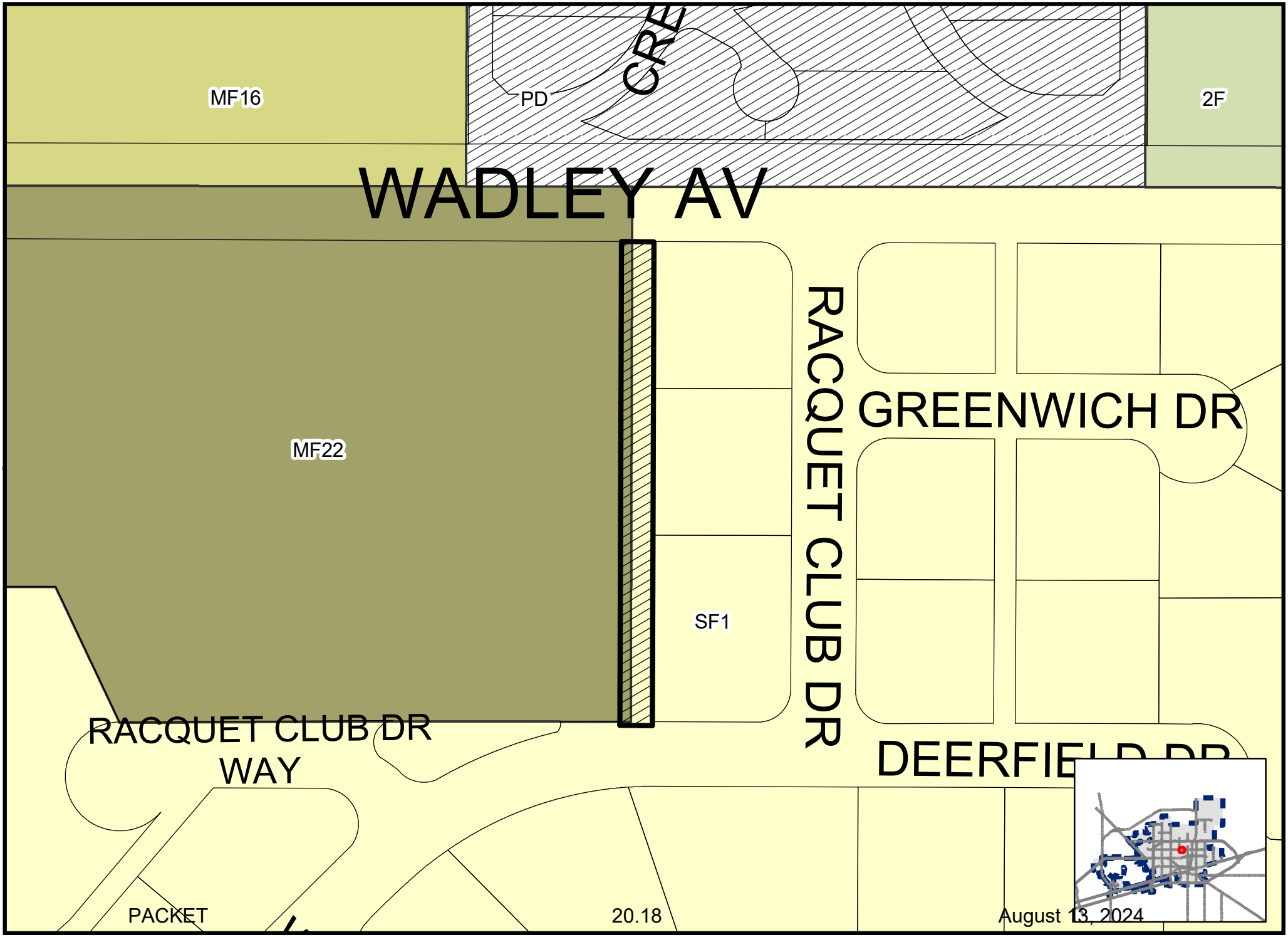
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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RACKET 20.17

August 13, 2024



Map By DG, 4/16/2024

V-24-0063

Scale: 1" = 600'

ZONING MAP

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From: Ruben Guerra
To: Diana Geerts
Subject: Re: FW: V-24-0063_ Racquet Club Vacation
Date: Thursday, April 25, 2024 2:23:14 PM
Attachments: image001.png

No, I have no further comments and approval.

Thank You
Ruben Guerra
Construction Coordinator
O: 432-272-3088
C: 432-653-9369
Ruben.Guerra@astound.com
Astound Business Solutions
Powered by RCN | Grande | Wave
astound.com

On Thu, Apr 25, 2024 at 2:21 PM Diana Geerts <dgeerts@midlandtexas.gov> wrote:

> Do you have any comments? Or just want to approve the request?
>
> *Respectfully,*
>
> *Diana Geerts*
>
> *Senior Planner | Development Services*
>
> *O. 432-685-7577*
>
> *dgeerts@midlandtexas.gov*
>
> MIDLAND
> Feel the Energy!
>
> 300 N. Loraine | P.O. Box 1152 | Midland, TX 79702
>
> ---
>
> **From:** Ruben Guerra <ruben.guerra@astound.com>

Sent: Thursday, April 25, 2024 2:21 PM
To: Diana Geerts <dgeerts@midlandtexas.gov>
Subject: Re: FW: V-24-0063_ Racquet Club Vacation

No, that is fine.

Thank You

Ruben Guerra

Construction Coordinator

O: 432-272-3088

C: 432-653-9369

Ruben.Guerra@astound.com

Astound Business Solutions

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astound.com

On Thu, Apr 25, 2024 at 2:15 PM Diana Geerts <dgeerts@midlandtexas.gov> wrote:

> Thank you for your clarification, Ruben. Do you need more time to research the vacation to approve or deny it?
>
> *Respectfully,*
>
> *Diana Geerts*
>
> *Senior Planner|Development Services*
>
> *O. 432-685-7577*
>
> *dgeerts@midlandtexas.gov*

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

From: Ruben Guerra <ruben.guerra@astound.com>
Sent: Thursday, April 25, 2024 2:13 PM
To: George Thornley <get@lcaodessa.com>
Cc: Diana Geerts <dgeerts@midlandtexas.gov>; Elizabeth Triggs <etriggs@midlandtexas.gov>; Xavier Bauguess <xbauguess@midlandtexas.gov>; John Landgraf <jfl@lcaodessa.com>; Jonny Heins <Jonny.Heins@permianres.com>
Subject: Re: FW: V-24-0063_ Racquet Club Vacation

Thank you for the clarification, and understood we were just trying to make sure if there was any relocation of Astounds plant that the customer would be responsible for the cost.

Thank You

Ruben Guerra

Construction Coordinator

O: 432-272-3088

C: 432-653-9369

Ruben.Guerra@astound.com

Astound Business Solutions

Powered by RCN | Grande | Wave

astound.com

On Thu, Apr 25, 2024 at 2:05 PM George Thornley <get@lcaodessa.com> wrote:

> ***Mr. Guerra,***
>
> ***The alley wat we are working with WILL BE retained as a General Utility Easement, which was stated in the application.***
>
> ***We are NOT asking for any re-locations. You will be able to access your equipment & such the same as you are doing now.***
>
> ***The alley vacation is intended to stop the traffic that is going through this alleyway.***
>
> ***Please advise.***
>
> ***Thank You***
>
> ***George E. Thornley***
>
> ***LCA***
>
> ***521 N. Texas***
>
> ***Odessa, Texas 79761***
>
> ***T: 432-332-5058***
>
> ***F: 432-332-8812***
>
> ***get@lcaodessa.com***

From: Diana Geerts <dgeerts@midlandtexas.gov>
Sent: Thursday, April 25, 2024 1:44 PM
To: Ruben Guerra <ruben.guerra@astound.com>
Cc: George Thornley <get@lcaodessa.com>
Subject: FW: FW: V-24-0063_ Racquet Club Vacation

I will forward this request to the applicant for a response.

Respectfully,

Diana Geerts

Senior Planner|Development Services

O. 432-685-7577

dgeerts@midlandtexas.gov

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

From: Ruben Guerra <ruben.guerra@astound.com>
Sent: Thursday, April 25, 2024 1:41 PM
To: Diana Geerts <dgeerts@midlandtexas.gov>
Subject: Re: FW: V-24-0063_ Racquet Club Vacation

No ma'am that will be all as long as they know that they will be responsible for any relocation of our plant.

Thank You

Ruben Guerra

Construction Coordinator

O: 432-272-3088

C: 432-653-9369

Ruben.Guerra@astound.com

Astound Business Solutions

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astound.com

On Thu, Apr 25, 2024 at 1:39 PM Diana Geerts <dgeerts@midlandtexas.gov> wrote:

> Good afternoon Ruben,
>
> The applicant will be responsible for relocating any utilities, if existing, and provide easements as needed. Will that work for your company or do you have any objections, questions or concerns?
>
> *Respectfully,*
>
> *Diana Geerts*
>
> *Senior Planner|Development Services*
>
> *O. 432-685-7577*
>
> *dgeerts@midlandtexas.gov*

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

From: Ruben Guerra <ruben.guerra@astound.com>
Sent: Thursday, April 25, 2024 1:16 PM
To: Diana Geerts <dgeerts@midlandtexas.gov>
Subject: Re: FW: V-24-0063_ Racquet Club Vacation

It looks like we are underground in this section of the alley way, on the east side of the alley closer to the houses along the fence line. Is there going to be an issue with us there>

Thank You

Ruben Guerra

Construction Coordinator

O: 432-272-3088

C: 432-653-9369

Ruben.Guerra@astound.com

Astound Business Solutions

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astound.com

On Thu, Apr 25, 2024 at 1:04 PM Diana Geerts <dgeerts@midlandtexas.gov> wrote:

Good afternoon,

I wanted to reach out and see if Grande had any comments on the proposed vacation that was sent out April 16th. This vacation is scheduled to go on May 28th, City Council Meeting. Please see the attached documents and notify me if you have any comments or concerns.

Respectfully,

Diana Geerts

Senior Planner | Development Services

O. 432-685-7577

dgeerts@midlandtexas.gov

MIDLAND
Feel the Energy!

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

From: Diana Geerts
Sent: Tuesday, April 16, 2024 4:50 PM
To: Ruben Guerra <ruben.guerra@astound.com>
Subject: V-24-0063_ Racquet Club Vacation

Good afternoon,

This vacation is scheduled to go on May 28th, City Council Meeting. Please see the attached documents and notify me if you have any comments or concerns.

Respectfully,

Diana Geerts

Senior Planner | Development Services

O. 432-685-7577

dgeerts@midlandtexas.gov

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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From: UNDERWOOD, JERRY D
To: Diana Geerts
Subject: RE: V-24-0063 Racquet Club Vacation
Date: Wednesday, April 17, 2024 6:11:43 AM
Attachments: image004.png

Good morning,

We have copper cable going down that alleyway feeding the houses on the east side of the alley. Since we can't feed them any other way we would still need an easement to be there.

Thanks,
Jerry

Jerry Underwood
Sr. Specialist OSP Design Engineer
Midland Engineering
AT&T

AT&T Technology Operations
410 W Missouri, Midland, TX 79701
m 432-296-2821 / ju1659@att.com

From: Diana Geerts <dgeerts@midlandtexas.gov>
Sent: Tuesday, April 16, 2024 4:54 PM
To: UNDERWOOD, JERRY D <ju1659@att.com>
Subject: V-24-0063 Racquet Club Vacation

Good afternoon,

This vacation is scheduled to go on May 28th, City Council Meeting. Please see the attached documents and notify me if you have any comments or concerns.

Respectfully,

Diana Geerts
Senior Planner | Development Services
O. 432-685-7577
dgeerts@midlandtexas.gov

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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ATMOS ENERGY

West Texas Division
P.O. Box 1111,
Midland, Texas 79702

City of Midland
Diana Geerts
Senior Planner/Development Services
300 N. Loraine
Midland, Texas 79702

April 24, 2024

Re: Case Name: Racquet Club
Case Number: V-24-0063

Diana,

Atmos Energy currently has facilities located within the above referenced Right of Way. Our existing facilities are currently located in the alley ROW west of Racquet Club between Wadley and Deerfield within the proposed vacate area.
Please let me know if you have any further questions.

Sincerely,

Mark Lieb

Mark Lieb
Project Specialist
Atmos Energy/Permian Basin
432-967-0370 cell
mark.lieb@atmosenergy.com

From: LReyna@midcad.org
To: Diana Geerts
Subject: Re: V-24-0063 Racquet Club Vacation
Date: Wednesday, April 17, 2024 8:42:05 AM
Attachments: ATT00002.png
VACATION RACQUET CLUB ALLEYWAY SURVEY.PDF
V-24-0063 Racquet Club-LOCATION MAP.pdf
MCAD (Utility Letter) V-24-0063.pdf

$ 4.00 per SF X 13,357 SF = $ 53,428 in VALUE

Hi Diana,

Please see above for the requested information.

Let me know if there is anything else I can help you with!

Thank you,

Lisa Reyna, RPA
Assistant Chief Appraiser
Midland Central Appraisal District
4631 Andrews Hwy
Midland, TX 79703
Phone (432) 699-4991
Fax (432) 689-7185

From: "Diana Geerts" <dgeerts@midlandtexas.gov>
To: "LReyna@midcad.org" <LReyna@midcad.org>
Date: 04/16/2024 04:56 PM
Subject: V-24-0063 Racquet Club Vacation

Good afternoon,

This vacation is scheduled to go on May 28th, City Council Meeting. Please see the attached documents and notify me if you have any comments or

concerns.

Respectfully,

Diana Geerts
Senior Planner|Development Services
O. 432-685-7577
dgeerts@midlandtexas.gov

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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From:	Henderson, Jeffrey
To:	Diana Geerts
Subject:	RE: Racquet Club Alley Abandonment
Date:	Tuesday, June 25, 2024 9:13:47 AM
Attachments:	image001.png image002.png

Thanks Diana.

From: Diana Geerts <dgeerts@midlandtexas.gov>
Sent: Tuesday, June 25, 2024 9:04 AM
To: Henderson, Jeffrey <Jeffrey.Henderson@oncor.com>
Cc: George Thornley <get@lcaodessa.com>; Jonny Heins <Jonny.Heins@permianres.com>; John Landgraf <jfl@lcaodessa.com>; Ortega, Gus Ortega <Gustavo.Ortega@oncor.com>; Blankenship, Chad <Chad.Blankenship@oncor.com>; Cavazos, Ryan <Ryan.Cavazos@oncor.com>
Subject: RE: Racquet Club Alley Abandonment

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Good afternoon, Jeff.

I will reinstate the approval process for this vacation.

Respectfully,

Diana Geerts
Senior Planner | Development Services
O. 432-685-7577
dgeerts@midlandtexas.gov

MIDLAND
Feel the Energy!
300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

From: Henderson, Jeffrey <Jeffrey.Henderson@oncor.com>
Sent: Monday, June 24, 2024 3:39 PM
To: Diana Geerts <dgeerts@midlandtexas.gov>
Cc: George Thornley <get@lcaodessa.com>; Jonny Heins <Jonny.Heins@permianres.com>; John Landgraf <jfl@lcaodessa.com>; Ortega, Gus Ortega <Gustavo.Ortega@oncor.com>; Blankenship, Chad <Chad.Blankenship@oncor.com>; Cavazos, Ryan <Ryan.Cavazos@oncor.com>
Subject: Racquet Club Alley Abandonment

Good afternoon Diana,
The Racquet Club Alley Abandonment is ready to be approved by Oncor and can be moved forward with the City of Midland vacation approval process. Please see attached survey for your reference.
Thanks,
Jeff

Jeffrey R. Henderson
Supervisor, Distribution Design
Oncor | PMDS
883 N Graham St.
Stephenville, Tx 76401

Office: 254-977-1910
Cell: 817-271-1422
Email: *jeffrey.henderson@oncor.com*

My Manager: Chad Blankenship
Phone: 325-456-2674
Email**:** *Chad.Blankenship@oncor.com*

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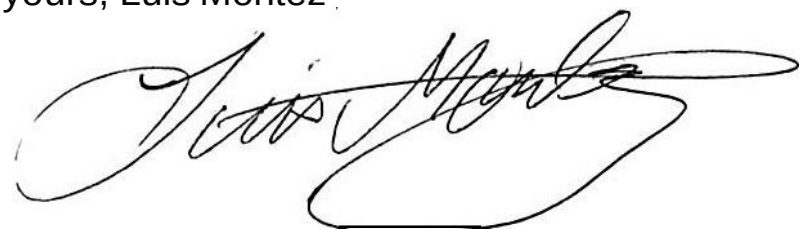
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optimum.

Dear Ms. Geerts:

Per our meeting this afternoon, Altice/OBA "Optimum" is okay with vacating the alley way at, Racquet Club as discussed with, Mr. George Thornley & Mr. Johnny Heins, as long as we retain the easement rights as they described that it would be notated on the plat. This is so that they can fence of the alley entrance off Wadley Ave.

I will sign off on said plat, sincerely yours, Luis Montez



MIDLAND

Be the Energy!

Racquet Club

Vacation

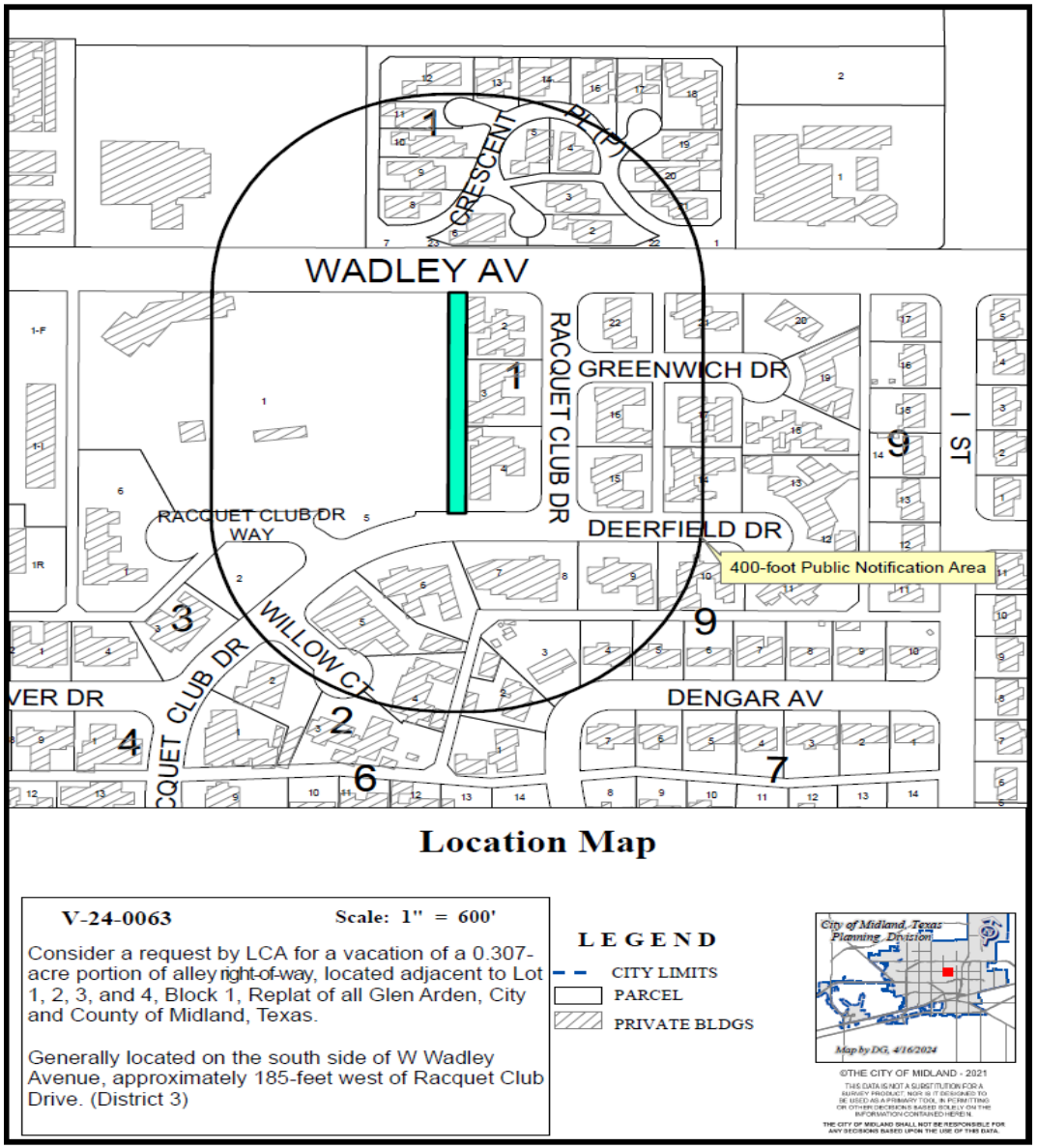
July 23, 2024



Visit Our Website:
MIDLANDTEXAS.GOV

Racquet Club Vacation

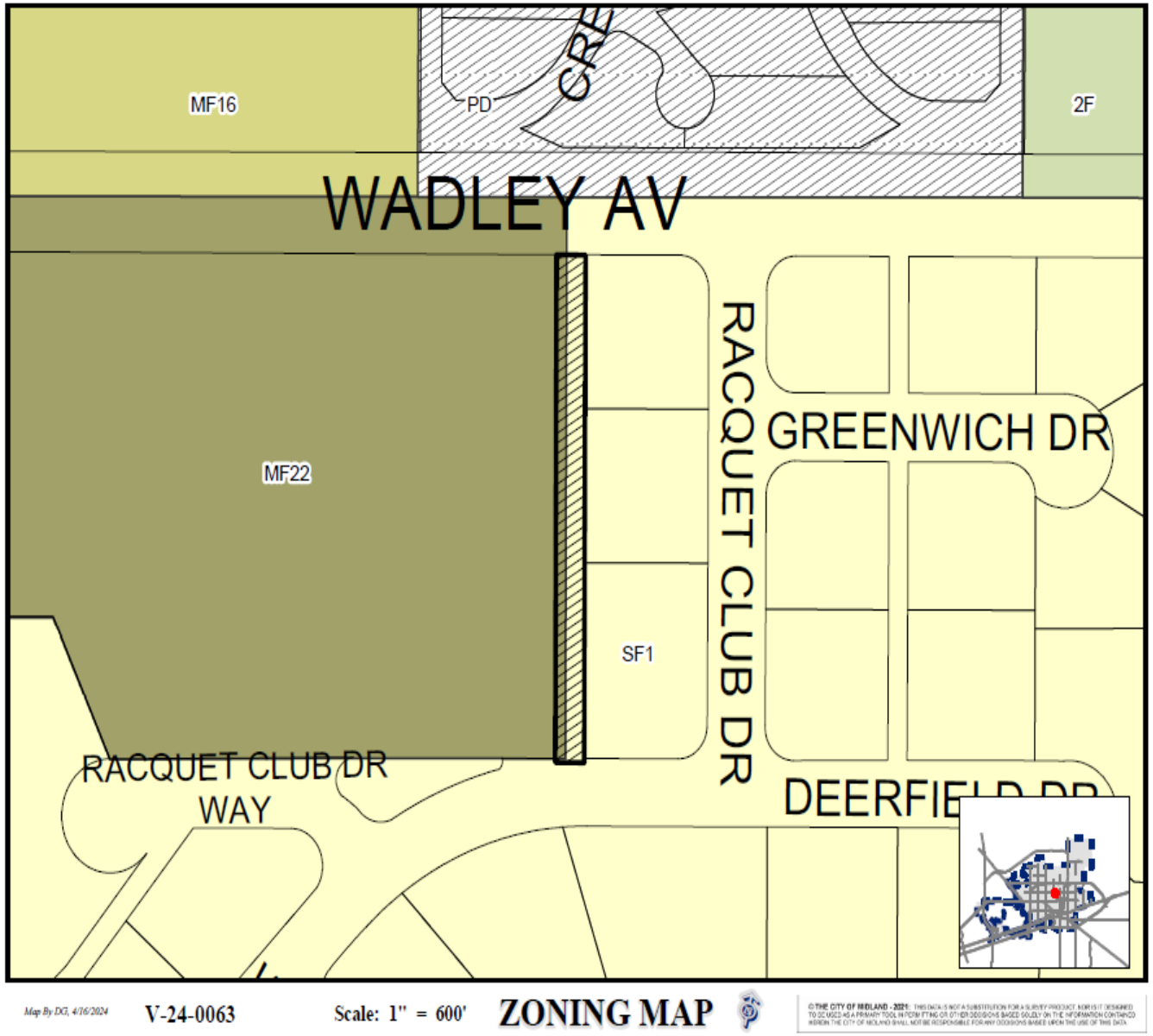
- LCA
- Vacate a 0.307-acre portion of alley right-of-way for safety purposes.



Racquet Club Vacation

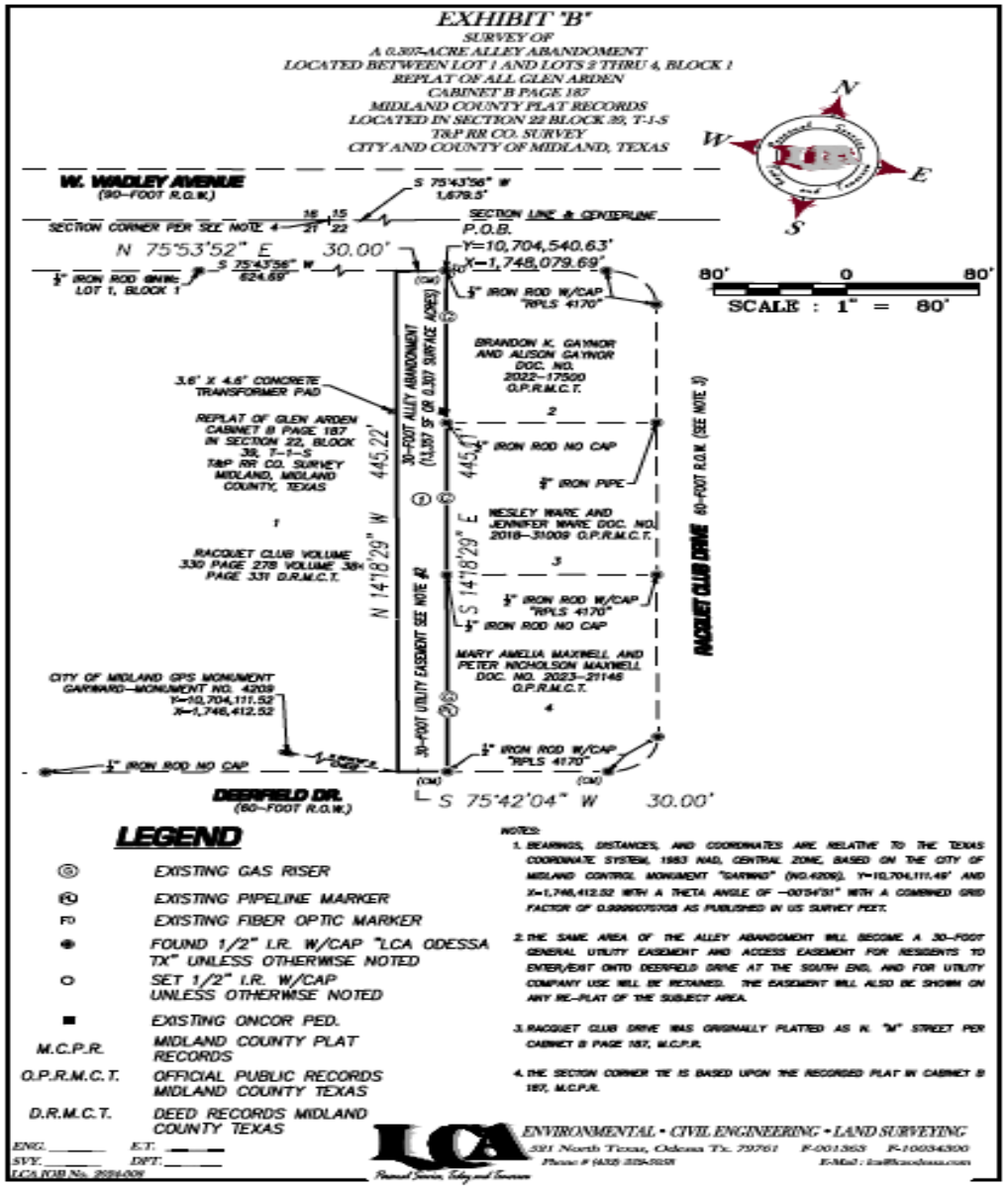
- Current Zoning: SF,1, Single Family Dwelling District

- Surrounding Zoning:
- North: PD, Planned Development District
- East and South: SF,1, Single Family Dwelling District
- West: MF-22, Multiple Family Dwelling District



Racquet Club Vacation

- 13,357 square-foot portion of alley right of way to be retained as a general utility easement.
- Residents to enter and exit onto Racquet Club Drive at the south end of the alley.



MIDLAND Be the Energy!

Racquet Club Vacation

- Aerial





On Wadley Ave, Looking South

Staff has not received any letters of objection and the request meets all the City of Midland Zoning requirements of the City Ordinance.

Therefore, Staff recommends APPROVAL of the request of this vacation, subject to conditions A and B.

Conditions:

A. That the value of the property shall be $53, 428.00.

B. That a replat of the Property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County, Texas.

City Council Meeting

Item Number: 21

Meeting Date: July 23, 2024, August 13, 2024

To: City Council / City Manager

From: Diana Geerts, Senior Planner

Subject: AN ORDINANCE VACATING AND ABANDONING A 5,036-SQUARE FOOT PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOT 1, BLOCK 1, KINGWICK PLACE ADDITION, SECTION 2 AND TRACT B, SUBDIVISION OF BLOCK 1, WARWICK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST SCHARBAUER DRIVE, APPROXIMATELY 640 FEET WEST OF NORTH I STREET); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF $22,662.00; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Landgraf Crutcher & Associates, is requesting to vacate a 0.116-acre portion of an alley, located adjacent to Lot 1, Block 1, Kingwick Place Addition, Section 2, and Tract B, Subdivision of Block 1, Warwick Addition, Section 22, Block 39, T-1-S T&P RR Co. Survey, City and County of Midland, Texas to minimize the traffic flow coming in from W. Scharbauer Drive.

Recommended City Council Action:

Approve

Fiscal Impact:

The 2024 appraised value of the right-of-way is a total value of $22,662.00.

Strategic Priority:

(Quality of Life and Place)

Discussion:

The applicant is seeking to vacate a 0.116-acre (5,036 square feet) portion of an alley right-of-way to combine tract B, Subdivision of Block 1, Warwick Addition, and Lot 1, Block 1, Kingwick Place Addition, Section 2, and retain a general utility easement.

The Midland Central Appraisal District's appraisal of this land at a total of $22,662.00 using the formula of 5,036 square feet x $4.50.

The property owner will replat Lot 1, Block 1, Kingwick Place Addition, Section 2 and Tract B, Subdivision of Block 1, Warwick Addition, City and County of Midland, Texas, to include the .116-acre right-of-way being vacated as one lot.

This request has been circulated and reviewed by all pertinent City departments and franchise utility companies. Their comments, conditions, and requests are as follows:

Oil & Gas: (Approved)

No oil and gas issues.

Building Code: (Approved)

No objections.

Engineering: (Approved with Conditions)

No objections to vacation. Applicant shall be responsible for relocating any and all utilities or providing easements as needed. The 21 inch wastewater main would require a 30 foot Public Utility Easement on center due to the size and depth of the wastewater main.

Fire: (Approved)

No objection.

Transportation: (Approved)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

GIS: (Approved)

Legal description should show that vacation is in the City. "...City and County of Midland, Texas."

AT&T: (Approved)

We don’t have anything in that alleyway.

Atmos: (Approved)

Atmos Energy currently has facilities located within the above-described alley Right of Way between Warwick and Scharbauer Dr. south of Shell. We currently have a gas main that extends along the north portion of this alley right of way. Atmos would have no objection to the proposed vacation as long as a utility easement can be maintained where our main is located since we are currently serving customers from this line.

ASTOUND: (Approved)

Yes, we do have services in the section you have on your map. We are attached to the Oncor poles in that section.

Oncor: (Approve)

The Warwick Alley Abandonment is ready to be approved by Oncor and can be moved forward with the City of Midland vacation approval process.

Altice USA: (Approved)

Optimum has aerial coax plant on the power poles on the west side of the alley.
There’s 2 active customer’s being serviced, the requestor will be responsible for the costs for us to relocate our plant to underground.

Planning:

Pertinent City departments and franchise utility companies have reviewed this vacation request.

Therefore, staff recommends approval this request, subject to conditions A through B.

Conditions:

A. **That the value of the property shall be $22,662.00.**

B. **That a replat of the subject property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County.**

Letters of Objection:

As of July 17, 2024, staff has not received any letters of objection to this request.

Attachments:

Metes & Bounds (Exhibit A)
Vacation Survey (Exhibit B)
Application
Maps
Responses from Franchise Utility Companies

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE VACATING AND ABANDONING A 5,036-SQUARE FOOT PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOT 1, BLOCK 1, KINGWICK PLACE ADDITION, SECTION 2 AND TRACT B, SUBDIVISION OF BLOCK 1, WARWICK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST SCHARBAUER DRIVE, APPROXIMATELY 640 FEET WEST OF NORTH I STREET); ADOPTING THE APPRAISAL BY THE ASSISTANT CITY MANAGER OF $22,662.00; RETAINING A NONEXCLUSIVE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 5,036-square foot portion of alley right-of-way located adjacent to Lot 1, Block 1, Kingwick Place Addition, Section 2 and Tract B, Subdivision of Block 1, Warwick Addition, City and County of Midland, Texas, as described in Exhibits "A" and "B" attached hereto and made a part hereof for all legal purposes (the "Property"), is no longer needed for public use; and

WHEREAS, an application for vacating the Property has been received by the City from the abutting property owner; and

WHEREAS, the Assistant City Manager has appraised the value of the City's property interest in the Property at $22,662.00, as shown in Exhibit "C" attached hereto and incorporated herein by reference; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing the notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the Property;

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

SECTION ONE. That the Property is hereby vacated and abandoned for all public

purposes. Provided, however, that the City is hereby abandoning only the public interest in

the Property, and this ordinance in no way affects any private easement or access easement

which abutting property owners may have in the Property.

SECTION TWO. That this ordinance shall not be effective until:

A. the City of Midland has received from the abutting property owner(s) the sum of $22,662.00; and

B. a replat of the Property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County, Texas.

SECTION THREE. That the City herein retains an accessible nonexclusive utility easement across, through, over, under, on and along the Property until all entities that were using the Property for utility purposes as of the date of approval of this ordinance have abandoned their uses of the Property.

SECTION FOUR. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____

Lori Merritt Blong, Mayor

ATTEST:

_____

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT

AND COMPLETENESS:

_____

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____

John Ohnemiller, City Attorney

EXHIBIT "A"

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

lca@lcaodessa.com
521 N. Texas Ave. • Odessa, Texas 79761
(432) 332-5058 or 580-8812 • Fax (432) 332-8812
Engineering Firm# 001363 • Surveying Firm# 10034300

METES & BOUNDS DESCRIPTION
OF A 5,036 SQUARE FOOT ALLEY ABANDONMENT
LOCATED BETWEEN LOT 1 BLOCK 1, KINGWICK PLACE ADDITON SECTION 2
AND TRACT "B", SUBDIVISION OF BLOCK 1, WARWICK ADDITION
LOCATED IN SECTION 22, BLOCK 39, T-1-S
T&P RR CO. SURVEY
MIDLAND, MIDLAND COUNTY, TEXAS

BEING A 5,036 SQUARE FOOT ALLEY ABANDONMENT, SAID ALLEY BEING 30-FEET WIDE, LOCATED BETWEEN LOT 1 BLOCK 1, KINGWICK PLACE ADDITON SECTION 2 AS DESCRIBED IN CABINET D, PAGE 207 OF THE MIDLAND COUNTY PLAT RECORDS, AND TRACT "B", SUBDIVISION OF BLOCK 1, WARWICK ADDITION, AS DESCRIBED IN CABINET A, PAGE 118 OF SAID MIDLAND COUNTY PLAT RECORDS AND BEING LOCATED IN SECTION 22, BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS AND BEING MORE PARTICULARL DESCRIBED BY METES & BOUNDS AS FOLLOEW:

BEGINNING at (Y= 10,699,732.18' & X= 1,749,314.24') a ½" Iron Rod (Control Monument) found at the southwest corner of said Lot 1 Block 1, Kingwick Place Addition on the northern right-of-way of West Scharbauer Drive and the east line of said 30-foot alley,

THENCE South 32°57'08" West with said Scharbauer Drive, a distance of 40.88 feet to a ½" Iron Rod with cap marked "LCA ODESSA TX" set at the south corner of said Tract "B";

THENCE North 14°15'28" West with the west line of said 30-foot alley and the east line of said Tract "B", a distance of 181.72 feet to a ½" Iron Rod with cap marked "LCA ODESSA TX" set at the northwest corner for this abandonment;

THENCE North 75°44'32" East crossing said alley, a distance of 30.00 feet to a ½" Iron Rod with cap marked "ASB 5689" (Control Monument) found at a cut-back corner of said alley and said Lot 1, Block 2;

THENCE South 14°15'28" East with the east line of said 30-foot alley and the west line of said Lot 1, Block 1, a distance of 153.95 feet to the Point of the Beginning containing 5,036 square feet or 0.116 surface acres. Bearings, distances and coordinates are relative to the Texas Coordinate System, 1983 NAD, Central Zone, based on the City of Midland GPS Control Monument "4210" (Y=10,698,976.99' and X=1,747,475.90' with a theta angle of -00°54'45" with a combined grid factor of 0.999902307 as published in US Survey feet.

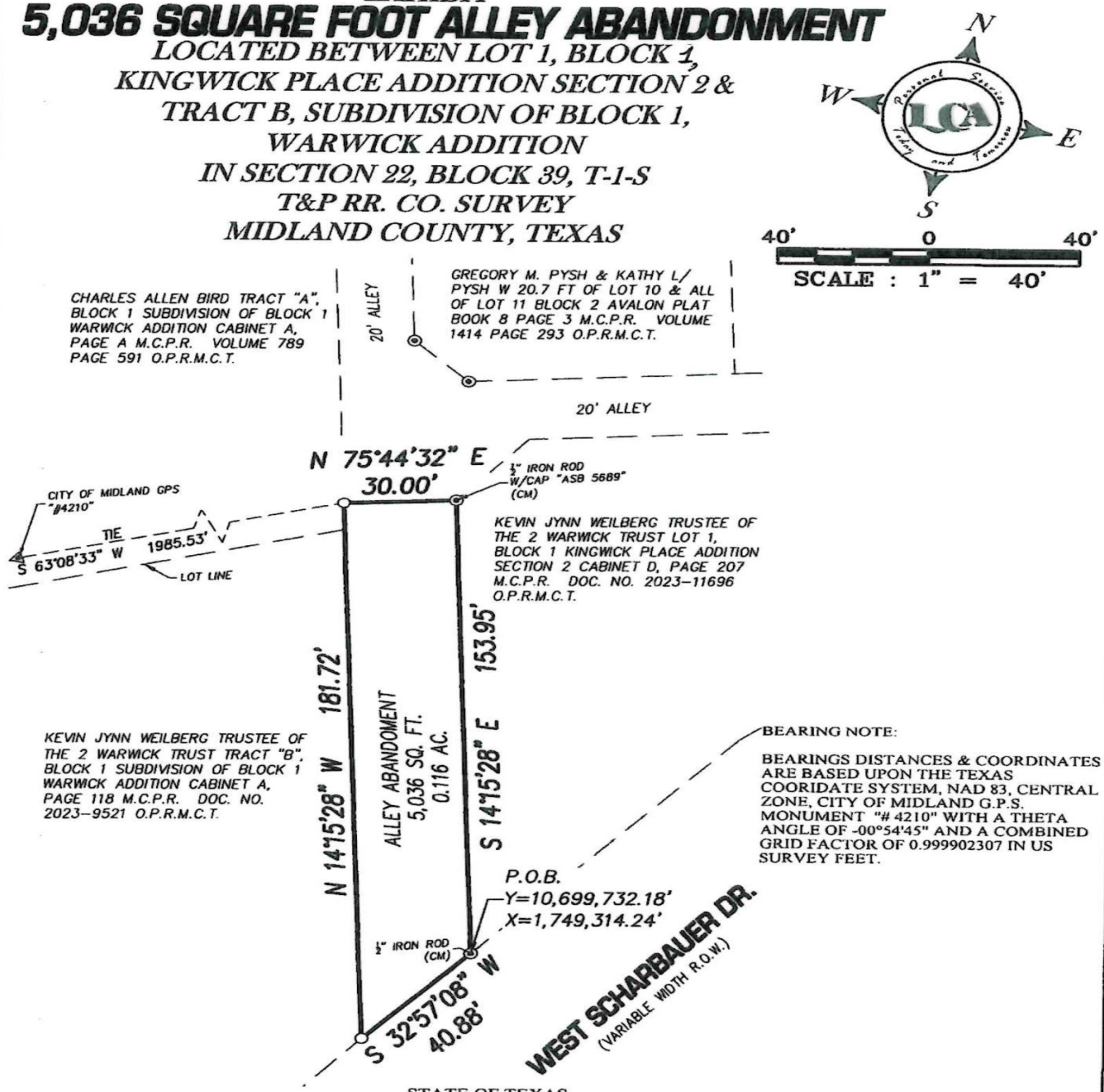
LCA

John F. Landgraf, RPLS 2410
19 February, 2024
REV: 10 July 2024

STATE OF TEXAS
REGISTERED
JOHN F. LANDGRAF
2410
PROFESSIONAL
LAND SURVEYOR

LCA Project No. 2024-002.2

EXHIBIT
5,036 SQUARE FOOT ALLEY ABANDONMENT
LOCATED BETWEEN LOT 1, BLOCK 1, KINGWICK PLACE ADDITION SECTION 2 & TRACT B, SUBDIVISION OF BLOCK 1, WARWICK ADDITION IN SECTION 22, BLOCK 39, T-1-S T&P RR. CO. SURVEY MIDLAND COUNTY, TEXAS



BEARING NOTE:

BEARINGS DISTANCES & COORDINATES ARE BASED UPON THE TEXAS COORIDATE SYSTEM, NAD 83, CENTRAL ZONE, CITY OF MIDLAND G.P.S. MONUMENT "# 4210" WITH A THETA ANGLE OF -00°54'45" AND A COMBINED GRID FACTOR OF 0.999902307 IN US SURVEY FEET.

STATE OF TEXAS
COUNTY OF ECTOR

I, John F. Landgraf, a Registered Professional Land Surveyor, No. 2410, do hereby certify that the above plat represents a survey actually made on the ground by me or under my direct supervision and is true and correct to the best of my knowledge and belief.

LCA

John F. Landgraf, R.P.L.S. #2410
19 Febuary 2024

STATE OF TEXAS REGISTERED JOHN F. LANDGRAF 2410 PROFESSIONAL LAND SURVEYOR

LEGEND

⊙	FOUND 1/2" I.R. W/CAP "LCA ODESSA TX" UNLESS OTHERWISE NOTED
○	SET 1/2" I.R. W/CAP UNLESS OTHERWISE NOTED
(CM)	CONTROL MONUMENT
O.P.R.M.C.T.	OFFICIAL PUBLIC RECORDS MIDLAND COUNTY TEXAS
M.C.P.R	MIDLAND COUNTY PLAT RECORDS

ENG. _____ E.T. _____
SVY. _____ DFT. _____
LCA JOB No. 2024-002

LCA Personal Service, Today and Tomorrow

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
521 North Texas, Odessa Tx. 79761 F-001363 F-10034300
Phone # (432) 332-5058 [illegible]@lcaodessa.com

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MIDLAND
Feel the Energy!

Office of the City Manager

July 11, 2024

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 5,036-square foot portion of alley right-of-way located adjacent to Lot 1, Block 1, Kingwick Place Addition, Section 2 and Tract B, Subdivision of Block 1, Warwick Addition, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is $22,662.00. Upon the City's receipt of this sum from the adjoining property owner(s), the ordinance vacating and abandoning the City's interest in the property may be recorded in the Midland County Clerk's office.

Very truly yours,

Jose Ortiz
Assistant City Manager

EXHIBIT "C"

300 N. Loraine, Midland TX 79701 • 432-685-7202 • Fax 432-686-1600

LCA

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

lca@lcaodessa.com
521 N. Texas Ave. • Odessa, Texas 79761
(432) 332-5058 or 580-8812 • Fax (432) 332-8812
Engineering Firm# 001363 • Surveying Firm# 10034300

METES & BOUNDS DESCRIPTION
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T&P RR CO. SURVEY
MIDLAND, MIDLAND COUNTY, TEXAS

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THENCE South 32°57'08" West with said Scharbauer Drive, a distance of 40.88 feet to a ½" Iron Rod with cap marked "LCA ODESSA TX" set at the south corner of said Tract "B";

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LCA

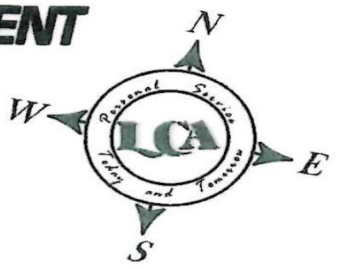
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19 February, 2024
REV: 10 July 2024

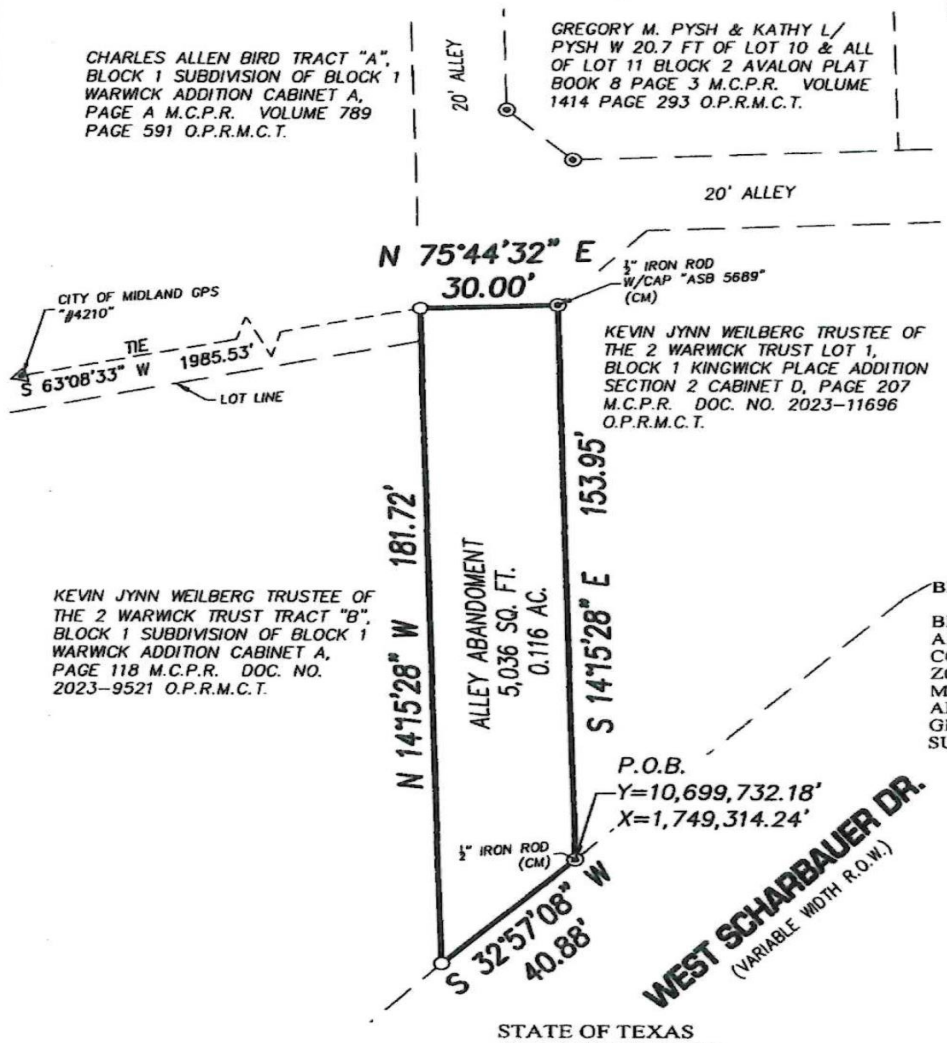
STATE OF TEXAS
REGISTERED
JOHN F. LANDGRAF
2410
PROFESSIONAL
LAND SURVEYOR

LCA Project No. 2024-002.2

PACKET

EXHIBIT
5,036 SQUARE FOOT ALLEY ABANDONMENT
LOCATED BETWEEN LOT 1, BLOCK 1, KINGWICK PLACE ADDITION SECTION 2 & TRACT B, SUBDIVISION OF BLOCK 1, WARWICK ADDITION IN SECTION 22, BLOCK 39, T-1-S T&P RR. CO. SURVEY MIDLAND COUNTY, TEXAS





BEARING NOTE:

BEARINGS DISTANCES & COORDINATES ARE BASED UPON THE TEXAS COORIDATE SYSTEM, NAD 83, CENTRAL ZONE, CITY OF MIDLAND G.P.S. MONUMENT "# 4210" WITH A THETA ANGLE OF -00°54'45" AND A COMBINED GRID FACTOR OF 0.999902307 IN US SURVEY FEET.

STATE OF TEXAS
COUNTY OF ECTOR

I, John F. Landgraf, a Registered Professional Land Surveyor, No. 2410, do hereby certify that the above plat represents a survey actually made on the ground by me or under my direct supervision and is true and correct to the best of my knowledge and belief.

LCA

John F. Landgraf, R.P.L.S. #2410
19 Febuary 2024

STATE OF TEXAS
REGISTERED
JOHN F. LANDGRAF
2410
PROFESSIONAL LAND SURVEYOR

LEGEND

⊙	FOUND 1/2" I.R. W/CAP "LCA ODESSA TX" UNLESS OTHERWISE NOTED
○	SET 1/2" I.R. W/CAP UNLESS OTHERWISE NOTED
(CM)	CONTROL MONUMENT
O.P.R.M.C.T.	OFFICIAL PUBLIC RECORDS MIDLAND COUNTY TEXAS
M.C.P.R	MIDLAND COUNTY PLAT RECORDS

ENG. _____ E.T. _____
SVY. _____ DFT. _____
LCA JOB No. 2024-002

LCA
Personal Service, Today and Tomorrow
ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
321 North Texas, Odessa Tx. 79761 F-001363 F-10034300
Phone # (432) 332-5058 E-Mail : lca@lcaodessa.com

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21.12
August 13, 2024

LCA Job #

MIDLAND Planning Division

Vacate Right-of-Way/Public Utility Easement/Land/Street Application

Project Number:_____

Case Number:_____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: LCA, Inc.		Phone (432) 332-5058 Email LCA@LCAODESSA.COM	
Address 521 N Texas Ave	City Odessa	State TX	Zip 79761

Application is hereby made to the City Council to vacate the following:

- ☒ Right-of-Way (Alley)
- ☐ Public Utility Easement
- ☐ Land
- ☐ Street

Description of Address: A 5,036 Square acre foot portion of the alley between 1606 W. Shaurbauer Dr. & 2 Warwick Place, Midland, Texas.

Reason for Request: This is to combine tract 13, Subdivision of Block 1 Warwick Addition and Lot 1 Block 1, Kingwick Place Addition Section 2 and retain a general utility easement .

Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way: _____

This abandonment w ill not adversely affect th e public welf are.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Sealed metes and bounds description of the property to be vacated (included on the map) and total square feet of vacation. Include ownership, legal and deed information for adjacent property owners
- Digital Copies of Site Plan (PDF/JPEG)

Utility Company Approval

Clearance is needed from the following utility companies:

- City of Midland
- Atmos Energy
- Sharyland Utilities
- Oncor Electric
- AT&T
- Suddenlink Cable TV Co.
- Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained to resolve any issues that may arise.

Policies

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.

2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:

    a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.

    b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.

    c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signatures

Applicant (signature):		Date:
Affected Property Owners:		
Signature:	Print:	Date:
Signature:	Print:	Date
Signature:	Print:	Date
Signature:	Print:	Date

The Vacation of right-of-way/public utility easement/land/street shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

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

FOR OFFICE USE ONLY

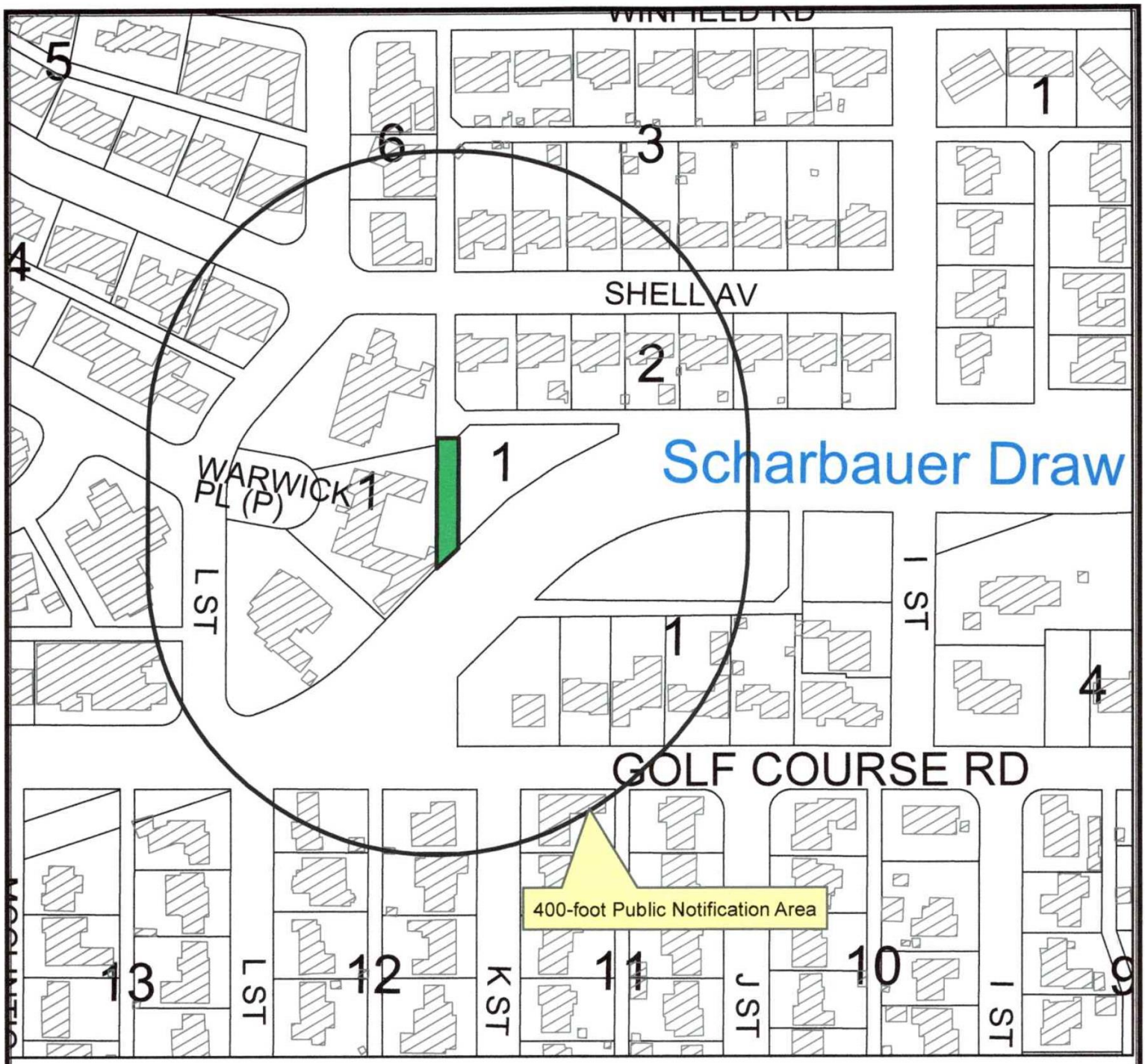
☐ 1 FOLDED Copy of Survey Plat ☐ Plans in Digital Format (PDF/JPEG)

☐ Application Fee

Check #_____

Received By:	Date:

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



Location Map

V-24-0062 **Scale: 1" = 600'**

Consider a request by Landgraf Crutcher & Associates for a vacation of a 5,036-square foot portion of an alley, located adjacent to Lot 1, Block 1, Kingwick Place Addition, Section 2 and Tract B, Subdivision of Block 1, Warwick Addition, City and County of Midland, Texas.

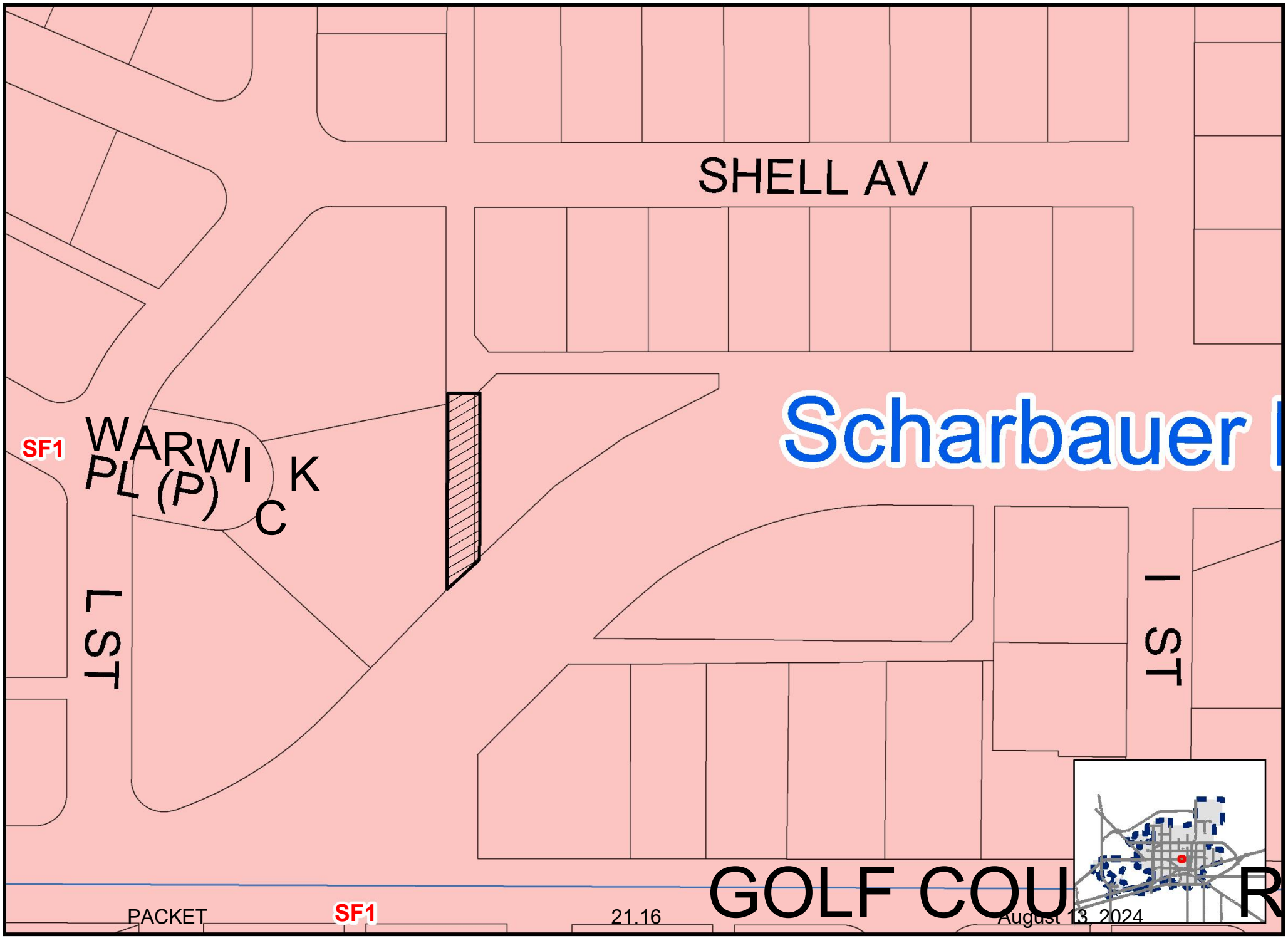
Generally located on the north side of W. Scharbauer Drive, approximately 640-feet west of N. "I" Street. (District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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



Map By DG, 3/4/2024

V-24-0062

Scale: 1" = 200'

ZONING MAP

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From: UNDERWOOD, JERRY D
To: Diana Geerts
Subject: RE: V-24-0062 1606 W Scharbauer Vacation
Date: Tuesday, March 5, 2024 6:10:09 AM
Attachments: image001.png
image002.png
image003.png
image004.png

Good morning,

We don't have anything in that alleyway.

Thanks,
Jerry

Jerry Underwood
Sr. Specialist OSP Design Engineer
Midland Engineering
AT&T

AT&T Technology Operations
410 W Missouri, Midland, TX 79701
m 432-296-2821 / ju1659@att.com

From: Diana Geerts <dgeerts@midlandtexas.gov>
Sent: Monday, March 4, 2024 2:43 PM
To: UNDERWOOD, JERRY D <ju1659@att.com>
Subject: V-24-0062 1606 W Scharbauer Vacation

Good Afternoon,

This vacation is scheduled to go on the April 9th, City Council Meeting. Please see the attached documents and notify me if you have any comments, or no comments.

Respectfully,

Diana Geerts
Senior Planner|Development Services
O. 432-685-7577
dgeerts@midlandtexas.gov

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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ATMOS ENERGY

West Texas Division
P.O. Box 1111,
Midland, Texas 79702

City of Midland
Diana Geerts
Senior Planner/Planning Division
300 N. Loraine
Midland, Texas 79701

March 8, 2024

Re: Case Name: Warwick Vacation
Case Number: V-24-0062

Diana,

Atmos Energy currently has facilities located within the above-described alley Right of Way between Warwick and Scharbauer Dr. south of Shell. We currently have a gas main that extends along the north portion of this alley right of way. Atmos would have no objection to the proposed vacation as long as a utility easement can be maintained where our main is located since we are currently serving customers from this line.
Please let me know if you have any further questions.

Sincerely,

Mark Lieb

Mark Lieb
Project Specialist
Atmos Energy/Permian Basin
432-967-0370 cell
mark.lieb@atmosenergy.com

From:	Henderson, Jeffrey
To:	Diana Geerts
Subject:	FW: Warwick Addition Alley Abandonment
Date:	Tuesday, June 25, 2024 9:31:26 AM
Attachments:	image001.png Warwick Plat.pdf

Sorry, I forgot to add you to this yesterday.

From: Henderson, Jeffrey
Sent: Monday, June 24, 2024 3:41 PM
To: 'George Thornley' <get@lcaodessa.com>
Cc: John Landgraf <jfl@lcaodessa.com>; Ortega, Gus Ortega <Gustavo.Ortega@oncor.com>; Chad Blankenship (Chad.Blankenship@oncor.com) <Chad.Blankenship@oncor.com>; Benavides, Rosalinda <Rosalinda.Benavides@oncor.com>; Arguello, Martin <Martin.Arguello@oncor.com>; Cavazos, Ryan <Ryan.Cavazos@oncor.com>; 'Cale Lancaster' <Cale@rwarchitects.com>; Mark Wellen <mtw@rwarchitects.com>
Subject: Warwick Addition Alley Abandonment

Good afternoon Diana,
The Warwick Alley Abandonment is ready to be approved by Oncor and can be moved forward with the City of Midland vacation approval process. Please see attached survey for your reference.
Thanks,
Jeff

Jeffrey R. Henderson
Supervisor, Distribution Design
Oncor | PMDS
883 N Graham St.
Stephenville, Tx 76401

Office: 254-977-1910
Cell: 817-271-1422
Email: *jeffrey.henderson@oncor.com*

My Manager: Chad Blankenship
Phone: 325-456-2674
Email: *Chad.Blankenship@oncor.com*

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From: Ruben Guerra
To: Diana Geerts
Subject: Re: V-24-0062 1606 W Scharbauer Vacation
Date: Monday, March 4, 2024 3:52:46 PM
Attachments: image001.png
image002.png
image003.png
image004.png

Diana

Yes we do have service's in the section you have on your map. We are attached to the Oncor poles in that section.

Thank You
Ruben Guerra
Construction Coordinator
O: 432-272-3088
C: 432-653-9369
Ruben.Guerra@astound.com
Astound Business Solutions
Powered by RCN | Grande | Wave
astound.com

On Mon, Mar 4, 2024 at 2:44 PM Diana Geerts <dgeerts@midlandtexas.gov> wrote:

> Good Afternoon,
>
> This vacation is scheduled to go on the April 9th, City Council Meeting. Please see the attached documents and notify me if you have any comments, or no comments.
>
> *Respectfully,*
>
> *Diana Geerts*
>
> *Senior Planner | Development Services*
>
> *O. 432-685-7577*
>
> *dgeerts@midlandtexas.gov*

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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From: LReyna@midcad.org
To: Diana Geerts
Subject: Re: FW: V-24-0062 1606 W Scharbauer Vacation
Date: Wednesday, March 13, 2024 2:47:55 PM
Attachments: ATT00001.png
ATT00002.png
ATT00003.png
ATT00004.png
ATT00005.png
ATT00006.png
ATT00007.png
ATT00008.png
MEETS AND BOUNDS VACATION SCHARBUER.PDF
V-24-0062, Location Map.pdf
V-24-0062-SURVEY.PDF
MCAD-Warwick Vacation.pdf
Importance: High

Valuation for the above vacation property: 5,036 square foot x $4.50 = $22,662 in value.

Hi Diana,

Please see the requested information above. My apologies for the delay in sending this to you and I really do appreciate that you reminded me!

Thank you for your patience and let me know if you need anything else.

Lisa Reyna, RPA
Assistant Chief Appraiser
Midland Central Appraisal District
4631 Andrews Hwy
Midland, TX 79703
Phone (432) 699-4991
Fax (432) 689-7185

From: "Diana Geerts" <dgeerts@midlandtexas.gov>
To: "LReyna@midcad.org" <LReyna@midcad.org>
Date: 03/13/2024 10:26 AM
Subject: FW: V-24-0062 1606 W Scharbauer Vacation

Good morning Lisa,

I just wanted to check in with you about this vacation, which is scheduled for the April 9th city council meeting, and confirm you received the needed documents for an estimated market value. Would you happen to know when you will be sending that out? Thank you for your time.

Respectfully,

Diana Geerts
Senior Planner|Development Services
O. 432-685-7577
dgeerts@midlandtexas.gov





300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

From: Diana Geerts
Sent: Monday, March 4, 2024 2:47 PM
To: LReyna@midcad.org
Subject: V-24-0062 1606 W Scharbauer Vacation

Good Afternoon,

This vacation is scheduled to go on the April 9th, City Council Meeting. Please see the attached documents and notify me if you have any comments, or no comments.

Respectfully,

Diana Geerts
Senior Planner|Development Services
O. 432-685-7577
dgeerts@midlandtexas.gov





300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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From:	Luis Montez
To:	Diana Geerts
Cc:	Eron Zapata
Subject:	RE: External E-mail - V-24-0062 1606 W Scharbauer Vacation
Date:	Wednesday, March 6, 2024 10:39:25 AM
Attachments:	image001.png image002.png image003.png image004.png

Diane, Optimum has aerial coax plant on the power poles on the west side of the alley.
There's 2 active customer's being serviced, the requestor will be responsible for the costs for us to relocate our plant to underground.

From: Diana Geerts <dgeerts@midlandtexas.gov>
Sent: Monday, March 4, 2024 2:42 PM
To: Luis Montez <Luis.Montez@AlticeUSA.com>
Subject: External E-mail - V-24-0062 1606 W Scharbauer Vacation

[External Email]

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Good Afternoon,

This vacation is scheduled to go on the April 9th, City Council Meeting. Please see the attached documents and notify me if you have any comments, or no comments.

Respectfully,

Diana Geerts
Senior Planner|Development Services
O. 432-685-7577
dgeerts@midlandtexas.gov

MIDLAND
Feel the Energy!

300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

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MIDLAND

Be the Energy!

Warwick Place

Vacation

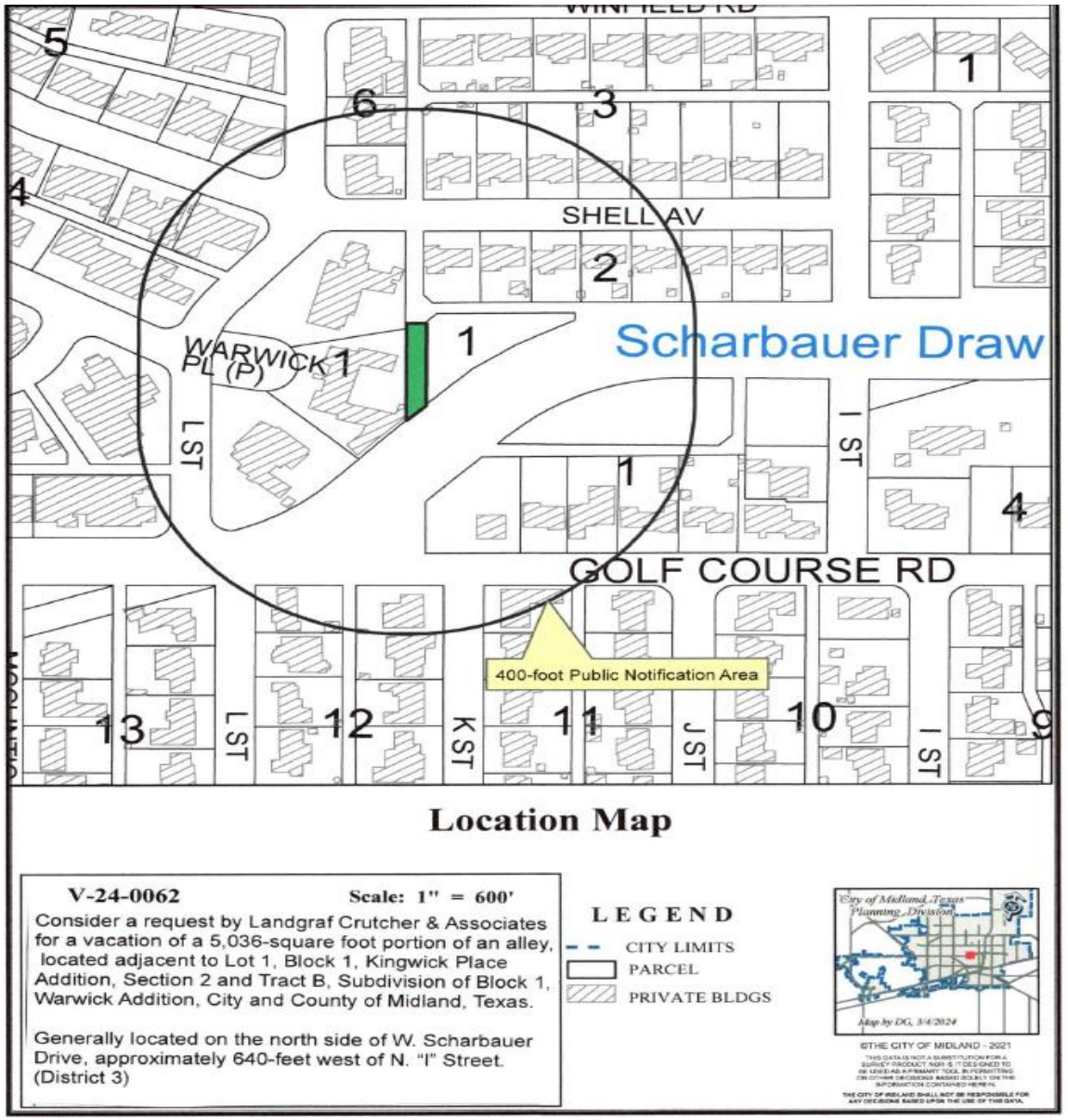
July 23, 2024

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Warwick Place

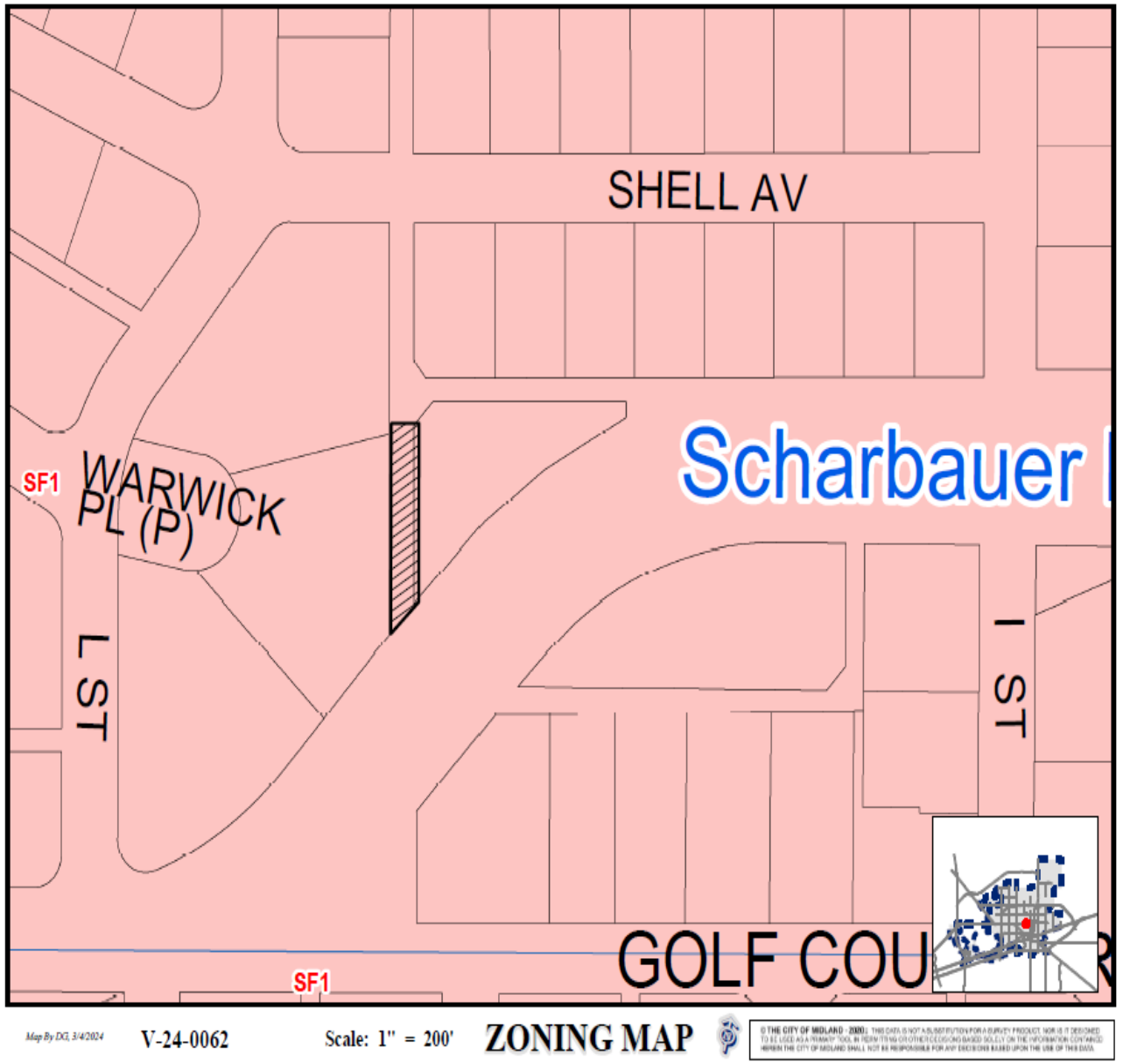
- LCA
- Vacate a 0.116-acre portion of alley right-of-way.



Warwick Place

- Current Zoning: SF,1, Single Family Dwelling District

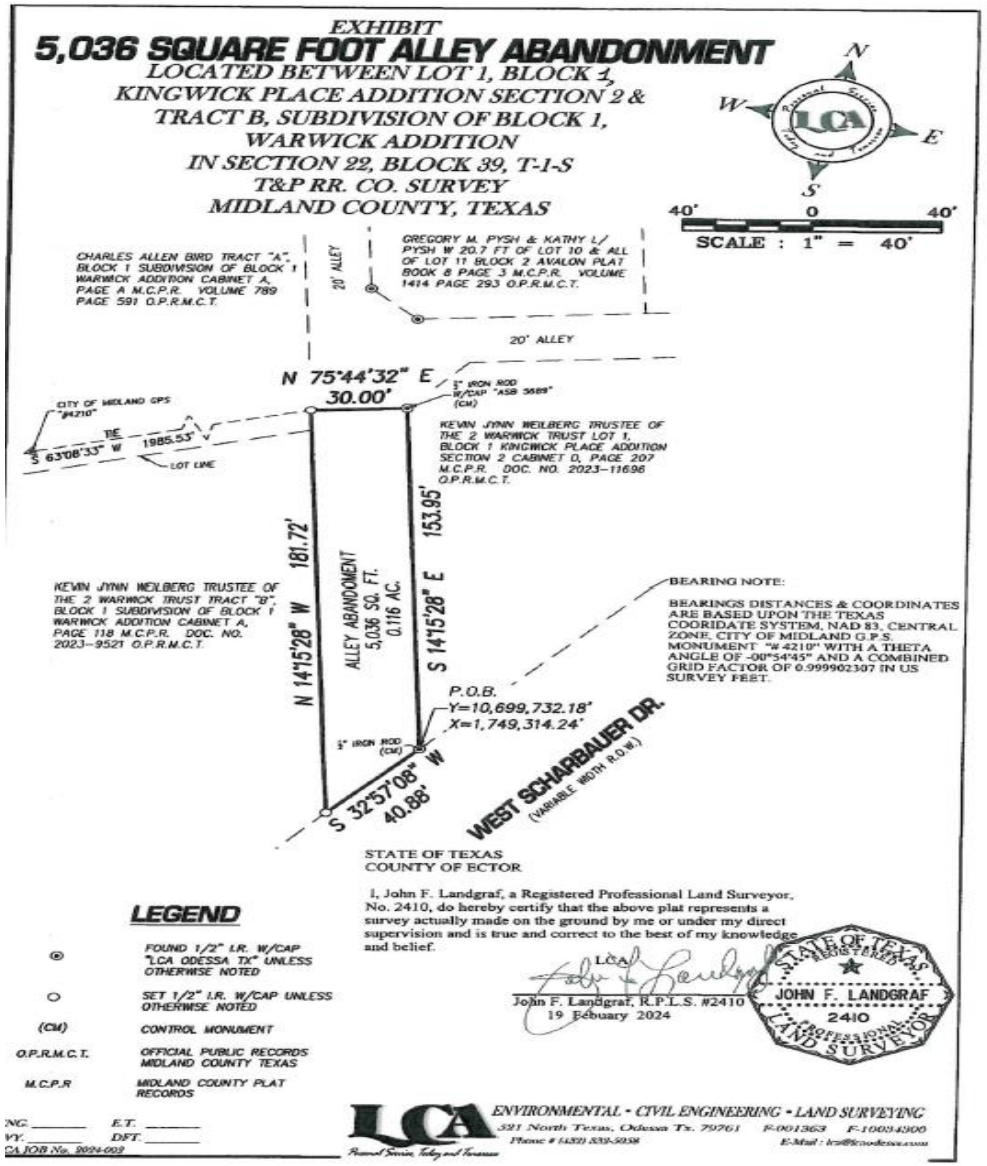
- Surrounding Zoning:
- North, East, South, and West: SF,1, Single Family Dwelling District



Warwick Place

- 5,036 square-foot portion of alley right of way to be retained as a general utility easement.

- Combine Tract B, Subdivision of Block 1, Warwick Addition, and Lot 1, Block 1, Kingwick Place Addition, Section 2.



- Aerial



Staff has not received any letters of objection and the request meets all the City of Midland Zoning requirements of the City Ordinance.

Therefore, staff recommends APPROVAL of this request, subject to conditions A through B.

Conditions:

A. That the value of the property shall be $22,662.00.

B. That a replat of the subject property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County.

.

City Council Meeting

Item Number: 22

Meeting Date: July 23, 2024, August 13, 2024

To: City Council / City Manager

From: Diana Geerts, Senior Planner

Subject: **AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,650-SQUARE FOOT PORTION OF LOT 5A, BLOCK 1, GATEWAY PLAZA, SECTION 12, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF STARBOARD DRIVE AND LIBERTY DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF BEER AND WINE IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Purpose:

The applicant, Marty Gautreaux is requesting approval of a Specific Used Designation with Term for the sale of beer and wine, for on premises consumption, in a restaurant at 5701 Starboard Drive, Suite 1.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Strategic Priority:

(Quality of Life and Place)

Current Zoning:

RR, Regional Retail District.

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned Development District for Housing Development, O-2, Office District and the location of an apartment complex and a hotel, respectively. The property to the east is zoned PD, Planned Development District for a Shopping Center, and the location of a movie theater. Business the south and across Business Interstate-20 is located outside city limits and the location of industrial businesses. The property to the west is zoned PD, Planned Development District for a Shopping Center and the location of a motor sports store.

Analysis:

The applicant, Marty Gautreaux is requesting approval of a Specific Used Designation with Term for the sale of beer and wine, for on premises consumption, in a restaurant. The property is zoned RR, Regional Retail District, which allows the sale of alcoholic beverages, for on premises consumption, in a restaurant with the approval of a Specific Use Designation. The property previously functioned as The Rig Tacos, which was regulated by Ordinance No.10,120. The location of the proposed restaurant is located within a retail center and there is currently one other Specific Use Designation for a bar, Woody's Hideaway.

The floor plan attached here to Exhibit A illustrates a dining area of 1,000 square feet. There is also an outside patio area of approximately 775 square feet. A total of 1,775 square feet is being dedicated for the sale and on premises consumption of alcoholic beverages.

The proposed hours of operations for the restaurant are as followed:

Monday through Saturday from 11:00 a.m. to 12:00 a.m. (midnight)

The applicant is requesting the following hours for alcohol service as the following:

Monday through Saturday from 11:00 a.m. to 12:00 a.m. (midnight)

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)

The SUD for Marty G's is acceptable. The property must adhere to the maximum occupant load of 118 persons for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Engineering: (Approved)

No objection.

Transportation: (Approved)

No objection.

Fire: (Approved)

No comments.

Planning:

This request meets all requirements; therefore, staff recommends approval of the Specific Use Designation with Term for the sale of beer and wine, for on-premises consumption, in a restaurant, subject to Conditions A through G.

Conditions:

A. **That the serviceable area of the restaurant shall be limited to approximately 1,775 square feet as shown in Exhibits "A", which is attached hereto and incorporated herein for all purposes.**

B. **That the days and hours of alcoholic beverages sales and consumption shall be limited to:**

Monday through Saturday, from 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 the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 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 12, 2024, staff has not received any letters of objection.

Attachments:

Floor Plan (Exhibit A)
Site Plan
Application
Maps
Photos
Powerpoint

Jose E. Ort

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 2,650-SQUARE FOOT PORTION OF LOT 5A, BLOCK 1, GATEWAY PLAZA, SECTION 12, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF STARBOARD DRIVE AND LIBERTY DRIVE), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF BEER AND WINE 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 2,650-square foot portion of Lot 5A, Block 1, Gateway Plaza, Section 12, 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 beer and wine in a restaurant (the "Establishment") for on-premises consumption, together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 1,775 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

C. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through 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 the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

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

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland,

Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

Inside Serving Area=
1,000 Sq. Ft.

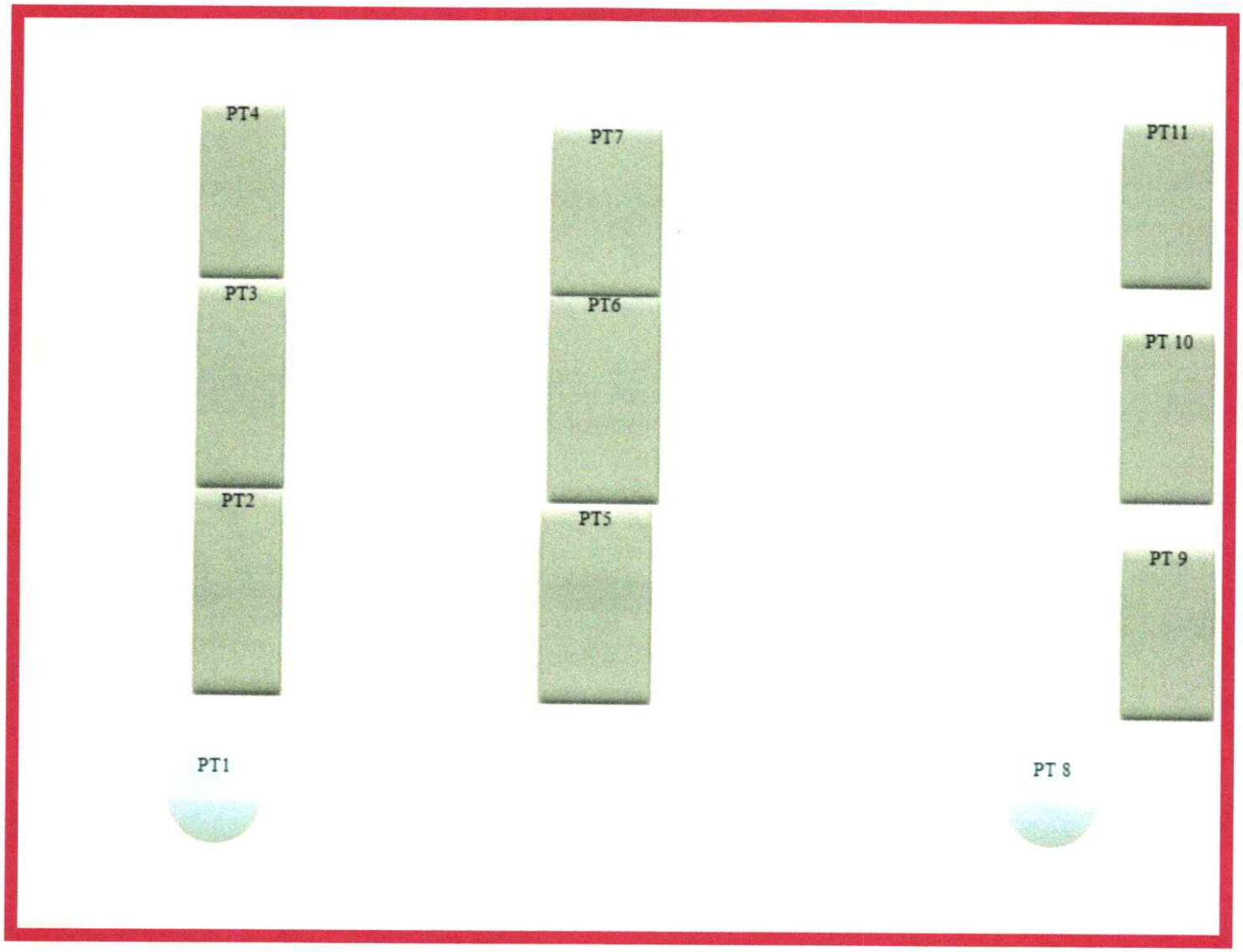


40'

25'

EXHIBIT "A" (cont'd)

Patio Layout =
775 Sq. Ft.



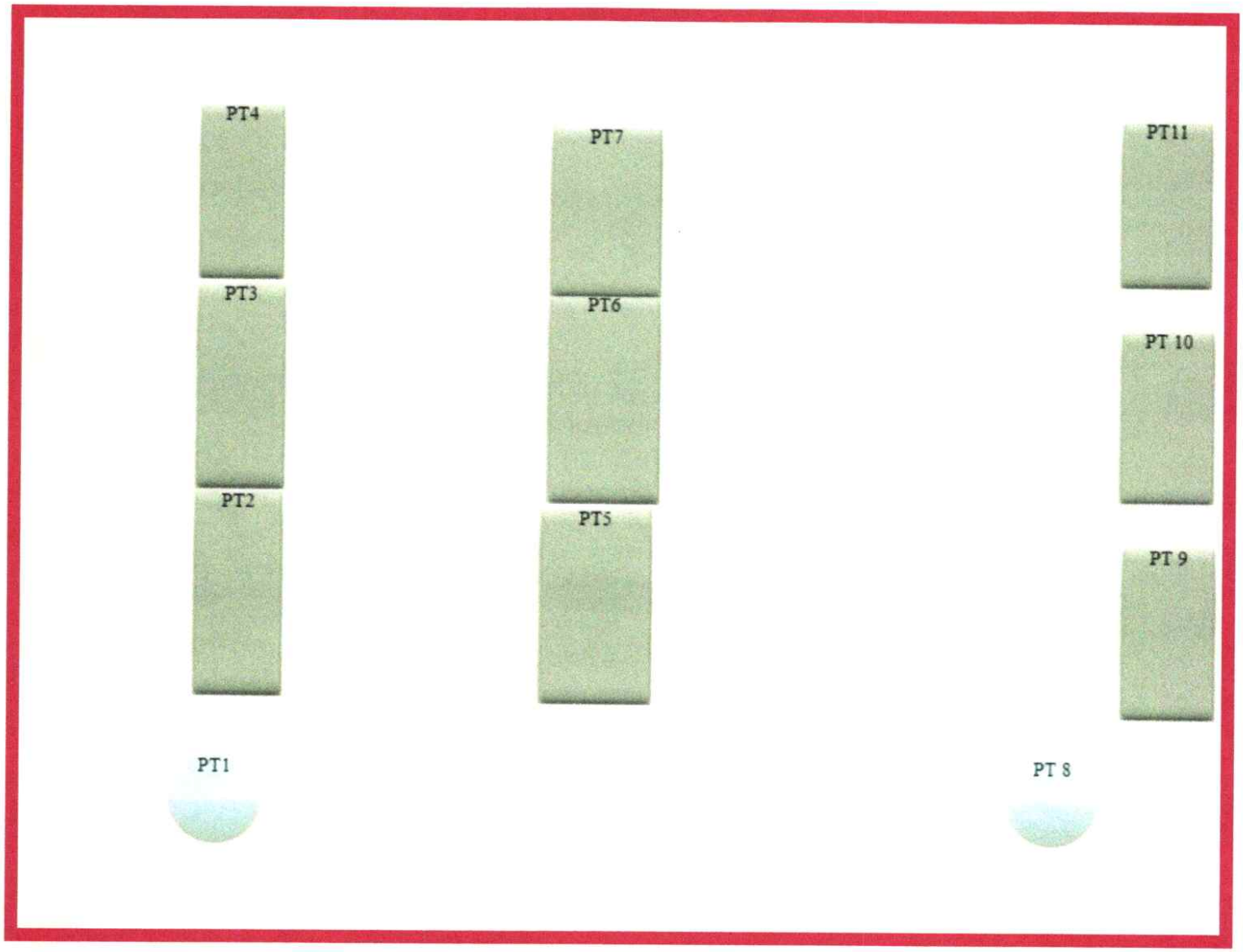
Inside Serving Area=
1,000 Sq. Ft.



40'

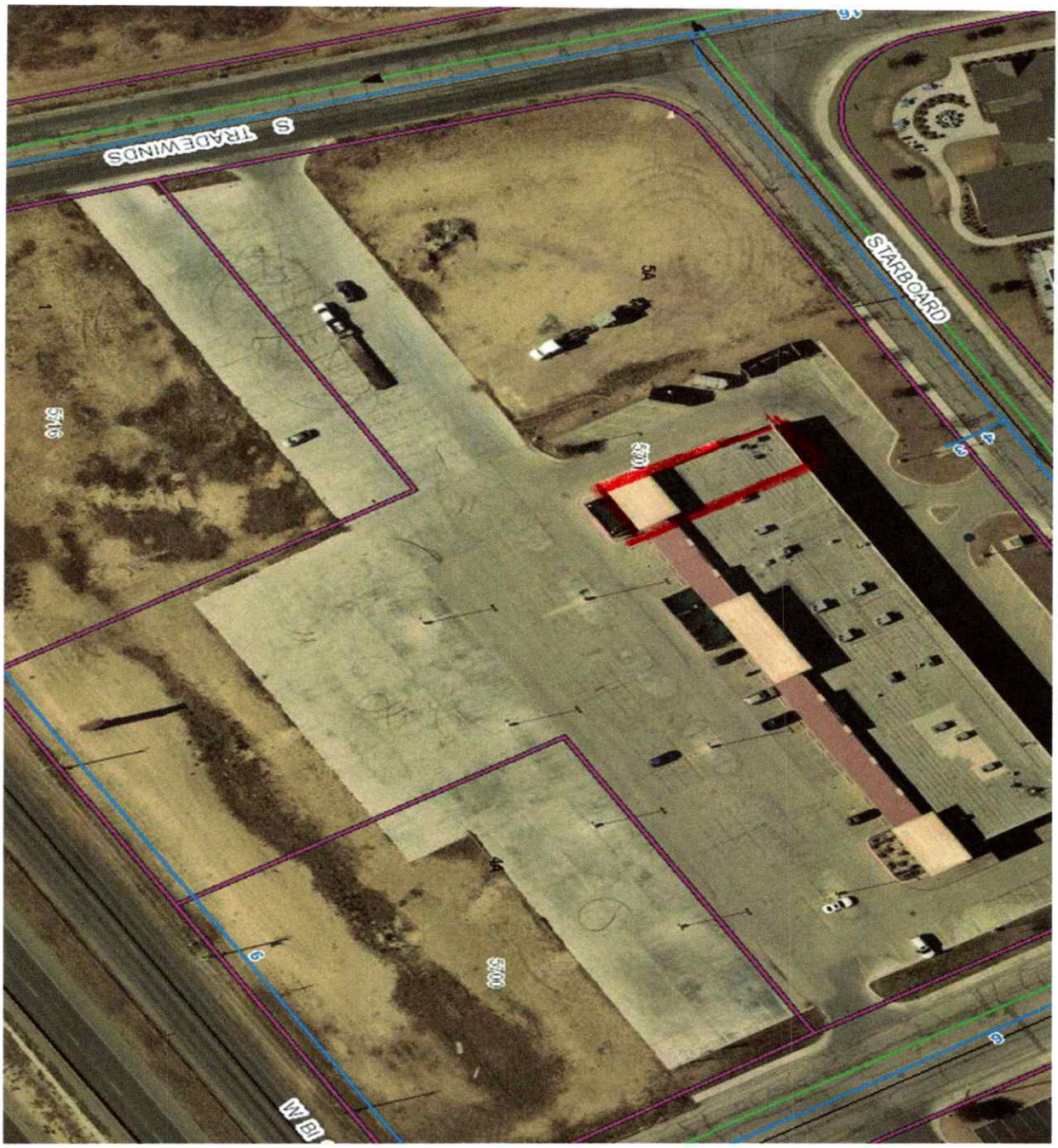
25'

Patio Layout =
775 Sq. Ft.



31'

25'


S TRADEWINDS
STARBOARD
5A
5516
5500
5501
1
4
5
6
9

MIDLAND
Planning Division

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

Project Number: _____
Case Number: SUD-24-0124

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Marty Gautreaux		Phone (337) 319 0616 Email Marty@MartyGsCajunEats.com	
Address 5701 Starboard Dr STE 1	City Midland	State TX	Zip 79703
Property Owner Printed Name: Crimson Sky Capital, LTD		Phone (806) 794-1492 Email pshipton@cmsproperties inc.com	
Address PO Box 53608	City Lubbock	State Tx	Zip 79453
Representative *(If different from Applicant or Property Owner)* Firm: _____ Printed Name: N/A		Phone ( ) Email	
Address	City	State	Zip

Street Address: 5701 Starboard Dr. STE 1

Business Name: Marty G's Cajun Restaurant

Legal Description
Lot: 5A Block: 1 Subdivision: Gateway Plaza Section 12

Current Zoning: P R

Reason for Request: TABC TO Sell Beer.

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Restaurant

Proposed/Current Days and Hours of Operation: Monday Thru Saturday 11AM - 12AM

Proposed Days and Hours of Alcohol Service: Monday - Saturday 11 AM - 12 AM

Total Square Footage of Business: 21560

Square Footage of Alcohol Serviceable Area: 1,775

Restroom Fixtures:	*Men*	**Toilets/Urinals:**	1 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): Marty Gautreaux	Date: 6/4/24
Applicant (printed): Marty Gautreaux	
Property Owner (signature): Crimson Sky Capital, LTD Patty Shipton	Date: 6/3/2024
Property Owner (printed): Crimson Sky Capital, LTD Patty Shipton	

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

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

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

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Marty D. Gautreaux who, being by me duly sworn, upon oath says: That (s)he is authorized by Crimson Sky Capital, 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. Marty D Gautreaux

Subscribed and sworn to before me, this 4th day of June, 2024 to certify which witness my hand and seal of office.

ALEXIS MARIE MARTINEZ
Notary Public, State of Texas
Comm. Expires 07-12-2027
Notary ID 134449907

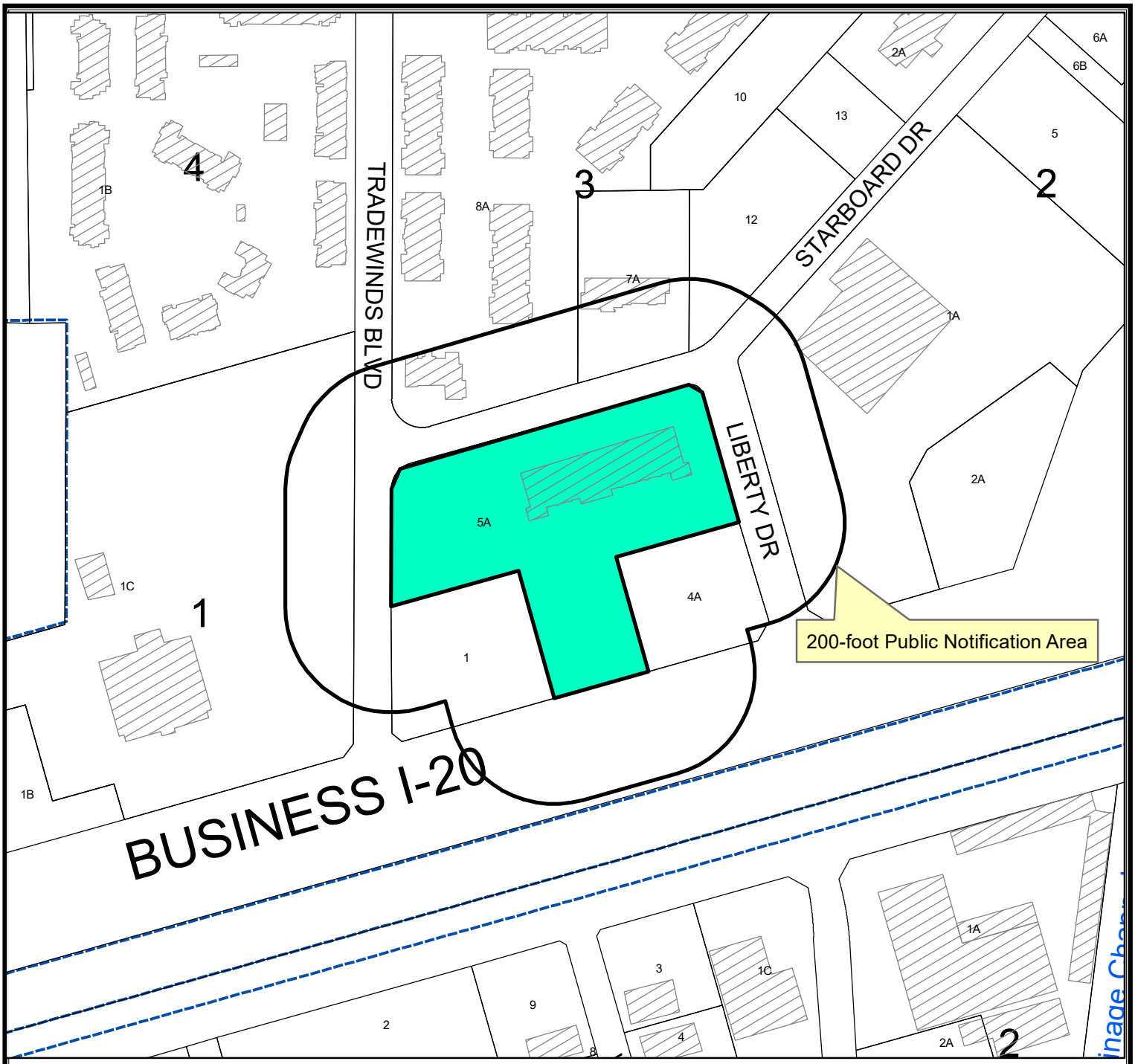
Notary Public

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Dimensioned Floor Plan
☐ Application Fee	☐ Site Plan
Check # 2112	☐ Plans In Digital Format (PDF/JPEG)
Received By:	Date: RECEIVED

BY: .....

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



Location Map

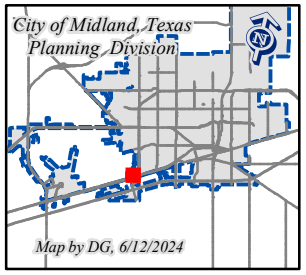
SUD-24-0184 **Scale: 1" = 600'**

Consider a request by Marty Gautreaux for a Specific Use Designation with Term for the Sale of Beer and Wine for on premises consumption in a Restaurant on a 2,650 square foot portion of Lot 5A, Block 1, Gateway Plaza, Section 12, City and County of Midland, Texas.

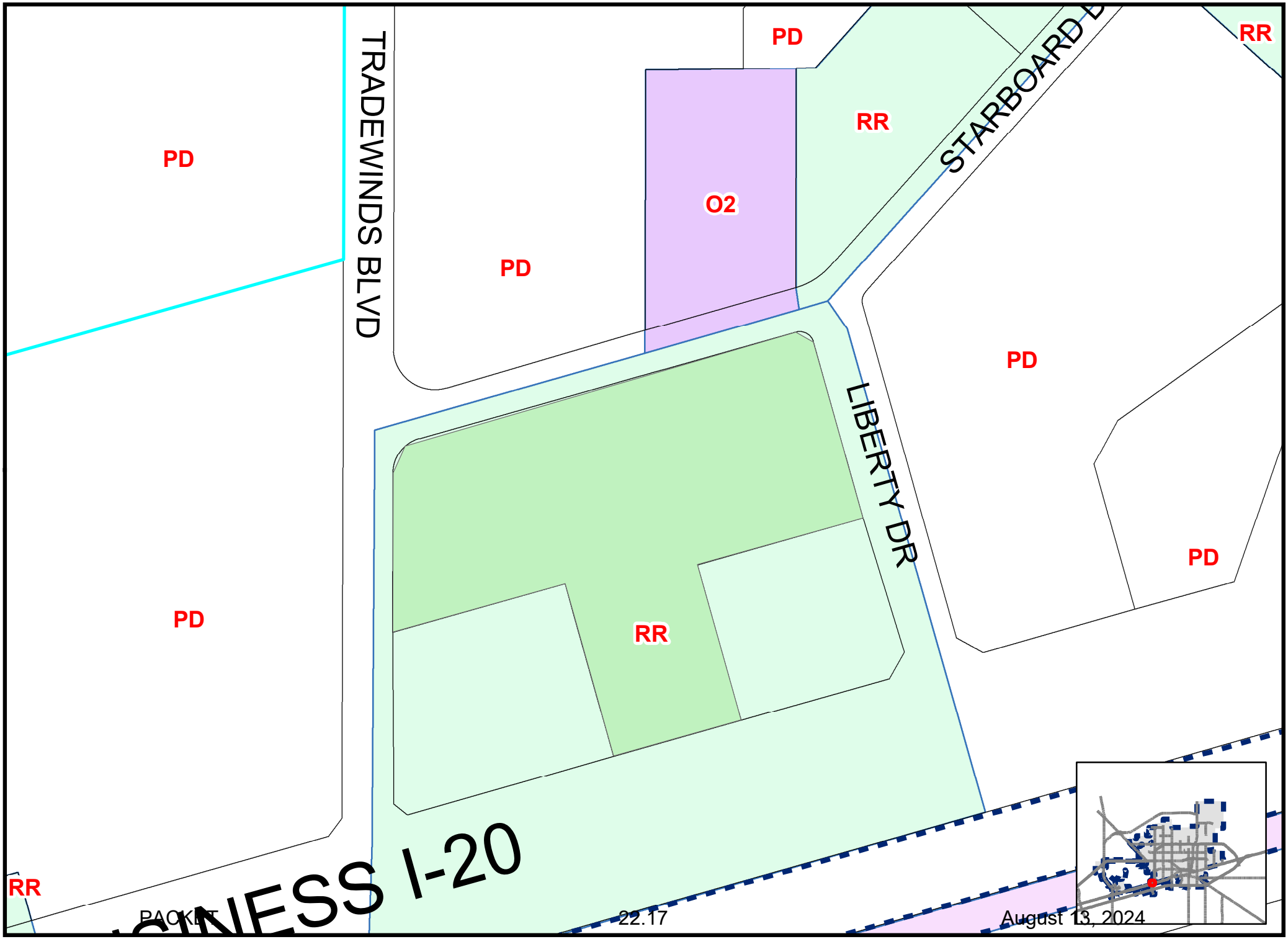
Generally located on the southwest corner of the intersection of Starboard Drive and Liberty Drive. (District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



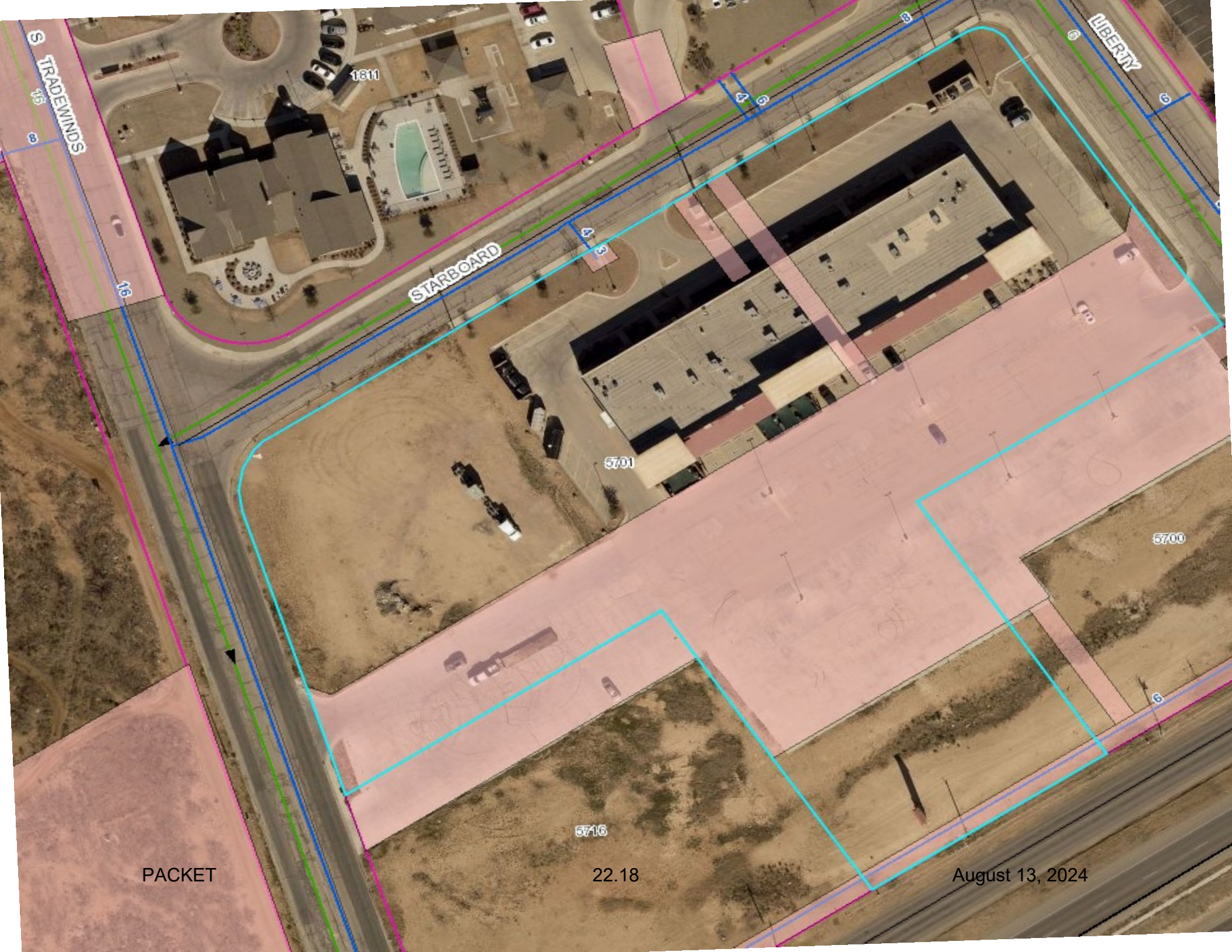
Map By DG, 6/12/2024

SUD-24-0184

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.


S TRADEWINDS
STARBOARD
LIBERTY
1811
5701
5700
5716


701
Marty G's
Cajun Restaurant
OPEN

MIDLAND

Be the Energy!

Specific Use Designation With Term for Alcoholic Beverages

Marty G's Cajun Restaurant

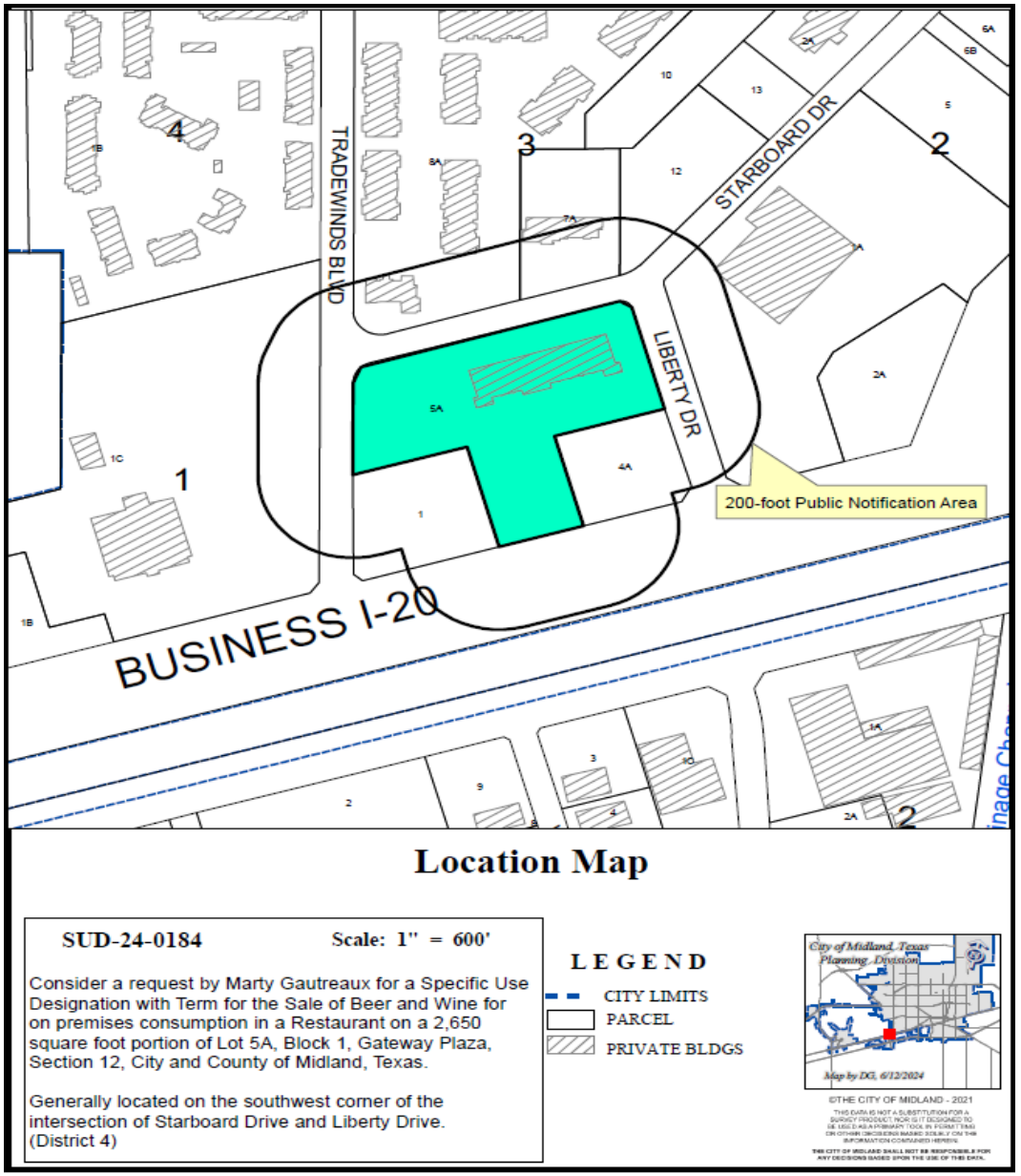
July 23, 2024



Visit Our Website:
MIDLANDTEXAS.GOV

Marty G's Cajun Restaurant

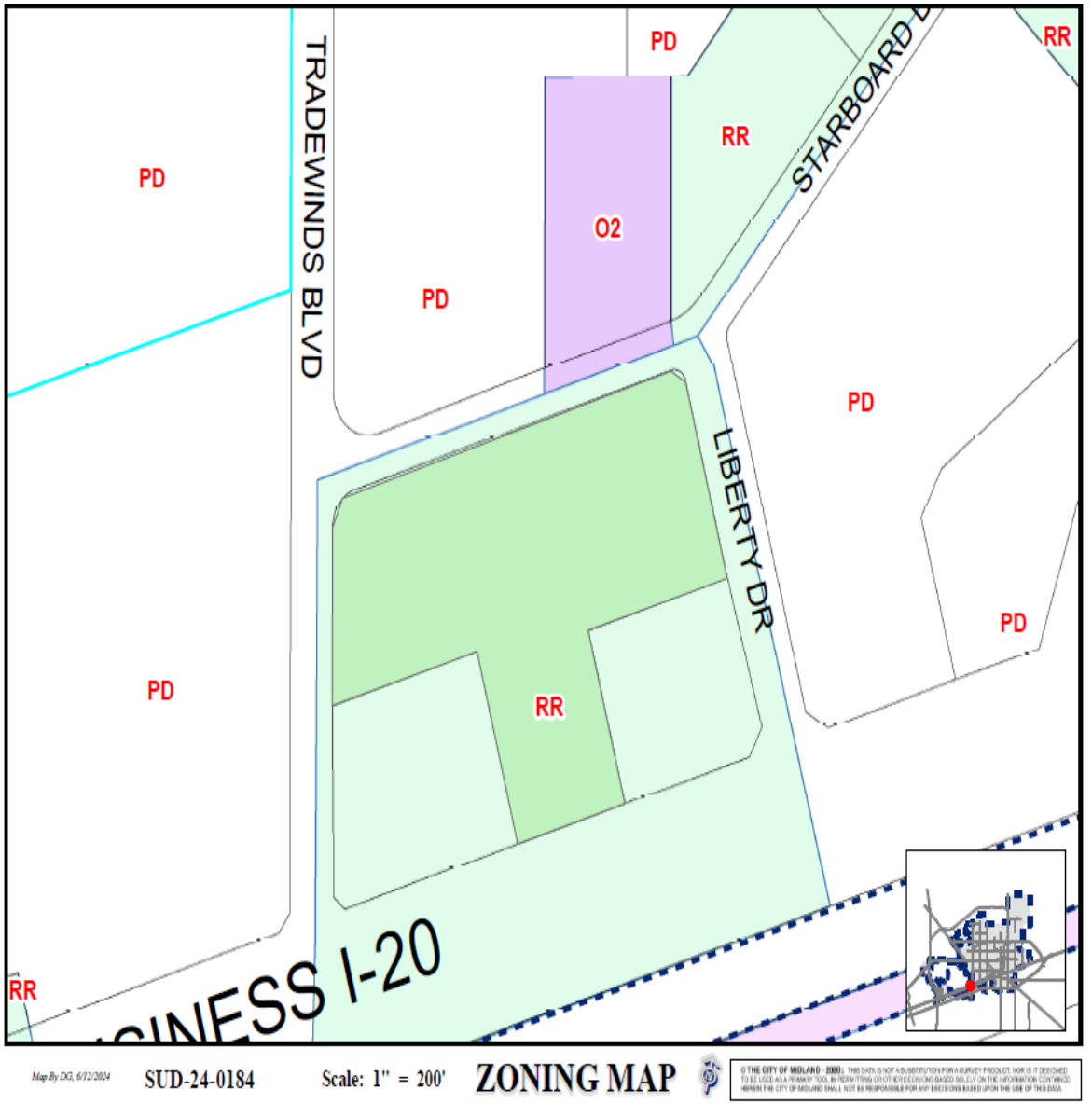
- Marty Gautreaux
- Specific Use Designation (SUD)- with Term for Alcoholic Beverages Sales for On- Premises Consumption
- 5701 Starboard Drive



MIDLAND
Be the Energy!

Marty G's Cajun Restaurant

- Current Zoning:
- RR, Regional Retail District.
- Surrounding Zoning:
  - North: PD, Planned Development District for Housing Development and O-2, Office District
  - South: ETJ
  - East: PD, Planned Development District for a Shopping Center
  - West: PD, Planned Development District for a Shopping Center



Marty G's Cajun Restaurant

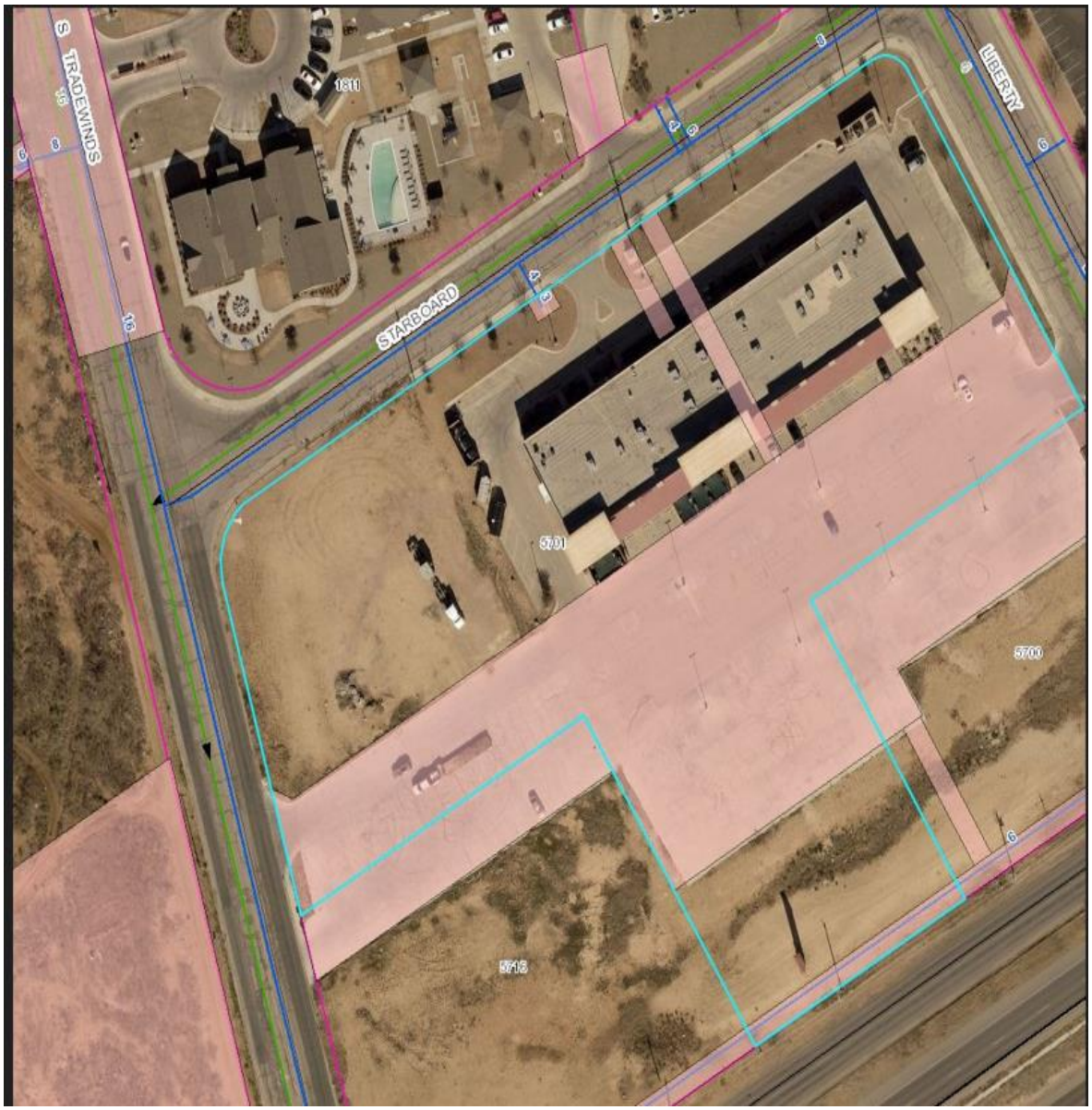
- Proposed Days and Hours of Operation and Alcohol Service:

Monday through Saturday,

11:00 a.m. to 12:00 a.m.

- Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public-school, public-school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.





On the Parking lot, looking North.

- Staff has not received any letters of objection and the request meets all the City of Midland Zoning requirements of the City Ordinance.

- This SUD was approved by the Planning and Zoning Commission on July 1, 2024.

- Therefore, Staff recommends APPROVAL of the request of the Specific Use Designation with Term for Alcoholic Beverages Sales for On- Premises Consumption, subject to Conditions A through G.

Conditions:

A. That the serviceable area of the restaurant shall be limited to approximately 1,775 square feet as shown in Exhibits "A", which is attached hereto and incorporated herein for all purposes.

B. That the days and hours of alcoholic beverages sales and consumption shall be limited to:

Monday through Saturday, from 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 the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 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.

City Council Meeting

Item Number: 23

Meeting Date: July 23, 2024, August 13, 2024

To: City Council / City Manager

From: Daniel Humbert, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,173-SQUARE FOOT PORTION OF LOT 7, BLOCK 58, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH PECOS STREET AND WEST WALL STREET), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Lee Sanchez, is requesting a Specific Use Designation (SUD) with Term for alcoholic beverages sales for on-premises consumption in a restaurant, Saint Blaise is located at 508 West Wall Street.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Strategic Priority:

(Quality of Life & Place)

Current Zoning:

CB, Central Business District

Surrounding Zoning and Land Use:

The parcel to the north is zoned CB, Central Business District and is the location of parking spaces. The parcel to the south is zoned CB, Central Business District and is the location of a bank. The parcel to the east is zoned CB, Central Business District and is the location of parking spaces. The parcel to the west is zoned CB, Central Business District and is the location of a bank.

Analysis:

The property is zoned CB, Central Business District and is the location of A business building. The CB zoning allows for alcoholic beverages sales for on-premises consumption in a Restaurant with the approval of an SUD. The total area of the restaurant is 2,173-square feet and the proposed alcohol serviceable area is 1,821-square feet.

The proposed hours of operation:

Monday through Sunday from 7 a.m. to 11 p.m.

The proposed hours of alcohol service:

Monday through Saturday from 7 a.m. to 11 p.m.
Sunday from 10 a.m. to 11 p.m.

Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public-school, public-school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches, private schools, public schools, public school grounds, athletic stadium, public hospital within 300 feet measurement along the property lines of the street fronts, and from the front door in a direct line across intersection where they occur within this site.

The request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 6-Character Plan Goal 4, which is to “Encourage the development of places where Midland residents can gather and socialize to build connections.” Saint Blaise is a destination where Midland residents will gather and socialize.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objections.

Engineering: (Approved)

No objection.

Transportation: (Approved)

No objection.

Building Code: (Approved)

The SUD for Saint Blaise is acceptable. The property must adhere to the maximum occupant load of 121 persons for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Planning: (Approved with Conditions)

This request meets all requirements; therefore, staff recommends approval of the request of the Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to Conditions A through G.

Conditions:

A. That the serviceable area of the establishment shall be limited to approximately 1,821 square feet as shown in Exhibit “A”.

B. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

C. That the permitted hours of the sale of alcoholic beverages sales and consumption shall be limited to:

Monday through Saturday from 7 a.m. to 11 p.m.
Sunday from 10 a.m. to 11 p.m.

D. **That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.**

E. **That the establishment shall meet all requirements of the Fire Department and Code Administration.**

F. **That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.**

G. **That in accordance with Section 11- 1- 9. 07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.**

Letters of Objection:

As of July 12, 2024, staff has not received any letters of objections.

Attachments:

Application
Floor Plan (Exhibit A)
Site Plan
Maps
PowerPoint

Jose E. Ort

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 2,173-SQUARE FOOT PORTION OF LOT 7, BLOCK 58, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH PECOS STREET AND WEST WALL STREET), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS 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 2,173-square foot portion of Lot 7, Block 58, Original Town Addition, City and County of Midland, Texas (the "Property"), as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation With Term for the sale of all alcoholic beverages in a restaurant (the "Establishment") for on-premises consumption, together with the uses permitted in the present CB, Central Business District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 1,821 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

C. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following:

Monday through Saturday from 7:00 a.m. to 11:00 p.m.; and
Sunday from 10:00 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 the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

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

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

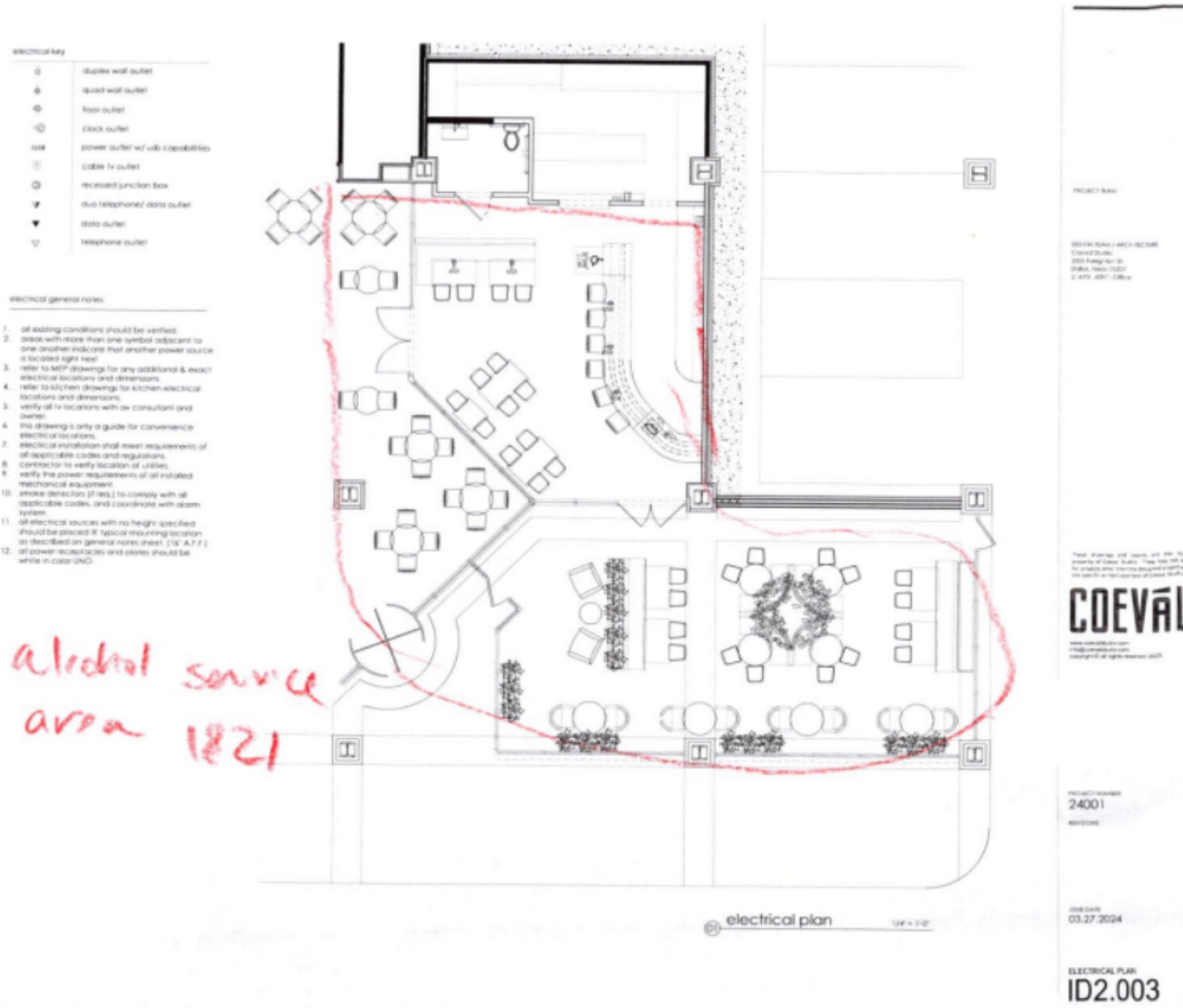
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

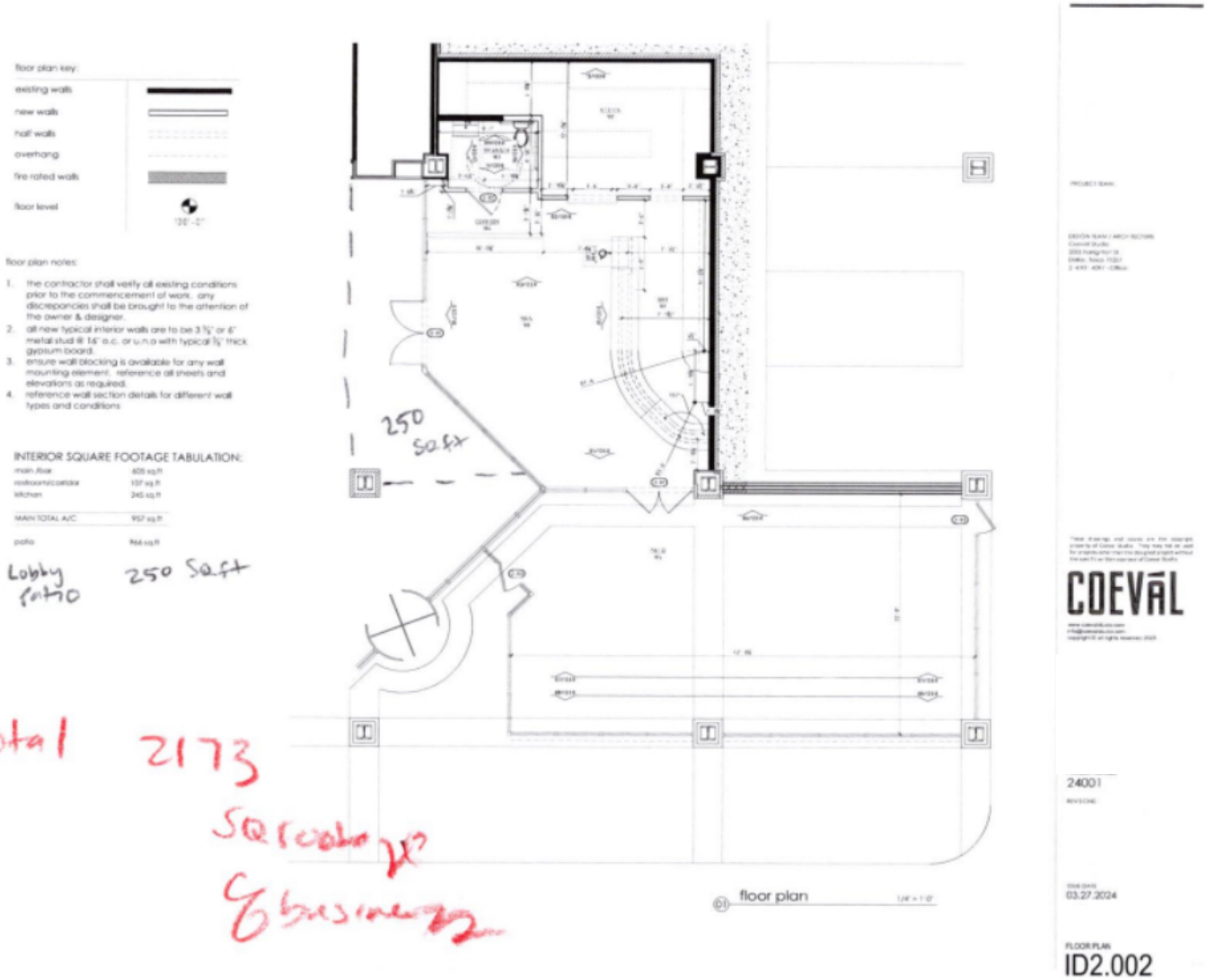
APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



SAINT BLAISE



SAINT BLAISE

MIDLAND
Planning Division

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

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Lee Sanchez		Phone (432) 853 5659 Email Lee@sculpt-haus.com	
Address 5105 King Richards Row	City Midland	State TX	Zip 79707

Property Owner Printed Name: Franklin Mountain Permian I, LP. William Kell		Phone (915) 504 7150 Email wkell@FMMEP.com	
Address 123 W Mills Ave Ste 600	City El Paso	State TX	Zip 79901

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

Street Address: 508 W Wall St Suite 150
Midland, TX 79701

Business Name: Sip Haus LLC

Legal Description
Lot: 7 Block: 58 Subdivision: original town

Current Zoning: Commercial

Reason for Request: TABC License/Restaurant

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Restaurant

Proposed/Current Days and Hours of Operation: Monday-Sunday 7am-11pm

Proposed Days and Hours of Alcohol Service: Monday-Saturday 7am-11pm & Sunday 10am-11pm

Total Square Footage of Business: 957 interior 966 exterior patio 250 lobby patio. Total 2173

Square Footage of Alcohol Serviceable Area: 1821

Restroom Fixtures:			
	Men	**Toilets/Urinals:** /	**Bathroom Sinks:**
	Women	**Toilets:**	**Bathroom Sinks:**

1 unisex restroom ADA Compliant
1 toilet & 1 sink

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: 05/31/24
Applicant (printed): Lee Sanchez	
Property Owner (signature):	Date: 05/31/2024
Property Owner (printed) : William Kell, COO of Franklin Mountain Frost Tower GP, LLC, General Partner of Franklin Mountain Permian I, LP	

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 Lee Sanchez 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 3 day of June, 2024, to certify which witness my hand and seal of office.

BIANCA M REYES
Notary ID #133704295
My Commission Expires
April 13, 2026

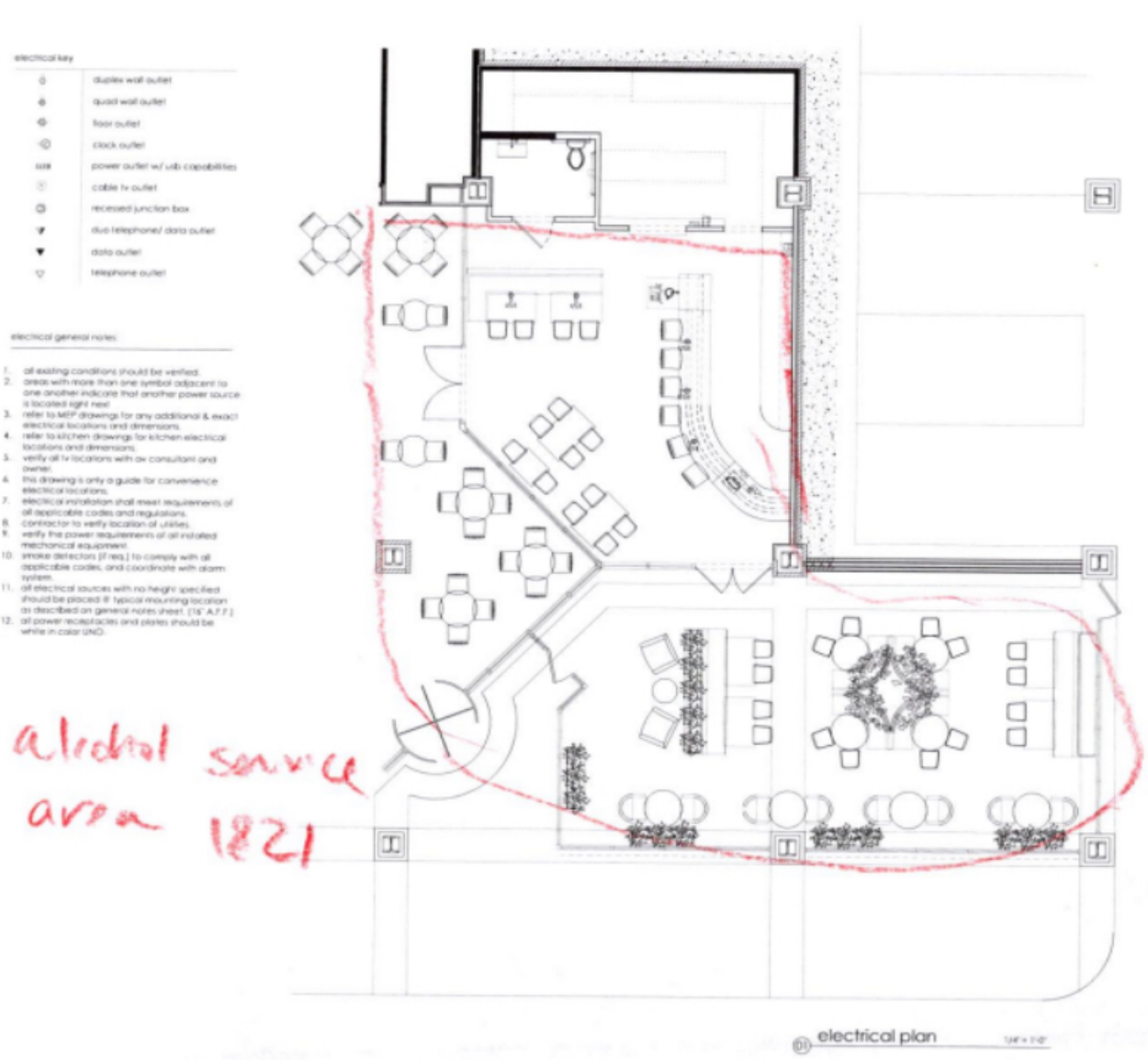
Bianca M. Reyes
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

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

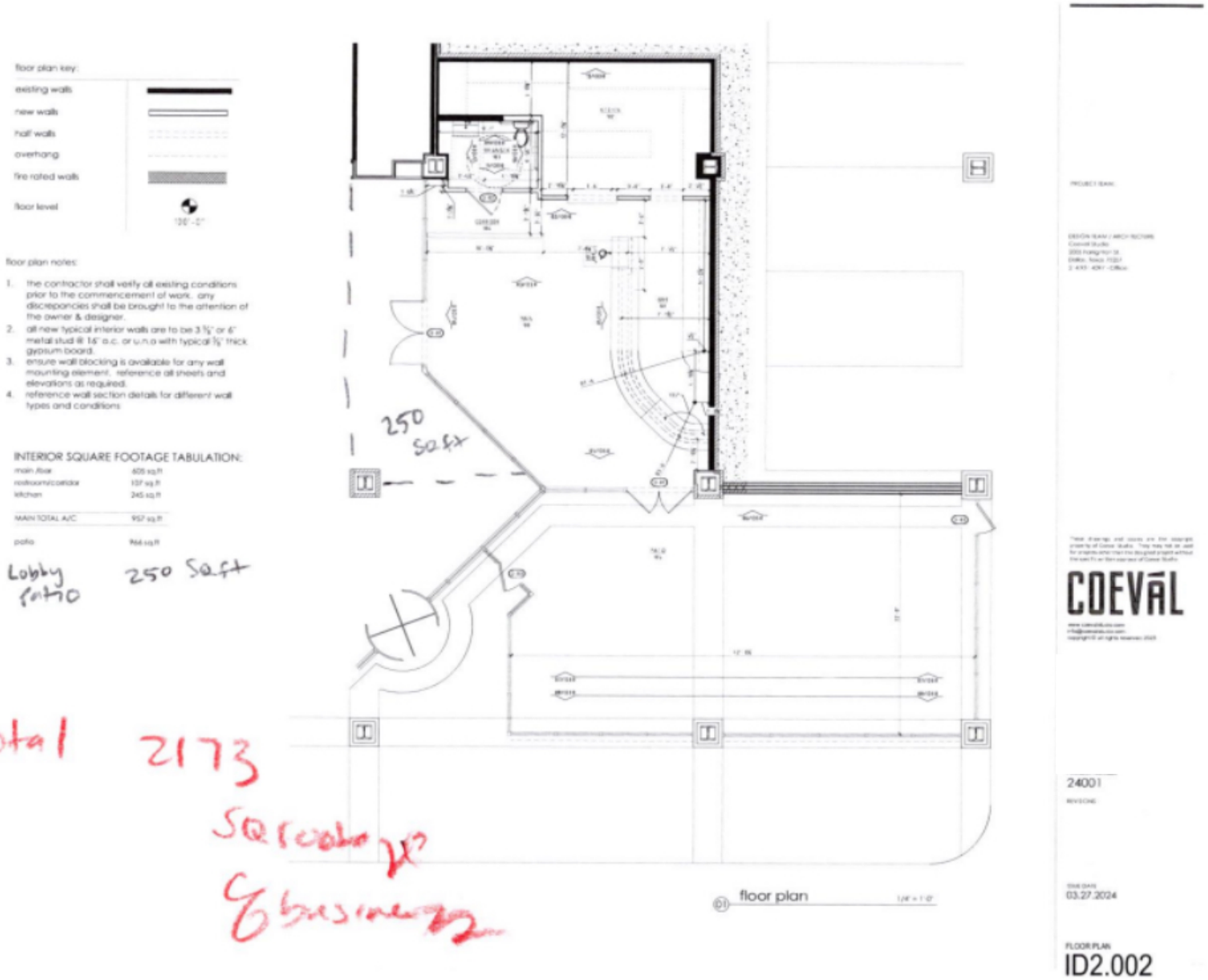
FOR OFFICE USE ONLY	
☐ Property Owner Authorization	☐ Dimensioned Floor Plan
☐ Application Fee	☐ Site Plan
Check # 1303	☐ Plans in Digital Format (PDF/JPEG)
Received By:	Date: RECEIVED JUN 03 2024

BY: .....

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



SAINT BLAISE



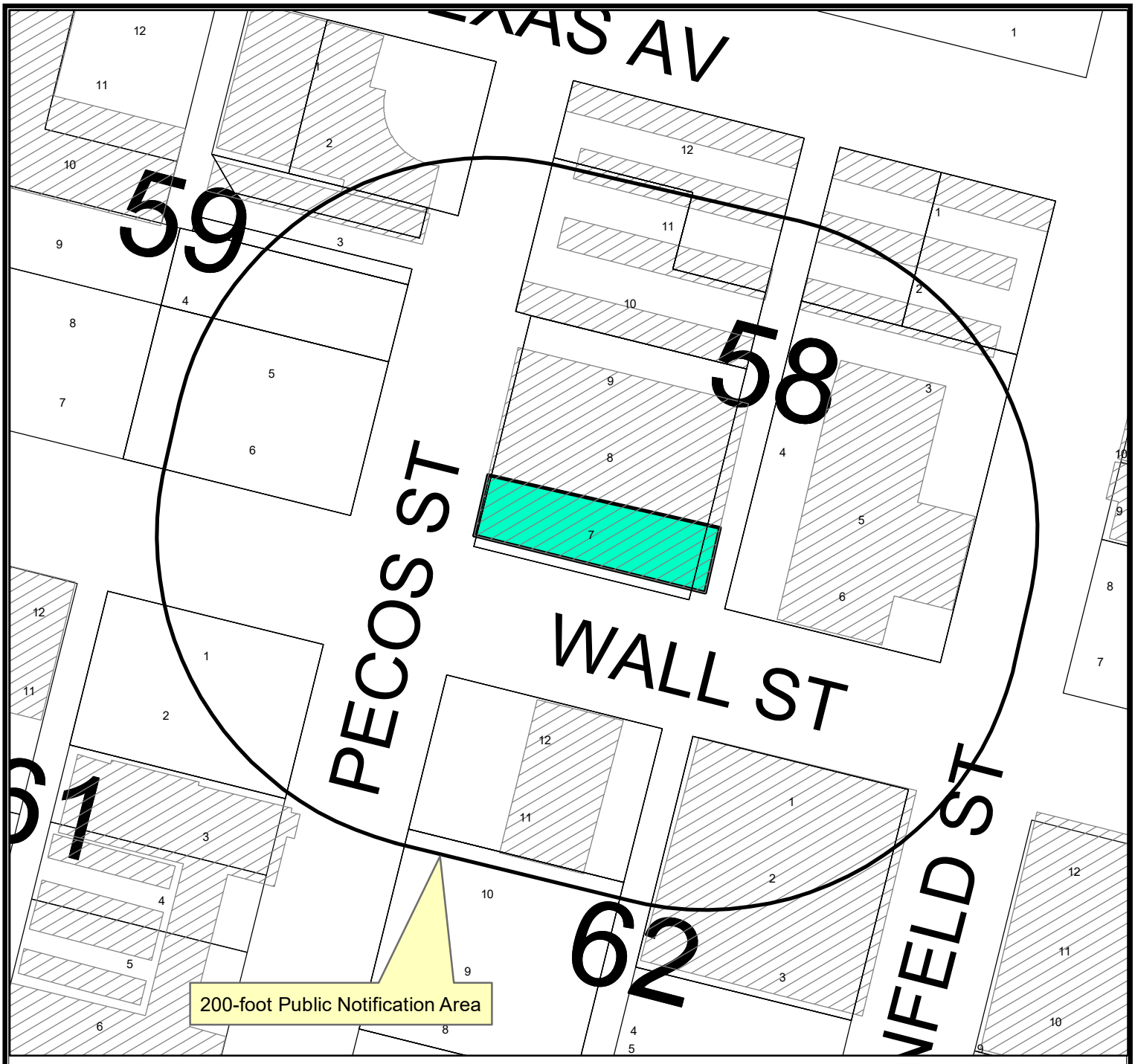
SAINT BLAISE

PARKING SITE PLAN



RESTAURANT LOCATION

PARKING



Location Map

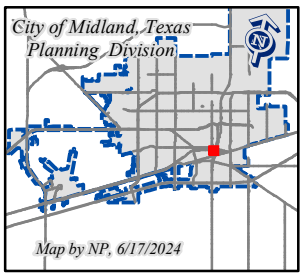
SUD-24-0183 **Scale: 1" = 90.01'**

Consider a request by Lee Sanchez for a Specific Use Designation with Term for the Sale of all Alcoholic Beverages for on premises consumption in a restaurant on a 2,173 square foot portion of Lot 7, Block 58, Original Town, City and County of Midland, Texas

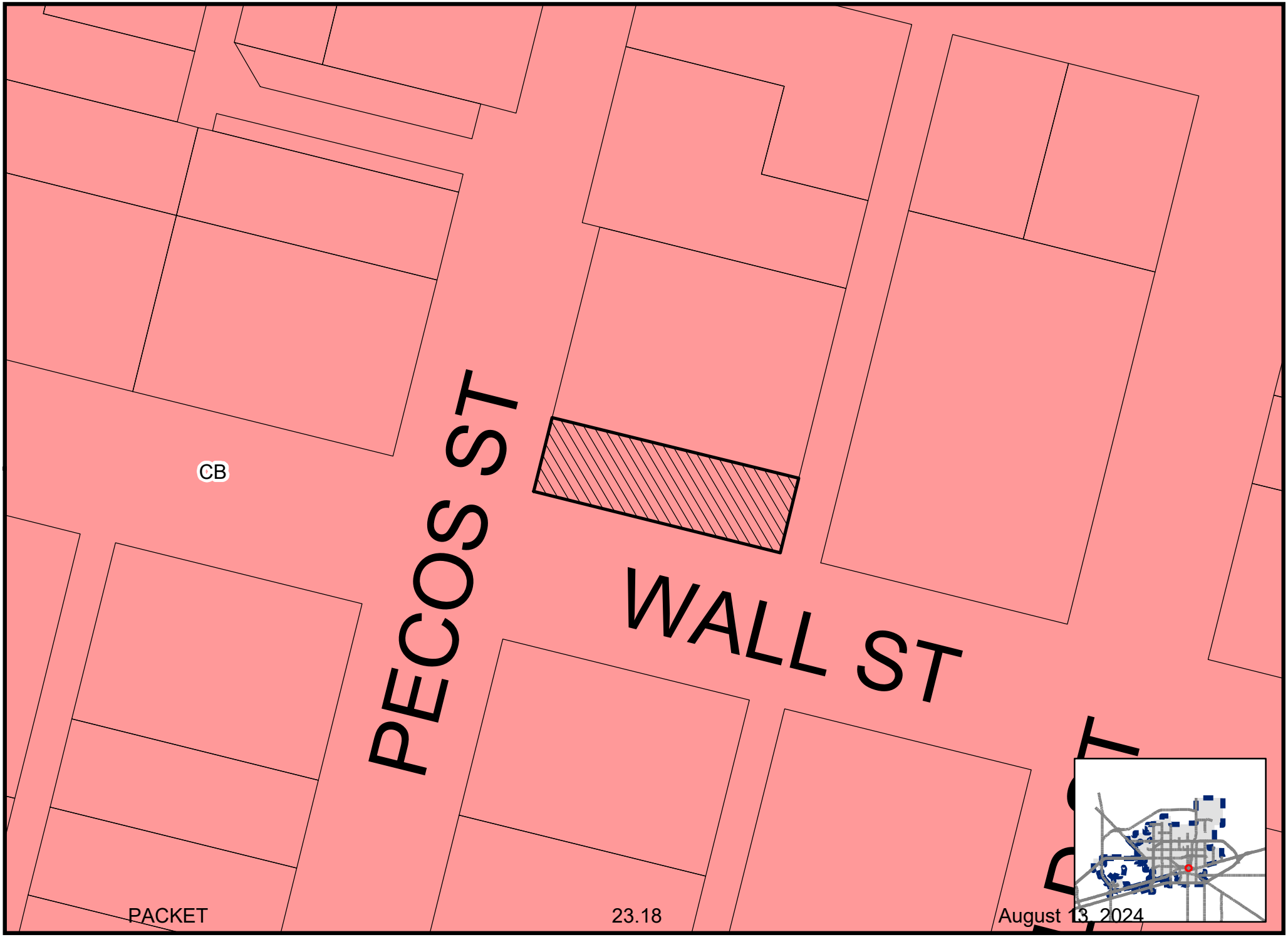
Generally located northeast of the intersection of North Pecos Street and West Wall Street. (District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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Map NP, 6/17/2024

SUD-24-0183

Scale: 1" = 66.32'

ZONING MAP

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COS ST
WALL ST
58


Frost
Frost

MIDLAND

Be the Energy!

Specific Use Designation

Saint Blaise

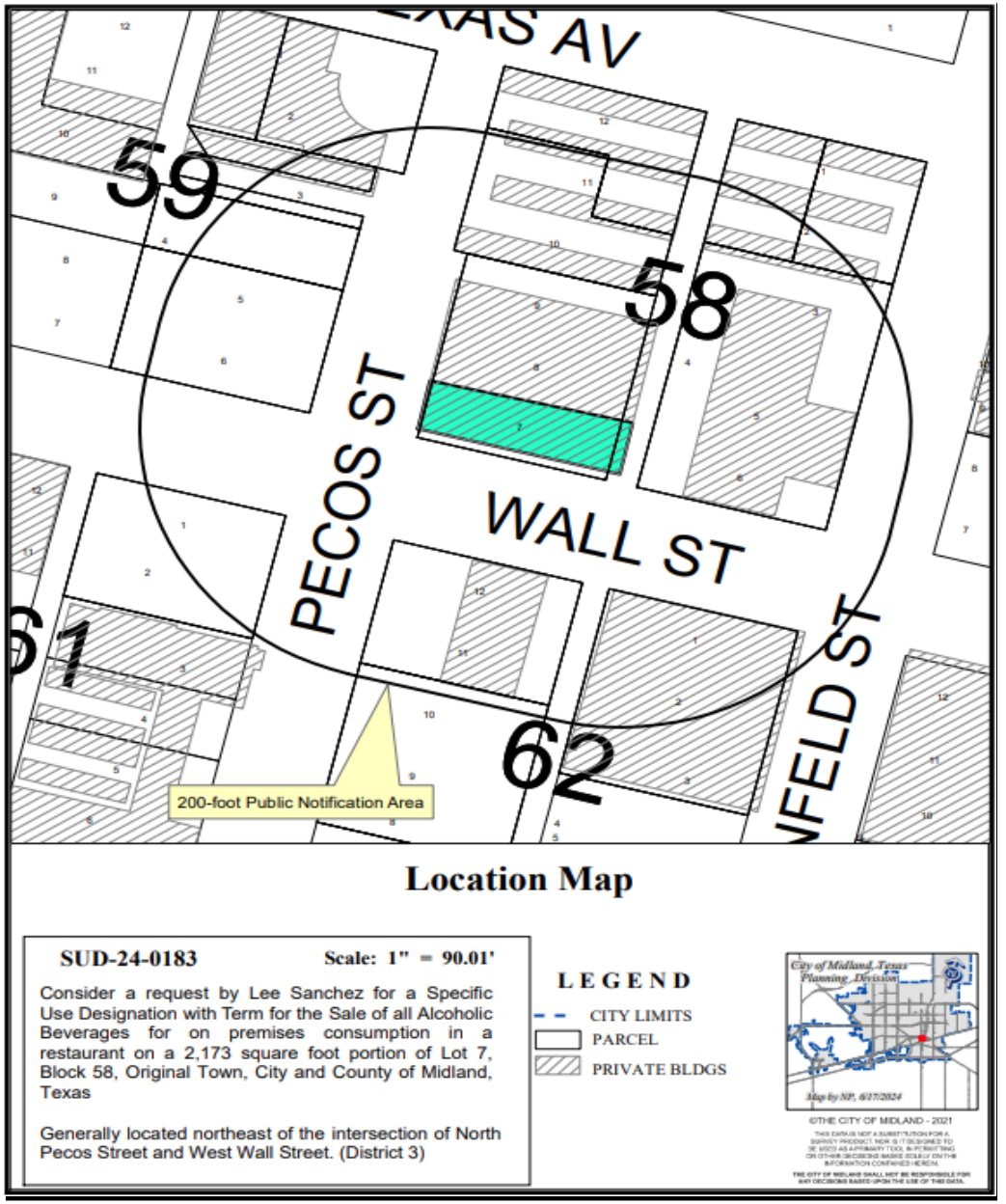
July 1, 2024



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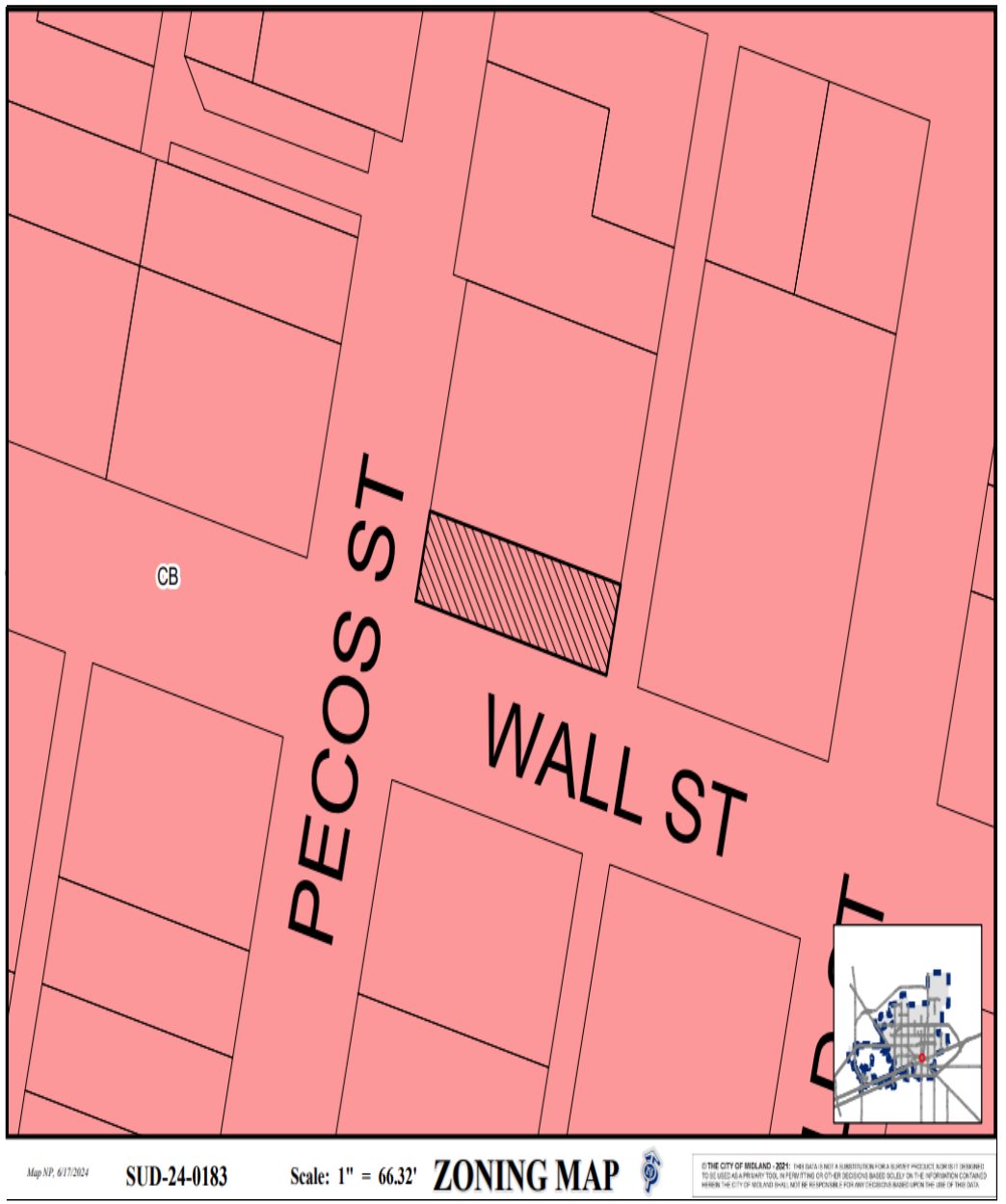
Saint Blaise

- Lee Sanchez
- Specific Use Designation (SUD) with Term for Beer and Wine Sales for On-Premises Consumption
- 508 West Wall Street



Saint Blaise

- Current Zoning: CB, Central Business District
- Surrounding Zoning: CB, Central Business District



- Hours of operation: Monday through Sunday from 7 a.m. to 11 p.m.
- Hours of alcohol service:
  - Monday through Saturday from 7 a.m. to 11 p.m.
  - Sunday from 10 a.m. to 11 p.m.
- Per Midland City Code, Section 5-4-4, Prohibited Places of Business:
- The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public-school, public-school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

Saint Blaise



On Pecos Street looking east.



- Recommendation
  - Staff has not received any letters of objection.
  - Staff recommends approval of the request 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 G.

- Conditions:

- A. That the serviceable area of the establishment shall be limited to approximately 1,821 square feet as shown in Exhibit “A”.
- B. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.
- C. That the permitted hours of the sale of alcoholic beverages sales and consumption shall be limited to: Monday through Saturday from 7 a.m. to 11 p.m. Sunday from 10 a.m. to 11 p.m.
- D. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.
- E. That the establishment shall meet all requirements of the Fire Department and Code Administration.
- F. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.
- G. That in accordance with Section 11- 1- 9. 07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

City Council Meeting

Item Number: 24

Meeting Date: July 23, 2024, August 13, 2024

To: City Council / City Manager

From: Andrew Meyers, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 7, BLOCK 3, CORPORATE PLAZA ADDITION, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED ON THE EAST SIDE OF NORTH BIG SPRING STREET, APPROXIMATELY 355 FEET NORTH OF FIESTA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, James Boots Reeder, on behalf of Midland Self Storage, is requesting a zone change from RR, Regional Retail District, to PD, Planned Development District, with an underlying zoning of RR, Regional Retail District, at 3600 North Big Spring Street in order to expand the current storage unit business located on the property.

Recommended City Council Action:

Approve

Fiscal Impact:

This request has no significant impact on the City's budget.

Strategic Priority:

(Quality of Life and Place)

Discussion:

Current Zoning:

RR, Regional Retail District.

Surrounding Zoning and Land Use:

The properties to the north are zoned RR, Regional Retail District, as well as PD, Planned Development District for a Transitional District. These properties are the location of doctors' offices and commercial buildings. The properties to the east and south are zoned RR, Regional Retail District. The property to the east is the location of Ally Village. To the south the properties are being used as a car wash. The properties to the west are zoned O1, Office District, and are the location of office buildings.

Analysis:

The subject property is zoned RR, Regional Retail District, and is home to Midland Self Storage. The applicant, James Boots Reeder, is requesting this zone change to PD, Planned Development District to allow for the use of storage units, mini, for an expansion of the current use.

This falls in line with the Tall City Tomorrow Comprehensive Plan, Chapter 3; This area is designated as Urban High, U-H. The U-H designation allows for a multitude of uses including commercial, residential, and office. Since this is an existing commercial use in the area this would not only fit the Comprehensive Plan but also bring the property into full compliance with the current Zoning Code.

Departmental Review:

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No comments

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2023 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on the time of new code editions adopted in the City of Midland and date of permit application.

Engineering: (Approved)

No objection. [For Applicant's Information Only.]

Code Compliance: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning: (Approved)

No comments

Therefore, staff recommends approval of this zone change from RR, Regional Retail District, to PD, Planned Development District.

Condition:

A. **The development of this property shall significantly conform to the site plan herein referenced as "Exhibit A"**

B. **That the use of the Property for Storage Units, Mini, as such term is defined in Section 11-1-2.01 of the City Code, is hereby allowed.**

Letters of Objection:

As of July 17, 2024, Staff has received no letters of objection for this request.

Attachments:

Survey
Application
Maps
Aerial Photo
PowerPoint Presentation

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 7, BLOCK 3, CORPORATE PLAZA ADDITION, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER GENERALLY LOCATED ON THE EAST SIDE OF NORTH BIG SPRING STREET, APPROXIMATELY 355 FEET NORTH OF FIESTA 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 7, Block 3, Corporate Plaza Addition, Section 16, City and County of Midland, Texas (the "Property") to PD, Planned Development District for an Office Center and adopting a site plan therefor, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from RR, Regional Retail District to PD, Planned Development District for an Office Center.

SECTION TWO. That the base zoning district to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, is the RR, Regional Retail District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes, is hereby adopted, and the use and development of the

Property shall be subject to the following conditions and restrictions:

A. That the Property shall significantly conform to the site plan attached hereto as Exhibit "A".

B. That the use of the Property for Storage Units, Mini, as such term is defined in Section 11-1-2.01 of the City Code, is hereby allowed.

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 hereby 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., 2024; and passed to second reading

on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the Council members voting "AYE":

following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____

Lori Merritt Blong, Mayor

ATTEST:

_____

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT

AND COMPLETENESS:

_____

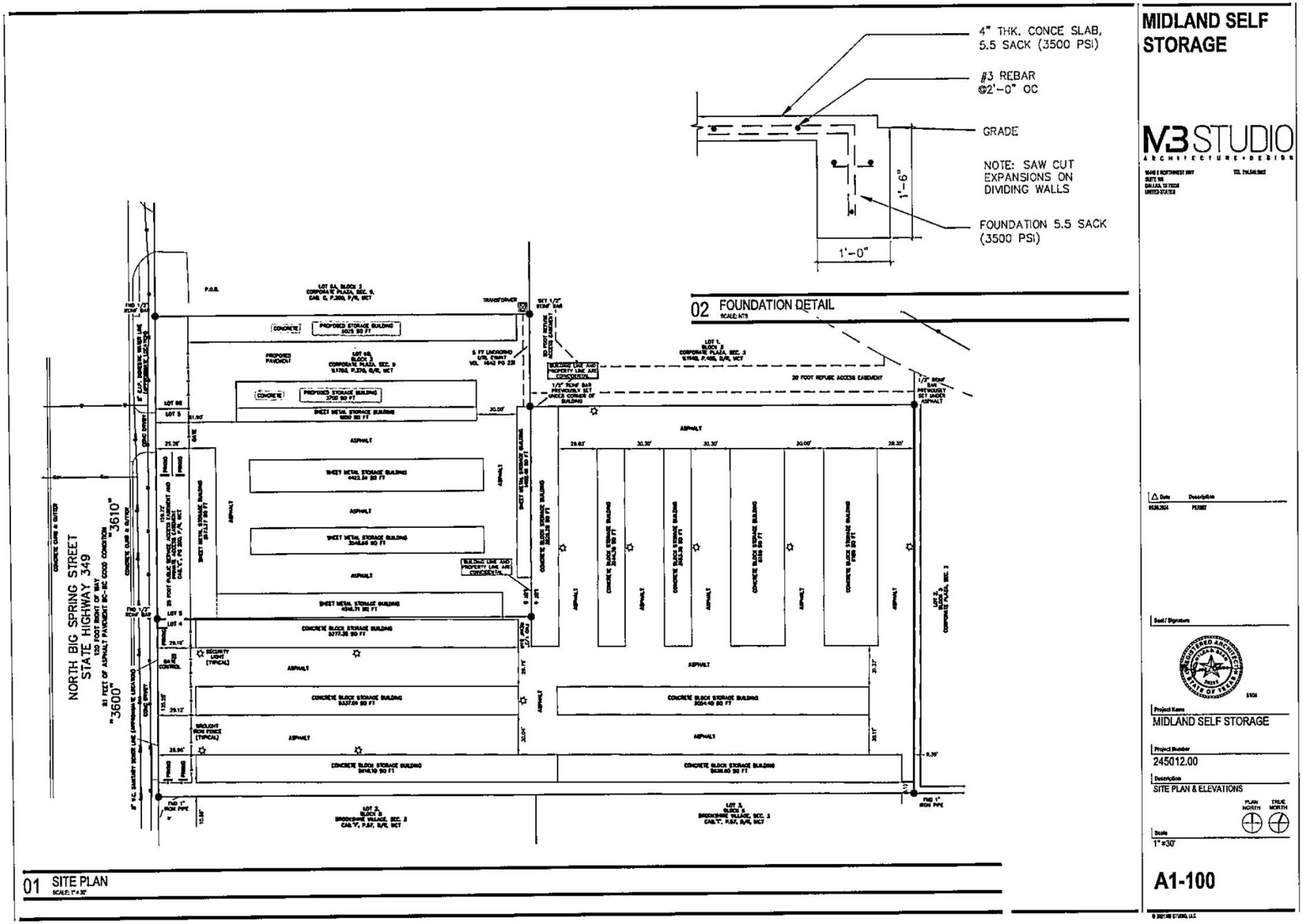
Elizabeth Triggs, Planning and Development Officer

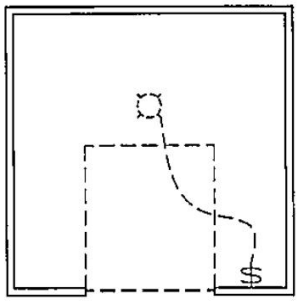
APPROVED ONLY AS TO FORM:

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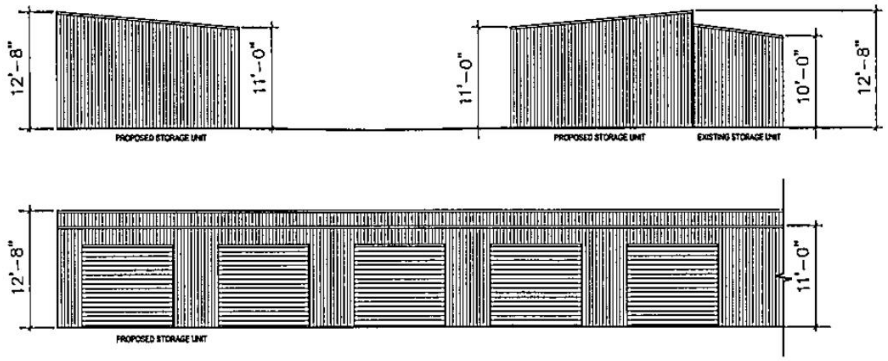
John Ohnemiller, City Attorney

EXHIBIT "A"

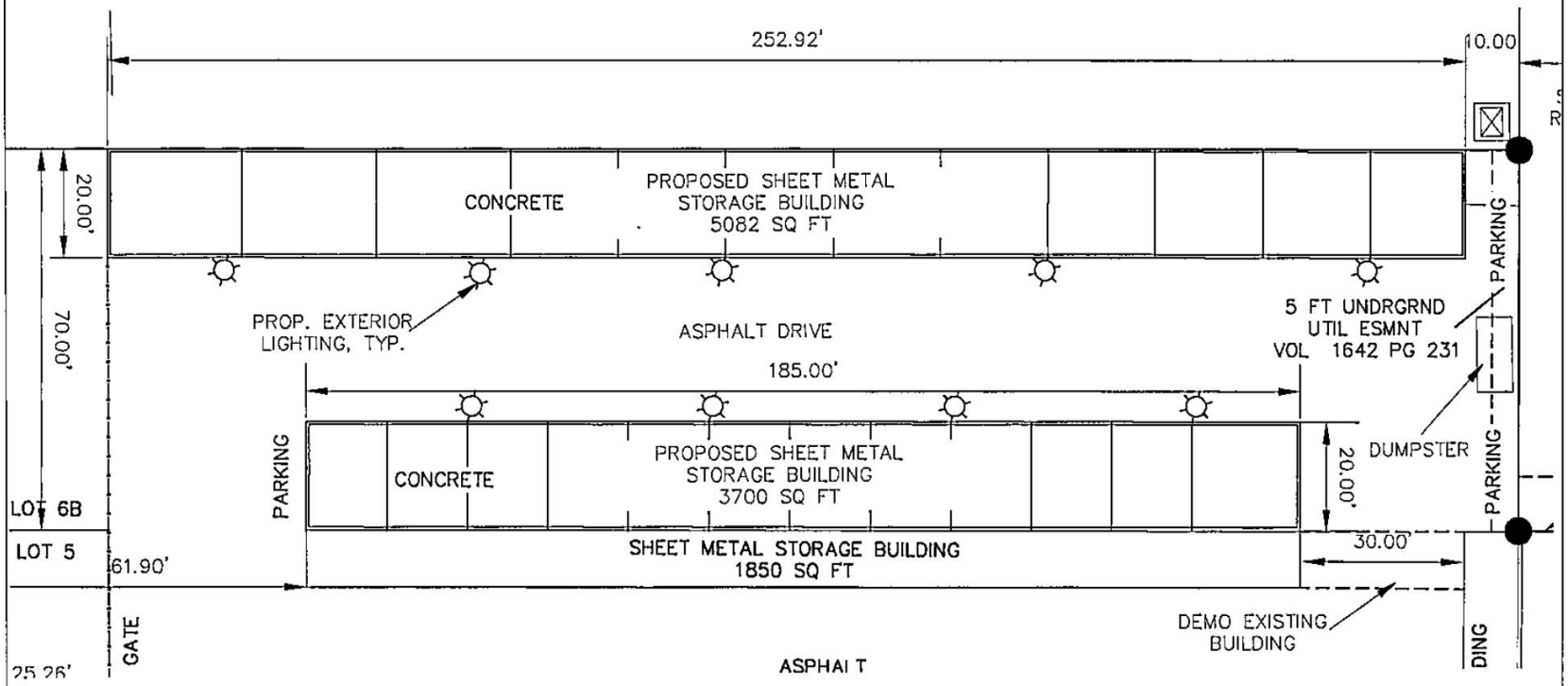

4" THK. CONCE SLAB, 5.5 SACK (3500 PSI)
#3 REBAR @2'-0" OC
GRADE
NOTE: SAW CUT EXPANSIONS ON DIVIDING WALLS
FOUNDATION 5.5 SACK (3500 PSI)
1'-6"
1'-0"
02 FOUNDATION DETAIL
SCALE: NTS
NORTH BIG SPRING STREET
STATE HIGHWAY 349
120 FOOT RIGHT OF WAY
81 FEET OF ASPHALT PAVEMENT WI- WI- GOOD CONDITION
"3610"
"3600"
01 SITE PLAN
SCALE: 1" = 30'
MIDLAND SELF STORAGE
M3 STUDIO
ARCHITECTURE + DESIGN
Project Name
MIDLAND SELF STORAGE
Project Number
245012.00
Description
SITE PLAN & ELEVATIONS
Scale
1" = 30'
A1-100



02 TYPICAL UNIT FLOOR PLAN
SCALE: NTS



02 ELEVATIONS
SCALE: NTS



01 ENLARGED PROPOSED FLOOR PLAN
SCALE: 1" = 10'

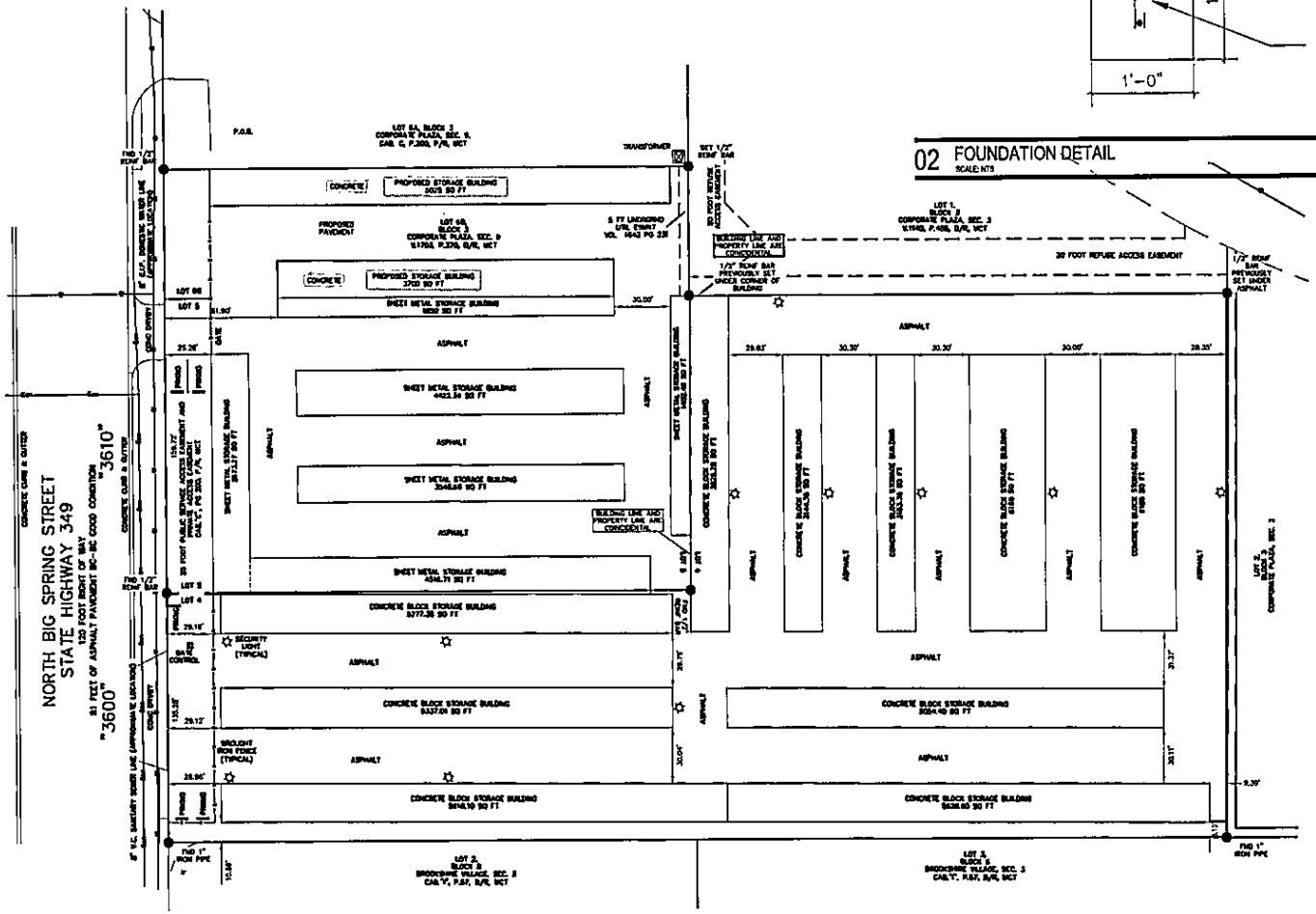
MIDLAND SELF STORAGE

M3 STUDIO
ARCHITECTURE + DESIGN

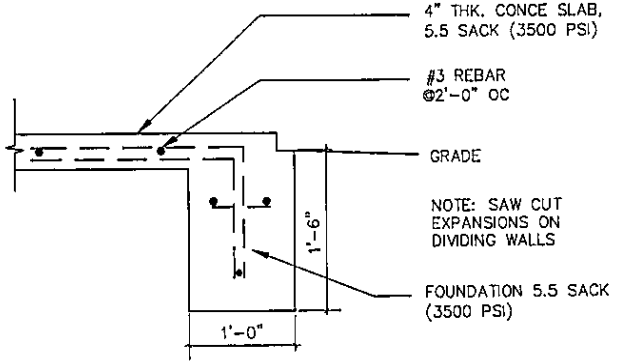
Date: 05.30.2024 Description: PERMIT

Project Name: MIDLAND SELF STORAGE
Project Number: 245012.00
Description: SITE PLAN & ELEVATIONS
Scale: 1" =30'

A1-100



01 SITE PLAN
SCALE: 1" = 30'



02 FOUNDATION DETAIL
SCALE: NTS

MIDLAND SELF STORAGE

August 13, 2024

M3 STUDIO
ARCHITECTURE + DESIGN

Date	Description
05.06.2024	PERMIT

24.11

Seal / Signature

Project Name
MIDLAND SELF STORAGE

Project Number
245012.00

Description
SITE PLAN & ELEVATIONS

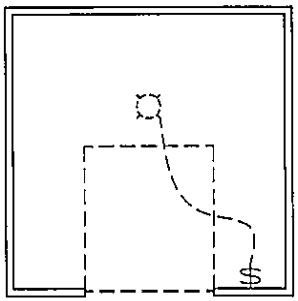
Scale
1" = 30'

PLAN NORTH | TRUE NORTH

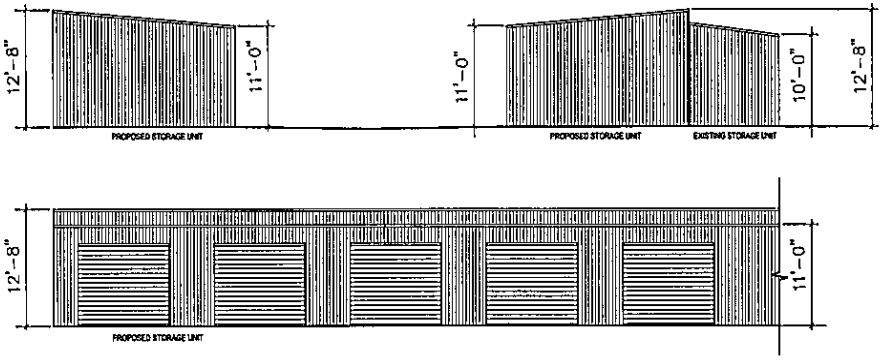
PACKET

A1-100

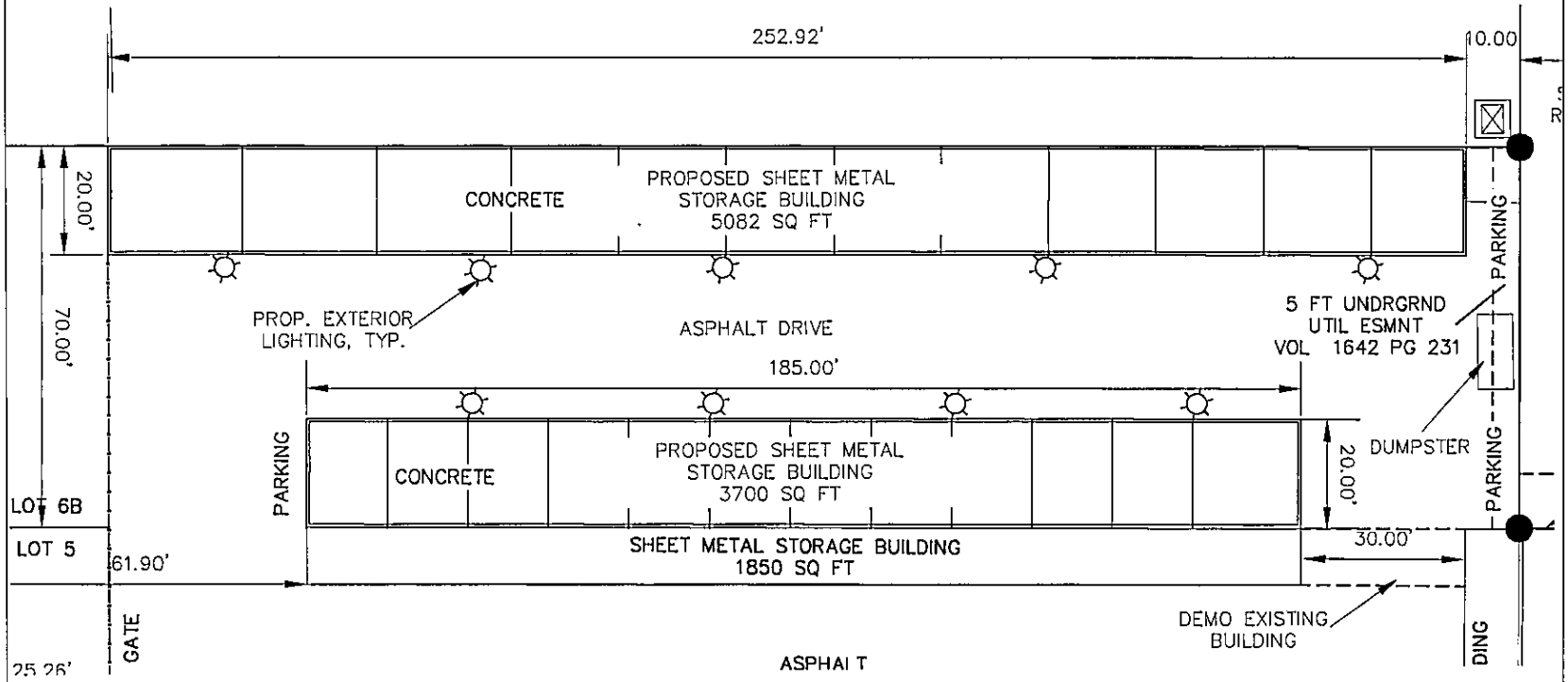
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02 TYPICAL UNIT FLOOR PLAN
SCALE: NTS



02 ELEVATIONS
SCALE: NTS



01 ENLARGED PROPOSED FLOOR PLAN
SCALE: 1" = 10'

MIDLAND SELF STORAGE

August 13, 2024

M3 STUDIO
ARCHITECTURE + DESIGN

24.12

Date	Description
08.06.2024	PERMIT

Seal / Signature

Project Name
MIDLAND SELF STORAGE

Project Number
245012.00

Description
SITE PLAN & ELEVATIONS

Scale
1" =30'

PLAN NORTH TRUE NORTH

PACKET

A1-100

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MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: MIDLAND Self STORAGE		Phone (214) 707-2921 Email JReeder@techenablers.com	
Address 3600 N. Big Spring	City MIDLAND	State TX	Zip 79705

Property Owner Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name: James Boots Reeder		Phone ( ) Email	
Address 1925 Cedar Springs	City DALLAS	State TX	Zip 75201

Street Address: 3600 N. Big Spring MIDLAND TX

Legal Description
Lot: 4 & 5 Block: 3 Subdivision: CORPORATE PLAZA, SECTION B

Current Zoning: RR

Proposed Zone: PD
(List by tracts if more than one district is requested)

Reason for Zone Change Request: TO Add 24 UNITS ON LAND We have owned from 1974

Present Use of Property: Self STORAGE

Proposed Use of Property: Self STORAGE

How would this zone change affect the public health, safety and welfare? NO Change ZON

Describe how conditions affecting the property have changed since present zoning designation: NO CHANGE

Submittal and Fees

Items to be submitted with this application form:

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

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature): James B Reeder	Date: 5/9/24
Applicant (printed): James B. Reeder	
Property Owner (signature):	Date:
Property Owner (printed) :	

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

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

STATE OF TEXAS
COUNTY OF ~~MIDLAND~~ Dallas

Before me, the undersigned authority, on this day personally appear James. B. Reeder who, being by me duly sworn, upon oath says: That (s)he is the owner of Midland Self Storage or authorized by himself, 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.

James B Reeder
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 9th day of May, 2024, to certify which witness my hand and seal of office.

ZOCORRO RAMIREZ
Notary Public
STATE OF TEXAS
My Comm. Exp. 07-14-25
Notary ID # 13321326-2

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

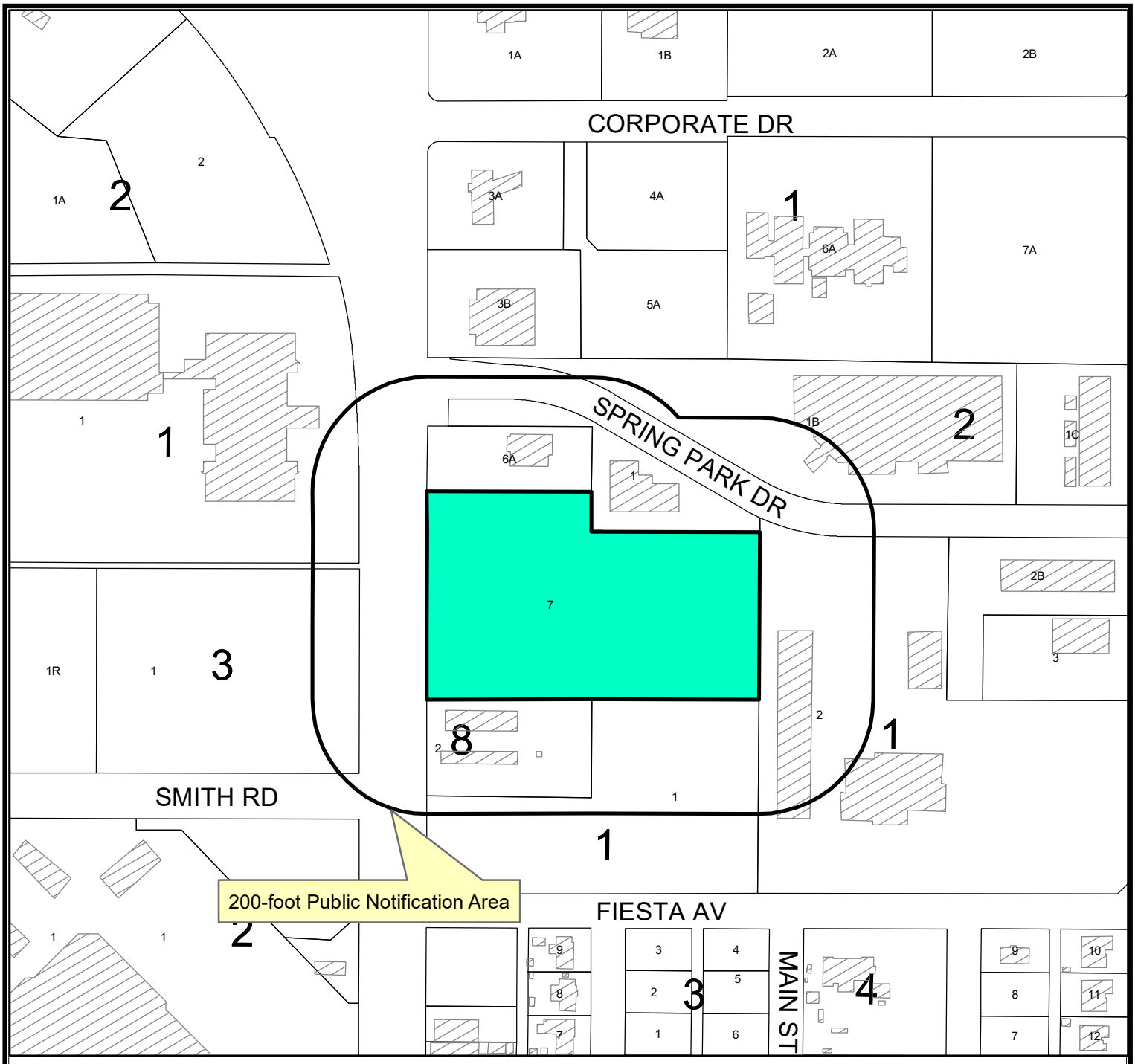
- ☑ Property Owner Authorization
- ☑ Application Fee
- Check # 6737
- ☑ Dimensioned Site Plan
- ☑ Plans in Digital Format (PDF/JPEG)

Received By:

Date:

RECEIVED
JUN 06 2024
BY: .....

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



Location Map

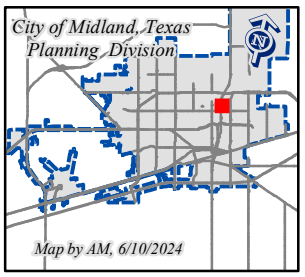
Z-24-0385 **Scale: 1" = 250'**

Consider a request by James Boots Reeder for a zone change from RR, Regional Retail District, to PD, Planned Development District, on Lot 7, Block 3, Corporate Plaza Addition, Section 16, City and County of Midland, Texas.

Generally located on the east side of North Big Spring Street, approximately 355 feet north of Fiesta Avenue. (Council District 2)

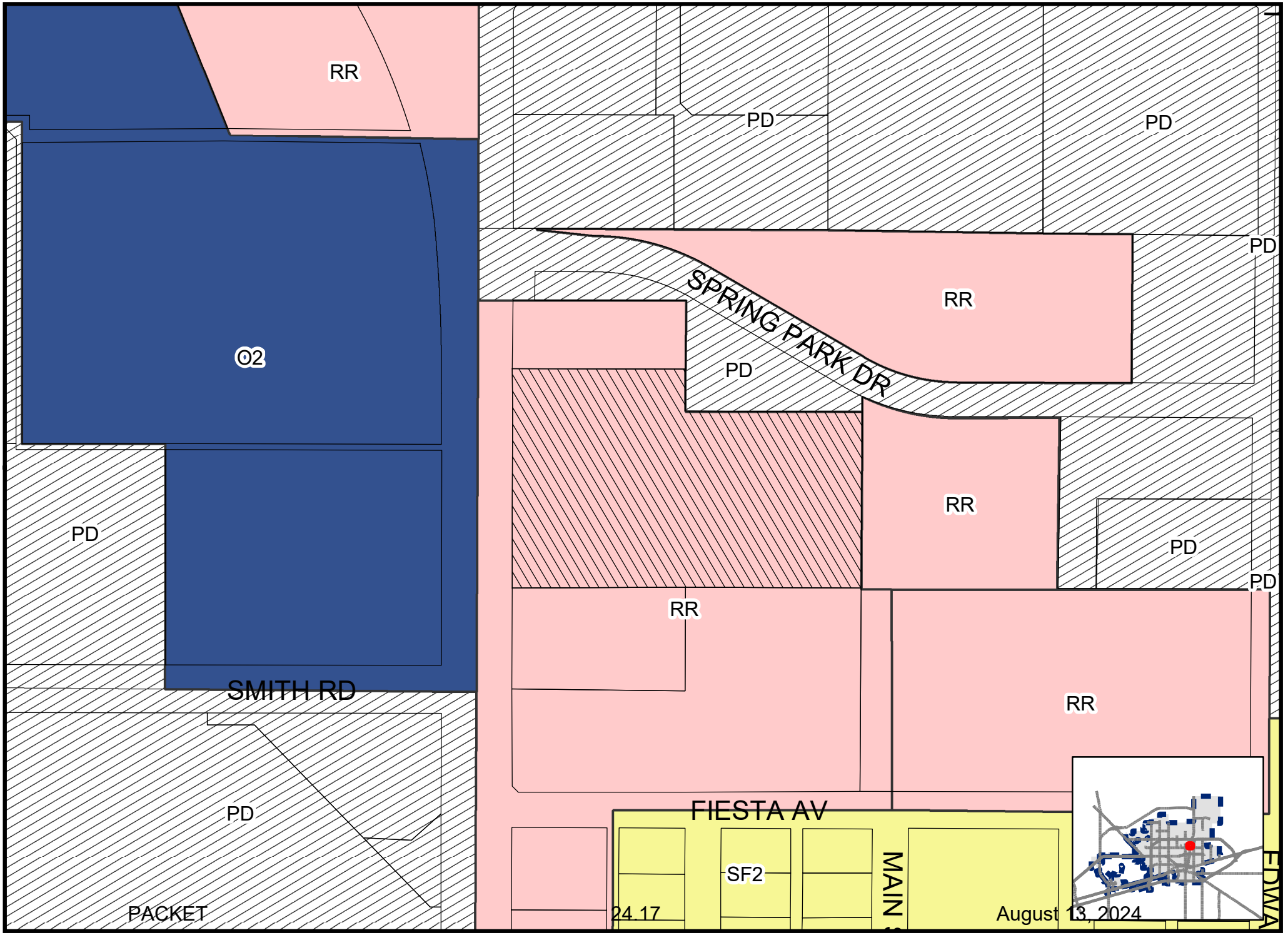
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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PACKET 24.16 August 13, 2024



Map AM, 6/10/2024

Z-24-0385

Scale: 1" = 200'

ZONING MAP

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SPRING PARK DR
3
2
1
8
H RD

MIDLAND

Be the Energy!

Public Hearing

Midland Self Storage Zone Change

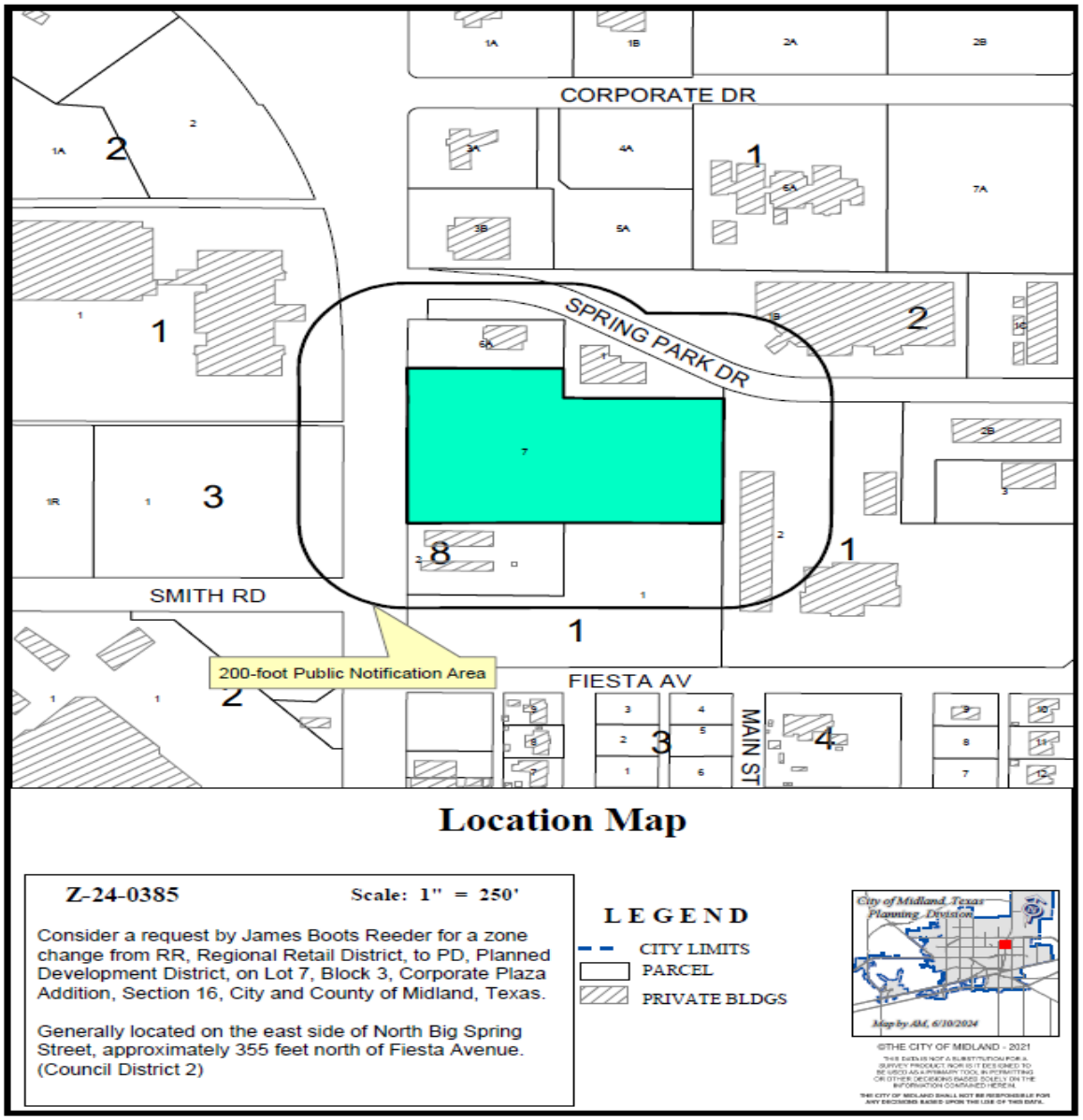
July 23, 2024



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MIDLANDTEXAS.GOV

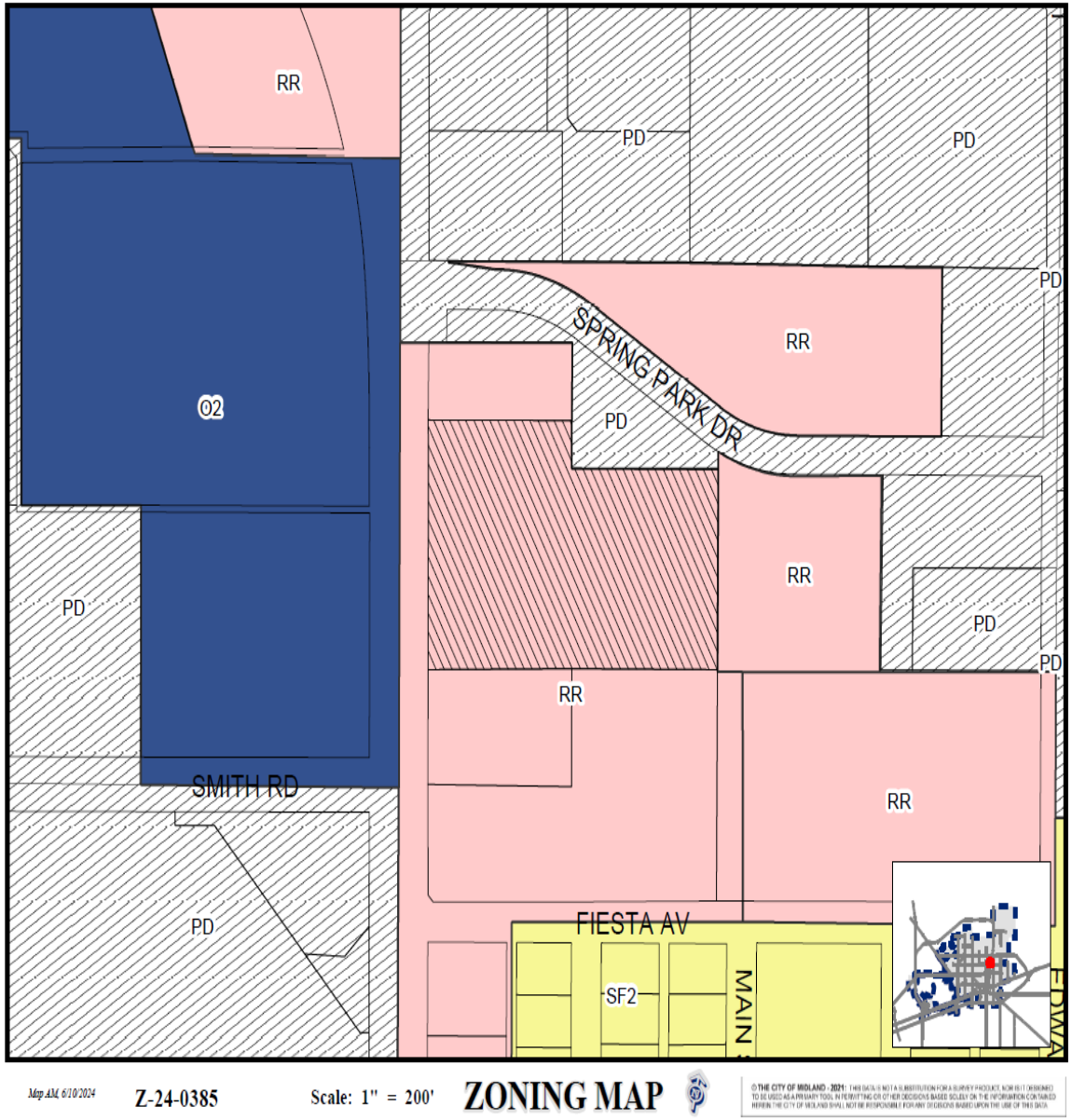
Midland Self Storage

- James Boots Reeder
- Zone Change from RR to PD-OC
- 3600 North Big Spring
- Approximately 4.405 acres



Midland Self Storage

- Currently Zoned: RR, Regional Retail District
- Surrounding Zoning of the Property
  - North: RR, Regional Retail District, and PD-TD, Planned Development District for a Transitional District
  - East and South: RR, Regional Retail
  - West: O-2, Office District
- Proposed Zoning of the property
  - PD-OC, Planned Development District for an Office Center

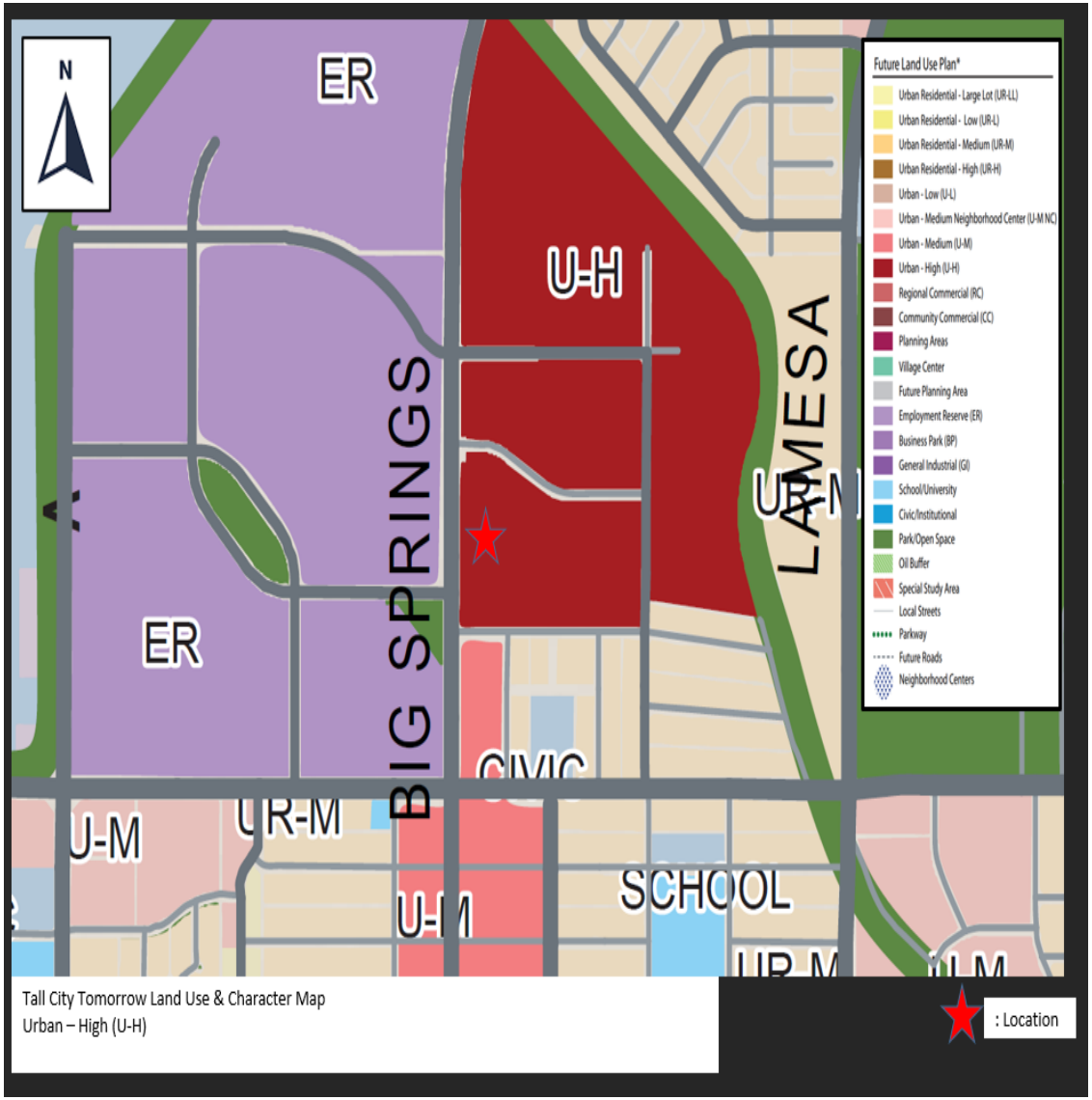


Midland Self Storage

- Storage Units
- Expansion of Storage Units



- Designated U-H, Urban High, by the Tall City Tomorrow Plan
- U-H, Urban High, accepted uses:
  - Townhouse District
  - Multi-Family Dwelling District
  - Office District
  - Commercial District





On Big Spring, Looking East Towards Property

- No objection letters received
- This was approved by the Planning and Zoning Commission on July 1, 2024
- This meets all applicable City Code therefore Staff recommends *APPROVAL* of the Zone Change for Midland Self Storage subject to conditions A & B:
- Conditions:
  A. That the Property shall significantly conform to the site plan attached hereto as Exhibit "A".

  B. That the use of the Property for Storage Units, Mini, as such term is defined in Section 11-1-2.01 of the City Code, is hereby allowed.

City Council Meeting

Item Number: 25

Meeting Date: July 23, 2023, August 13, 2024

To: City Council / City Manager

From: Alexis M. Martinez, Associate Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 8, BLOCK 63, PARK AVENUE HEIGHTS ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF BUNCHE STREET, APPROXIMATELY 380 FEET SOUTH OF EAST CALIFORNIA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)(DISTRICT 2)(QUALITY OF LIFE & PLACE)

Purpose:

The applicant, Jorge Chavez, is requesting a zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District to build a new single-family dwelling at 814 Bunche Street.

Recommended City Council Action:

Approve

Fiscal Impact:

The request has no significant impact on the City's budget.

Strategic Priority:

Quality of Life and Place

Discussion:

Current Zoning:

MF-22, Multiple-Family Dwelling District.

Surrounding Zoning and Land Use:

The properties to the north, east, south and west are zoned MF-22, Multiple-Family Dwelling District and is an existing single-family residential neighborhood.

Analysis:

The subject property is zoned MF-22, Multiple-Family Dwelling District. Jorge Chavez is seeking this zone change in order to construct a single-family home, which is not allowed in the MF-22 district. This vacant lot is located in a residential neighborhood that is developed with single-family homes. Changing this zoning would help the future residential development of this area. This lot does meet the requirements for the SF-3, Single-Family Dwelling District zoning.

This request is consistent with the Tall City Tomorrow Comprehensive Plan, Chapter 3; which designated this area as U-M, Urban-Medium. This designation calls for any single-family zoning district.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire:

No comments or objections.

Oil and Gas:

No Oil and Gas issues.

Engineering:

No objections to zone change. [For Applicant's Information Only.] Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Code:

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Transportation:

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.] No objection to zone change. [For the Applicant's information only.]

Planning:

Therefore, staff recommends approval of this zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

Letters of Objection:

As of July 12, 2024, staff has received no letters of objection for this request.

Attachments:

Application
Site Plan
Maps
PowerPoint

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 8, BLOCK 63, PARK AVENUE HEIGHTS ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF BUNCHE STREET, APPROXIMATELY 380 FEET SOUTH OF EAST CALIFORNIA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 8, Block 63, Park Avenue Heights Addition, Section 2, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

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

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as

that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: _____

Case Number: Z-24-0384

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Property Owner Printed Name: Jorge Chavez		Phone (432) 254-0327 Email ealeman@schumannonline.com	
Address 1111 Magnolia Ave	City Midland	State TX	Zip 79705

Representative *(if different from Applicant or Property Owner)* Firm: Schumann Surveying Printed Name: Ed Aleman		Phone (432) 254-0327 Email ealeman@schumannonline.com	
Address 800 N. Marienfeld, Suite 100	City	State	Zip

Street Address: 814 S. Bunche St.

Legal Description
Lot: 8 Block: 63 Subdivision: Park Avenue Height Sec. 2.

Current Zoning: MF 22	**Proposed Zone:** SF 3 *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: Single home Construction

Present Use of Property: Vacant

Proposed Use of Property: Single Family

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

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

Submittal and Fees
Items to be submitted with this application form:

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

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature): Jorge Chavez	Date: 05-22-2024
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 Ed Aleman or authorized by Jorge Chavez, ~~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.

Eduardo L Aleman
Authorized Agent *(signature)*

Subscribed and sworn to before me, this 22nd day of May, 2024, to certify which witness my hand and seal of office.

HUNTER WAYNE HALL
Notary Public, State of Texas
Comm. Expires 06-05-2024
Notary ID 132509132

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

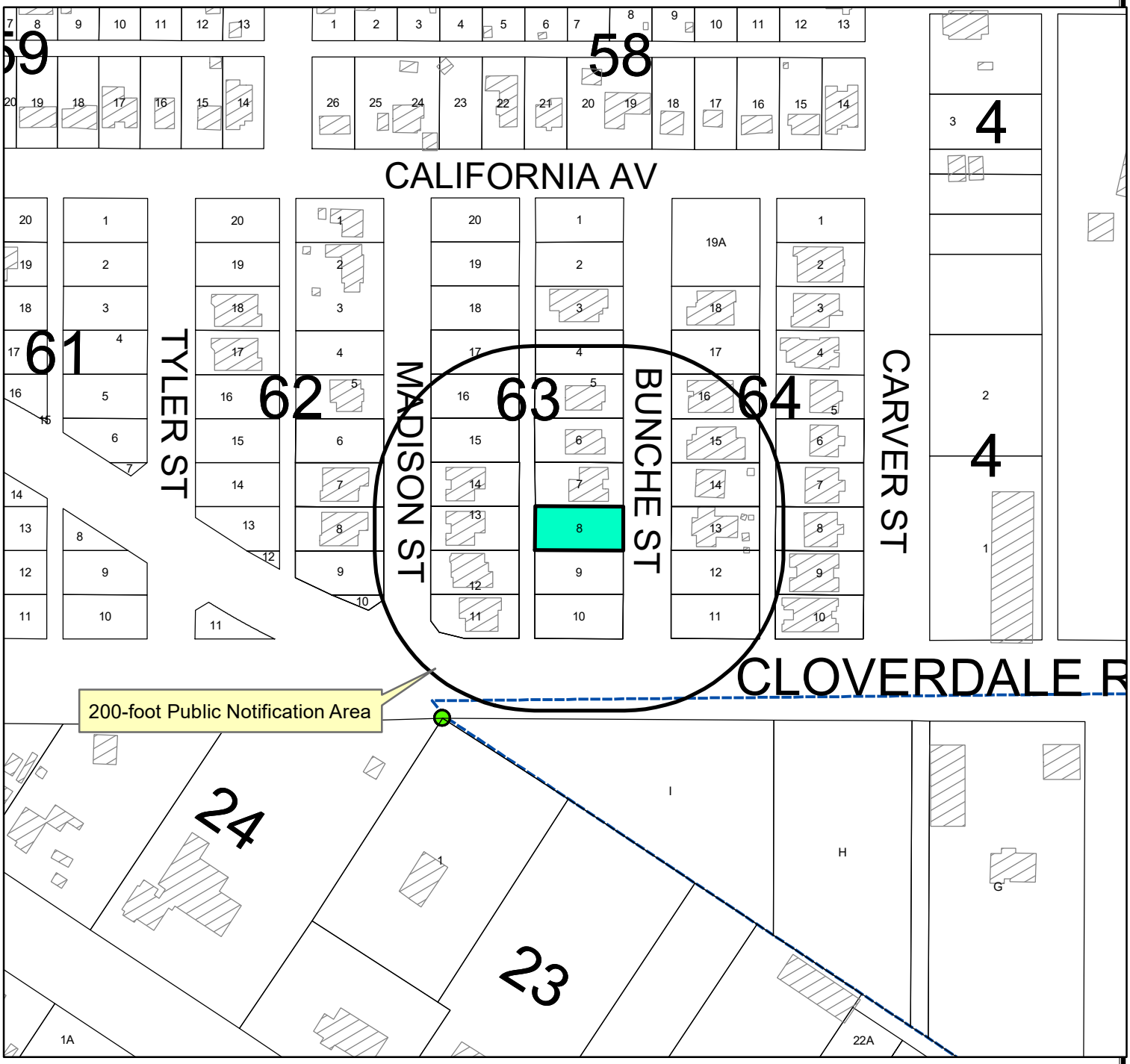
- ☑ Property Owner Authorization
- ☑ Application Fee
- Check # Paid online
- ☑ Dimensioned Site Plan
- ☑ Plans in Digital Format (PDF/JPEG)

Received By:

Date: RECEIVED MAY 22 2024

BY: .....

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



Location Map

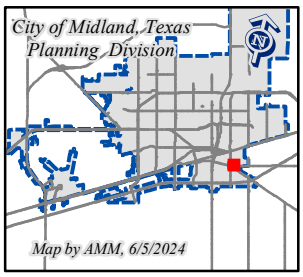
Z-24-0384 **Scale: 1" = 2,147'**

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 8, Block 63, Park Avenue Heights Addition, Section 2, City and County of Midland, Texas.

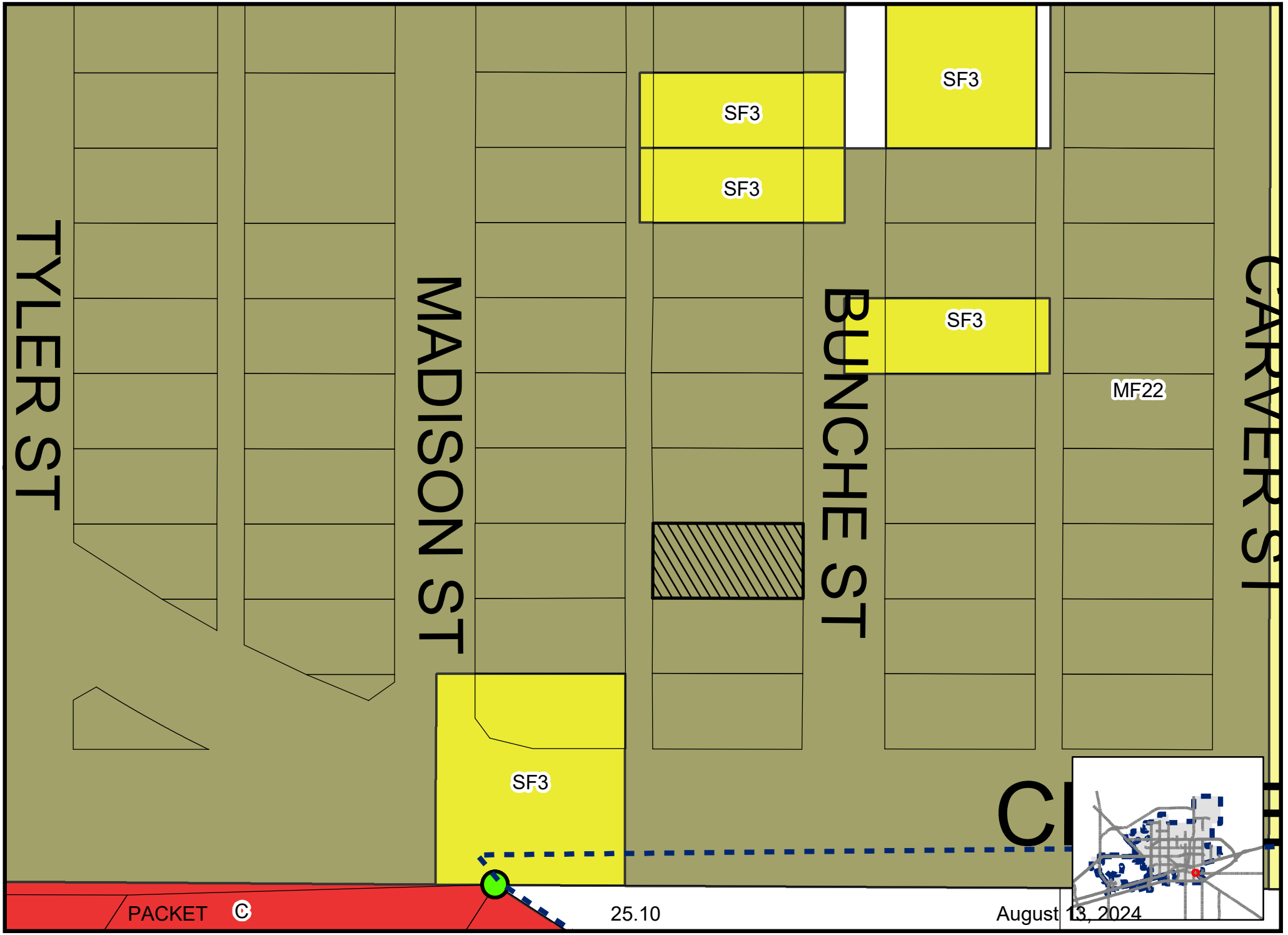
Generally located on the west side of Bunche Street, approximately 380 feet south of East California Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



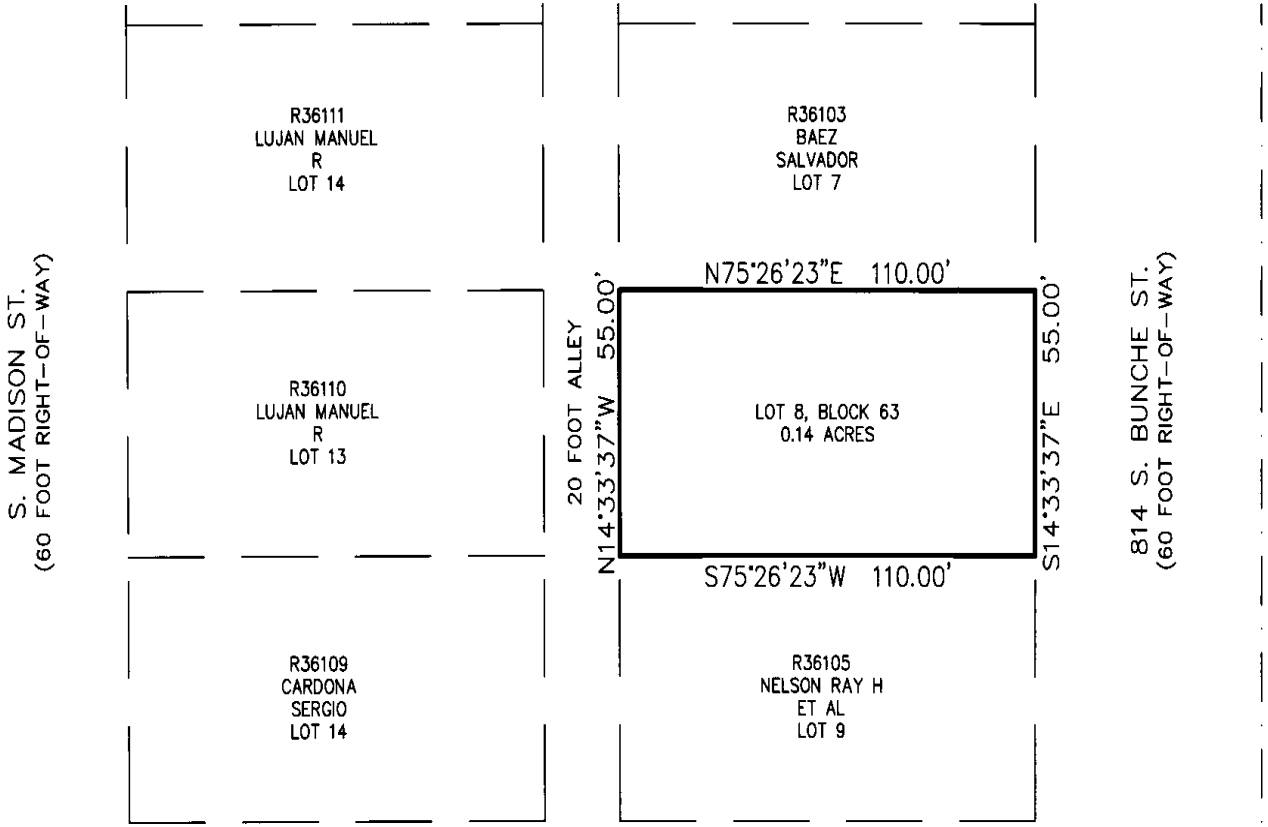
Map DG, 5/1/2024

Z-24-0384

Scale: 1" = 1,055'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



LEGEND:

PROPERTY LINE

ADJOINING PROPERTIES

August 13, 2024

25.11

SITE PLAN

SITE PLAN FOR

LOT 8, BLOCK 63,

PARK AVENUE HEIGHTS
SECTION 2.

ACCORDING TO THE PLAT RECORDED IN
THE COUNTY CLERKS OFFICE OF

MIDLAND COUNTY, TEXAS

PACKET

SCALE: 1" = 40'

PROJECT: SITE PLAN
JOB NO.: SITE PLAN

SCHUMANN
SURVEYING, INC.
A LATERAL LAND COMPANY

800 N. MARIENFELD STREET
SUITE 100
MIDLAND, TEXAS 79701

TEXAS FIRM No. 10149500

Office (432) 684-5548


MADISON ST
63
BUNCHE ST
64

LAND USE: URBAN-MEDIUM NEIGHBORHOOD CENTER (U-M NC)

DESCRIPTION:

» These districts will be new village hubs for the city's growth areas. They should offer small to moderate scale commercial development connected to an anchor store such as a grocery store surrounded by a mix of housing types including townhomes and small lot single family.

POTENTIAL ZONING:

» Single-Family Dwelling District
» Townhouse District
» Office District
» Local Retail District

INTENSITY (DU/A):

10+



USES:

Should include a mix of traditional neighborhood businesses including small scale commercial, office, civic and residential. The commercial uses should be low impact and provide a variety of neighborhood services.

FORM:

Low to moderate building and impervious coverage, located along major streets in areas close to residential growth centers or at nodes created by significant intersections of streets. Developments should emphasize pedestrian scale and relationships among businesses and accommodate automobile access without being dominated by an automotive scale. Good pedestrian circulation should connect businesses and surrounding residential uses.

COMPATIBILITY:

The emphasis for these areas should be on creating unique neighborhood centers or villages. Compatibility should be achieved through increased attention to traffic circulation and parking, site and building design, and on-site operations.

- Land uses may be mixed vertically in smaller scale two to three story buildings.
- Horizontal mixed use must create should create smooth internal transitions from lower to higher intensity uses in distances similar to U-M or U-H.
- Larger commercial uses should cluster around arterial streets.
- Smaller commercial uses are appropriate on any street provided that a smooth transition in intensity of uses is maintained.



MIDLAND

Be the Energy!



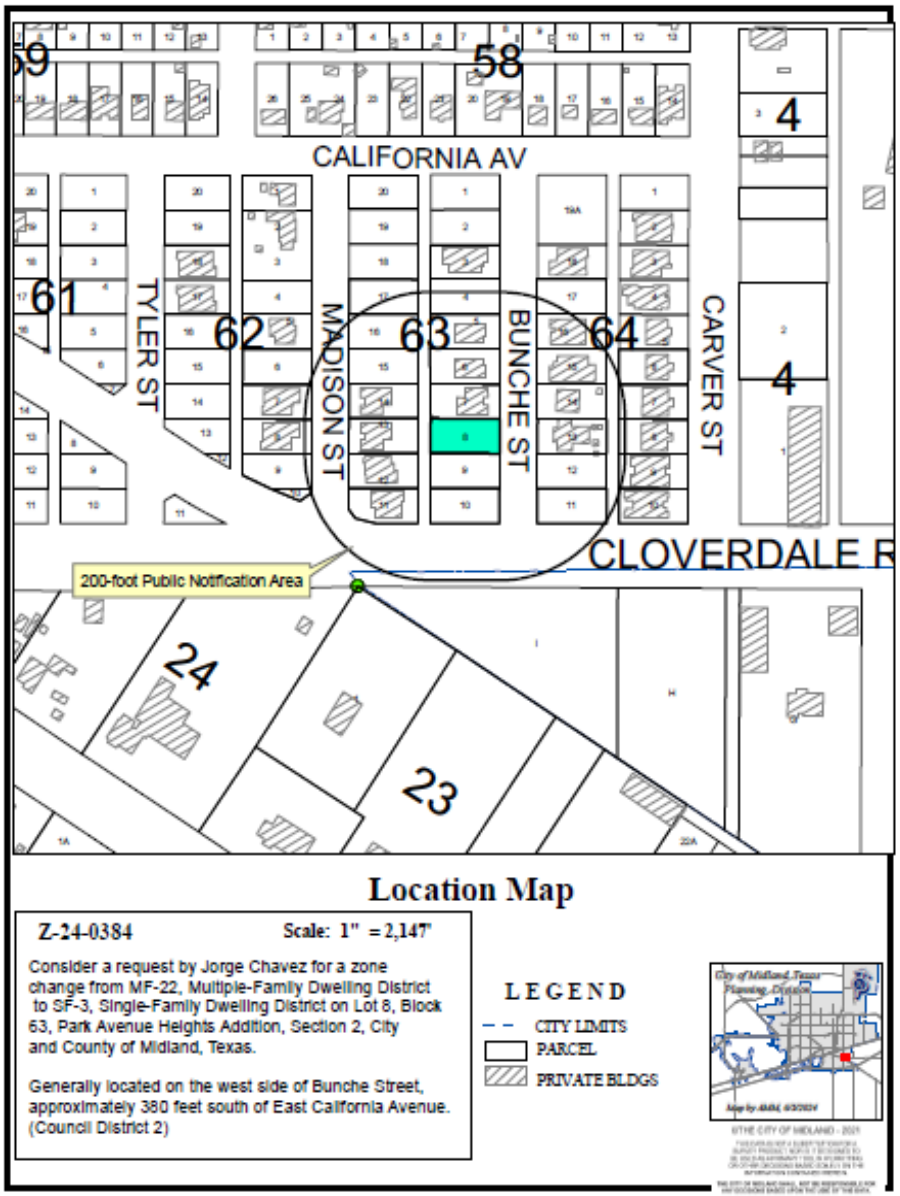
Jorge Chavez

Zone Change

July 23, 2024

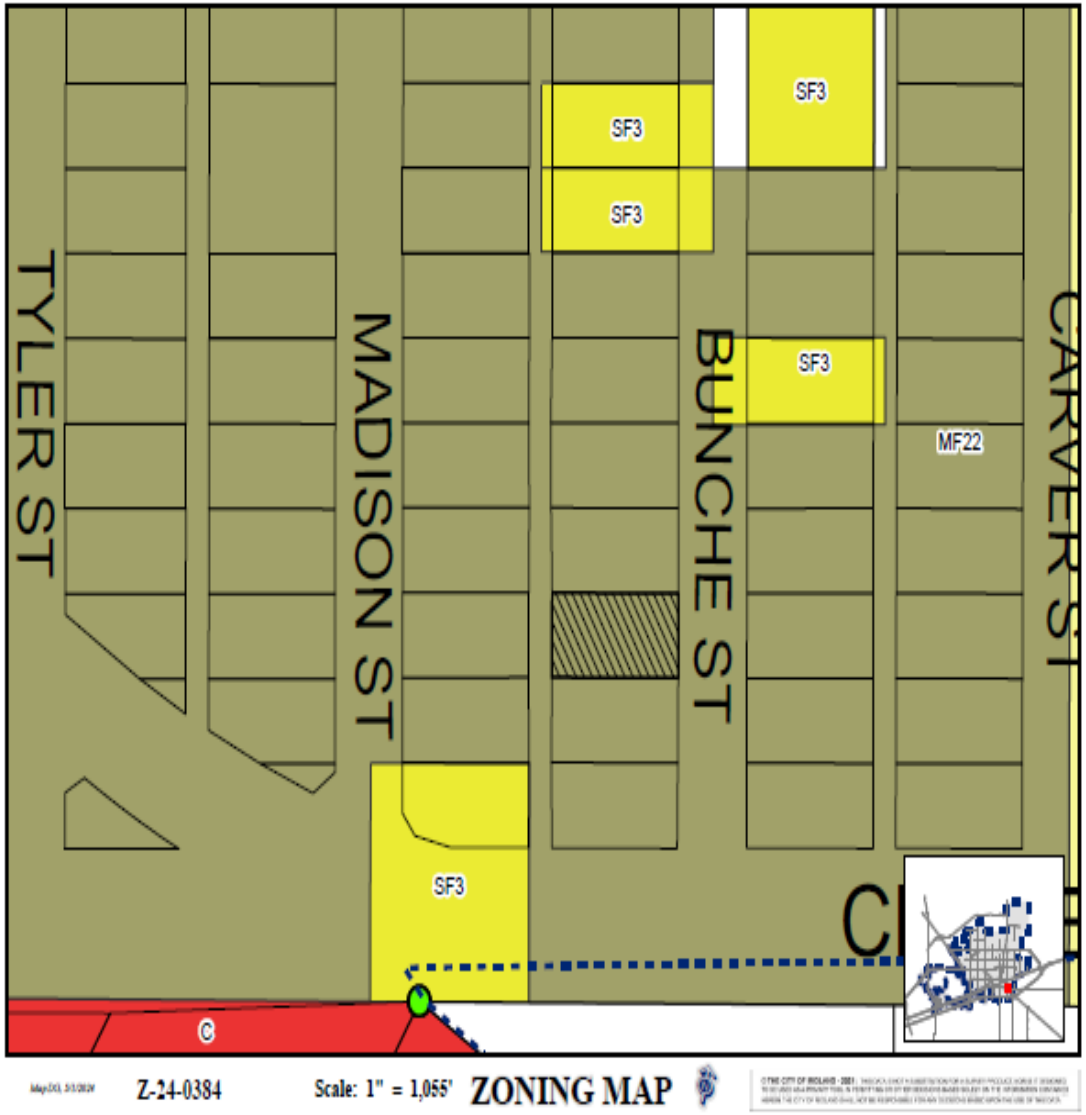
Visit Our Website:
MIDLANDTEXAS.GOV

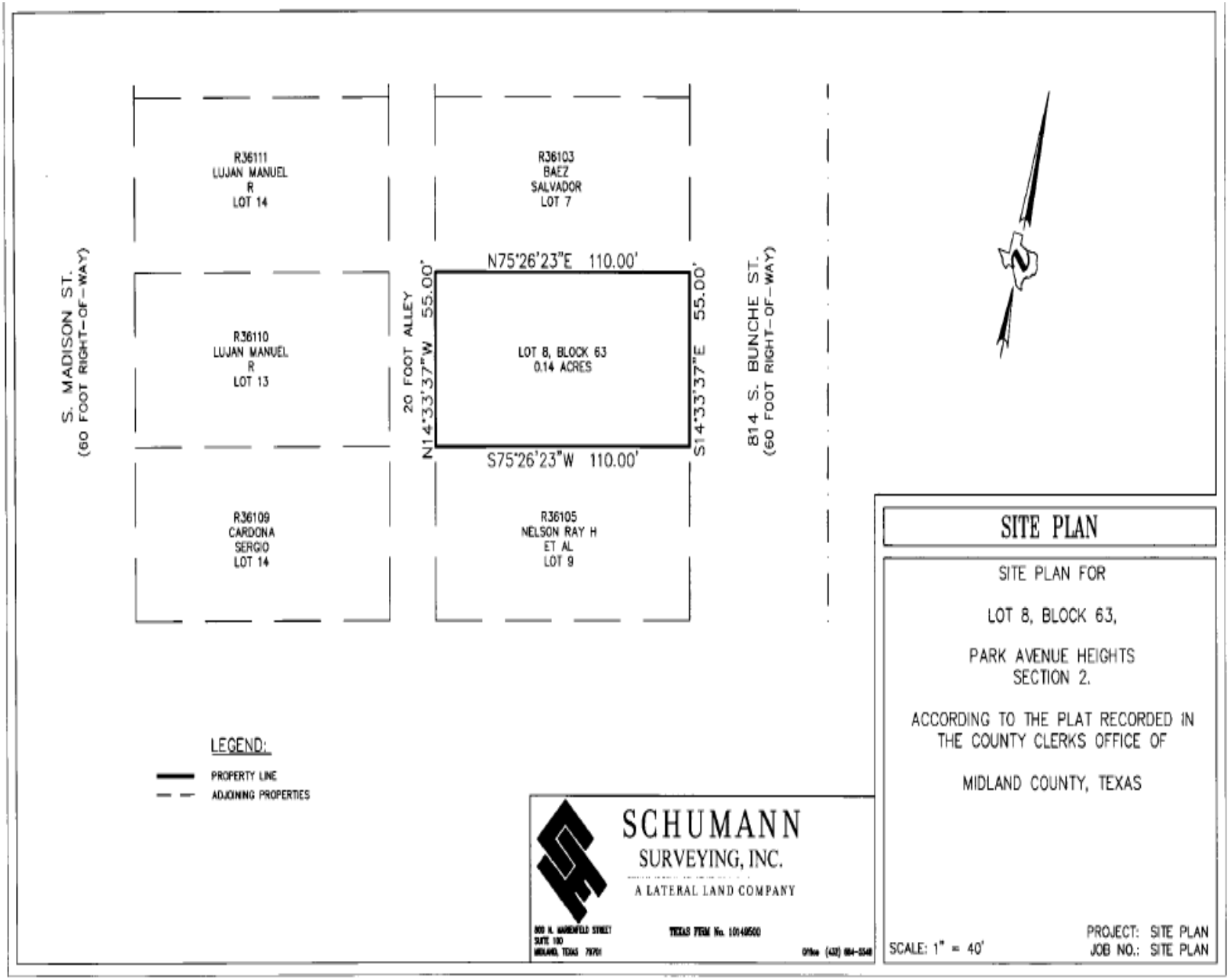
- Jorge Chavez
- Zone Change
- 814 S. Bunche
- .14 Acres



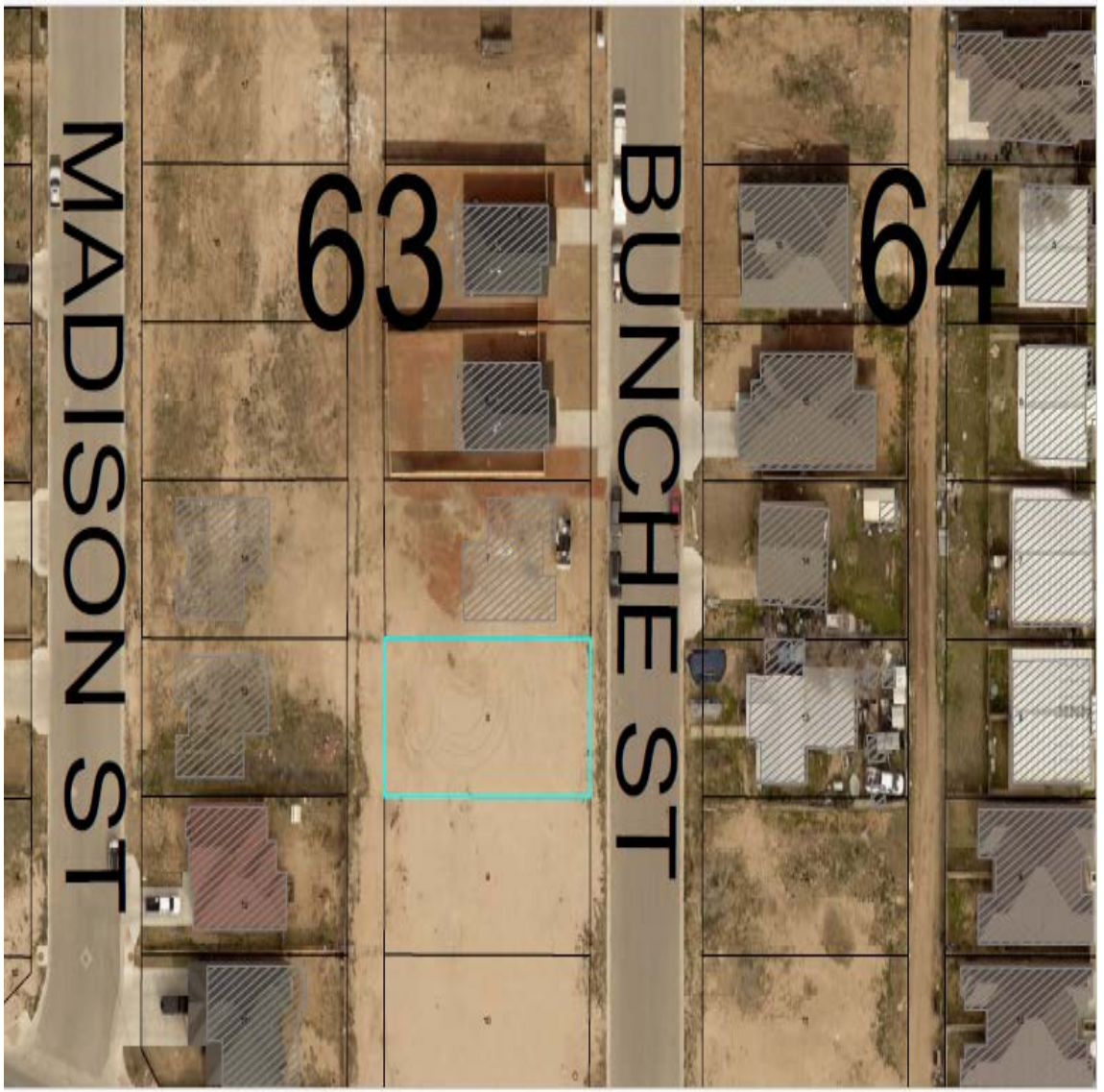
- Current Zoning: MF-22, Multiple-Family Dwelling District

- Surrounding Zoning:
- North, South, East, and West is MF-22, Multiple-Family Dwelling District
- Proposed Zoning: SF-3, Single-Family Dwelling District




R36111
LUJAN MANUEL
R
LOT 14
R36103
BAEZ
SALVADOR
LOT 7
S. MADISON ST.
(60 FOOT RIGHT-OF-WAY)
N75°26'23"E 110.00'
20 FOOT ALLEY
N14°33'37"W 55.00'
LOT 8, BLOCK 63
0.14 ACRES
S14°33'37"E 55.00'
S75°26'23"W 110.00'
814 S. BUNCHE ST.
(60 FOOT RIGHT-OF-WAY)
R36110
LUJAN MANUEL
R
LOT 13
R36109
CARDONA
SERGIO
LOT 14
R36105
NELSON RAY H
ET AL
LOT 9
LEGEND:
PROPERTY LINE
ADJOINING PROPERTIES
SCHUMANN
SURVEYING, INC.
A LATERAL LAND COMPANY
TEXAS FIRM No. 10149500
SITE PLAN
SITE PLAN FOR
LOT 8, BLOCK 63,
PARK AVENUE HEIGHTS
SECTION 2.
ACCORDING TO THE PLAT RECORDED IN
THE COUNTY CLERKS OFFICE OF
MIDLAND COUNTY, TEXAS
SCALE: 1" = 40'
PROJECT: SITE PLAN
JOB NO.: SITE PLAN

- Current use of the property: Vacant
- Proposed use of the Property Single-Family dwelling



- TCT Land Use Designation: Urban-Medium Neighborhood Center (U-M)
- Supported Uses: Calls for any single-family zoning district
- Request is compatible with the surrounding area and the Tall City Tomorrow Plan.



- Staff recommends APPROVAL of the Zone Change from MF-22, Multiple-Family to SF-3, Single-Family District.
  - No objection letters received

City Council Meeting

Item Number: 26

Meeting Date: July 23, 2024, August 13, 2024

To: City Council / City Manager

From: Alexis M. Martinez, Associate Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 9 AND 10, BLOCK 31, 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 CALHOUN STREET, APPROXIMATELY 160 FEET SOUTH OF EAST NEW YORK 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) (DISTRICT 2) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Terrill Q. LittleJohn, is requesting a Zone Change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District to build a new single-family dwellings at 605 and 607 S Calhoun St.

Recommended City Council Action:

Approve

Fiscal Impact:

The request has no significant impact on the City's budget.

Strategic Priority:

Quality of Life and Place**.**

Discussion:

Current Zoning:

MF-22, Multiple-Family Dwelling District.

Surrounding Zoning and Land Use:

The properties to the north, east, south and west are zoned MF-22, Multiple-Family Dwelling District and is an existing single-family residential neighborhood.

Analysis:

The subject property is zoned MF-22, Multiple-Family Dwelling District. Armando Sanchez is seeking this zone change in order to construct a single-family home, which is not allowed in the MF-22 district. This vacant lot is located in a residential neighborhood that is developed with single-family homes. Changing this zoning would help the future residential development of this area. This lot does meet the requirements for the SF-3, Single-Family Dwelling District zoning.

This request is consistent with the Tall City Tomorrow Comprehensive Plan, Chapter 3; which designated this area as U-M, Urban-Medium. This designation calls for any single-family zoning district.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire:

No comments or objections.

Oil and Gas:

No Oil and Gas issues.

Engineering:

No objections to zone change. [For Applicant's Information Only.] Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Code:

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Transportation:

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.] No objection to zone change. [For the Applicant's information only.]

Planning:

Therefore, staff recommends approval of this zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

Letters of Objection:

As of July 12, 2024, staff has received no letters of objection for this request.

Attachments:

Application
Site Plan
Maps
Powerpoint

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 9 AND 10, BLOCK 31, 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 CALHOUN STREET, APPROXIMATELY 160 FEET SOUTH OF EAST NEW YORK AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lots 9 and 10, Block 31, 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., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: _____

Case Number: Z-24-0387

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: TERRILL Q. LITTLEJOHN		Phone (432) 684-4643 Email: tlittlej@SUDDENLINK.NET	
Address: 1209 W. LOUISIANA AVE.	City: MIDLAND	State: TEXAS	Zip: 79701

Property Owner Printed Name: TERRILL Q. LITTLEJOHN		Phone (432) 684-4643 Email: tlittlej@SUDDENLINK.NET	
Address: 1209 W. LOUISIANA AVE.	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: 605 + 607 S. CALHOUN ST.

Legal Description
Lot: 009+010 Block: 031 Subdivision: GREENWOOD

Current Zoning:	**Proposed Zone:** *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: TO MAKE APPLICABLE FOR SINGLE FAMILY USE

Present Use of Property: VACANT

Proposed Use of Property: RESIDENTIAL

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)

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature): Terrill D. Littlejohn	Date: 5-17-24
Applicant (printed): TERRILL D. LITTLEJOHN	
Property Owner (signature): Terrill D. Littlejohn	Date: 5-17-24
Property Owner (printed): TERRILL D. LITTLEJOHN	

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*)

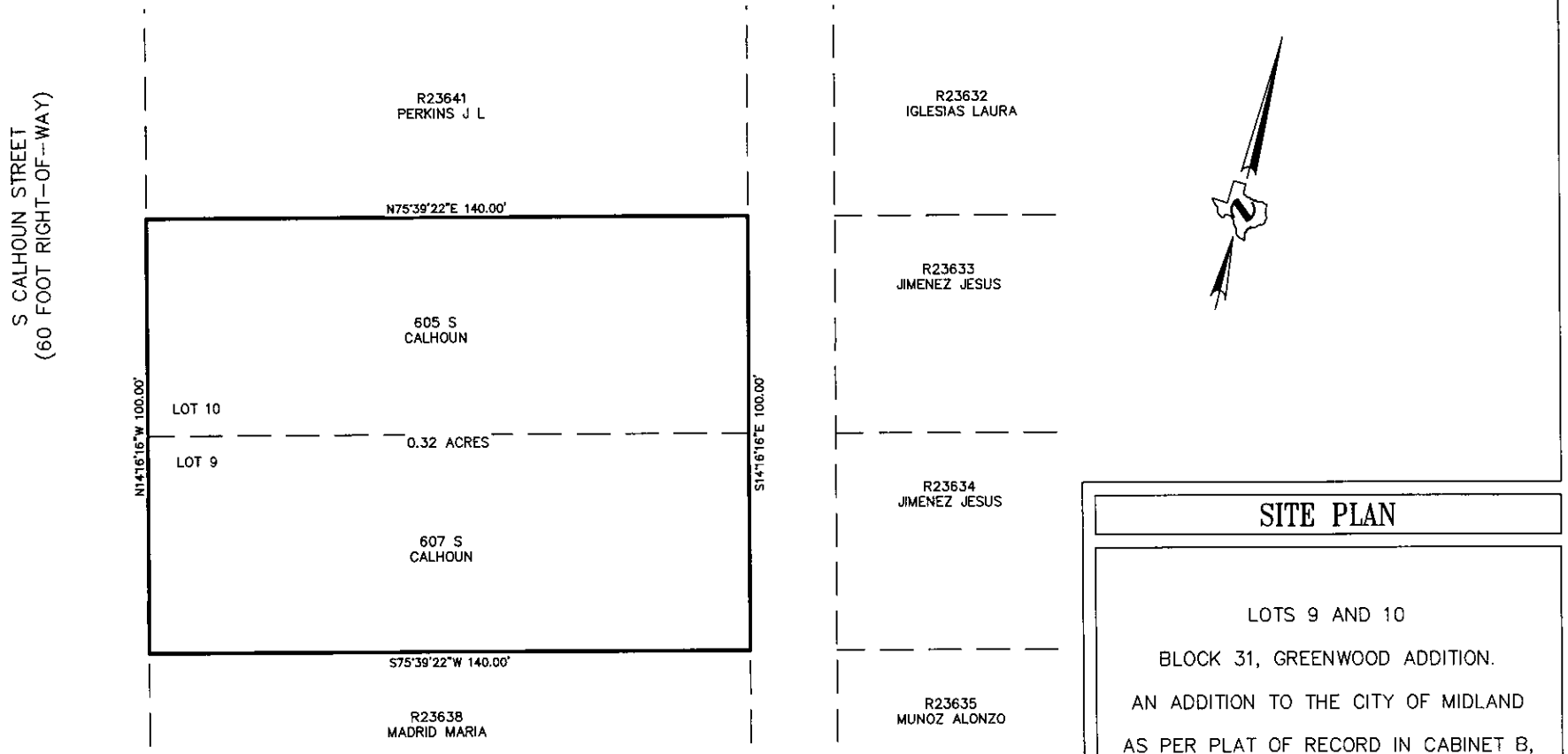
Subscribed and sworn to before me, this_____day of_____, 20____, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # Wired Per Nancy	
Received By:	Date: RECEIVED MAY 21 2024
	BY:

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



SITE PLAN

LOTS 9 AND 10

BLOCK 31, GREENWOOD ADDITION.

AN ADDITION TO THE CITY OF MIDLAND

AS PER PLAT OF RECORD IN CABINET B,

PAGE 52, PLAT RECORDS,

MIDLAND COUNTY, TEXAS.

SCALE: 1" = 40'

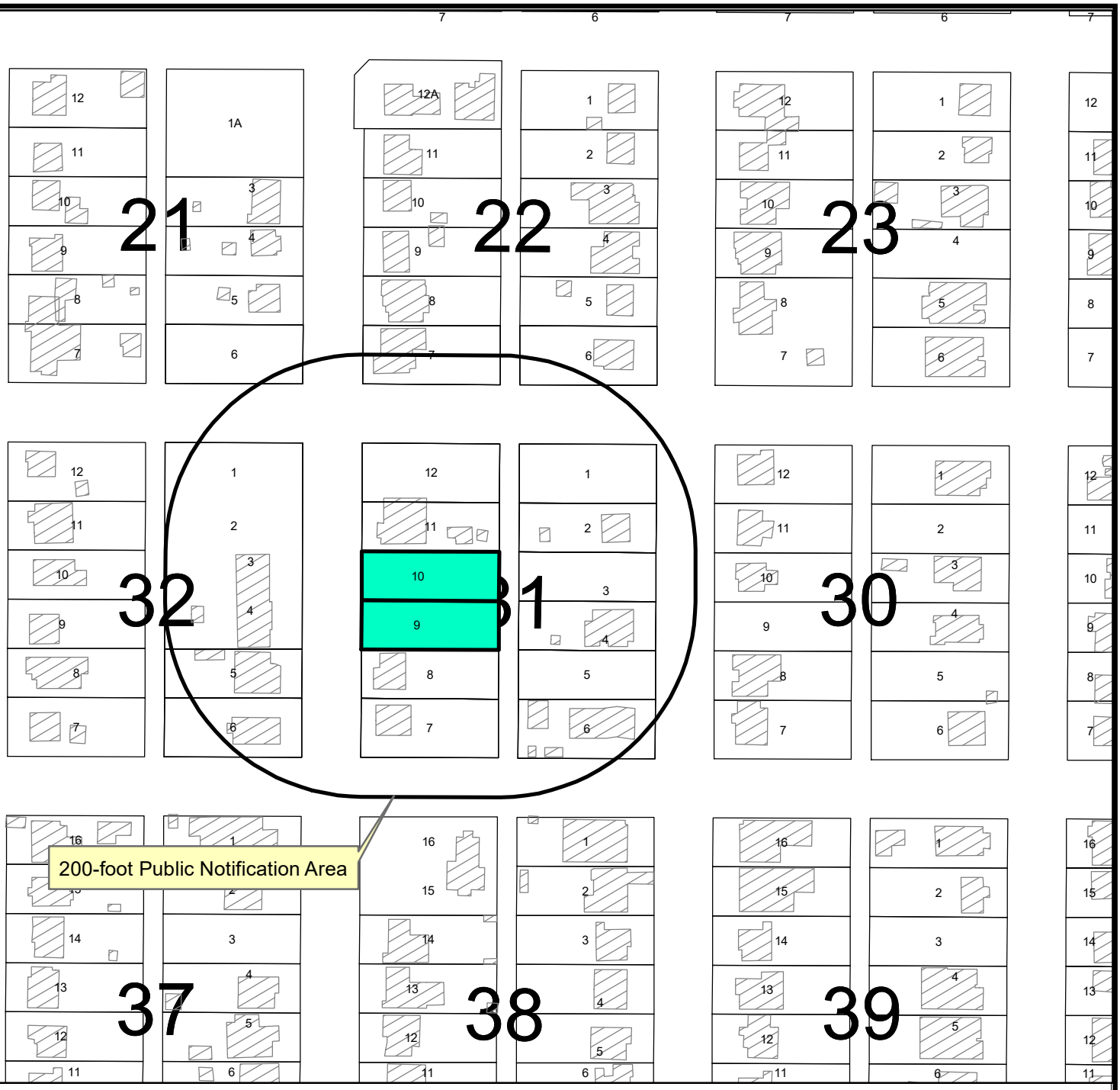
PROJECT:
JOB NO.:

SCHUMANN
SURVEYING, INC.
A LATERAL LAND COMPANY

800 N. MARIENFELD STREET
SUITE 100
MIDLAND, TEXAS 79701

TEXAS FIRM No. 10149500

Office (432) 684-5548



Location Map

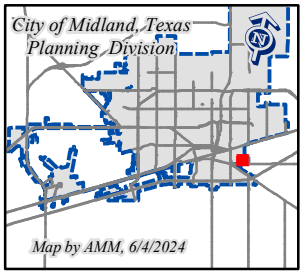
Z-24-0382 **Scale: 1" = 1,789**

Consider a request by Terrill Q. LittleJohn for a zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District on Lots 9 and 10, Block 31, Greenwood, Addition, Section 3,4 and 5, City and County of Midland, Texas.

Generally located on the east side of South Calhoun Street, approximately 160 feet south of East New York. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



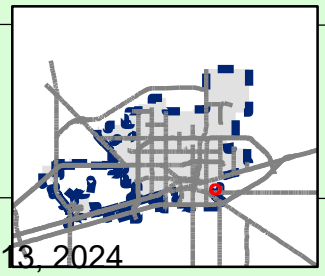
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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

E. NEW YORK

S. CALHOUN

MF22

SF3



PACKET 26.11 August 13, 2024

Map By EM, 2/14/2020

Z-24-0382

Scale: 1" = 791

ZONING MAP

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32
31
30



MIDLAND

Be the Energy!

Terrill Q. Little John

Zone Change

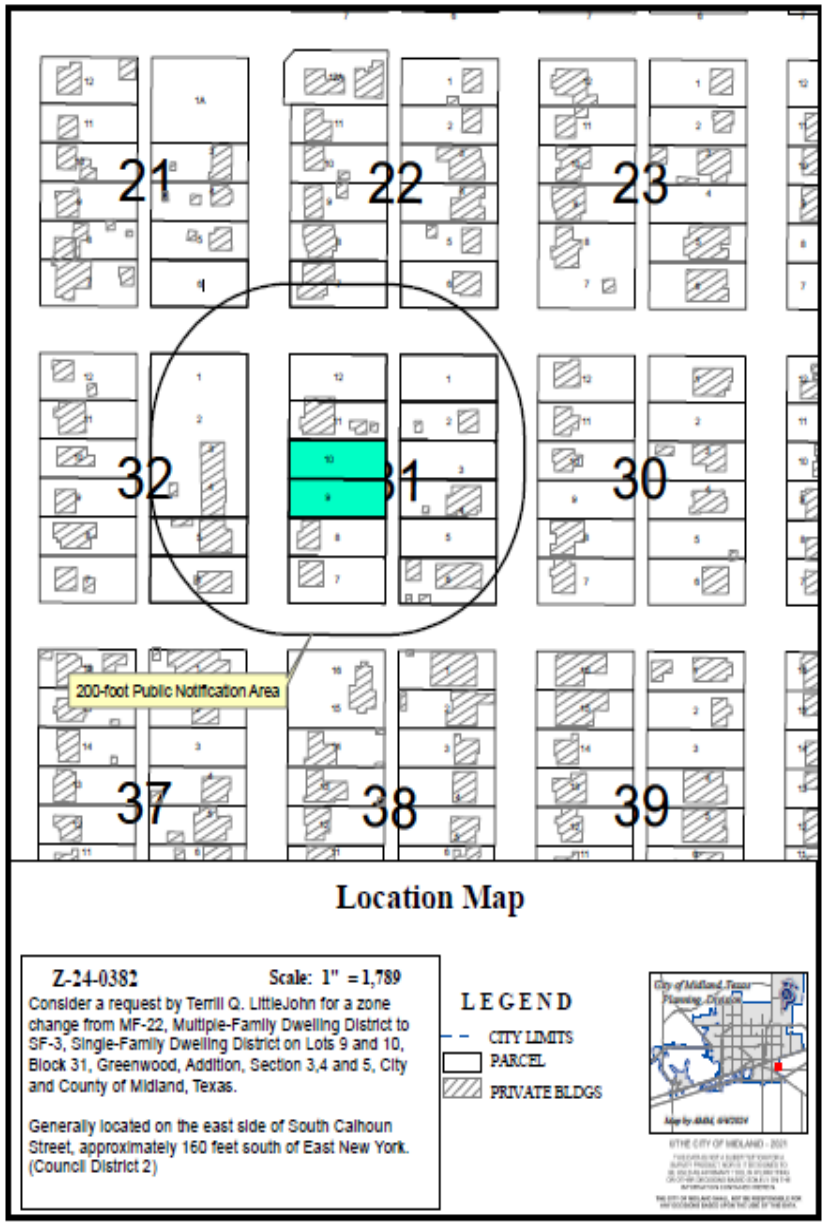
July 1, 2024

Visit Our Website:
MIDLANDTEXAS.GOV



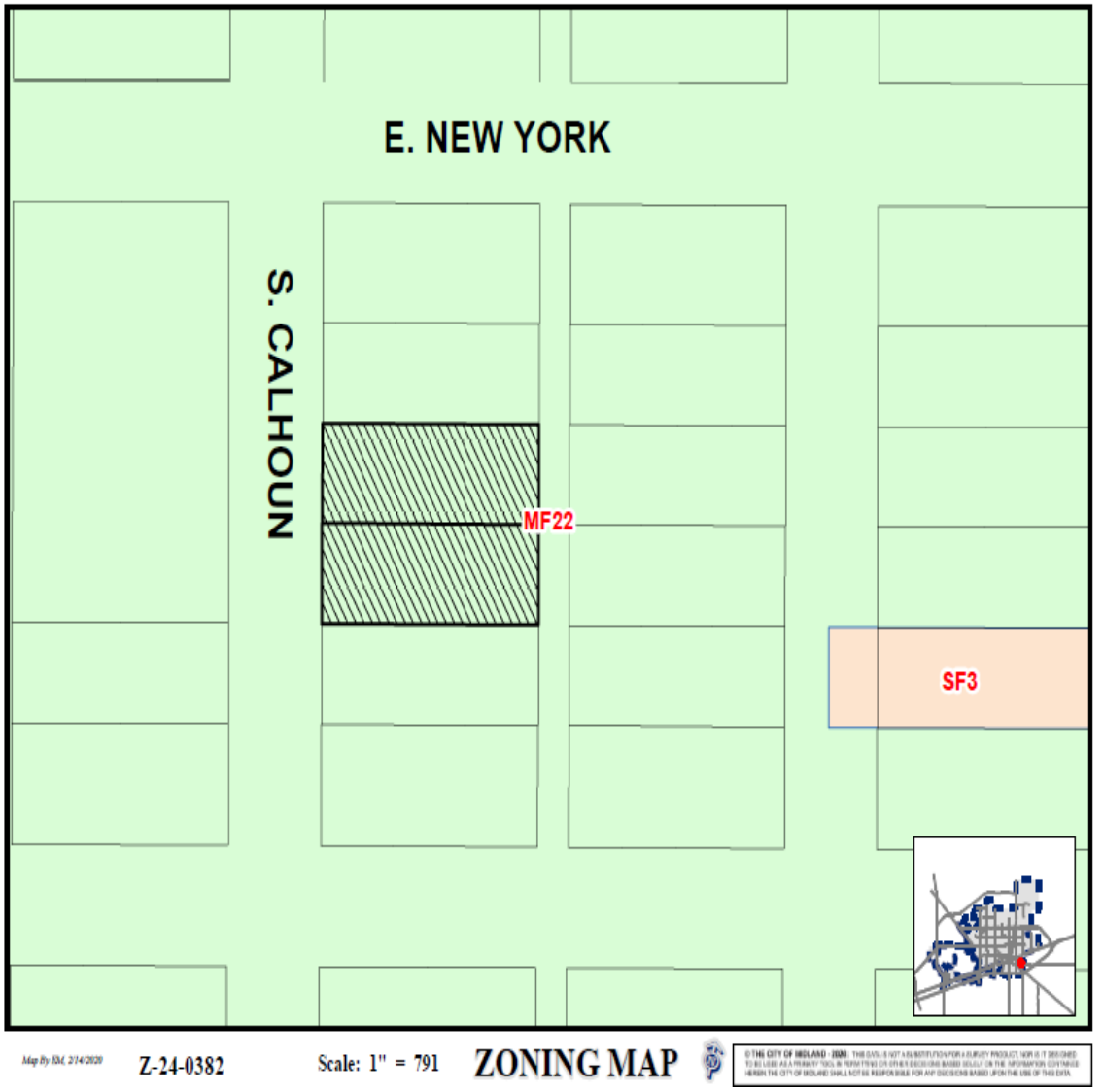
Public Hearing

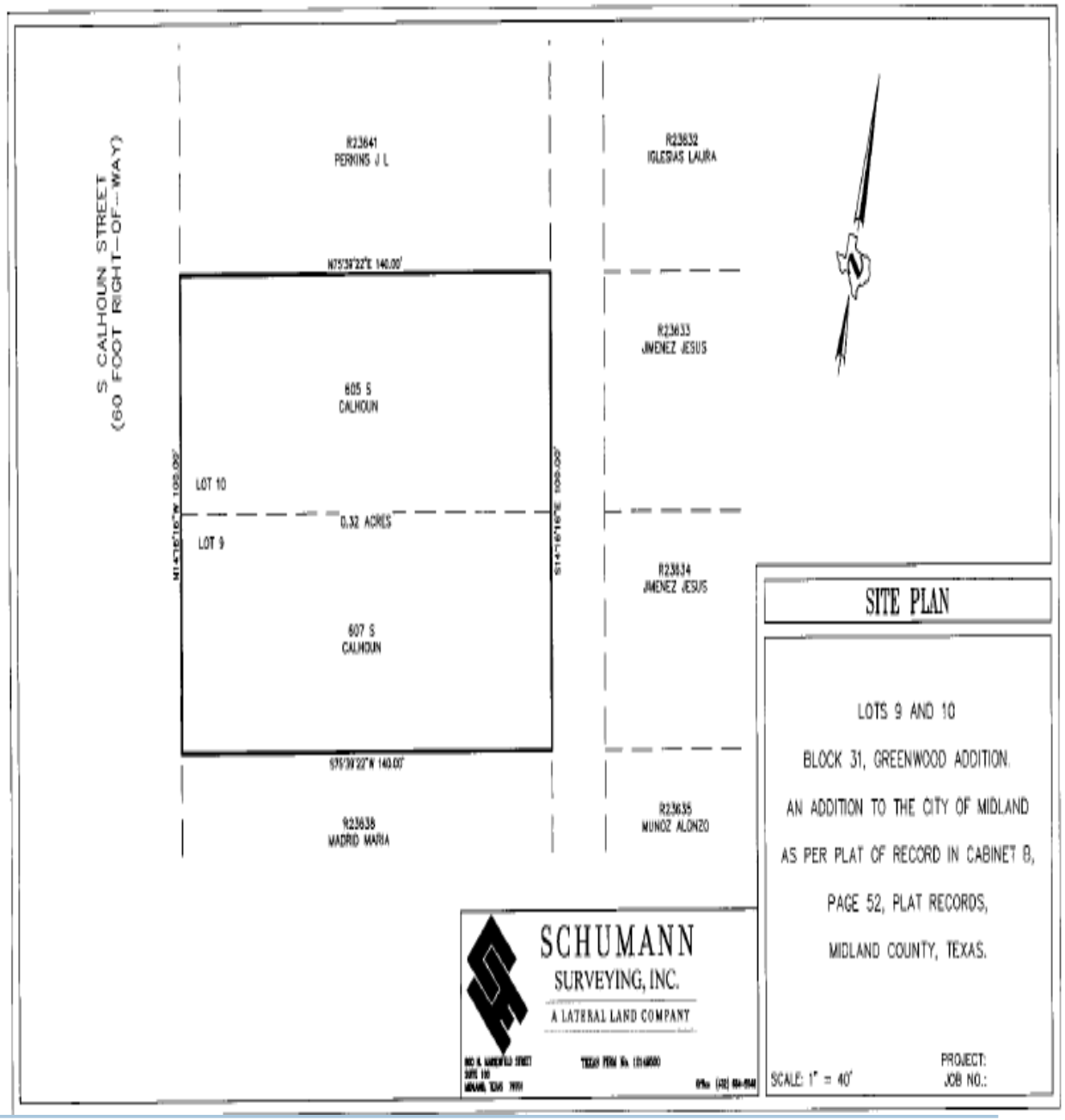
- Terrill Q. Little John
- Zone Change
- 605 & 607 S. Calhoun
- Both are .13 acres



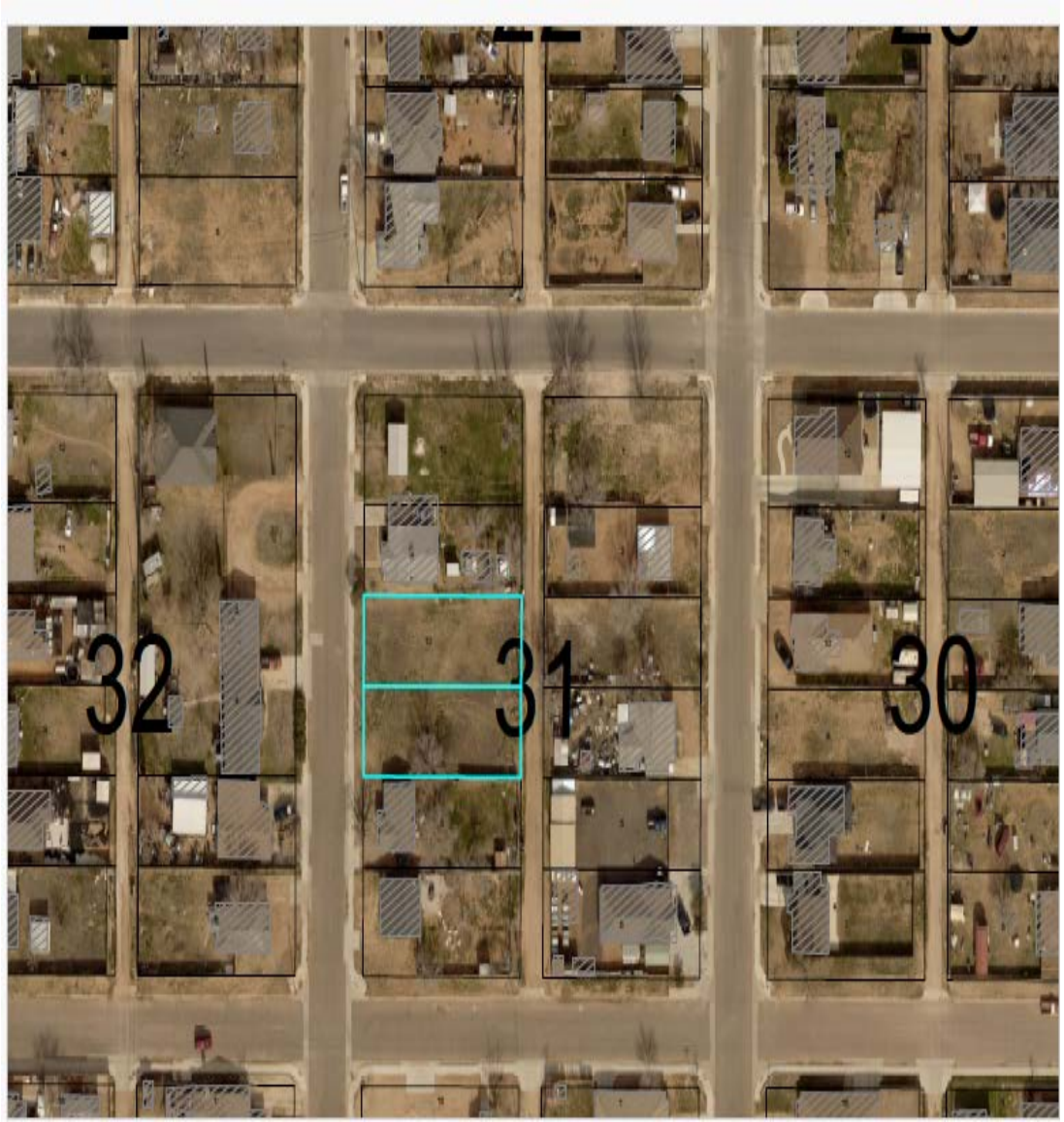
- Current Zoning: MF-22, Multiple-Family Dwelling District

- Surrounding Zoning:
- North, South, East, and West is MF-22, Multiple-Family Dwelling District
- Proposed Zoning: SF-3, Single-Family Dwelling District

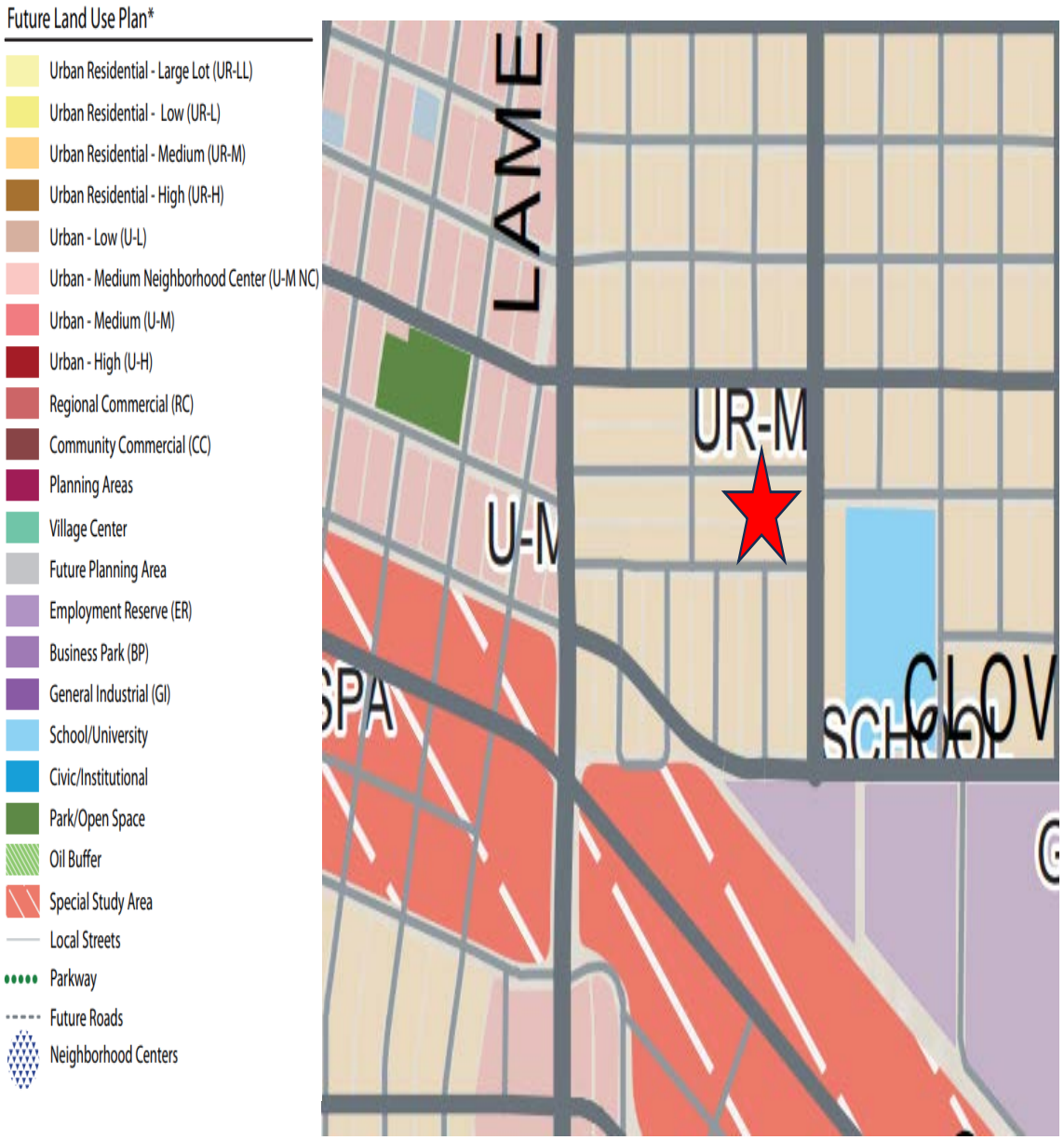



S CALHOUN STREET
(60 FOOT RIGHT-OF-WAY)
R23641
PERKINS J L
R23632
IGLESIAS LAURA
N75°39'22"E 140.00'
R23633
JIMENEZ JESUS
605 S
CALHOUN
LOT 10
0.32 ACRES
LOT 9
N14°16'16"W 105.00'
S14°16'16"E 105.00'
R23634
JIMENEZ JESUS
607 S
CALHOUN
S75°39'22"W 140.00'
R23638
MADRID MARIA
R23635
MUNOZ ALONZO
SCHUMANN
SURVEYING, INC.
A LATERAL LAND COMPANY
SITE PLAN
LOTS 9 AND 10
BLOCK 31, GREENWOOD ADDITION
AN ADDITION TO THE CITY OF MIDLAND
AS PER PLAT OF RECORD IN CABINET B,
PAGE 52, PLAT RECORDS,
MIDLAND COUNTY, TEXAS.
SCALE: 1" = 40'
PROJECT:
JOB NO.:

- Current use of the property: Vacant
- Proposed use of the Property: Single-Family dwelling



- TCT Land Use Designation: Urban-Medium Neighborhood Center (U-M)
- Supported Uses: Calls for any single-family zoning district
- Request is compatible with the surrounding area and the Tall City Tomorrow Plan.



- Therefore, staff recommends APPROVAL of the Zone Change from MF-22, Multiple-Family to SF-3, Single-Family District.
  - No objection letters received

City Council Meeting

Item Number: 27

Meeting Date: July 23, 2024, August 13, 2024

To: City Council / City Manager

From: Alexis M. Martinez, Associate Planner

Subject: **AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 2,400-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 (DISTRICT 2) (DEVELOPMENT SERVICES) QUALITY OF LIFE AND PLACE)**

Purpose:

The applicant, Leticia Juarez Gonzalez, is requesting a Specific Use Designation (SUD) with Term for the sale of all alcoholic beverages sales for on-premises consumption in a restaurant. The restaurant, La Florida, is located at 210 West Longview Ave.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Strategic Priority:

(Strong Economy with More Quality Jobs)

Discussion:

Current Zoning:

RR, Retail Regional

Surrounding Zoning and Land Use:

The properties to the north are zoned O1, Office District, SF-1, Single Family Dwelling District and SF-3, Single-Family Dwelling District. The property to the south is RR, Regional Retail District, and the location of Walmart. The property to the east is zoned PD and is the location of a hotel. The property to the west is zoned PD, Planned District and is the location of a bank and retail stores.

Analysis:

The property is zoned RR, Regional Retail. The RR zoning allows for Alcoholic Beverages Sales for On-Premises Consumption in a Restaurant with the approval of an SUD. The total area of the restaurant, La Florida, is 2,400-square feet and the proposed alcohol serviceable area is 1,200-square feet.

The proposed hours of operation:

Monday through Sunday from 5 a.m. to 2 a.m.

The proposed hours of alcohol service:

Monday through Sunday from 11 a.m. to 2 a.m.

Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public-school, public-school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches, private schools, public schools, public school grounds, athletic stadium, public hospital within 300 feet measurement along the property lines of the street fronts, and from the front door in a direct line across intersection where they occur within this site.

The request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 6-

Character Plan Goal 4, which is to “Encourage the development of places where Midland residents can gather and socialize to build connections.” La Florida is a destination where Midland residents will gather and socialize.

This project has been circulated to all City departments for review. Below are the department comments.

Engineering: (Approved)

No objection. [For Applicant’s Information Only.]

Transportation: (Approved)

No objections. [For the Applicant’s information only.]

Building Code: (Approved)

The SUD is approved based on the current occupant load pending that no changes to the occupancy, seating count, physical structure, and/or the floor layout has taken place when compared to previously approved SUDs. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Fire: (Approved)

No objections

Planning: (Approved)

No objections.

This request meets all requirements; therefore, staff recommends approval of the request of the Specific Use Designation with Term for Sales of all Alcoholic Beverages for On-Premises Use.

Conditions:

A. That the serviceable area of the establishment shall be limited to approximately 1,200 square feet as shown in Exhibit “A”.

B. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

C. That the permitted hours of the sale of alcoholic beverages sales and consumption shall be limited to:

Monday through Sunday from 11 a.m. to 2 a.m.

D. **That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.**

E. **That the establishment shall meet all requirements of the Fire Department and Code Administration.**

F. **That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.**

G. **That in accordance with Section 9.07.E.3 of the zoning ordinance, the restaurant shall be in operation within 120 days from the final adoption date of this ordinance.**

Letters of Objection:

As of July 12, 2024, staff has not received any letters of objection.

Attachments:

Floor Plan
Site Plan
Application
Maps
Areial Photo
Site Photo

Jose E. Ort

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 2,400-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 2,400-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 in a restaurant (the "Establishment") for on-premises consumption, together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 1,200 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

C. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through Sunday from 11:00 a.m. to 2:00 a.m. of the following day.

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

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

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

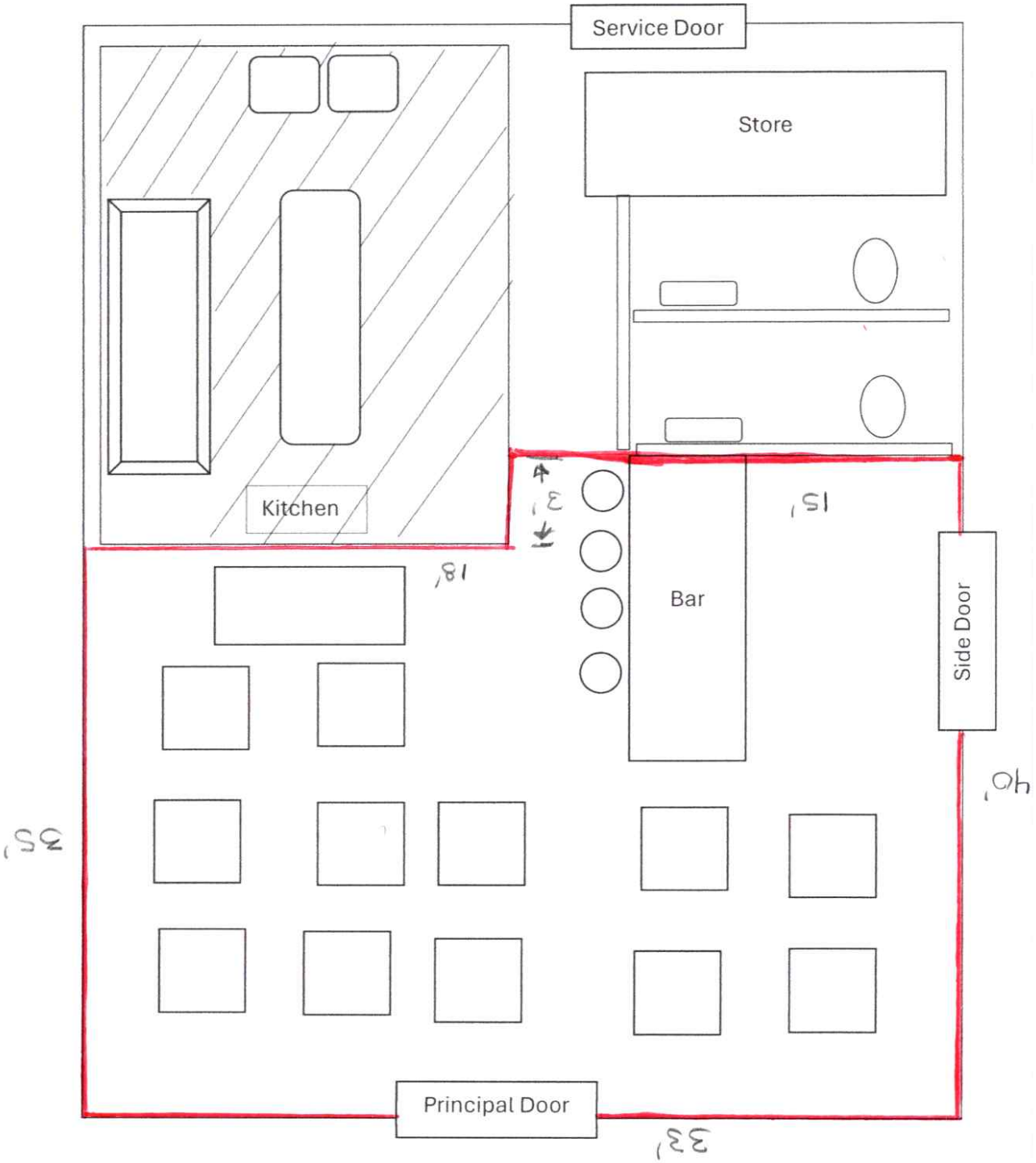
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



Local J2-Mexican Restaurant La Florida #2

Total square Footage of Business 2,400

Square Footage of Alcohol serviceable Area 1,200

MIDLAND
Planning Division

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

Project Number:
Case Number: SUD-24-0182

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Leticia Juarez Gonzalez			Phone (432) 553-1265 Email leticiajuarez6572gmail.com
Address: 210 S Fort worth St #	City: Midland	State: Texas	Zip: 79701
Property Owner Printed Name: Kiran Ponnam			Phone (918) 978-3366 Email kponnam@yahoo.com
Address: 440 Louisiana Ave. S. 952	City: Houston	State: Texas	Zip: 77002
Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:			Phone ( ) Email
Address	City	State	Zip

Street Address: 210 longview Ave

Business Name: Mexican Restaurant La Florida #2 JZ

Legal Description
Lot: 2A Block: 52 Subdivision: BELMONT SECTION 12

Current Zoning: Comercial

Reason for Request: permit for Alcohol

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: restaurant bar

Proposed/Current Days and Hours of Operation: Lunes a Domingo 5:AM a 2:00 AM

Proposed Days and Hours of Alcohol Service: Lunes a Domingo 11:00AM a 2:00 AM

Total Square Footage of Business: 2400

Square Footage of Alcohol Serviceable Area: 1200

Restroom Fixtures: 1 *Men*	**Toilets/Urinals:** 1 1	**Bathroom Sinks:** 1
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:
  - Seati
  - Exits
  - Restr
  - Kitchen (if applicable)
  - Total Square Footage
  - Serviceable Square Footage
- Dimensioned Site Plan showing:
  - Parking
  - Business Footprint

Signatures	
Applicant (signature): Leticia	Date: 05-08-2024
Applicant (printed): Leticia Juarez Gonzalez	
Property Owner (signature):	Date:
Property Owner (printed) :	

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

All materials, 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, TEXA

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

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

Signature

Applicant (signature)

Applicant (printed)

Property Owner (signature) P-Kiran

Property Owner (printed) Kiran Ponham

Date 05/20/2024

Kiran Ponham ... identification ... Authorized Agent (signature)

Subscribed and sworn to before me, this 20th day of May 2024, to certify which witness my hand and seal of office.

Commission Expires 06/13/2026

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

JACQUELINE HINOJOS
Notary Public, State of Texas
Comm. Expires 06-13-2026
Notary ID 131546139

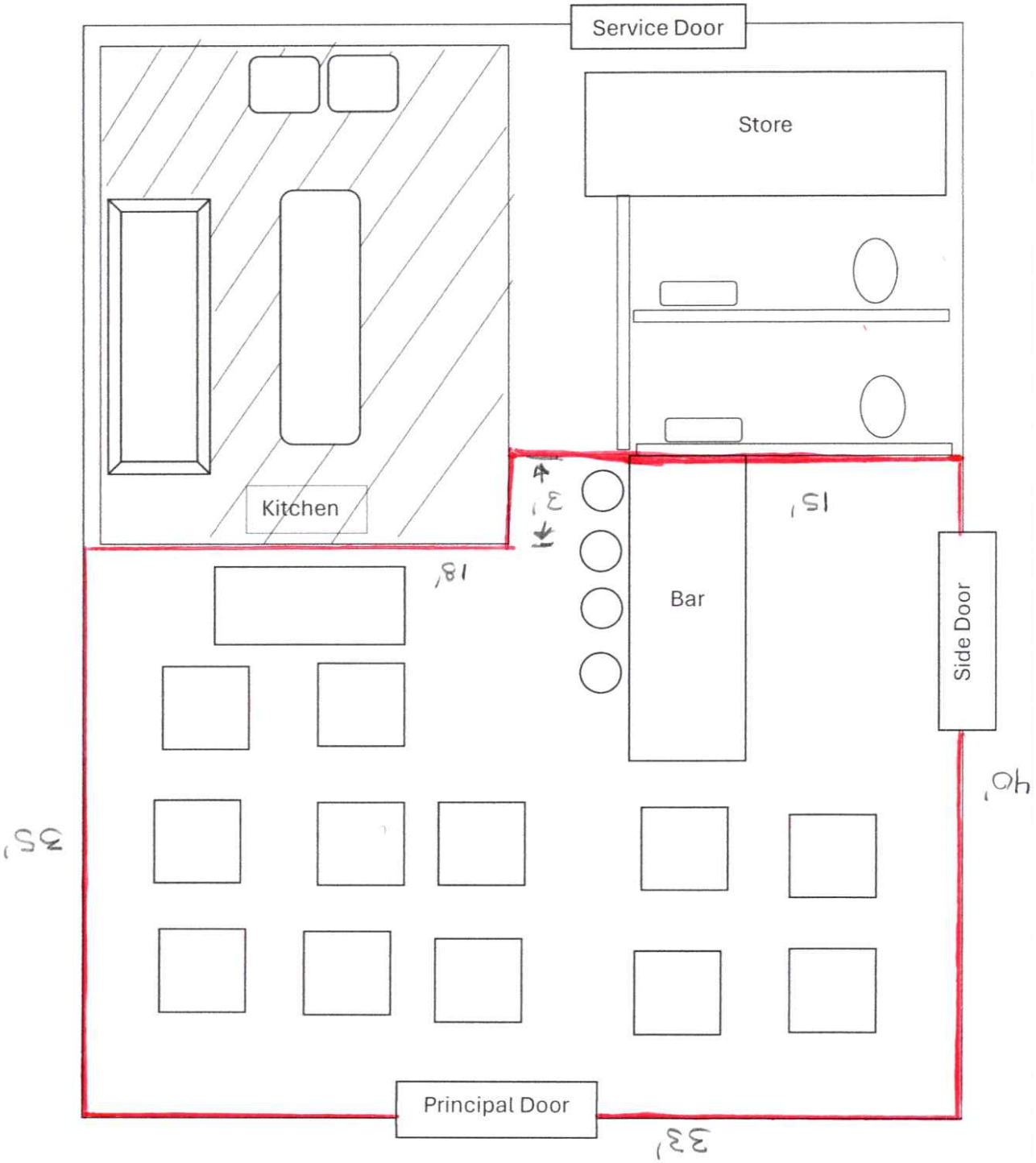
FOR OFFICE USE ONLY

- [x] Property Owner Authorization
- [x] Dimensioned Floor Plan
- [x] Application Fee
- [x] Site Plan
- Check # 1003
- [ ] Plans in Digital Format (PDF/JPEG)
- Received By: Alexis
- Date:

RECEIVED

BY: .....

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



Local J2-Mexican Restaurant La Florida #2

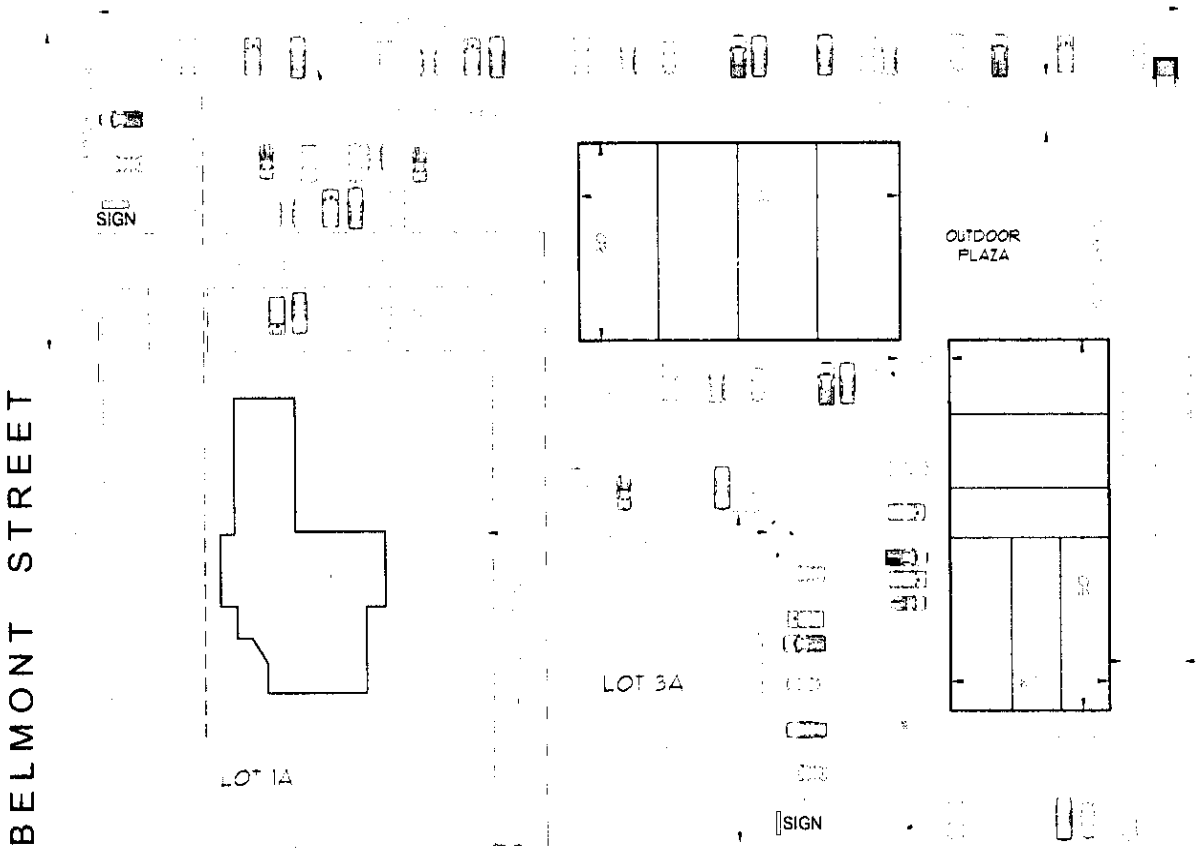
Total square Footage of Business 2,400

Square Footage of Alcohol serviceable Area 1,200

PACKET

27.14

August 13, 2024



LOT 2A, BLOCK 52
BELMONT SECTION 12 ADDITION
CITY OF MIDLAND

NEW 20,500 SF SHOPPING CENTER

PARKING RATIO (AVG)	1:200
PARKING REQUIRED:	103 SPACES
PARKING PROVIDED:	134 SPACES

1" = 50'

0' 25' 100'

10' 50'

LONGVIEW AVE

TO WALMART

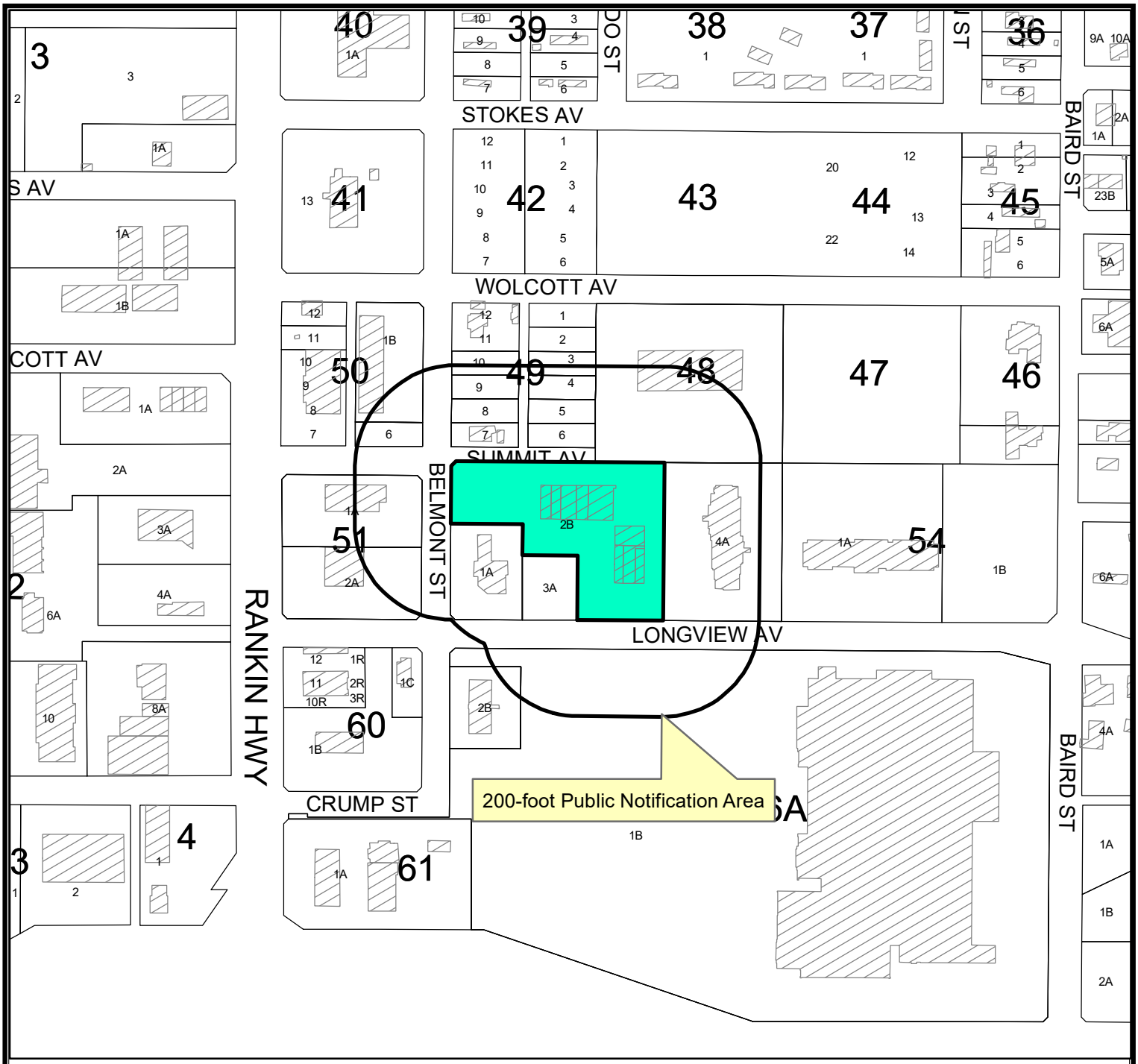
MIDLAND CROSSING SHOPPING CENTER

MIDLAND, TEXAS

LONGVIEW AVE NEAR BELMONT STREET

White Oak Development

CONTACT:
JEFF FARMER
WWW.WHITEOAKDEVELOPMENT.NET
901-763-2858



Location Map

SUD-24-0182 **Scale: 1" = 3,578'**

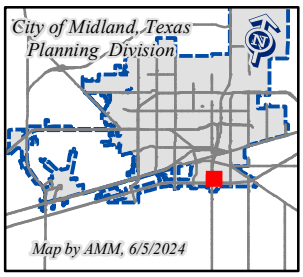
Consider a request by Leticia Juarez Gonzalez for a Specific Use Designation with Term for the Sale of all Alcoholic Beverages for on premises consumption in a Restaurant on a 2,400 square foot portion of Lot 2B, Block 52, Belmont, Section 21, City and County of Midland, Texas.

Generally located on the North side of West Longview Avenue, approximately 290 feet east of Belmont Street. (Council District 2)

PACKET 27.15

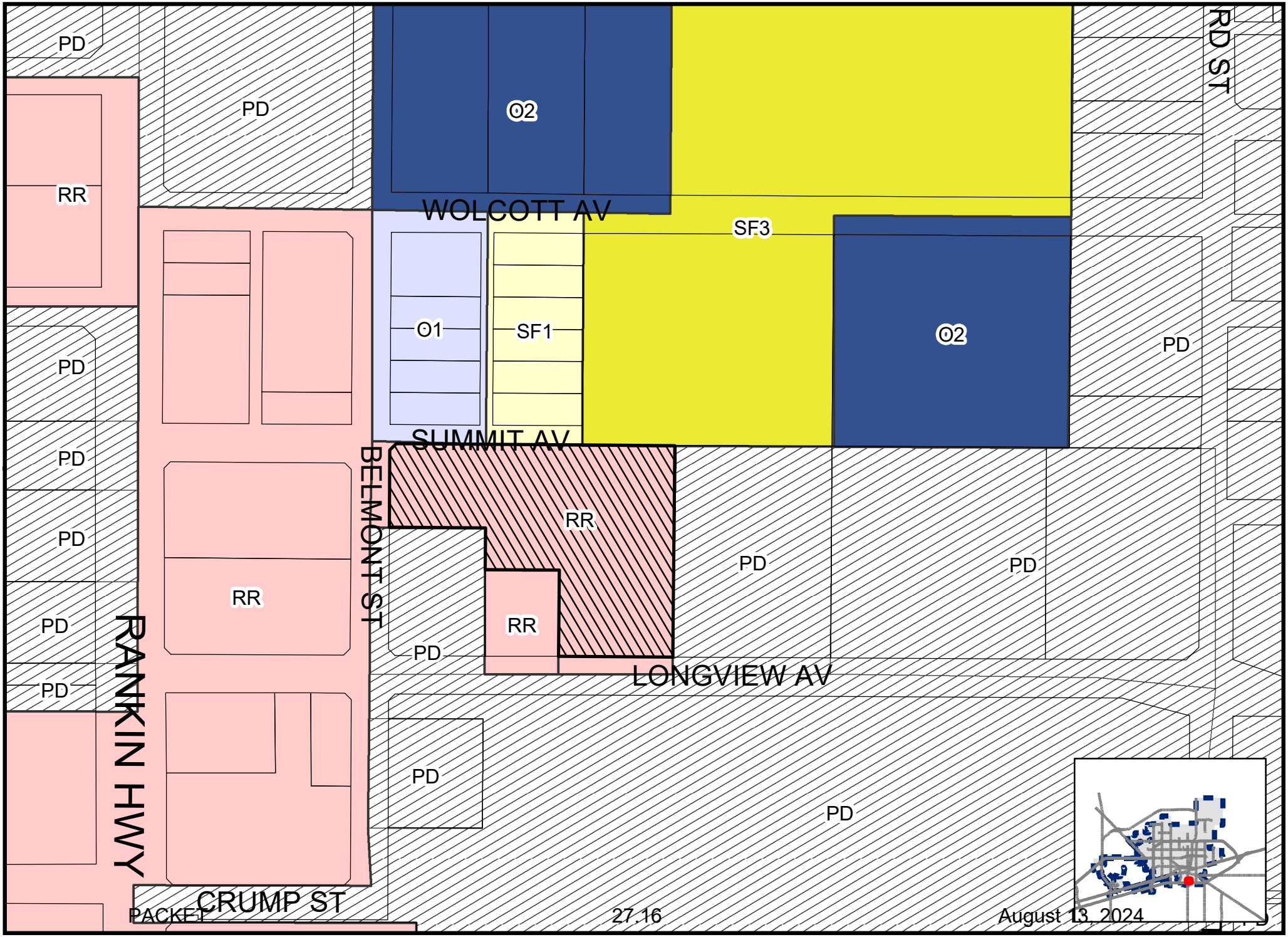
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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August 13, 2024



Map DG, 5/1/2024

SUB-24-0182

Scale: 1" = 2,251'

ZONING MAP

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49
48
47
SUMMIT AV
BELMONT ST
51
52
LONGVIEW AV
RANKIN HWY
60


LAVENDER
NAILS & SPA
REGIONAL FINANCE
WESTEX URGENT CARE
ER SKILLS WITHOUT THE ER BILLS!

MIDLAND

Be the Energy!

La Florida

Specific Use Designation

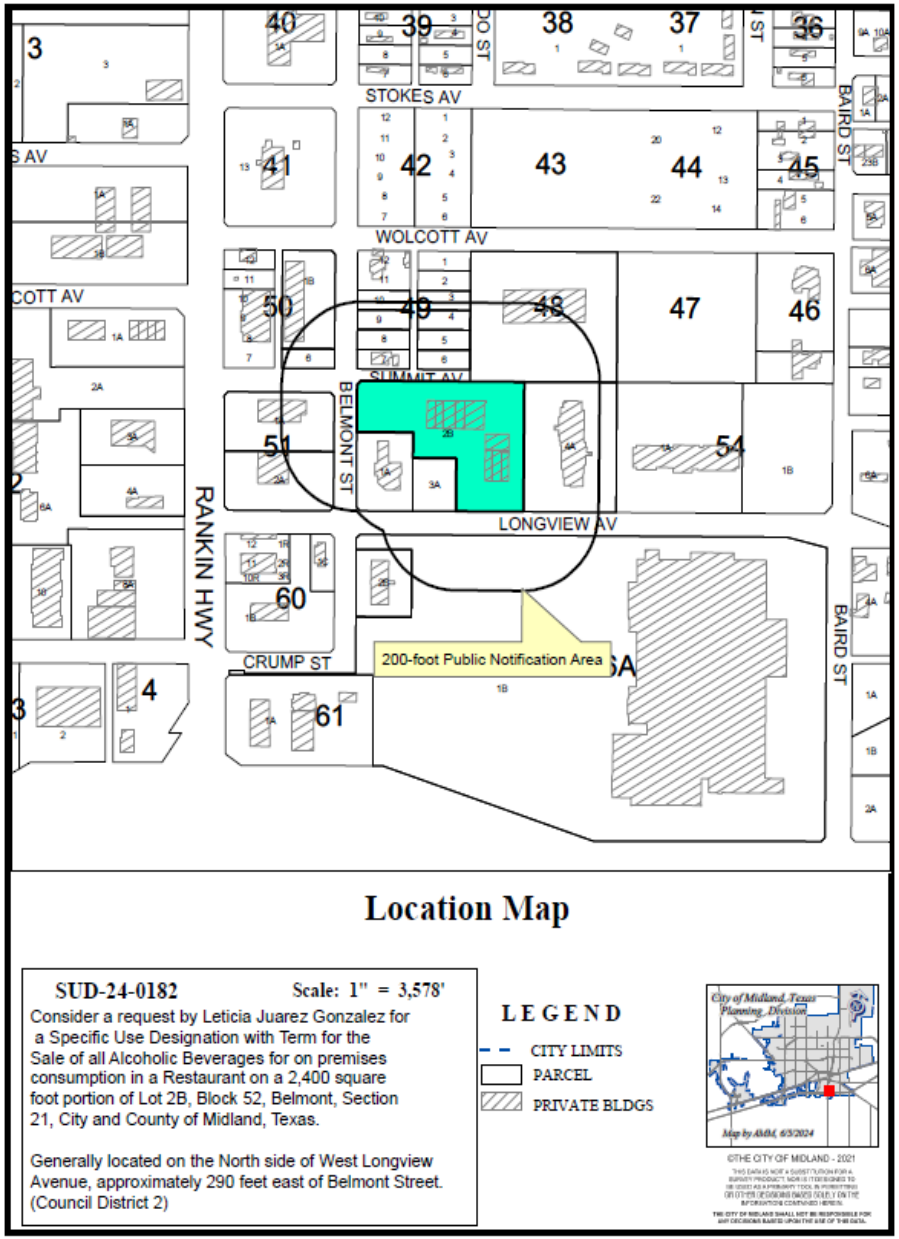
July 23, 2024



Visit Our Website:
MIDLANDTEXAS.GOV

La Florida

- Leticia Juarez Gonzalez
- Specific Use Designation (SUD) with Term for the sale of alcoholic beverages for on-premises consumption
- 210 Longview Ave.
- Suite J2



MIDLAND Be the Energy!

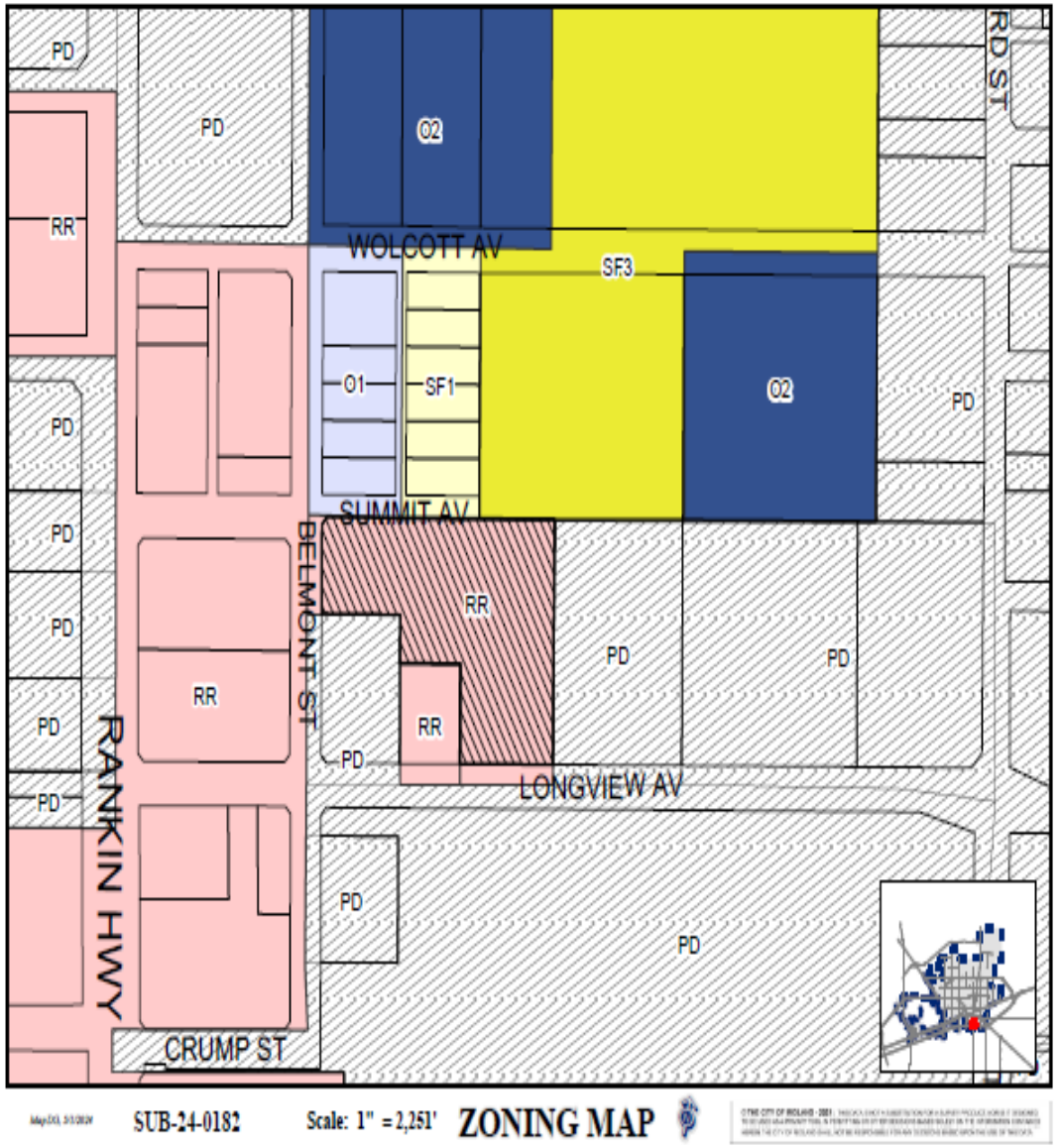


Site photo of La Florida location

MIDLAND
Be the Energy!

La Florida

- Current Zoning: RR, Regional Retail District
- Surrounding Zoning:
- North: O1- Office District SF-1, Single Family Dwelling, and SF-3, Single-Family Dwelling District
- South: RR, Regional Retail and PD, Planned District for Shopping Center
- East: PD, Planned District for Shopping Center
- West: RR, Regional Retail



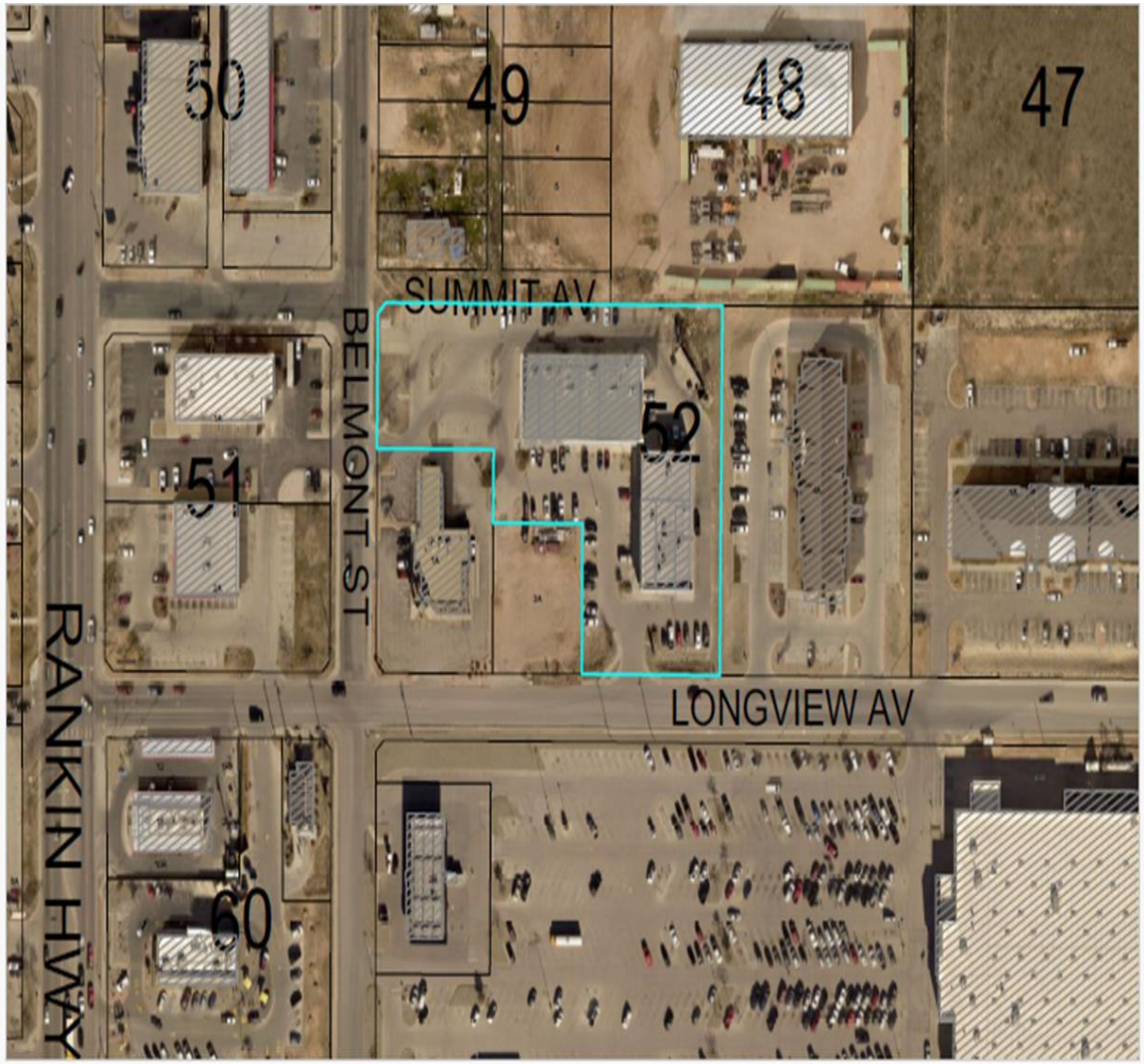
La Florida

- Hours of operation: 5 a.m. to 2 a.m.

- Hours of alcohol services: 11 a.m. to 2 a.m.

- Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

- The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public-school, public-school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.



- No objection letters received.
- Therefore, staff recommends APPROVAL of this request for a Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant subject to conditions A through G.
- Conditions:

A. That the serviceable area of the establishment shall be limited to approximately 1,200 square feet as shown in Exhibit "A".

B. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

C. That the permitted hours of the sale of alcoholic beverages sales and consumption shall be limited to:

Monday through Sunday from 11 a.m. to 2 a.m.

D. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.

E. That the establishment shall meet all requirements of the Fire Department and Code Administration.

F. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.

G. That in accordance with Section 9.07.E.3 of the zoning ordinance, the restaurant shall be in operation within 120 days from the final adoption date of this ordinance.

City Council Meeting

Item Number: 28

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Daniel Humbert, Planner

Subject: RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A BIRTHDAY PARTY ON LOTS 7 THROUGH 12, BLOCK 116, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF SOUTH MAIN STREET AND EAST NEW YORK AVENUE) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS (DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Consider a request by Noah Seabourn for approval of a Temporary Land Use Permit for a private birthday party at 514 South Main Street.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Noah Seabourn is requesting a Temporary Land Use permit to play outdoor music after 10:00 p.m. for a birthday party on the above-described property as seen on the attached site (Exhibit A). Per Section 11-1-4.05.A.8, a TLU is required for any event with outdoor music past 10AM. There will be no alcohol at this event. There will be live music and a roll-off stage. At least two (2) peace officers will be provided. There will be three (3) unisex restrooms provided.

The event will last from

September 28, 2024, from 10:00 a.m. to 4:00 p.m. (setup)
September 28, 2024, from 7:00 p.m. to 12:00 a.m. (midnight) (event)
September 29, 2024, from 8:00 a.m. to 2:00 p.m. (tear-down)

This request has been circulated to all pertinent City departments for review. Below are the departments's comments:

Engineering: (Approved)

No objection. [For Applicant's Information Only.]

Transportation: (Approved)

No objections to plat. [For the Applicant's information only.]

Fire: (Approved)

All future development shall meet the requirements of IFC 2015 ed. and local ordinances.

Building Code: (Approved)

No objections. All canopies, tents, and stages must be erected according to manufacturer's instruction and anchored down or tied down in a manner that prevents damage to other properties and helps to prevent a safety risk to other people in the event of adverse weather. All sanitary facilities must be maintained in a reasonable manner and easily located by the public.

Oil and gas: (Approved)

No Oil and Gas issues.

Planning:

Staff recommends approval of this request for a Temporary Land Use permit subject to conditions A through K:

A. That the day and hours of the Event shall be limited to:

September 28, 2024, from 7:00 p.m. to 12:00 a.m. (midnight)

B. That the days and hours of set-up and tear-down of the Event shall be limited to the following:

September 28, 2024, from 10:00 a.m. to 4:00 p.m.; and

September 29, 2024, from 8:00 a.m. to 2:00 p.m.

C. **That the operation of the Event shall conform to the site plan, which is attached hereto as "Exhibit A" and incorporated herein for all purposes.**

D. **That live music shall be permitted during all operating hours of the Event.**

E. **That the sale and on-premises consumption of alcoholic beverages shall be prohibited.**

F. **That the Applicant shall provide a minimum of four (3) restrooms that shall be made available for use during all operation hours of the Event. The restrooms shall be maintained in a reasonable manner and shall be easily located by members of the event.**

G. **That the Applicant shall provide a minimum of two (2) peace officers during all operation hours of the Event.**

H. **That the Event shall comply with all requirements of the Fire Code; the applicant shall call for an inspection by the Fire Marshal prior to commencing the Event.**

I. **That the Code Administration Division and the Planning Division shall be notified no later than 48 hours preceding the Event.**

J. **That the applicant shall obtain approval from the Solid Waste Department for a refuse collection and clean-up plan prior to the Event.**

K. **That the Applicant shall be responsible for ensuring that the conditions of this permit are observed.**

Letters of Objection:

As of August 7, 2024, staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)
Application
Maps
PowerPoint

City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A BIRTHDAY PARTY ON LOTS 7 THROUGH 12, BLOCK 116, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF SOUTH MAIN STREET AND EAST NEW YORK AVENUE) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS

WHEREAS, pursuant to Section 11-1-4.05 of the City Code of Midland, Texas, Noah Seabourn (the "Applicant") has applied for authorization to temporarily use Lots 7 through 12, Block 116, Southern Addition, City and County of Midland, Texas (the "Property") for a birthday party (the "Event"); and

WHEREAS, the Council finds and determines that such temporary use shall be allowed;

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

SECTION ONE. That the Applicant is hereby authorized by the City Council to temporarily use the Property for the Event subject to the following conditions and restrictions:

A. That the day and hours of operation of the Event shall be limited to the following September 28, 2024, from 7:00 p.m. to 12:00 a.m. (midnight).

B. That the days and hours of set-up and tear-down of the Event shall be limited to the following:

September 28, 2024, from 10:00 a.m. to 4:00 p.m.; and

September 29, 2024, from 8:00 a.m. to 2:00 p.m.

C. That the operation of the Event shall conform to the site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes.

D. That live music shall be permitted during all operating hours of the Event.

E. That the sale and on-premises consumption of alcoholic beverages shall be prohibited.

F. That the Applicant shall provide a minimum of three (3) restrooms that shall be made available for use during all operating hours of the Event. The

restrooms shall be maintained in a reasonable manner and shall be easily

G. That the Applicant shall provide a minimum of two (2) peace officers located by attendees of the Event.
during

H. That the Event shall be operated in compliance with all requirements all operating hours of the Event.
of the

Fire Code. The Applicant shall call for an inspection by the Fire Marshal
I. That the Applicant shall obtain approval from the Solid Waste
prior
Department for

J. That the Code Administration Division and the Planning Division shall to commencing operation of the Event.
a refuse collection and clean-up plan prior to operation of the Event.
be

K. That the Applicant shall be responsible for ensuring that the conditions notified no later than 48 hours preceding operation of the Event.
herein

SECTION TWO. That the City Council reserves at all times the full right and are observed and satisfied.
power

to revoke said temporary use for violation of any of its terms or any misrepresentations

On motion of Council member _____, seconded by Council member
contained in the application, after a hearing of which the holder of said temporary use has

_____, the above and foregoing resolution was adopted by the City Council of the
been given at least one (1) day notice.

Council members voting "AYE":

City of Midland at a regular meeting on the _____ day of _____, A.D., 2024, by

Council members voting "NAY":

the following vote:

_____

Lori Merritt Blong, Mayor

ATTEST:

_____

Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____

Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT

AND COMPLETENESS:

_____

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____

John Ohnemiller, City Attorney


GUEST SEATING
ROLL OFF STAGE
GUEST PARKING
514
GUEST SEATING
508
GUEST PARKING
W New York Ave
W New York Ave
W New York Ave
W New York Ave

EXHIBIT "A"

MIDLAND Planning Division

Temporary Land Use Application

Project Number: _____

Case Number: _____

Event Name: Birthday Party

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Noah K. Seabourn		Phone (432) 413 3092 Email noah@glatner.com	
Address 601 W. Estes Ave	City Midland	State TX	Zip 79701

Property Owner Printed Name: Mark W. Woodside		Phone (432) 770 6337 Email mark@glatner.com	
Address PO Box 4161	City Midland	State TX	Zip 79704

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

Street Address: 514 South Main St., 79701

Legal Description
Lot: Block: Subdivision: See attached Warranty Deed + plat

Current Zoning: Commercial | **Type of Temporary Use Requested:**

Description of Event: Private birthday party

Duration of Temporary Use: Sept 28, 2024 10am - Sept 29 2024 2pm
If event lasts for more than (1) day and is located within any residential district or is located within 1,000 feet of any residential district, then a public hearing is required.

Proposed Days and Hours: Sept 28, 2024 7pm-12am
Setup (10a-4p) event (7p-12a) teardown (Sept 29 8am-2pm)

Will alcoholic beverages be sold? ☐ Yes ☒ No
If yes, you must comply with all Texas Alcoholic Beverage Commission (TABC) regulations for the event.

Are you requesting the temporary closure of any streets? ☐ Yes ☒ No
If yes, you must:

A. Complete the "**Special Event and Street Closure Application**", available from the Planning Division (4th Floor, City Hall), as well as submit a "**Traffic Control Plan**" to the Transportation Division (5th Floor, City Hall).
B. Provide the City with a **general liability insurance certificate**, naming the **City** as an **Additional Insured**, in the amount of one million dollars ($1,000,000) for the term of the closure.

Number of Peace Offices Provided: 2 *Contact the Midland Police Department to schedule off-duty police officers.* MCSO Deputies			
Type of Music (*carnival, live, etc.*): live band			
Showmobile (*portable stage*) **Requested:** ☐ Yes ☒ No		Days & Hours:	
Number of Restroom Fixtures Provided:	*Men*	**Toilets/Urinals:** 1	**Bathroom Sinks:**
	Women	**Toilets:**	**Bathroom Sinks:**
	Unisex	**Toilets:** 3	**Bathroom Sinks:** 2

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Damage Deposit
- Clean-Up Deposit
- 1 FOLDED Copy of Site Plan*
- Digital Copies of Site Plan (PDF/JPEG)

**Should show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.*

Signatures	
Applicant (signature): Noah Seaborn	Date: 6.19.24
Applicant (printed): Noah Seabourn	
Property Owner (signature):	Date: 6.19.24
Property Owner (printed): Mark W. Woodside	
Representative (signature):	Date:
Representative (printed) :	

The Temporary Land Use Permit 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.

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

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 Noah Seabourn who, being by me duly sworn, upon oath says: That (s)he is authorized by Mark Woodside, 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.

Noah Seaborn
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 19 day of June, 2024, to certify which witness my hand and seal of office.

JEFF C MADDOX
Notary ID #12357674
My Commission Expires
July 27, 2025

Jeff C Maddox
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Liability Insurance (Street Closure)
☐ Dimensioned Site Plan	☐ Traffic Control Plan (Street Closure)
☐ Plans in Digital Format (PDF/JPEG)	☐ Clean-Up Deposit
☐ Application Fee	Check #"
Check # 218	☐ Damage Deposit
☐ Administrative Approval	Check #"
Received By:	Date: RECEIVED JUN 20 2024

BY: .....

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

MIDLAND CENTRAL APPRAISAL DISTRICT

Home Return to Search Print

Property Year 2024 Tax Summary **Map/GIS**

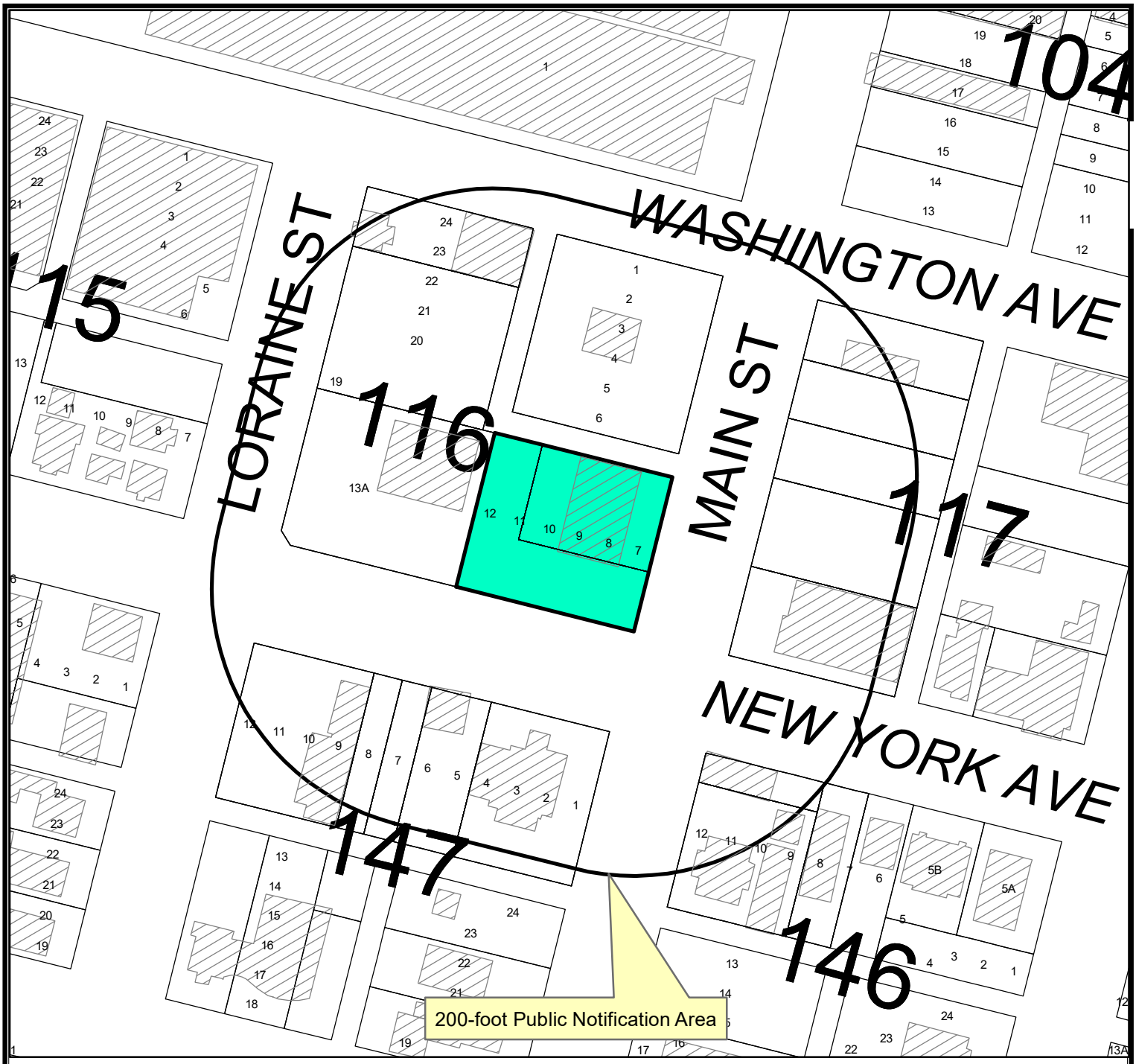
Property ID: R000045399 Geo ID: 00080800.116.0074

Information Upc

< Previous Property 98 / 323



ROLL OFF STAGE
GUEST SEATING
GUEST SEATING
GUEST PARKING
GUEST PARKING
514
508
W New York Ave
W New York Ave
W New York Ave



Location Map

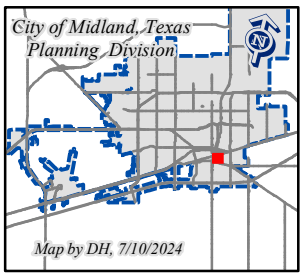
TLU-24-0179 **Scale: 1" = 117'**

Consider a request for a Temporary Land Use Permit for a Birthday Party on Lots 7 through 12, Block 116, Southern Addition, City and County of Midland, Texas.

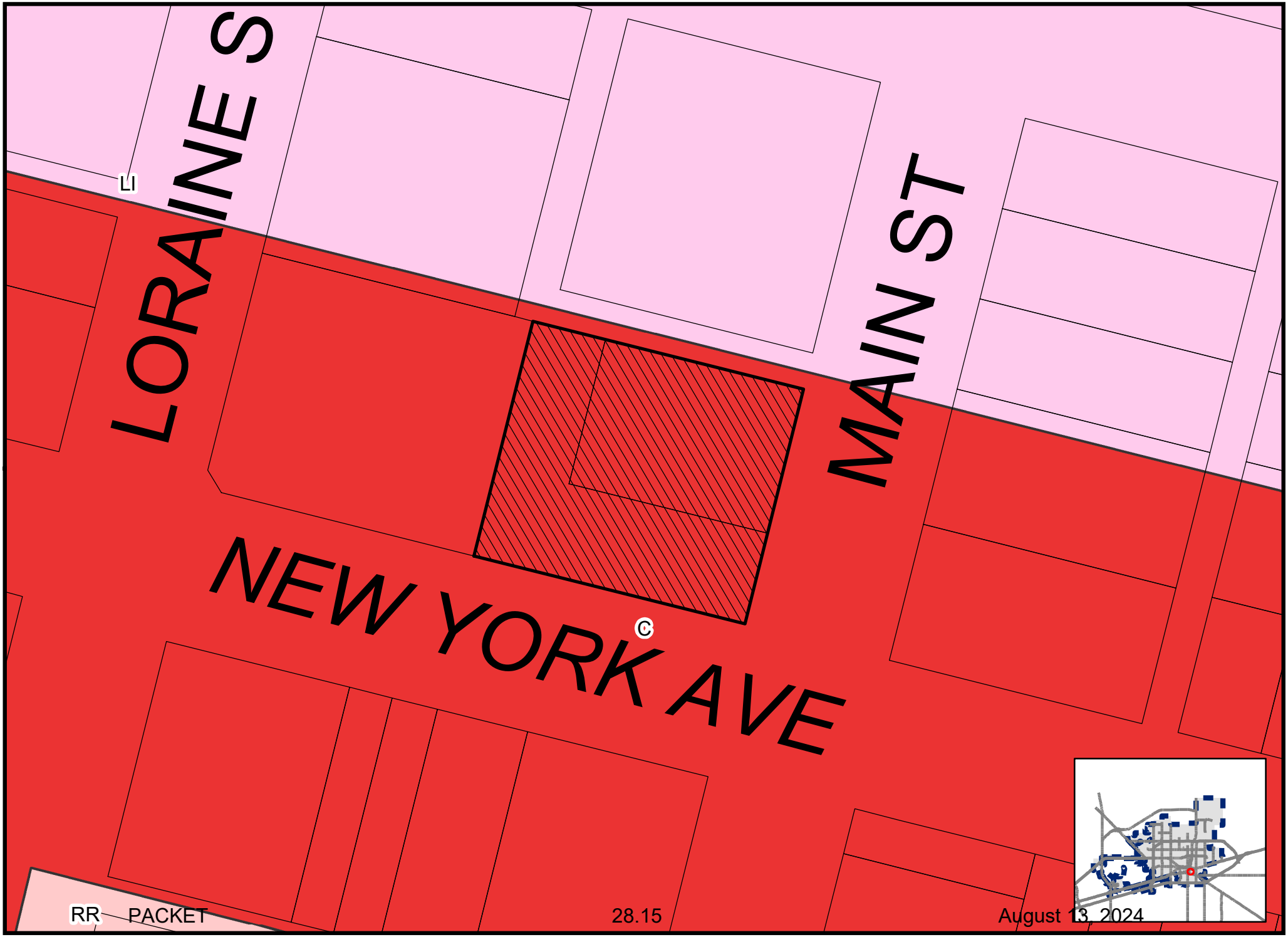
Generally located northwest of the intersection of South Main Street and East New York. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map DH, 7/10/2024

TLU-24-0179

Scale: 1" = 65'

ZONING MAP

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RIGHT

MIDLAND

Be the Energy!

Item _

Temporary Land Use Birthday Party

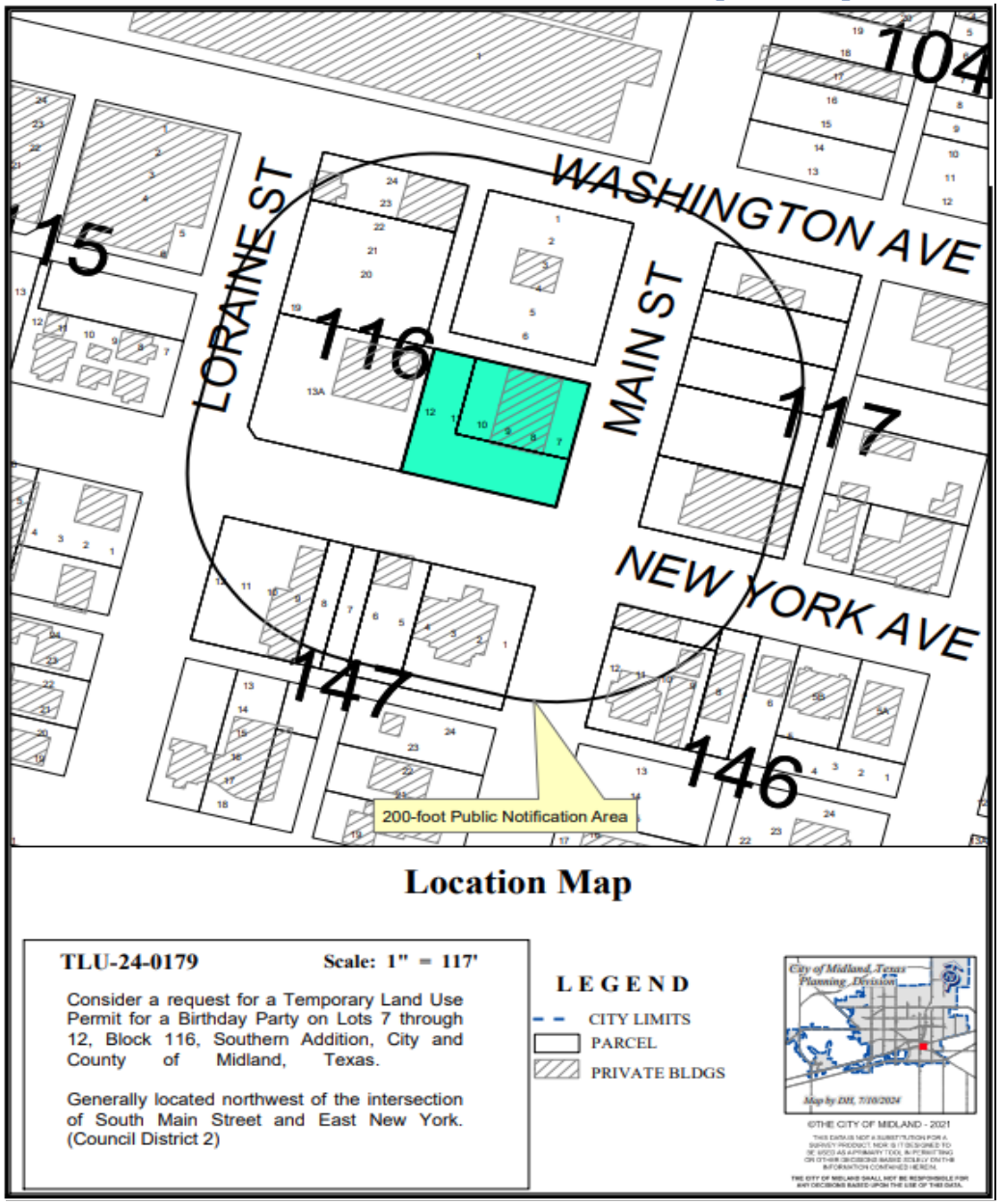
August 13, 2024

Visit Our Website:
MIDLANDTEXAS.GOV



Birthday Party

- Noah Seabourn
- Temporary Land Use to play music outdoors after 10 p.m. for a birthday party
- 514 South Main Street



Birthday Party

Current use of property:

- Automobile Service Garage (Minor)

Proposed use of property:

- Private Birthday Party

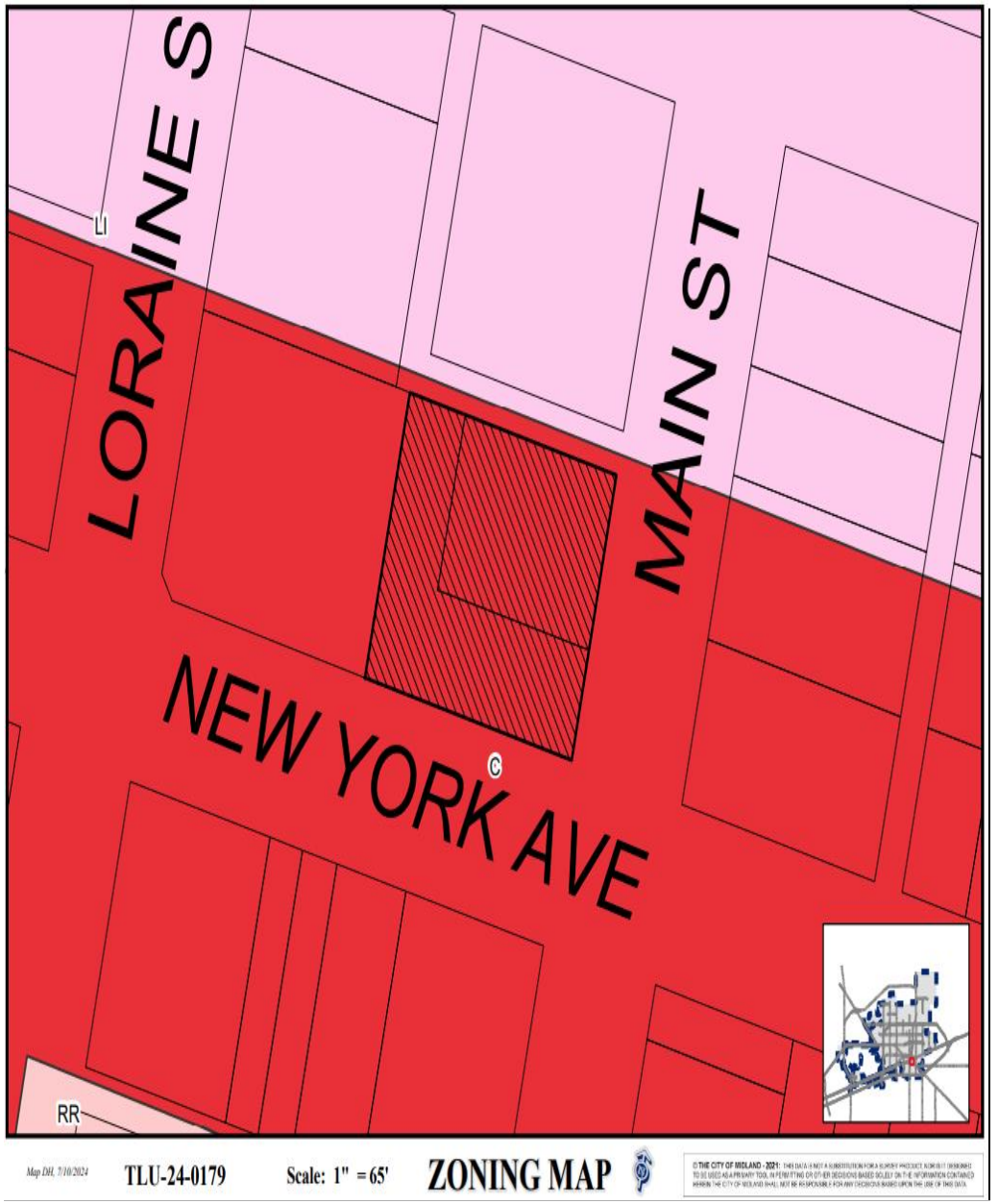


Current Zoning:

- C, Commercial District

Surrounding Zoning:

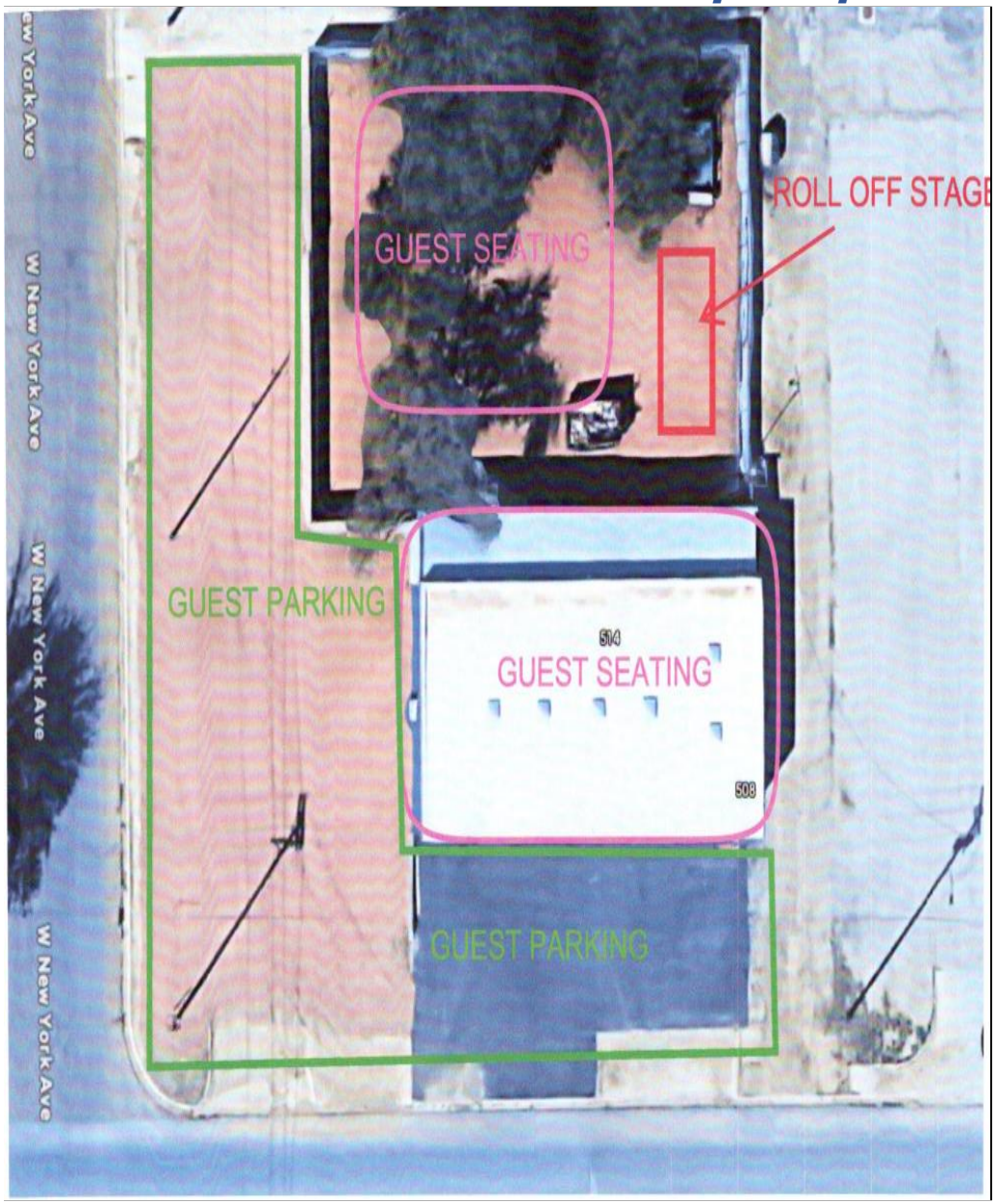
- North: LI, Light Industrial District
- South, East, & West: C, Commercial District



MIDLAND
Be the Energy!

Birthday Party

- The proposed Birthday Party will have live music and a roll off stage
- The Birthday Party will run one (1) day from 7:00 p.m. to 12:00 a.m. (midnight)





On South Main Street, looking east

- The proposed Private Birthday Party meets all applicable City Code; therefore, Staff recommends APPROVAL of this request.
- As of August 7, 2024, there have been no objections.

City Council Meeting

Item Number: 29

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Andrew Meyers, Planner

Subject: AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO A CERTAIN AREA ADJOINING THE PRESENT CITY LIMITS, BEING A 10.00-ACRE TRACT OF LAND OUT OF SECTION 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE BOULEVARD AND ARLINGTON ROAD); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT: NONE) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Cavender Real Estate of Midland IV, LLC, is requesting an annexation of a 10.00-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR. Co Survey, Midland County, Texas to allow for the future development of a car dealership.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Strategic Priority:

Quality of Life and Place

Discussion:

The Future Land Use Map in the Tall City Tomorrow Comprehensive Plan does not have a designation for this area. However, the surrounding area is zoned for commercial and this development would fall in line with the character of commercial developments.

On June 13, 2024, the service agreement between the City and the property was executed. This is the next step in the annexation process.

The request for an initial zoning of RR, Regional Retail District is scheduled for the August 13, 2024 City Council meeting.

The Planning and Zoning Commission recommended approval of the initial zoning request on July 15, 2024.

This project has been circulated to all respective departments for internal review and received no objections.

Engineering: (Approved)

No objection.

Transportation: (Approved)

No objections. [For the Applicant's information only.]

Fire: (Approved)

No comments or objections.

Building Code: (Approved)

No objections.

Oil and Gas: (Approved)

No Oil & Gas well concerns. Informational: No Oil or Gas wells identified within 500 ft. radius of city permitted well or in the 135 ft. non-permitted well radius of location on plat. Please note if oil & gas wells are not identified or left off plat, this could prevent receiving city permits for structures. Any plugged and abandoned (P&A) well would need to be identified. No structure shall be built over an abandoned well.

GIS: (Approved)

No comments.

Planning: (Approved)

No Planning issues.

Letters of Objection:

As of August 7, 2024, staff has received no letters of objection to this request.

Attachments:

Service Agreement
Application
Maps
PowerPoint Presentation

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO A CERTAIN AREA ADJOINING THE PRESENT CITY LIMITS, BEING A 10.00-ACRE TRACT OF LAND OUT OF SECTION 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE BOULEVARD AND ARLINGTON ROAD); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, a public hearing before the City Council of the City of Midland, Texas, a home rule municipal corporation, was held in the City Council Chamber on August 13, 2024, during which all interested persons were provided an opportunity to be heard on the proposed annexation of the hereinafter described territory; and

WHEREAS, notice of the public hearing was published on the City of Midland, Texas' Internet website on July 24, 2024, and the notice remained posted until the date of the public hearing; and

WHEREAS, notice of the public hearing was published in a newspaper having general circulation in the City of Midland, Texas, and in the below described territory, on July 26, 2024; and

WHEREAS, all required notices of the proposed annexation and the public hearing were given in accordance with applicable laws; and

WHEREAS, the City of Midland has entered into a written agreement with the owner(s) of the hereinafter described territory for the provision of services in said area;

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

SECTION ONE. That the following described property adjoining the present boundary lines of the City of Midland, Texas, be and the same is hereby annexed to and incorporated within the boundary of the City of Midland, Texas:

Being a 10.00-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR

Co. Survey, Midland County, Texas, and being more fully described by metes

and bounds in the petition for annexation attached hereto as Exhibit "A" and

incorporated herein by reference for all legal purposes.

SECTION TWO. That this ordinance shall be published in the official newspaper

in the City of Midland, Texas, and the same shall not be effective until after the publication

thereof.

SECTION THREE. That the City Secretary is hereby authorized and directed to file

a certified copy of this ordinance with the County Clerk of Midland County, Texas, for the

purpose of recording in the Deed Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on

first reading, the _____ day of _____, A.D., 2024; and passed to second reading

on motion by Council member _____, seconded by Council member

following vote upon motion of Council member _____, seconded by Council _____, 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

Council members voting "AYE":

member _____, on the _____ day of _____, A.D., 2024, at a regular

Council members voting "NAY":

meeting of the City Council:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____

Lori Merritt Blong, Mayor

ATTEST:

_____

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT

AND COMPLETENESS:

_____

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____

John Ohnemiller, City Attorney

EXHIBIT A

VOLUNTARY PETITION FOR ANNEXATION

May 13, 2024

City of Midland Texas
300 N. Loraine
Midland, TX 79702

RE: Annexation of a 10.00-Acre Tract of Land in Section 38, Block 40, T-1-S, T&P Ry. Co. Survey, Midland County, TX

Dear City of Midland Official;

As current owner of the tract(s) of land described in the exhibit(s) attached hereto and incorporated by reference herein, (the "Property"), I, Cavender Real Estate of Midland IV, LLC, a Texas liability company, ("Owner") acting as or within the capacity of owner, does hereby submit this petition for annexation and request that the Property be legally incorporated and annexed to the City of Midland.

Stephen B. Cavender
Manager
Cavender Real Estate of Midland IV, LLC, a Texas liability company
5778 Stemmons, Ste. 130, San Antonio, Texas 78238

STATE OF TEXAS §

COUNTY OF BEXAR§

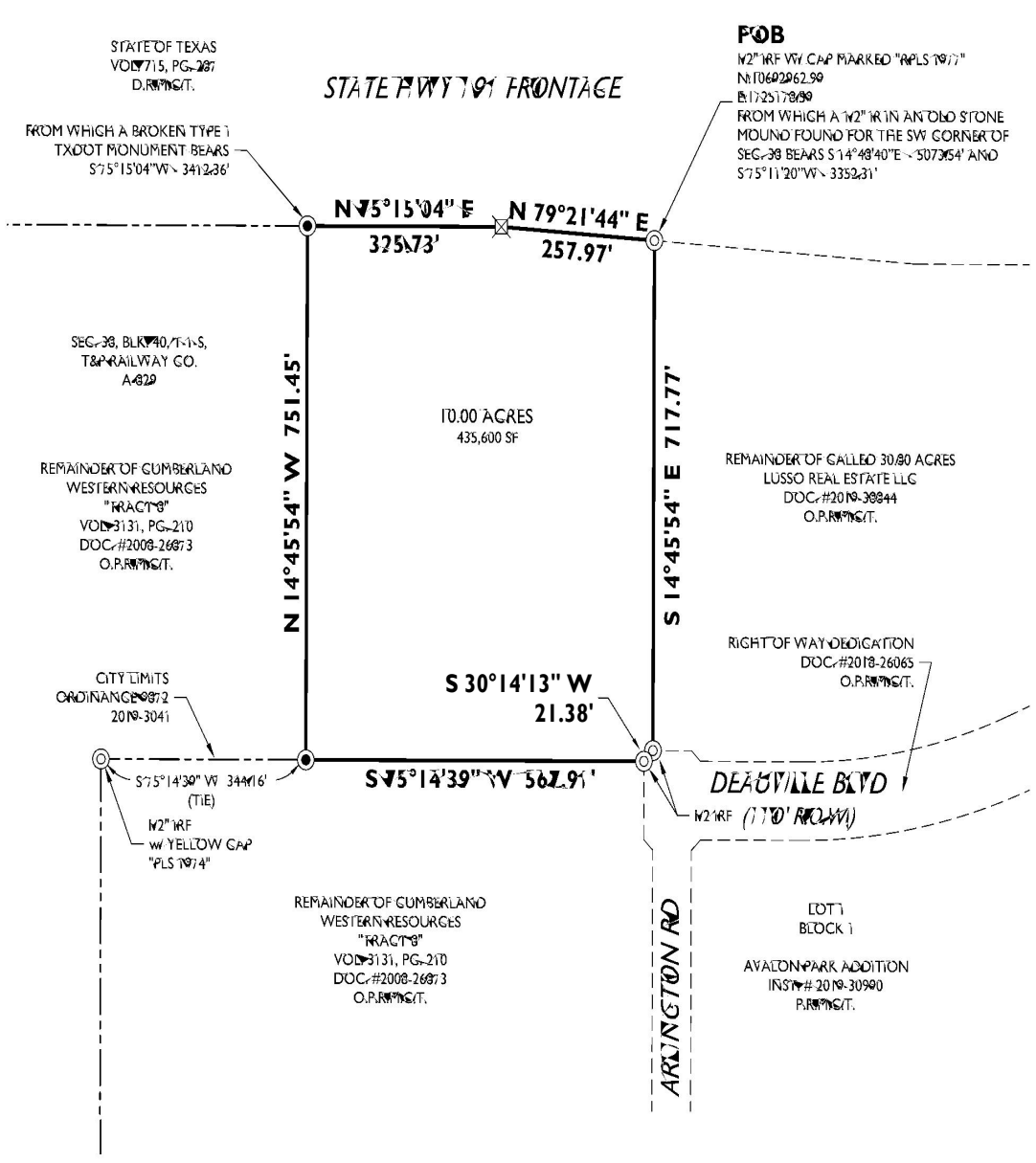
BEFORE ME, the undersigned authority, on this day personally appeared Stephen B. Cavender, as Manager of Cavender Real Estate of Midland IV, LLC, a Texas liability company, known to me, as the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same in the capacity herein stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 14th day of, MAY, 2024.

MERIGET G. BLANKENSHIP
Notary Public, State of Texas
My Comm. Exp. 08-25-2027
ID No. 12621740-4

Notary Public in and for the State of TEXAS

Exhibit A





0' 200' 400'

ORIGINAL SCALE : 1" = 200'

LEGEND

- TYPE I TxDOT MONUMENT
- FOUND 1/2-INCH IRON ROD AS NOTED
- SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514"
- ANNEXATION BOUNDARY
- EXISTING LOTS
- EXISTING CITY LIMITS

FIELD NOTE DESCRIPTION:

FIELD NOTE DESCRIPTION OF A 10.00 ACRE TRACT OF LAND, SITUATED IN SECTION 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CALLED 634.887 ACRE "TRACT 8" AS DESCRIBED IN A WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2008-26873 IN VOLUME 3131 ON PAGE 210 OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING *AT N.(y):10692962.99, E.(x):1725178.59, A ONE HALF INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "RPLS 1977", FOUND IN THE SOUTH RIGHT OF WAY OF STATE HIGHWAY 191 AS CONVEYED IN VOLUME 715 ON PAGE 287 OF THE DEED RECORDS OF SAID MIDLAND COUNTY, BEING THE NORTHWEST CORNER OF THE REMAINDER OF A CALLED 30.80 ACRE TRACT OF LAND AS DESCRIBED IN A SPECIAL WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2019-38844 IN SAID "OPR", FROM WHICH A ONE HALF INCH IRON ROD FOUND IN AN OLD STONE MOUND FOR THE SOUTHWEST CORNER OF SAID SECTION 38 BEARS S.14°48'40"E., 5073.54 FEET AND S.75°11'20"W., 3352.31 FEET FOR THE NORTHEAST CORNER HEREOF;*

THENCE *S.14°45'54"E., ALONG THE WEST LINE OF SAID CALLED 30.80 ACRE TRACT REMAINDER, 717.77 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE MOST NORTH NORTHWEST CORNER OF A CALLED 6.975 ACRE TRACT AS DESCRIBED IN A RIGHT OF WAY DEDICATION DEED RECORDED AS DOCUMENT NUMBER 2018-26065 IN SAID "OPR" FOR THE EAST SOUTHEAST CORNER HEREOF;*

THENCE *S.30°14'13"W., ALONG A CUTBACK ON SAID CALLED 6.975 ACRE TRACT 21.38 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE NORTH NORTHEAST CORNER OF A CALLED 21.30 ACRE TRACT OF LAND AS DESCRIBED IN CITY OF MIDLAND ORDINANCE 9872 AS RECORDED IN DOCUMENT NUMBER 2019-3041 OF SAID "OPR" FOR THE SOUTH SOUTHEAST CORNER HEREOF;*

THENCE *S.75°14'39"W., ALONG THE NORTH LINE OF SAID CALLED 21.30 ACRE TRACT, 567.91 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM# 10194514" (RPC) SET, FROM WHICH A ONE HALF INCH IRON ROD WITH A YELLOW PLASTIC CAP MARKED "PLS 1974" FOUND FOR THE NORTHWEST CORNER OF SAID CALLED 21.30 ACRE TRACT BEARS S.75°14'39"W., 344.16 FEET FOR THE SOUTHWEST CORNER HEREOF;*

THENCE *N.14°45'54"W., SEVERING SAID CALLED 634.887 ACRE TRACT 751.45 FEET TO AN "RPC" SET IN SAID SOUTH RIGHT OF WAY LINE FROM WHICH A POINT WITHIN A BROKEN TYPE I TxDOT MONUMENT BEARS S.75°15'04"W., 3412.36 FEET FOR THE NORTHWEST CORNER HEREOF;*

THENCE *N.75°15'04"E., ALONG SAID RIGHT OF WAY, 325.73 FEET TO A POINT WITHIN A TYPE I TxDOT MONUMENT FOUND FOR AN ANGLE CORNER HEREOF;*

THENCE *N.79°21'44"E., CONTINUING ALONG SAID RIGHT OF WAY, 257.97 FEET TO THE* ***POINT OF BEGINNING****, CONTAINING 435600 SQUARE FEET OR 10.00 ACRES OF LAND.*

SURVEY NOTES:

1. *BASIS OF BEARING, COORDINATES, DISTANCES AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, CENTRAL ZONE, NORTH AMERICAN DATUM 1983, U.S. SURVEY FOOT, WITH A CONVERGENCE ANGLE (theta) OF -0°54'48.40" AND A COMBINED SCALE FACTOR OF 0.99989911 AT NGS "MIDLAND".*
2. *1/2 IRON ROD WITH RED PLASTIC CAP MARKED "MAVERICK FIRM # 10194514" AT ALL SET CORNERS, UNLESS OTHERWISE SPECIFIED.*
3. *SEE DOCUMENTS OR ELECTRONIC DATA FILED IN THE OFFICE OF MAVERICK ENGINEERING FOR COMPLETE RECONSTRUCTION OF THIS SURVEY.*

MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
ENGINEER FIRM #: F-15089
SURVEY FIRM #: 10194514
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

PACKET 29.8 August 13, 2024

JOB NO.:	FIELD WORK:	DRAWN BY:	REV 1:	REV 2:
240009	1.24.24	AK		

I, GREGORY W. SHOULTS, DO HEREBY CERTIFY THAT THE SURVEY INFORMATION FOUND ON THIS PLAT WAS DERIVED FROM FIELD NOTES AND/OR ELECTRONIC DATA OF AN ACTUAL ON-THE-GROUND SURVEY MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT AND NO WARRANTY IS MADE OR INTENDED FOR THE LOCATION OF ANY OR ALL EASEMENTS THAT MAY EXIST WITHIN THE BOUNDS OF THIS SURVEY.

GREGORY W. SHOULTS, RPLS #5356
FIRM NO. TX #10194514

MARCH 25, 2024

STATE OF TEXAS REGISTERED GREGORY W. SHOULTS 5356 PROFESSIONAL LAND SURVEYOR

CAVENDER AUTO FAMILY

ANNEXATION BOUNDARY

OF A 10.00 ACRE TRACT OF LAND SITUATED IN SECTION 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS

Drawing: F:\2024\240009-CAVENDER AUTO FAMILY-MERCEDES BENZ NEW SITE MIDLAND\DRAWINGS\ANNEXATION BOUNDARY\240009 ANNEXATION BOUNDARY.DWG Last Saved By: AKalenak on 3/25/24

MIDLAND
Planning Division

Annexation/Zone Change Application

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Cavender Real Estate of Midland IV, LLC,		Phone (210) 410-0075 Email stephenc@cavendertoyota.com	
Address 5778 Stemmons, Ste. 130	City San Antonio	State TX	Zip 78238

Property Owner Printed Name: See applicant info		Phone ( ) Email	
Address	City	State	Zip

Representative *(if different from Applicant or Property Owner)* Firm: Maverick Engineering Printed Name: Andrew L. Mellen, PE		Phone ( ) Email phuckaba@maverick-eng.com 432-262-0999	
Address 1909 W. Wall St., Ste. K	City Midland	State TX	Zip 79701

Street Address: NA (Hwy 191)

Legal Description See attached included metes & bounds description
Lot: Block: Subdivision:

Current Zoning: None. Un-annexed

Proposed Zone: RR Regional Retail
(List by tracts if more than one district is requested)

Reason for Annexation/Zone Change Request: To advance the inclusion of the subject tract into the City Limits of Midland

Present Use of Property: Vacant/Unimproved

Proposed Use of Property: Automotive sales facility.

How would this annexation/zone change affect the public health, safety and welfare?
No adverse effect. Site will contribute to the expansion and improvement of Midland's automobile market offerings

Describe how this annexation/zone change will affect adjacent properties:
Approval will encourage further expansion and improvement of private and public interests in the area.

Submittal and Fees

Items to be submitted with this application form:

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

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date: 5/14/2024
Applicant (printed): STEPHEN CAVENDER	
Property Owner (signature):	Date: 5/14/2024
Property Owner (printed) : CAVENDER REAL ESTATE OF MIDLAND IV, LLC	

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

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

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

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L. Mellen, PE who, being by me duly sworn, upon oath says: That (s)he is authorized by Stephen Cavender, 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.

Andrew L. Mellen
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 17 day of MAY, 2024, to certify which witness my hand and seal of office.

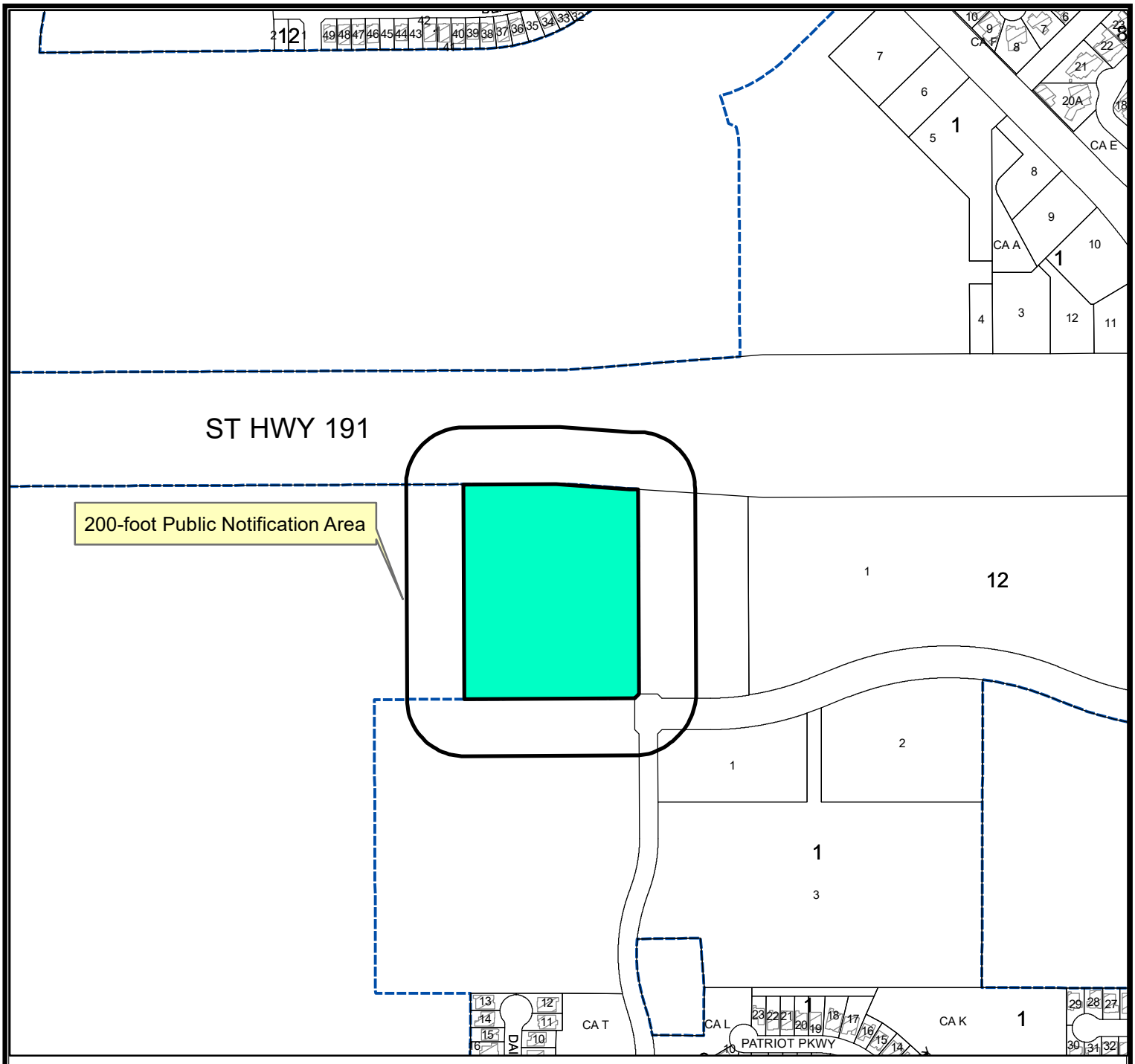
JACQUELINE L. MELLEN
Notary Public, State of Texas
Comm. Expires 04-24-2028
Notary ID 129443262

Jacqueline L Mellen
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # 4815	
Received By: Alexy	Date: RECEIVED MAY 22 2024
	BY:

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



Location Map

A-24-0046 **Scale: 1" = 500'**

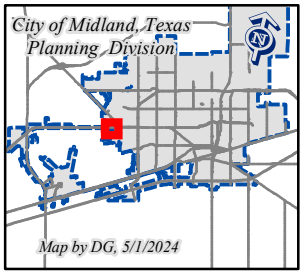
An ordinance on a request by Maverick Engineering, on behalf of Cavender Real Estate of Midland IV, LLC, for an annexation of a 10.00-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR. Co Survey, Midland County, Texas.

Generally located northwest of the intersection of Deauville Boulevard and Arlington Road (ETJ)29.11

PACKET

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY DOCUMENT NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

August 13, 2024


ST HWY 191
12
1



SERVICE AGREEMENT

THIS AGREEMENT is made and effective the 13 day of JUNE, 2024, by and between the CITY OF MIDLAND, TEXAS, hereinafter called "CITY," and Cavender Real Estate of Midland IV, LLC, hereinafter referred to as "PETITIONER," whether one or more.

WHEREAS, a petition for annexation of a 10.00-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR. Co Survey, Midland County, Texas, said tract being more fully described by metes and bounds therein (the "Area"), has been submitted to CITY by PETITIONER, the owner(s) of the land located in the Area, a copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, before CITY annexes the Area, CITY and PETITIONER must enter into a written agreement for the provision of services in the Area in accordance with Section 43.0672 of the Local Government Code;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is (1) to list each service CITY will provide in the Area on the effective date of the annexation, (2) to establish a schedule that includes the period within which CITY will provide each service in the Area that is not provided on the effective date of the annexation, if any, and (3) to establish the duty of PETITIONER to pay fees similar to impact fees in the event that CITY has adopted, or adopts in the future, one or more ordinances establishing impact fees. PETITIONER understands and agrees that CITY is not required to provide a service that is not included in this Agreement. PETITIONER further understands and agrees that the execution of this Agreement does not constitute a promise by CITY to annex the Area and that this Agreement is not a permit for purposes of Chapter 245 of the Local Government Code.

ARTICLE II. TERM

The term of this Agreement shall be one year; provided, however, that if CITY annexes the Area within one year from the effective date, the term of this Agreement shall continue until such time when all services described in this Agreement are provided in the Area, and at such time, the Agreement shall terminate and shall be of no further force or effect except for those provisions that expressly survive termination. If CITY does not annex the Area during the term of this Agreement, this Agreement shall terminate and shall be of no further force or effect, and CITY shall have no duty to provide services to the Area.

ARTICLE III. SERVICES TO BE PROVIDED UPON ANNEXATION

CITY will provide the following services in the Area on the date that the ordinance annexing the Area becomes effective:

A. **Engineering:** CITY's Engineering Services Department will maintain streets, drainage facilities, and rights-of-way in accordance with CITY policies, procedures, and ordinances and applicable laws. PETITIONER understands and agrees that PETITIONER may be required to construct public improvements, including but not limited to (i) roadways adjacent to property located in the Area upon platting and (ii) roadway connections to existing facilities in the Area upon issuance of building permits in accordance with applicable laws and ordinances. PETITIONER understands and agrees that the Area will be included in CITY's service area of CITY's drainage utility.

B. **Utilities:** CITY will provide water services and wastewater collection services, upon platting property in the Area, in accordance with the City Code at rates established by ordinances for such services; provided, however, that no such service shall be provided until the public improvements necessary therefor have been constructed and CITY has approved said improvements. PETITIONER understands and agrees that CITY may require PETITIONER to construct such public improvements in accordance with applicable laws and ordinances.

C. **Development:** CITY's Development Services Department will provide planning, land development, land use, building review and inspection, and code enforcement services in accordance with applicable laws, rules, regulations, and ordinances.

D. **Police:** CITY's Police Department will provide emergency and routine call response, traffic enforcement, and law enforcement services in the Area.

E. **Fire:** CITY's Fire Department will provide emergency service for fire protection services and emergency medical services.

F. **Community Services:** CITY's Community Services Department will provide access to services and programs that may be offered by the Health and Senior Services Division, services and programs that may be offered by Animal Services Division, and access to City-owned parks.

G. **Solid Waste:** CITY's Solid Waste Department will provide residential garbage pickup service only. PETITIONER understands and agrees that CITY will not provide garbage pickup services to new commercial developments.

Regarding the services described above, PETITIONER understands and agrees that CITY will provide a level of services that is comparable to the level of services available in other parts of the City of Midland with topography, land use, and population density similar to those reasonably contemplated or projected for the Area. PETITIONER understands and acknowledges that any CITY departments or divisions identified above may change names or be reorganized. Any reference to a specific CITY department or division also includes any subsequent CITY department or division that will provide the same or similar services.

ARTICLE IV. IMPACT FEES

A. **Fees to be assessed and collected.** Except as otherwise described herein, if CITY has adopted, or adopts in the future, one or more ordinances establishing impact fees in accordance with Chapter 395 of the Local Government Code, CITY shall assess and collect fees associated with the development of the Area as described for impact fees in the applicable impact fee ordinance(s) (the "Fees").

B. **Service areas.** For purposes of assessing and collecting Fees for water and wastewater under this Agreement, the Area is deemed to be located within CITY's capital improvements plan service area therefor. For the purpose of assessing and collecting Fees for roadways under this Agreement, the Area is deemed to be located in CITY's capital improvements plan roadway service area(s) immediately adjacent thereto; provided, however, that if the Area is not located immediately adjacent to a roadway service area and is located immediately adjacent to a tract of land that is associated with an agreement regarding fees similar to the Fees in this Agreement, the Area is deemed to be located in the roadway service area(s) specified in such similar agreement associated with the adjacent tract of land.

C. **Capital improvements and facility expansions.** For purposes of this Agreement, a capital improvement or facility expansion that will serve the Area shall be deemed to be included in CITY's capital improvements plan if:

   a. said capital improvement or facility expansion is substantially similar to a type of capital improvement or facility expansion identified in CITY's capital improvements plan; or

   b. said capital improvement or facility expansion is an extension of a capital improvement or facility expansion identified in CITY's capital improvements plan.

D. **Time of assessment.** Fees shall be assessed at the time of recordation of a final plat of any portion of the Area, at the time the Area is annexed, or on the effective date(s) of the applicable impact fee ordinance(s), whichever is later.

E. **Time of collection.** CITY shall collect the Fees from PETITIONER at the time of issuance of a building permit. PETITIONER acknowledges and agrees that no building permit or certificate of occupancy shall be issued until PETITIONER has paid the applicable Fees.

F. **Amendment to land use assumptions, capital improvements plan, or impact fees.** Notwithstanding any provision in this Agreement to the contrary, if CITY amends its land use assumptions, capital improvements plan, or impact fees such that PETITIONER would be required to pay impact fees, CITY shall assess and PETITIONER shall pay the applicable impact fees in accordance with the applicable impact fee ordinance(s), as amended; provided, however, that to the extent CITY assesses applicable Fees for service units under this Agreement, PETITIONER shall pay such Fees in accordance with this Agreement and shall not be required to pay the applicable impact fees for the same service units.

G. **Article to survive termination.** If CITY annexes the Area within one year from the

effective date, the provisions of this Article shall survive termination of this Agreement.

ARTICLE V. 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. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE VI. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, PETITIONER 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 PETITIONER 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, CITY'S NEGLIGENCE, OR CLAIMS UNDER CHAPTER 395 OF THE TEXAS LOCAL GOVERNMENT CODE. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE VII. ATTORNEYS' FEES

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

BY EXECUTING THIS AGREEMENT, THE PARTIES AGREE TO WAIVE AND DO HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM EITHER PARTY HAS OR MAY HAVE IN THE FUTURE AGAINST THE OTHER PARTY, SPECIFICALLY AND SOLELY REGARDING THE AWARD OF ATTORNEYS' FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE PARTIES SPECIFICALLY AGREE THAT IF A PARTY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING

RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PARTY BRINGING THE ACTION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEYS' FEES TO WHICH THE PARTY MIGHT OTHERWISE BE ENTITLED.

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

THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT. PETITIONER AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE VIII. GENERAL PROVISIONS

A. **Governing law and venue.** This Agreement shall be governed by the laws of the State of Texas. All performance 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. The provisions of this Article VIII.A. shall survive termination of this Agreement.

B. **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 PETITIONER: Cavender Real Estate of Midland IV, LLC
5778 Stemmons, Ste. 130
San Antonio, Texas 78238

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

C. **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.

D. **Use of language.** Words in the singular shall be held to include the plural, unless the context otherwise requires.

E. **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.

F. **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.

G. **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, PETITIONER or PETITIONER'S 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 PETITIONER will settle, the physical and mailing addresses of PETITIONER at the time and date the claim was presented and the physical and mailing addresses of PETITIONER for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom PETITIONER 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 PETITIONER that PETITIONER'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, PETITIONER'S failure to comply with the requirements herein shall perpetually bar PETITIONER'S claim for damages under Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code, regardless of whether CITY has actual or constructive notice or knowledge of said claim or alleged damages. The provisions of this Article VIII.G. shall survive termination of this agreement. **PETITONER AGREES THAT THE REQUIREMENTS OF THIS ENTIRE AGREEMENT ARE REASONABLE.**

H. **Covenants run with the land.** The provisions of this Agreement are covenants that run with the land located in the Area. CITY and PETITIONER agree that this Agreement may be recorded in the deed records of the county in which the Area is located. CITY and PETITIONER acknowledge and agree that this Agreement is binding upon CITY and PETITIONER and their respective successors, executors, heirs, and assigns, as applicable. The provisions of this Article VIII.H. shall survive termination of this Agreement.

EXECUTED the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
FOR Tommy Gonzalez, City Manager

ATTEST

_____
Marcia Bentley-German, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

PETITIONER:

By: _____

Name: STEPHEN CAVENDER

Title: DIRECTOR

STATE OF TEXAS §

§

COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this 11th day of JUNE, 2024, personally appeared Stephen B. Cavender, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said person executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 11th day of June, 2024.

MERIGET G. BLANKENSHIP
Notary Public, State of Texas
My Comm. Exp. 08-25-2027
ID No. 12521740-4

_____

Notary Public, State of Texas

EXHIBIT A TO SERVICE AGREEMENT

VOLUNTARY PETITION FOR ANNEXATION

May 13, 2024

City of Midland Texas
300 N. Loraine
Midland, TX 79702

RE: Annexation of a 10.00-Acre Tract of Land in Section 38, Block 40, T-1-S, T&P Ry. Co. Survey, Midland County, TX

Dear City of Midland Official;

As current owner of the tract(s) of land described in the exhibit(s) attached hereto and incorporated by reference herein, (the "Property"), I, Cavender Real Estate of Midland IV, LLC, a Texas liability company, ("Owner") acting as or within the capacity of owner, does hereby submit this petition for annexation and request that the Property be legally incorporated and annexed to the City of Midland.

Stephen B. Cavender
Manager
Cavender Real Estate of Midland IV, LLC, a Texas liability company
5778 Stemmons, Ste. 130, San Antonio, Texas 78238

STATE OF TEXAS §

COUNTY OF BEXAR§

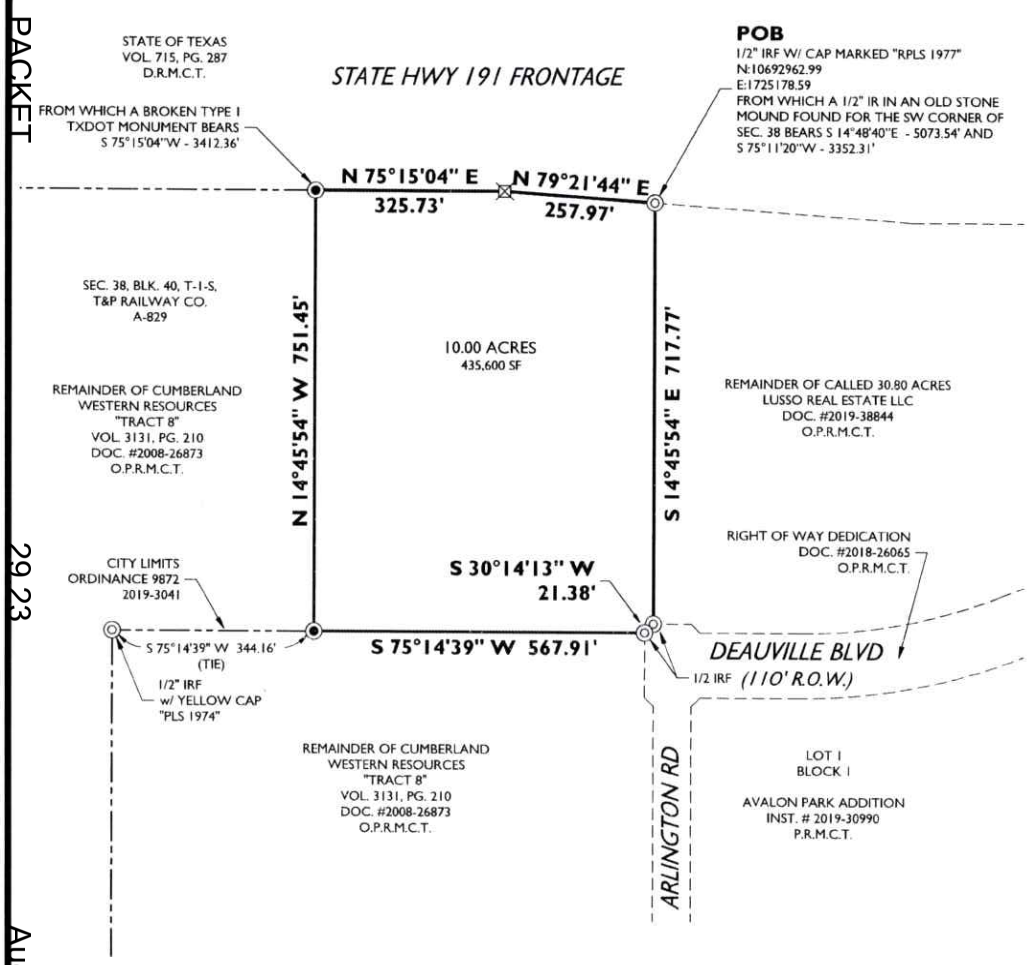
BEFORE ME, the undersigned authority, on this day personally appeared Stephen B. Cavender, as Manager of Cavender Real Estate of Midland IV, LLC, a Texas liability company, known to me, as the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same in the capacity herein stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 14th day of, MAY, 2024.

Notary Public in and for the State of TEXAS

PACKET 29.23 August 13, 2024

Drawing: F:\2024\240009-CAVENDER AUTO FAMILY-MERCEDES BENZ NEW SITE MIDLAND\DRAWINGS\ANNEXATION BOUNDARY\240009 ANNEXATION BOUNDARY.DWG Last Saved By: AKalensk on 3/25/24





0' 200' 400'

ORIGINAL SCALE : 1" = 200'

LEGEND

- TYPE I TxDOT MONUMENT
- FOUND 1/2-INCH IRON ROD AS NOTED
- SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514"
- ANNEXATION BOUNDARY
- EXISTING LOTS
- EXISTING CITY LIMITS

FIELD NOTE DESCRIPTION:

FIELD NOTE DESCRIPTION OF A 10.00 ACRE TRACT OF LAND, SITUATED IN SECTION 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CALLED 634.887 ACRE "TRACT 8" AS DESCRIBED IN A WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2008-26873 IN VOLUME 3131 ON PAGE 210 OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

***BEGINNING** AT N.(y): 10692962.99, E.(x):1725178.59, A ONE HALF INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "RPLS 1977", FOUND IN THE SOUTH RIGHT OF WAY OF STATE HIGHWAY 191 AS CONVEYED IN VOLUME 715 ON PAGE 287 OF THE DEED RECORDS OF SAID MIDLAND COUNTY, BEING THE NORTHWEST CORNER OF THE REMAINDER OF A CALLED 30.80 ACRE TRACT OF LAND AS DESCRIBED IN A SPECIAL WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2019-38844 IN SAID "OPR", FROM WHICH A ONE HALF INCH IRON ROD FOUND IN AN OLD STONE MOUND FOR THE SOUTHWEST CORNER OF SAID SECTION 38 BEARS S.14°48'40"E., 5073.54 FEET AND S.75°11'20"W., 3352.31 FEET FOR THE NORTHEAST CORNER HEREOF;*

***THENCE** S.14°45'54"E., ALONG THE WEST LINE OF SAID CALLED 30.80 ACRE TRACT REMAINDER, 717.77 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE MOST NORTH NORTHWEST CORNER OF A CALLED 6.975 ACRE TRACT AS DESCRIBED IN A RIGHT OF WAY DEDICATION DEED RECORDED AS DOCUMENT NUMBER 2018-26065 IN SAID "OPR" FOR THE EAST SOUTHEAST CORNER HEREOF;*

***THENCE** S.30°14'13"W., ALONG A CUTBACK ON SAID CALLED 6.975 ACRE TRACT 21.38 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE NORTH NORTHEAST CORNER OF A CALLED 21.30 ACRE TRACT OF LAND AS DESCRIBED IN CITY OF MIDLAND ORDINANCE 9872 AS RECORDED IN DOCUMENT NUMBER 2019-3041 OF SAID "OPR" FOR THE SOUTH SOUTHEAST CORNER HEREOF;*

***THENCE** S.75°14'39"W., ALONG THE NORTH LINE OF SAID CALLED 21.30 ACRE TRACT, 567.91 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM# 10194514" (RPC) SET, FROM WHICH A ONE HALF INCH IRON ROD WITH A YELLOW PLASTIC CAP MARKED "PLS 1974" FOUND FOR THE NORTHWEST CORNER OF SAID CALLED 21.30 ACRE TRACT BEARS S.75°14'39"W., 344.16 FEET FOR THE SOUTHWEST CORNER HEREOF;*

***THENCE** N.14°45'54"W., SEVERING SAID CALLED 634.887 ACRE TRACT 751.45 FEET TO AN "RPC" SET IN SAID SOUTH RIGHT OF WAY LINE FROM WHICH A POINT WITHIN A BROKEN TYPE I TxDOT MONUMENT BEARS S.75°15'04"W., 3412.36 FEET FOR THE NORTHWEST CORNER HEREOF;*

***THENCE** N.75°15'04"E., ALONG SAID RIGHT OF WAY, 325.73 FEET TO A POINT WITHIN A TYPE I TxDOT MONUMENT FOUND FOR AN ANGLE CORNER HEREOF;*

***THENCE** N.79°21'44"E., CONTINUING ALONG SAID RIGHT OF WAY, 257.97 FEET TO THE **POINT OF BEGINNING**, CONTAINING 435600 SQUARE FEET OR 10.00 ACRES OF LAND.*

SURVEY NOTES:

1. *BASIS OF BEARING, COORDINATES, DISTANCES AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, CENTRAL ZONE, NORTH AMERICAN DATUM 1983, U.S. SURVEY FOOT, WITH A CONVERGENCE ANGLE (theta) OF -0°54'48.40" AND A COMBINED SCALE FACTOR OF 0.99989611 AT NGS "MIDLAND".*
2. *1/2 IRON ROD WITH RED PLASTIC CAP MARKED "MAVERICK FIRM # 10194514" AT ALL SET CORNERS, UNLESS OTHERWISE SPECIFIED.*
3. *SEE DOCUMENTS OR ELECTRONIC DATA FILED IN THE OFFICE OF MAVERICK ENGINEERING FOR COMPLETE RECONSTRUCTION OF THIS SURVEY.*

MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
ENGINEER FIRM #: F-15089
SURVEY FIRM #: 10194514
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

JOB NO.:	FIELD WORK:	DRAWN BY:	REV 1:	REV 2:
240009	1.24.24	AK		

I, GREGORY W. SHOULTS, DO HEREBY CERTIFY THAT THE SURVEY INFORMATION FOUND ON THIS PLAT WAS DERIVED FROM FIELD NOTES AND/OR ELECTRONIC DATA OF AN ACTUAL ON-THE-GROUND SURVEY MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT AND NO WARRANTY IS MADE OR INTENDED FOR THE LOCATION OF ANY OR ALL EASEMENTS THAT MAY EXIST WITHIN THE BOUNDS OF THIS SURVEY.

GREGORY W. SHOULTS, RPLS #5356
FIRM NO. TX #10194514

MARCH 25, 2024

STATE OF TEXAS REGISTERED GREGORY W. SHOULTS 5356 PROFESSIONAL LAND SURVEYOR

CAVENDER AUTO FAMILY

ANNEXATION BOUNDARY

OF A 10.00 ACRE TRACT OF LAND, SITUATED IN SECTION 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS

2474611

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL 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.

Special Warranty Deed

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

CUMBERLAND AND WESTERN RESOURCES, LLC, a Wyoming limited liability company (hereinafter called "Grantor"), whose address is c/o Greg Betterton, 735 E. Venice Avenue, #200, Venice, Florida, 34285, for and in consideration of the sum of Ten Dollars ($10.00) cash in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, has granted, sold, conveyed and delivered, and does hereby grant, sell, convey and deliver unto Cavender Real Estate of Midland IV, LLC, a Texas limited liability company (hereinafter called "Grantee"), whose address is 5778 Stemmons, Ste. 130, San Antonio, Texas 78238, all of the Grantor's right, title and interest in and to those lands located in Midland County, Texas, and described on Exhibit A hereto and made a part hereof for all purposes (the "Land"), and all buildings, fixtures and other improvements located on the Land, if any, together with all and singular the rights, privileges, hereditaments, and appurtenances pertaining to such real property (collectively the "Property").

This conveyance is subject to, and there is excepted from the warranty of this conveyance, only those certain exceptions set forth on Exhibit B attached hereto and made a part hereof, including any and all oil, gas and other minerals in and under and that may be produced from the Land that have been reserved or conveyed prior to the date of this Deed, but in all events only to the extent such matters are validly existing and are applicable to the Property (the "Permitted Exceptions").

EXCEPT THE SPECIAL WARRANTY OF TITLE GRANTED HEREIN (THE "EXPRESS REPRESENTATIONS AND WARRANTIES") GRANTOR HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS, TO, OR CONCERNING (i) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, (A) THE WATER, SOIL AND GEOLOGY THEREIN, (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES OR USES WHICH GRANTEE MAY ELECT TO CONDUCT THEREON, AND (C) THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS ON OR IN THE VICINITY OF THE PROPERTY OR COMPLIANCE WITH APPLICABLE LAWS, ORDINANCES, RULES AND REGULATIONS; (ii) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE,

POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR OTHER ENCUMBRANCE; AND (iii) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL OR OTHER BODY. GRANTEE ACKNOWLEDGES THAT IT HAS INSPECTED THE PROPERTY AND GRANTEE RELIES SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY GRANTOR, EXCEPT FORTH THE EXPRESS REPRESENTATIONS AND WARRANTIES. GRANTEE FURTHER ACKNOWLEDGES THAT THE INFORMATION PROVIDED AND TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND GRANTOR (x) HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION; AND (y) DOES NOT MAKE ANY REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES. THE CONVEYANCE OF THE PROPERTY PROVIDED FOR HEREIN IS MADE ON AN "AS IS" "WHERE IS" BASIS AND WITH ALL FAULTS, INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL HAZARDS OR CONDITIONS, AND GRANTEE EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE CONVEYANCE BY GRANTOR HEREIN, GRANTOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE IN RESPECT OF THE PROPERTY, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES.

Subject to the foregoing, Grantor hereby covenants and warrants that the interest in the Property being conveyed herein is free and clear of all liens.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereunto in anywise belonging unto the said Grantee, its successors and assigns forever; and Grantor hereby binds itself, its successors and assigns, to warrant and forever defend the above described premises unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same or any part thereof by, through or under Grantor, but not otherwise, and Grantor further covenants and warrants that it is the owner of said Property with the full right to convey same.

[Signature Page Follows]

IN WITNESS whereof, this instrument is executed on this 24th day of April, 2024.

GRANTOR: CUMBERLAND & WESTERN RESOURCES, LLC,
a Wyoming limited liability company

By: _____
Greg Betterton, Manager

THE STATE OF FLORIDA '
'
COUNTY OF SARASOTA '

This instrument was acknowledged before me this 24th day of April, 2024, by Greg Betterton, as Manager of CUMBERLAND & WESTERN RESOURCES, LLC, a Wyoming limited liability company, on behalf of said company, personally known to me, and who did swear an oath.

JEANETTE PETERSON
MY COMMISSION # HH 308967
EXPIRES: August 21, 2025

_____
Notary Public

AFTER RECORDING, PLEASE RETURN TO:
Hornberger Fuller & Garza Incorporated
7373 Broadway, Suite 300
San Antonio, Texas 78209
Attention: Drew Fuller

Exhibits:
Exhibit A – Legal Description of Land
Exhibit B – Permitted Exceptions

EXHIBIT A
Legal Description of Land

Tract I: That certain 10.00 acre tract of land in Midland County, Texas, being more particularly described on Exhibit A-1 attached hereto.

Tract II: That certain 0.72 acre tract of land in Midland County, Texas, being more particularly described on Exhibit A-2 attached hereto.

A depiction of both tracts is attached hereto as Exhibit A-3.

EXHIBIT A-1
Tract I

FIELD NOTE DESCRIPTION OF A 10.00 ACRE TRACT OF LAND, SITUATED IN SECTION 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CALLED 634.887 ACRE "TRACT 8" AS DESCRIBED IN A WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2008-26873 IN VOLUME 3131 ON PAGE 210 OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(y):10692962.99, E.(x):1725178.59, A ONE HALF INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "RPLS 1977", FOUND IN THE SOUTH RIGHT OF WAY OF STATE HIGHWAY 191 AS CONVEYED IN VOLUME 715 ON PAGE 287 OF THE DEED RECORDS OF SAID MIDLAND COUNTY, BEING THE NORTHWEST CORNER OF THE REMAINDER OF A CALLED 30.80 ACRE TRACT OF LAND AS DESCRIBED IN A SPECIAL WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2019-38844 IN SAID "OPR", FROM WHICH A ONE HALF INCH IRON ROD FOUND IN AN OLD STONE MOUND FOR THE SOUTHWEST CORNER OF SAID SECTION 38 BEARS S.14°48'40"E., 5073.54 FEET AND S.75°11'20"W., 3352.31 FEET FOR THE NORTHEAST CORNER HEREOF;

THENCE S.14°45'54"E., ALONG THE WEST LINE OF SAID CALLED 30.80 ACRE TRACT REMAINDER, 717.77 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE MOST NORTH NORTHWEST CORNER OF A CALLED 6.975 ACRE TRACT AS DESCRIBED IN A RIGHT OF WAY DEDICATION DEED RECORDED AS DOCUMENT NUMBER 2018-26065 IN SAID "OPR" FOR THE EAST SOUTHEAST CORNER HEREOF;

THENCE S.30°14'13"W., ALONG A CUTBACK ON SAID CALLED 6.975 ACRE TRACT 21.38 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE NORTH NORTHEAST CORNER OF A CALLED 21.30 ACRE TRACT OF LAND AS DESCRIBED IN CITY OF MIDLAND ORDINANCE 9872 AS RECORDED IN DOCUMENT NUMBER 2019-3041 OF SAID "OPR" FOR THE SOUTH SOUTHEAST CORNER HEREOF;

THENCE S.75°14'39"W., ALONG THE NORTH LINE OF SAID CALLED 21.30 ACRE TRACT, 567.91 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM# 10194514" (RPC) SET, FROM WHICH A ONE HALF INCH IRON ROD WITH A YELLOW PLASTIC CAP MARKED "PLS 1974" FOUND FOR THE NORTHWEST CORNER OF SAID CALLED 21.30 ACRE TRACT BEARS S.75°14'39"W., 344.16 FEET FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.14°45'54"W., SEVERING SAID CALLED 634.887 ACRE TRACT 751.45 FEET TO AN "RPC" SET IN SAID SOUTH RIGHT OF WAY LINE FROM WHICH A POINT WITHIN A BROKEN TYPE I TxDOT MONUMENT BEARS S.75°15'04"W., 3412.36 FEET FOR THE NORTHWEST CORNER HEREOF;

THENCE N.75°15'04"E., ALONG SAID RIGHT OF WAY, 325.73 FEET TO A POINT WITHIN A TYPE I TxDOT MONUMENT FOUND FOR AN ANGLE CORNER HEREOF;

THENCE N.79°21'44"E., CONTINUING ALONG SAID RIGHT OF WAY, 257.97 FEET TO THE POINT OF BEGINNING, CONTAINING 435600 SQUARE FEET OR 10.00 ACRES OF LAND.

EXHIBIT A-2
Tract II

SECTION 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS.

FIELD NOTE DESCRIPTION OF A 0.72 ACRE TRACT OF LAND, SITUATED IN SECTION 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CALLED 634.887 ACRE "TRACT 8" AS DESCRIBED IN A WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2008-26873 IN VOLUME 3131 ON PAGE 210 OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(y): 10692250.45, E.(x): 1725350.75, A ONE HALF INCH IRON ROD FOUND IN THE EAST LINE OF SAID CALLED REMAINDER OF "TRACT 8", BEING THE NORTH NORTHEAST CORNER OF A CALLED 21.30 ACRE TRACT OF LAND AS DESCRIBED IN CITY OF MIDLAND ORDINANCE 9872 AS RECORDED IN DOCUMENT NUMBER 2019-3041 OF SAID "OPR", FROM WHICH A ONE HALF INCH IRON ROD FOUND AT THE MOST NORTH NORTHWEST CORNER OF A CALLED 6.975 ACRE TRACT AS DESCRIBED IN A RIGHT OF WAY DEDICATION DEED RECORDED AS DOCUMENT NUMBER 2018-26065 IN SAID "OPR" BEARS N.30°14'13"E. 21.38 FEET FOR THE NORTHEAST CORNER HEREOF;

THENCE S.14°41'51"E., ALONG THE WEST LINE OF SAID CALLED 6.975 ACRE TRACT, 55.00 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM# 10194514" (RPC) SET, BEING THE NORTHEAST CORNER OF A CALLED 20.16 ACRE TRACT OF LAND DESCRIBED IN DOCUMENT NUMBER 2019-9869 OF SAID "OPR", FOR THE SOUTHEAST CORNER HEREOF;

THENCE S.75°14'08"W., ALONG THE NORTH LINE OF SAID CALLED 20.16 ACRE TRACT, 567.85 FEET TO AN "RPC", FROM WHICH A ONE HALF INCH IRON ROD WITH A YELLOW PLASTIC CAP MARKED "PLS 1974" FOUND FOR THE NORTHWEST CORNER OF SAID CALLED 20.16 ACRE TRACT BEARS S.75°14'08"W., 344.31 FEET FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.14°45'54"W., 55.09 FEET TO AN "RPC" SET FOR THE NORTHWEST CORNER HEREOF;

THENCE N.75°14'39"E., 567.91 FEET TO THE **POINT OF BEGINNING**, CONTAINING 31,258 SQUARE FEET OR 0.72 ACRES OF LAND.

Exhibit A-3

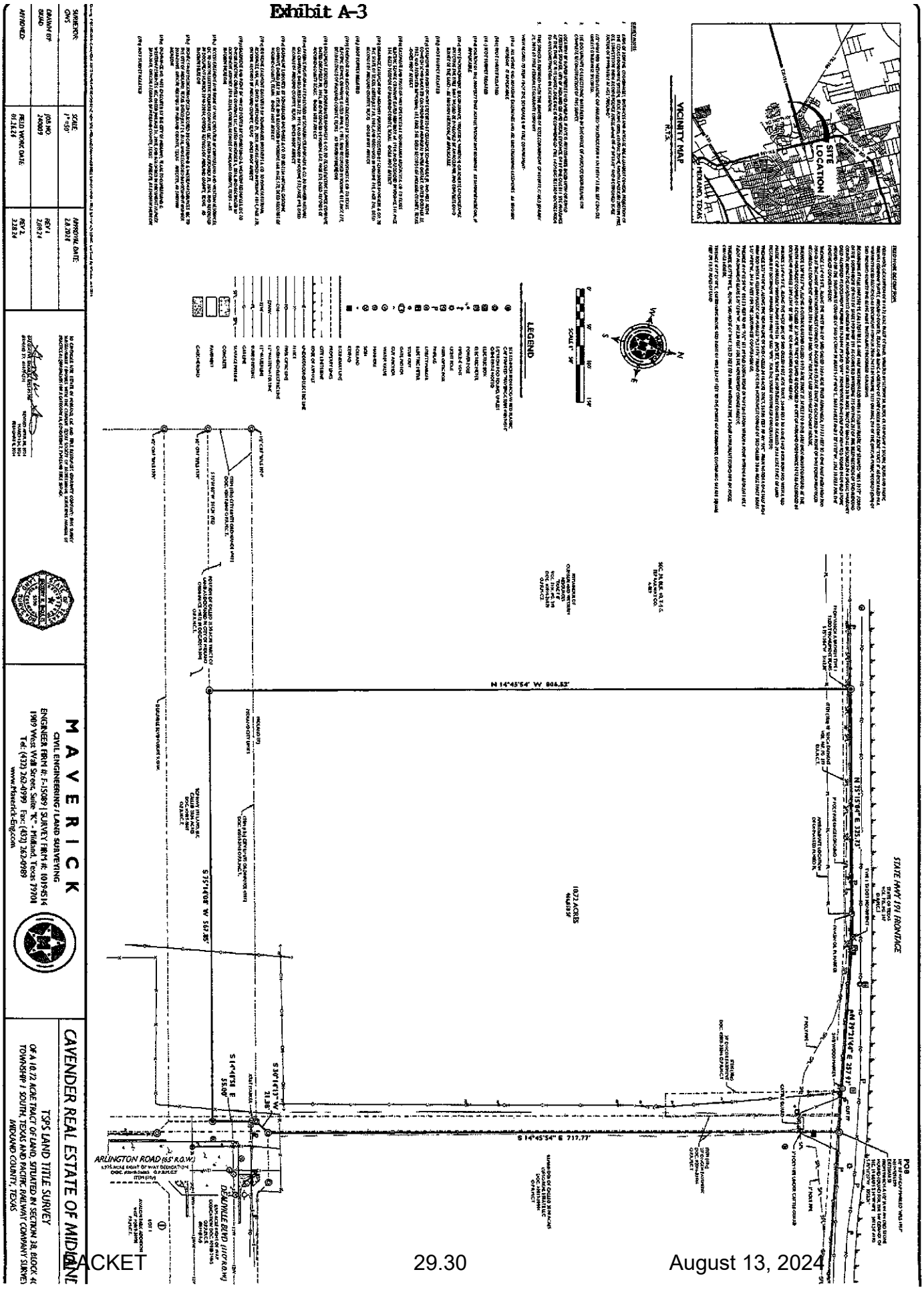

VICINITY MAP
SITE LOCATION
MIDLAND, TEXAS
LEGEND
STATE HWY 191 FRONTAGE
ARLINGTON ROAD (65' R.O.W.)
DENVILLE BLVD (107' R.O.W.)
POB
N 14°45'54" W 906.53'
S 75°14'06" W 150.00'
S 14°45'54" E 717.77'
N 75°14'06" E 325.73'
N 75°14'06" E 357.97'
10.72 ACRES
466,919 SF
SCALE: 1" = 100'
MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
ENGINEER FIRM #: F-15089 | SURVEY FIRM #: 10194514
1909 West Wall Street, Suite "K" - Midland, Texas 79701
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com
CAVENDER REAL ESTATE OF MIDLAND
TSP'S LAND TITLE SURVEY
OF A 10.72 ACRE TRACT OF LAND, SITUATED IN SECTION 38, BLOCK 41
TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY
MIDLAND COUNTY, TEXAS
SURVEYOR: ONY
DRAWN BY: BRAD
APPROVED:
SCALE: 1" = 100'
JOB NO. 240901
FIELD WORK DATE: 01.14.24
APPROVAL DATE: 1.8.2024
REV 1: 2.20.24
REV 2: 3.28.24

EXHIBIT B
Permitted Exceptions

The following matters and all terms of the documents creating or offering evidence of the matters:

1. Designated Acreage Agreement by and between M. W. Branum and Clarence Scharbauer et al, dated May 2, 1984, and recorded in Volume 819, Page 712, Deed Records of Midland County, Texas.

2. Easement and Right-of-Way executed by Scharbauer Brothers & Co. to Texas Electric Service Company, dated April 9, 1985, and recorded in Volume 867, Page 277, Deed Records of Midland County, Texas.

3. Easement and Right-of-Way executed by Cumberland & Western Resources, LLC, to Oncor Electric Delivery Company, LLC, dated November 8, 2016, and recorded in Document No. 2016-33266, Official Records of Midland County, Texas.

4. Access Easement and Right-of-Way executed by Cumberland and Western Resources, LLC, to Oncor Electric Delivery Company, LLC, dated September 28, 2016, and recorded in Document No. 2016-33844, Official Records of Midland County, Texas.

5. Right-of-Way Dedication Deed executed by Cumberland & Western Resources, LLC, to the City of Midland, Texas, dated July 2, 2018, and recorded in Document No. 2018-26065, Official Records of Midland County, Texas.

6. Ordinance No. 9872 executed by the City of Midland, Texas, to Cumberland & Western Resources, LLC, dated January 31, 2018, and recorded in Document No. 2019-3041, Official Records of Midland County, Texas.

7. Unmarked buried pipeline as shown on survey dated February 8, 2024, prepared by Gregory W. Shoults, RPLS No. 5356 on behalf of Maverick Civil Engineering.

8. 3" Poly pipe underground and surface pipeline as shown on survey dated February 8, 2024, prepared by Gregory W. Shoults, RPLS No. 5356 on behalf of Maverick Civil Engineering.

Midland County
Alison Haley
Midland County
Clerk

Instrument Number: 9450

eRecording - Real Property

Recorded On: April 29, 2024 03:34 PM

Number of Pages: 9

" Examined and Charged as Follows: "

Total Recording: $53.00

********** **THIS PAGE IS PART OF THE INSTRUMENT** **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	9450
Receipt Number:	20240429000136
Recorded Date/Time:	April 29, 2024 03:34 PM
User:	Amanda D
Station:	cc10299

Record and Return To:

Corporation Service Company

STATE OF TEXAS
COUNTY OF MIDLAND

I hereby certify that this Instrument was FILED **In the File Number sequence on the date/time printed hereon, and was duly** RECORDED **in the Official Records of Midland County, Texas.**

Alison Haley
Midland County Clerk
Midland County, TX

MIDLAND

Be the Energy!

Cavender

Annexation

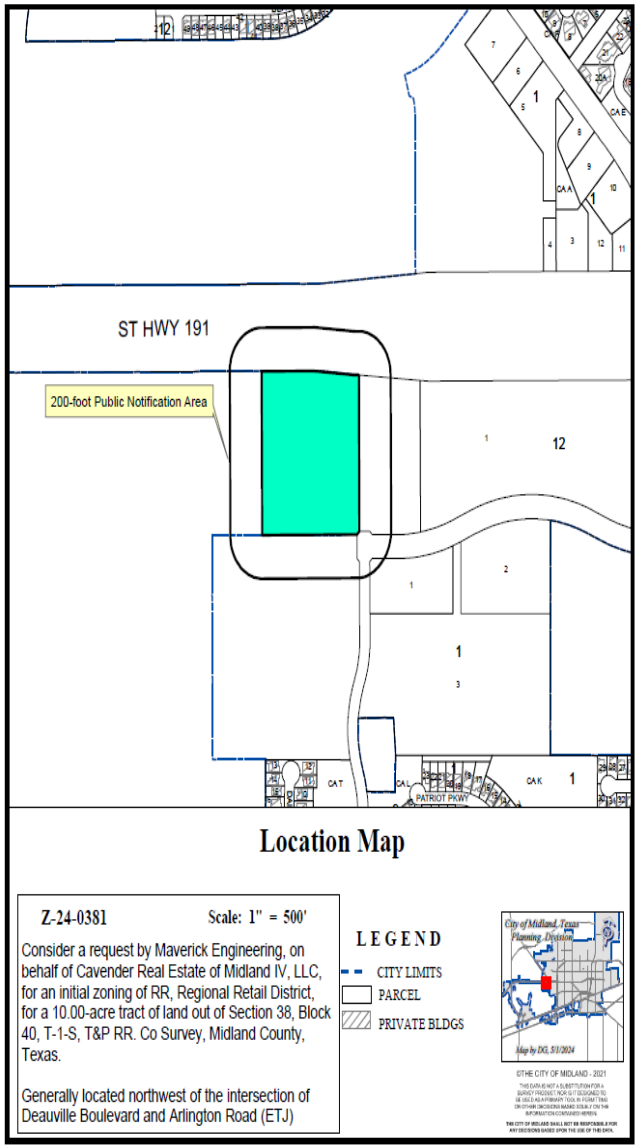
August 13, 2024



Visit Our Website:
MIDLANDTEXAS.GOV

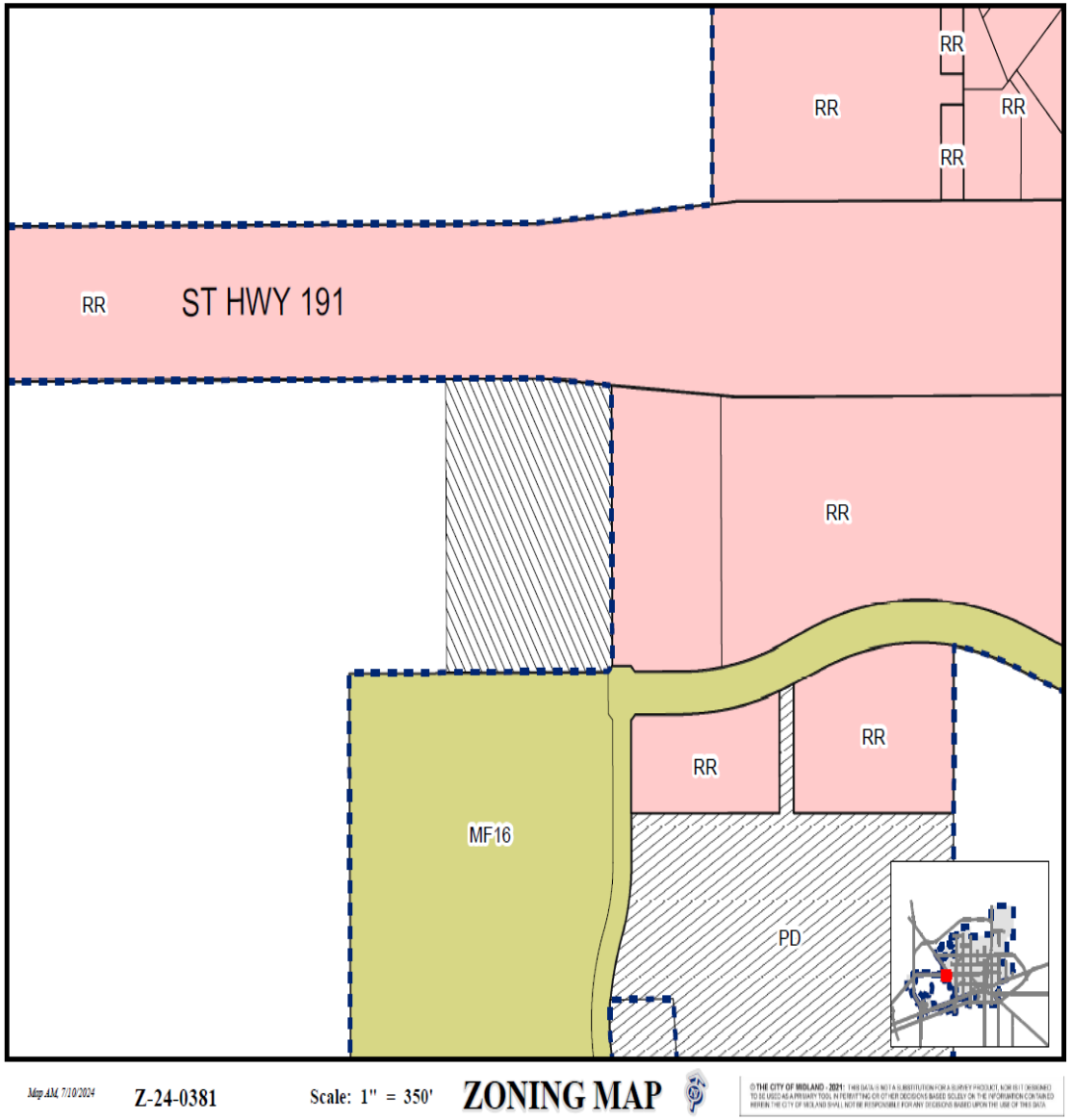
Cavender

- Maverick Engineering, on behalf of Cavender Real Estate of Midland IV, LLC
- Annexation
- 6601 Deauville Boulevard
- Approximately 10.00 acres



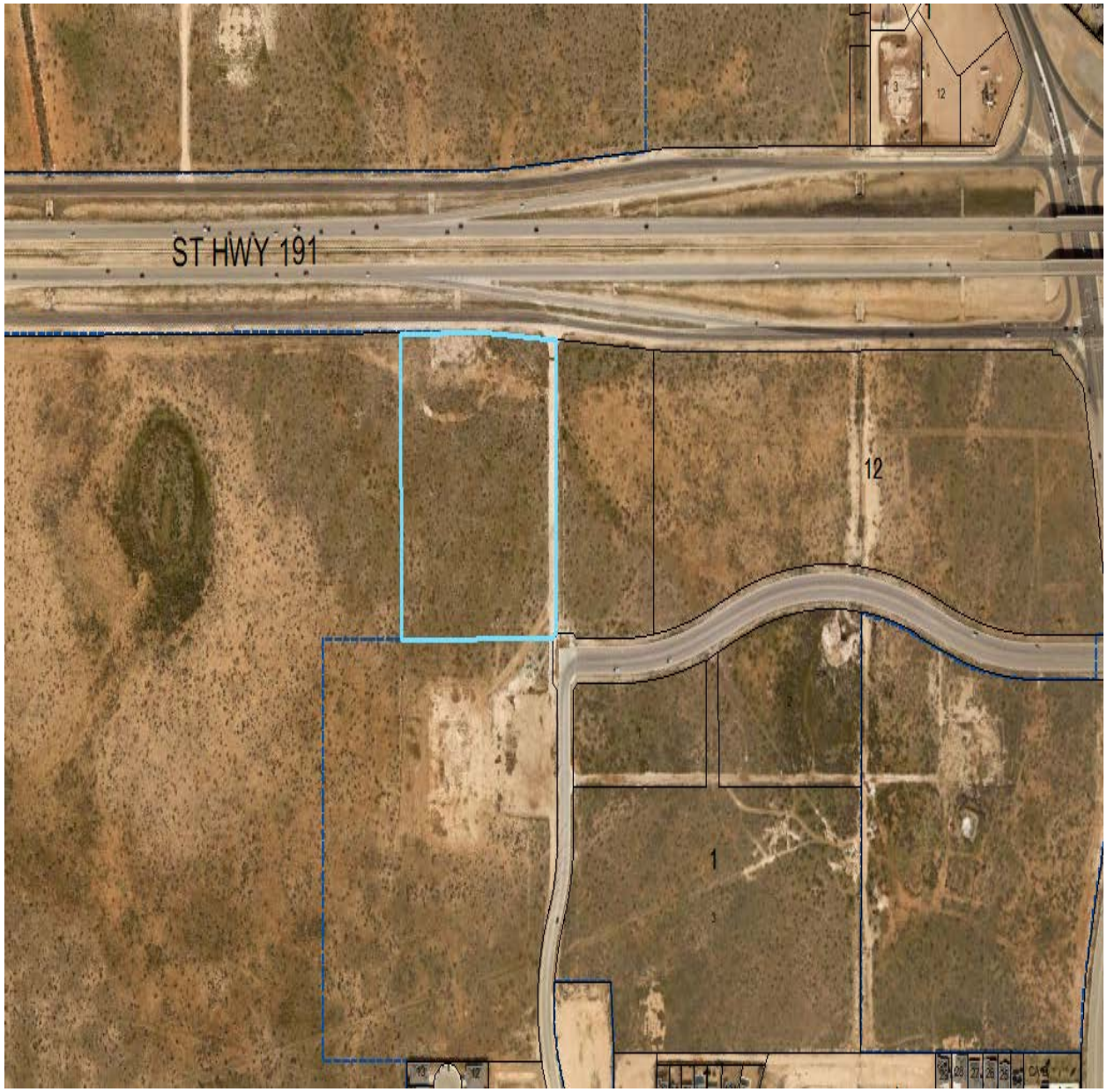
Cavender

- Currently Zoned: ETJ, Extraterritorial Jurisdiction
- Surrounding Zoning of the Property:
  - North and West: ETJ, Extraterritorial Jurisdiction
  - East: RR, Regional Retail District
  - South: MF-16, Multi Family Dwelling District
- Proposed Zoning of the property:
  - RR, Regional Retail District

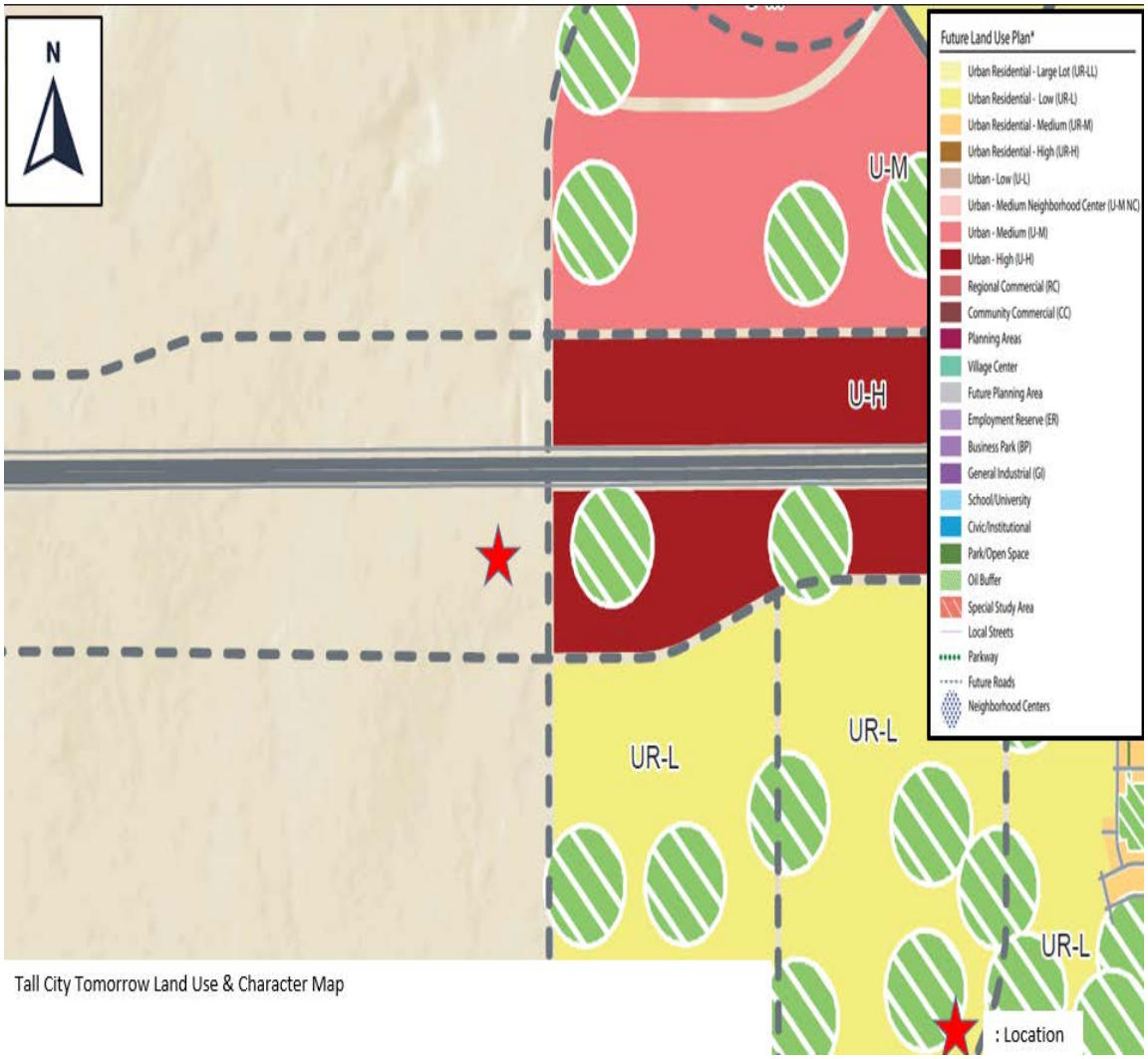


Cavender

- Current Use: Vacant
- Proposed Use: Cavender Mercedes Dealership



- Not designated by the Tall City Tomorrow



Tall City Tomorrow Land Use & Character Map



On 191, Looking South

- No objection letters received
- This meets all applicable City Code; therefore, staff recommends *APPROVAL* of this annexation.

City Council Meeting

Item Number: 30

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Landon Ochoa, Planning Division Manager

Subject: AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 10.00-ACRE TRACT OF LAND OUT OF SECTION 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AS AN RR, REGIONAL RETAIL DISTRICT; SAID TRACT BEING GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE BOULEVARD AND ARLINGTON ROAD; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT: NONE) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Cavender Real Estate of Midland, LLC, is requesting an initial zoning of RR, Regional Retail District for a property to be annexed at the northwest corner of Deauville Boulevard and Arlington Road for the future use of a car dealership.

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Strategic Priority:

Quality of Life and Place

Discussion:

Surrounding Zoning and Land Use:

The property to the east is zoned RR, Regional Retail District, and is currently vacant. The property to the south is zoned MF16, Multi-Family Dwelling District, and is currently vacant. The properties to the north and west are in Extraterritorial Jurisdiction and are vacant.

Analysis:

The site is currently in the process of being annexed into City Limits. A plat of the property will be required. The plat, Cavender Addition, is currently in the preliminary phase.

The Future Land Use Map in the Tall City Tomorrow Comprehensive Plan does not have a designation for this area. However, most of the surrounding area is zoned for this kind of development being that it is zoned RR, Regional Retail District.

The Planning Zoning Commission recommended approval of this request on July 15, 2024.

The associated annexation request is scheduled for the August 13, 2024 City Council meeting.

This case has been circulated to and reviewed by all pertinent City departments for internal review and has received no objections. Their comments are as follows.

Engineering: (Approved)

No objections to zoning/zone change. [For Applicant's Information Only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Fire: (Approved)

No objections.

Building Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Oil and Gas: (Approved)

No Oil & Gas well concern for Zoning. Informational: Plats will need to identify any Oil or Gas wells and include 500 ft. radius for city permitted well or the 135 ft. radius for non-permitted well radius plat. Please note if oil & gas wells are not identified or left off a plat, this could prevent receiving city permits for structures. Any plugged and abandoned (P&A) well would need to be identified with comments- No structure shall be built over an abandoned well.

Planning: (Approved)

No Planning issues

Staff recommends approval of this request.

Letters of Objection:

As of July 7, 2024, staff has not received any objection letters.

Attachments:

Petition & Survey
Application
Maps

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 10.00-ACRE TRACT OF LAND OUT OF SECTION 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AS AN RR, REGIONAL RETAIL DISTRICT; SAID TRACT BEING GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE BOULEVARD AND ARLINGTON ROAD; 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, notice has been given to interested citizens by publication in the official newspaper and otherwise of a public hearing to be held before the City Council on August 13, 2024 (the "Hearing Date"), to consider an amendment to the Zoning District Map of the City of Midland, Texas, so as to establish the initial zoning classification of the property described in Section One hereof as an RR, Regional Retail District, as set out in Title XI, Chapter 1 of the City Code of Midland, Texas; and

WHEREAS, such a public hearing was held in the Council Chambers on the Hearing Date, as advertised, at which all interested citizens were given an opportunity to be heard; and after considering among other things, the character of the property involved and the surrounding area and its peculiar suitability for particular uses; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, the Council finds it to be in the best interest of the health, safety, morals and general welfare of the City of Midland to amend the Zoning

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

SECTION ONE. That the initial zoning classification of the area indicated on Exhibit "A", attached hereto and incorporated herein by reference, is hereby established as

District Map accordingly;

an RR, Regional Retail District, and the Zoning District Map of the City of Midland, Te xas,

is hereby amended to reflect the establishment of this initial zoning classification.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this

SECTION TWO. The provisions of this ordinance are to be cumulative of all

other

ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not

ordinances or parts of ordinances governing or regulating the same subject matter as that

affect the validity of the remaining portions of this ordinance. The Council of the City of

covered herein; provided, however, that all prior ordinances or parts of

ordinances

Midland hereby declares that it would have passed this ordinance and each section,

inconsistent with or in conflict with any of the provisions of this ordinance are hereby

subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

expressly repealed to the extent of any such inconsistency or conflict.

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in

accordance

The above and foregoing ordinance was duly proposed, read in full and

with the general penalty provisions contained in Section 1-3-1 of the City Code of

adopted on

Midland,

first reading, the ___ day of _____, A.D., 2024; and passed to second reading

Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

on

Council members voting "AYE":

SECTION FIVE. The City Secretary is hereby authorized and directed to

motion of Council member _____, seconded by Council member _____,

publish

Council members voting "NAY":

by the following vote:

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 read in full and finally adopted by the

following vote upon motion of Council member _____, seconded by Council

Council members voting "AYE":

member _____, on the ___ day of _____, A.D., 2024, at a regular meeting

Council members voting "NAY":

of the City Council:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____

Lori Merritt Blong, Mayor

ATTEST:

_____

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT

AND COMPLETENESS:

_____

Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____

John Ohnemiller, City Attorney

EXHIBIT A

VOLUNTARY PETITION FOR ANNEXATION

May 13, 2024

City of Midland Texas
300 N. Loraine
Midland, TX 79702

RE: Annexation of a 10.00-Acre Tract of Land in Section 38, Block 40, T-1-S, T&P Ry. Co. Survey, Midland County, TX

Dear City of Midland Official;

As current owner of the tract(s) of land described in the exhibit(s) attached hereto and incorporated by reference herein, (the "Property"), I, Cavender Real Estate of Midland IV, LLC, a Texas liability company, ("Owner") acting as or within the capacity of owner, does hereby submit this petition for annexation and request that the Property be legally incorporated and annexed to the City of Midland.

Stephen B. Cavender
Manager
Cavender Real Estate of Midland IV, LLC, a Texas liability company
5778 Stemmons, Ste. 130, San Antonio, Texas 78238

STATE OF TEXAS §

COUNTY OF BEXAR§

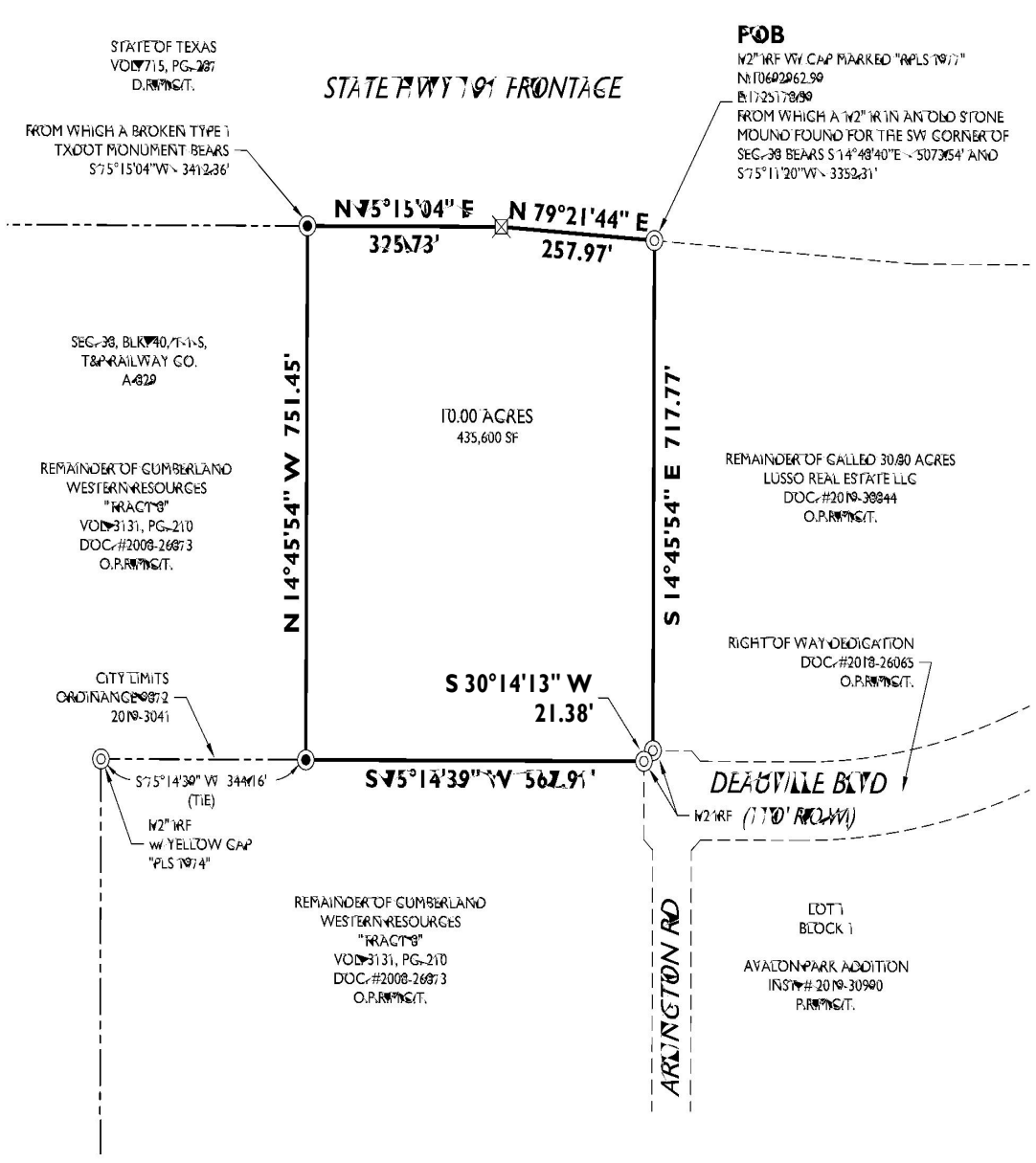
BEFORE ME, the undersigned authority, on this day personally appeared Stephen B. Cavender, as Manager of Cavender Real Estate of Midland IV, LLC, a Texas liability company, known to me, as the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same in the capacity herein stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 14th day of, MAY, 2024.

MERIGET G. BLANKENSHIP
Notary Public, State of Texas
My Comm. Exp. 08-25-2027
ID No. 12621740-4

Notary Public in and for the State of TEXAS

Exhibit A





0' 200' 400'

ORIGINAL SCALE : 1" = 200'

LEGEND

- TYPE I TxDOT MONUMENT
- FOUND 1/2-INCH IRON ROD AS NOTED
- SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514"
- ANNEXATION BOUNDARY
- EXISTING LOTS
- EXISTING CITY LIMITS

FIELD NOTE DESCRIPTION:

FIELD NOTE DESCRIPTION OF A 10.00 ACRE TRACT OF LAND, SITUATED IN SECTION 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CALLED 634.887 ACRE "TRACT 8" AS DESCRIBED IN A WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2008-26873 IN VOLUME 3131 ON PAGE 210 OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING *AT N.(y):10692962.99, E.(x):1725178.59, A ONE HALF INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "RPLS 1977", FOUND IN THE SOUTH RIGHT OF WAY OF STATE HIGHWAY 191 AS CONVEYED IN VOLUME 715 ON PAGE 287 OF THE DEED RECORDS OF SAID MIDLAND COUNTY, BEING THE NORTHWEST CORNER OF THE REMAINDER OF A CALLED 30.80 ACRE TRACT OF LAND AS DESCRIBED IN A SPECIAL WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2019-38844 IN SAID "OPR", FROM WHICH A ONE HALF INCH IRON ROD FOUND IN AN OLD STONE MOUND FOR THE SOUTHWEST CORNER OF SAID SECTION 38 BEARS S.14°48'40"E., 5073.54 FEET AND S.75°11'20"W., 3352.31 FEET FOR THE NORTHEAST CORNER HEREOF;*

THENCE *S.14°45'54"E., ALONG THE WEST LINE OF SAID CALLED 30.80 ACRE TRACT REMAINDER, 717.77 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE MOST NORTH NORTHWEST CORNER OF A CALLED 6.975 ACRE TRACT AS DESCRIBED IN A RIGHT OF WAY DEDICATION DEED RECORDED AS DOCUMENT NUMBER 2018-26065 IN SAID "OPR" FOR THE EAST SOUTHEAST CORNER HEREOF;*

THENCE *S.30°14'13"W., ALONG A CUTBACK ON SAID CALLED 6.975 ACRE TRACT 21.38 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE NORTH NORTHEAST CORNER OF A CALLED 21.30 ACRE TRACT OF LAND AS DESCRIBED IN CITY OF MIDLAND ORDINANCE 9872 AS RECORDED IN DOCUMENT NUMBER 2019-3041 OF SAID "OPR" FOR THE SOUTH SOUTHEAST CORNER HEREOF;*

THENCE *S.75°14'39"W., ALONG THE NORTH LINE OF SAID CALLED 21.30 ACRE TRACT, 567.91 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM# 10194514" (RPC) SET, FROM WHICH A ONE HALF INCH IRON ROD WITH A YELLOW PLASTIC CAP MARKED "PLS 1974" FOUND FOR THE NORTHWEST CORNER OF SAID CALLED 21.30 ACRE TRACT BEARS S.75°14'39"W., 344.16 FEET FOR THE SOUTHWEST CORNER HEREOF;*

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THENCE *N.79°21'44"E., CONTINUING ALONG SAID RIGHT OF WAY, 257.97 FEET TO THE* ***POINT OF BEGINNING****, CONTAINING 435600 SQUARE FEET OR 10.00 ACRES OF LAND.*

SURVEY NOTES:

1. *BASIS OF BEARING, COORDINATES, DISTANCES AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, CENTRAL ZONE, NORTH AMERICAN DATUM 1983, U.S. SURVEY FOOT, WITH A CONVERGENCE ANGLE (theta) OF -0°54'48.40" AND A COMBINED SCALE FACTOR OF 0.99989911 AT NGS "MIDLAND".*
2. *1/2 IRON ROD WITH RED PLASTIC CAP MARKED "MAVERICK FIRM # 10194514" AT ALL SET CORNERS, UNLESS OTHERWISE SPECIFIED.*
3. *SEE DOCUMENTS OR ELECTRONIC DATA FILED IN THE OFFICE OF MAVERICK ENGINEERING FOR COMPLETE RECONSTRUCTION OF THIS SURVEY.*

MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
ENGINEER FIRM #: F-15089
SURVEY FIRM #: 10194514
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

PACKET 30.8 August 13, 2024

JOB NO.:	FIELD WORK:	DRAWN BY:	REV 1:	REV 2:
240009	1.24.24	AK		

I, GREGORY W. SHOULTS, DO HEREBY CERTIFY THAT THE SURVEY INFORMATION FOUND ON THIS PLAT WAS DERIVED FROM FIELD NOTES AND/OR ELECTRONIC DATA OF AN ACTUAL ON-THE-GROUND SURVEY MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT AND NO WARRANTY IS MADE OR INTENDED FOR THE LOCATION OF ANY OR ALL EASEMENTS THAT MAY EXIST WITHIN THE BOUNDS OF THIS SURVEY.

GREGORY W. SHOULTS, RPLS #5356
FIRM NO. TX #10194514

MARCH 25, 2024

STATE OF TEXAS REGISTERED GREGORY W. SHOULTS 5356 PROFESSIONAL LAND SURVEYOR

CAVENDER AUTO FAMILY

ANNEXATION BOUNDARY

OF A 10.00 ACRE TRACT OF LAND SITUATED IN SECTION 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS

Drawing: F:\2024\240009-CAVENDER AUTO FAMILY-MERCEDES BENZ NEW SITE MIDLAND\DRAWINGS\ANNEXATION BOUNDARY\240009 ANNEXATION BOUNDARY.DWG Last Saved By: AKalenak on 3/25/24

VOLUNTARY PETITION FOR ANNEXATION

May 13, 2024

City of Midland Texas
300 N. Loraine
Midland, TX 79702

RE: Annexation of a 10.00-Acre Tract of Land in Section 38, Block 40, T-1-S, T&P Ry. Co. Survey, Midland County, TX

Dear City of Midland Official;

As current owner of the tract(s) of land described in the exhibit(s) attached hereto and incorporated by reference herein, (the "Property"), I, Cavender Real Estate of Midland IV, LLC, a Texas liability company, ("Owner") acting as or within the capacity of owner, does hereby submit this petition for annexation and request that the Property be legally incorporated and annexed to the City of Midland.

Stephen B. Cavender
Manager
Cavender Real Estate of Midland IV, LLC, a Texas liability company
5778 Stemmons, Ste. 130, San Antonio, Texas 78238

STATE OF TEXAS §

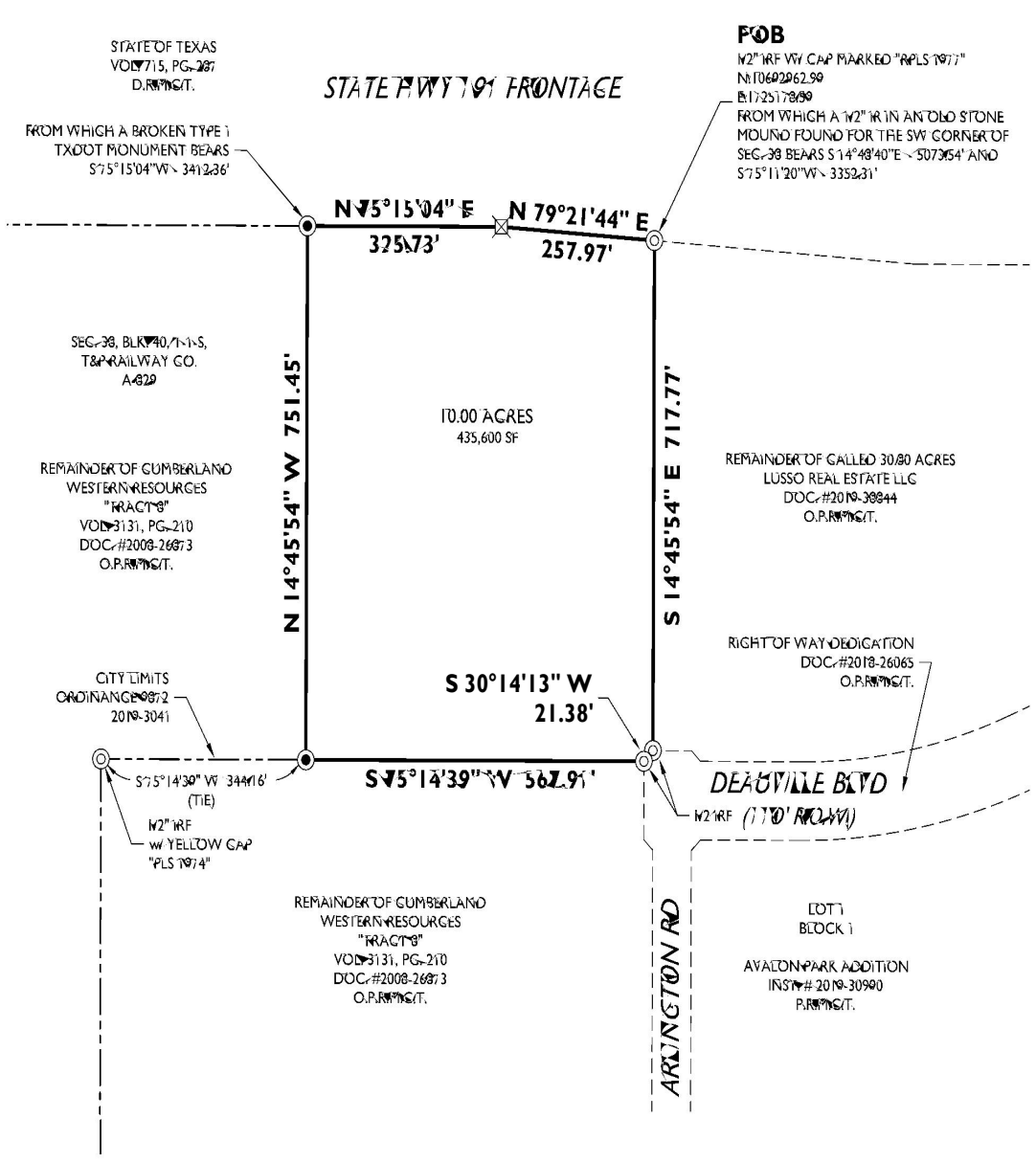
COUNTY OF BEXAR§

BEFORE ME, the undersigned authority, on this day personally appeared Stephen B. Cavender, as Manager of Cavender Real Estate of Midland IV, LLC, a Texas liability company, known to me, as the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same in the capacity herein stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 14th day of, MAY, 2024.

MERIGET G. BLANKENSHIP
Notary Public, State of Texas
My Comm. Exp. 08-25-2027
ID No. 1262.1740-4

Notary Public in and for the State of TEXAS





0' 200' 400'

ORIGINAL SCALE : 1" = 200'

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PACKET

JOB NO.:	FIELD WORK:	DRAWN BY:	REV 1:	REV 2:
240009	1.24.24	AK		

I, GREGORY W. SHOULTS, DO HEREBY CERTIFY THAT THE SURVEY INFORMATION FOUND ON THIS PLAT WAS DERIVED FROM FIELD NOTES AND/OR ELECTRONIC DATA OF AN ACTUAL ON-THE-GROUND SURVEY MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT AND NO WARRANTY IS MADE OR INTENDED FOR THE LOCATION OF ANY OR ALL EASEMENTS THAT MAY EXIST WITHIN THE BOUNDS OF THIS SURVEY.

GREGORY W. SHOULTS, RPLS #5356
FIRM NO. TX #10194514

30.10

MARCH 25, 2024

STATE OF TEXAS REGISTERED GREGORY W. SHOULTS 5356 PROFESSIONAL LAND SURVEYOR

CAVENDER AUTO FAMILY

ANNEXATION BOUNDARY

OF A 10.00 ACRE TRACT OF LAND SITUATED IN SECTION 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS

August 13, 2024

Drawing: F:\2024\240009-CAVENDER AUTO FAMILY-MERCEDES BENZ NEW SITE MIDLAND\DRAWINGS\ANNEXATION BOUNDARY\240009 ANNEXATION BOUNDARY.DWG Last Saved By: AKalenak on 3/25/24

MIDLAND
Planning Division

Annexation/Zone Change Application

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Cavender Real Estate of Midland IV, LLC,		Phone (210) 410-0075 Email stephenc@cavendertoyota.com	
Address 5778 Stemmons, Ste. 130	City San Antonio	State TX	Zip 78238

Property Owner Printed Name: See applicant info		Phone ( ) Email	
Address	City	State	Zip

Representative *(if different from Applicant or Property Owner)* Firm: Maverick Engineering Printed Name: Andrew L. Mellen, PE		Phone ( ) Email phuckaba@maverick-eng.com 432-262-0999	
Address 1909 W. Wall St., Ste. K	City Midland	State TX	Zip 79701

Street Address: NA (Hwy 191)

Legal Description See attached included metes & bounds description
Lot: Block: Subdivision:

Current Zoning: None. Un-annexed	**Proposed Zone:** RR Regional Retail *(List by tracts if more than one district is requested)*

Reason for Annexation/Zone Change Request: To advance the inclusion of the subject tract into the City Limits of Midland

Present Use of Property: Vacant/Unimproved

Proposed Use of Property: Automotive sales facility.

How would this annexation/zone change affect the public health, safety and welfare?
No adverse effect. Site will contribute to the expansion and improvement of Midland's automobile market offerings

Describe how this annexation/zone change will affect adjacent properties:
Approval will encourage further expansion and improvement of private and public interests in the area.

Submittal and Fees

Items to be submitted with this application form:

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

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date: 5/14/2024
Applicant (printed): STEPHEN CAVENDER	
Property Owner (signature):	Date: 5/14/2024
Property Owner (printed) : CAVENDER REAL ESTATE OF MIDLAND IV, LLC	

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

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

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

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L. Mellen, PE who, being by me duly sworn, upon oath says: That (s)he is authorized by Stephen Cavender, 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.

Andrew L. Mellen
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 17 day of MAY, 2024, to certify which witness my hand and seal of office.

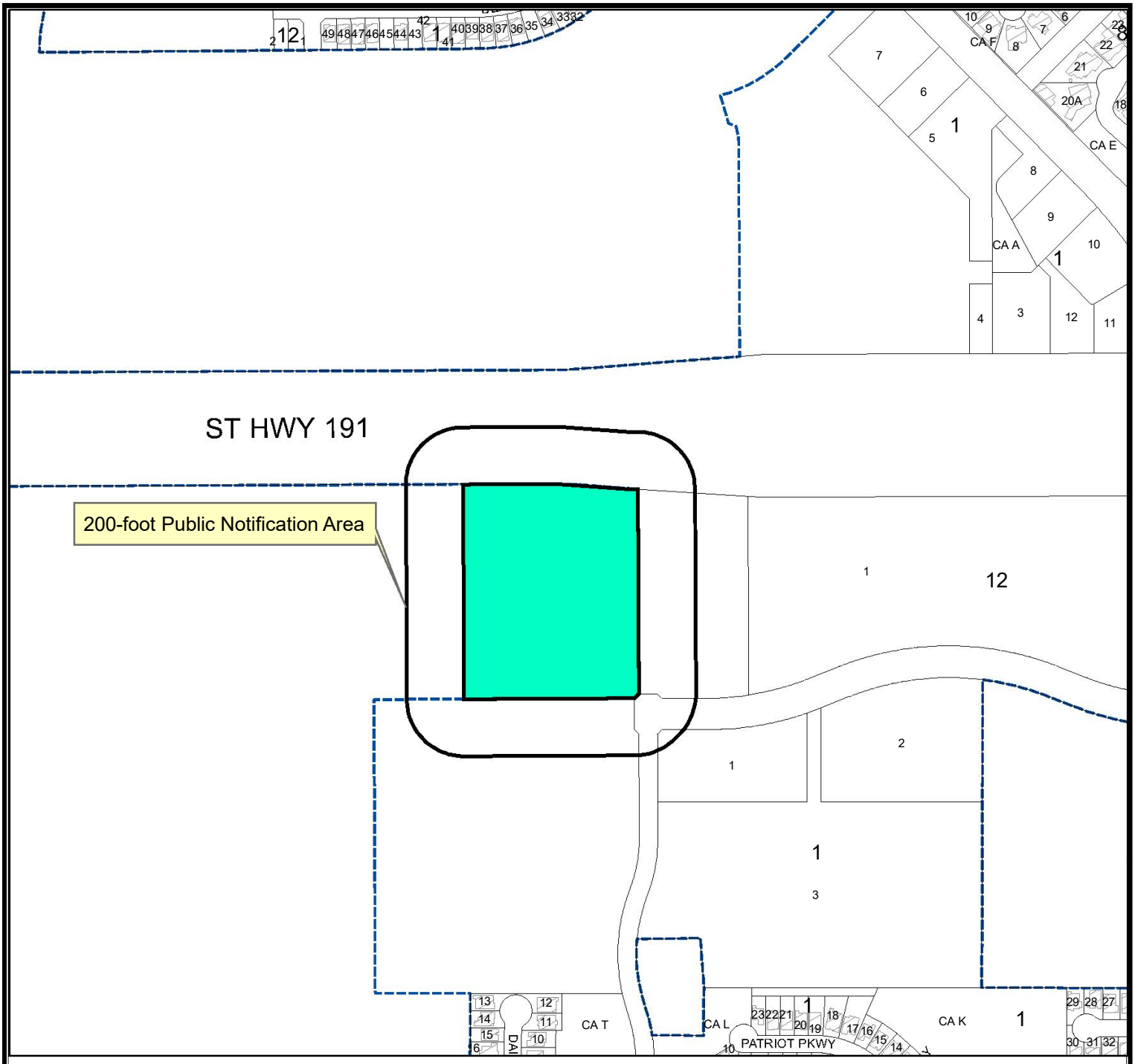
JACQUELINE L. MELLEN
Notary Public, State of Texas
Comm. Expires 04-24-2028
Notary ID 129443262

Jacqueline L. Mellen
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☑ Plans in Digital Format (PDF/JPEG)
Check # 4815	
Received By: Alexy	Date: RECEIVED MAY 22 2024
	BY:

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



Location Map

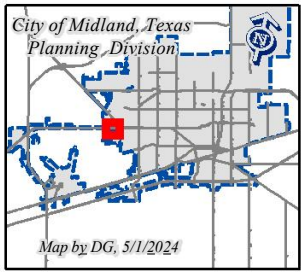
Z-24-0381 **Scale: 1" = 500'**

Consider a request by Maverick Engineering, on behalf of Cavender Real Estate of Midland IV, LLC, for an initial zoning of RR, Regional Retail District, for a 10.00-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR. Co Survey, Midland County, Texas.

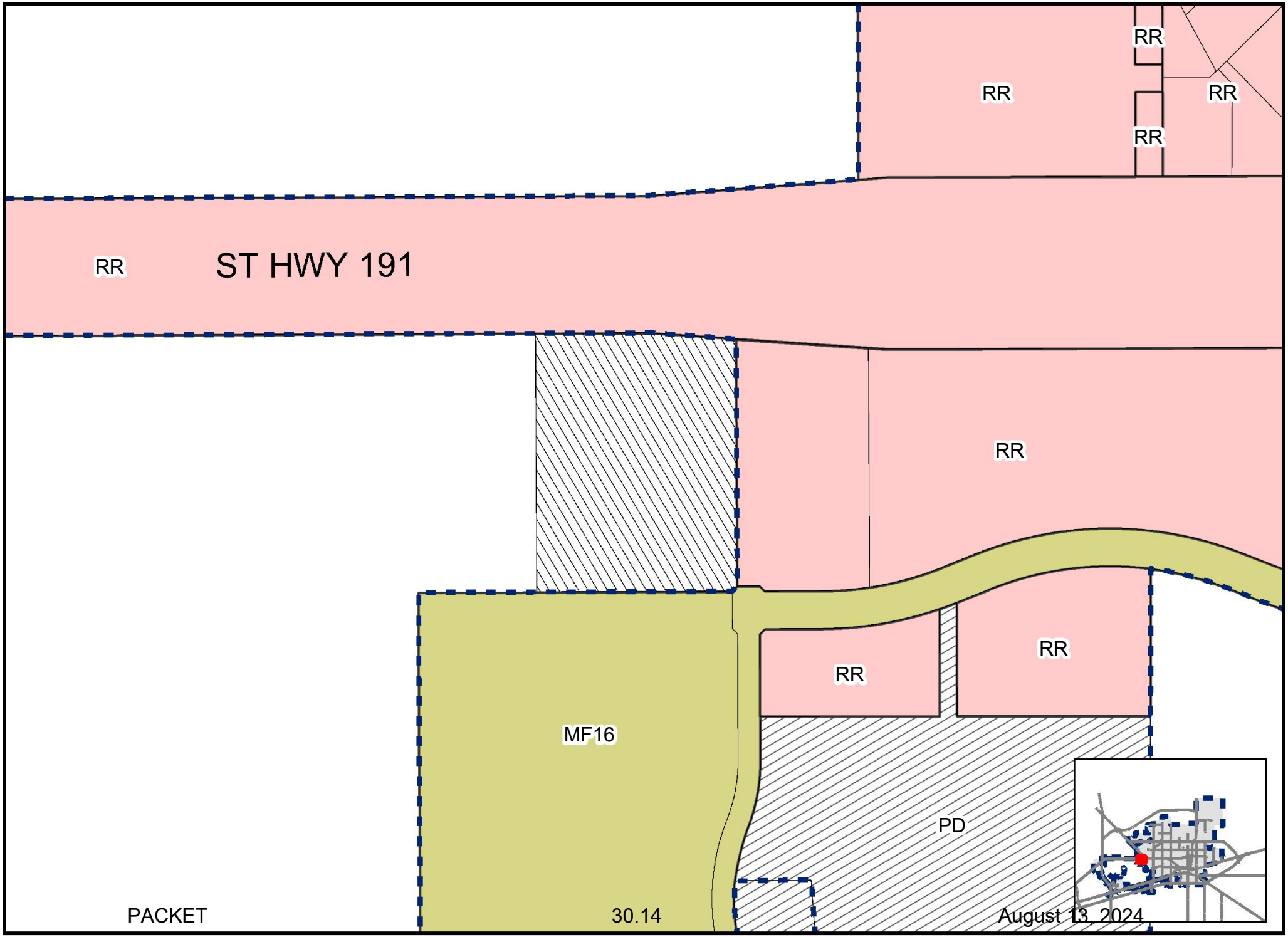
Generally located northwest of the intersection of Deauville Boulevard and Arlington Road (ETJ)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map AM, 7/10/2024

Z-24-0381

Scale: 1" = 350'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA


ST HWY 191
12
1



2474011

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL 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.

Special Warranty Deed

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

CUMBERLAND AND WESTERN RESOURCES, LLC, a Wyoming limited liability company (hereinafter called "Grantor"), whose address is c/o Greg Betterton, 735 E. Venice Avenue, #200, Venice, Florida, 34285, for and in consideration of the sum of Ten Dollars ($10.00) cash in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, has granted, sold, conveyed and delivered, and does hereby grant, sell, convey and deliver unto Cavender Real Estate of Midland IV, LLC, a Texas limited liability company (hereinafter called "Grantee"), whose address is 5778 Stemmons, Ste. 130, San Antonio, Texas 78238, all of the Grantor's right, title and interest in and to those lands located in Midland County, Texas, and described on Exhibit A hereto and made a part hereof for all purposes (the "Land"), and all buildings, fixtures and other improvements located on the Land, if any, together with all and singular the rights, privileges, hereditaments, and appurtenances pertaining to such real property (collectively the "Property").

This conveyance is subject to, and there is excepted from the warranty of this conveyance, only those certain exceptions set forth on Exhibit B attached hereto and made a part hereof, including any and all oil, gas and other minerals in and under and that may be produced from the Land that have been reserved or conveyed prior to the date of this Deed, but in all events only to the extent such matters are validly existing and are applicable to the Property (the "Permitted Exceptions").

EXCEPT THE SPECIAL WARRANTY OF TITLE GRANTED HEREIN (THE "EXPRESS REPRESENTATIONS AND WARRANTIES") GRANTOR HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS, TO, OR CONCERNING (i) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, (A) THE WATER, SOIL AND GEOLOGY THEREIN, (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES OR USES WHICH GRANTEE MAY ELECT TO CONDUCT THEREON, AND (C) THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS ON OR IN THE VICINITY OF THE PROPERTY OR COMPLIANCE WITH APPLICABLE LAWS, ORDINANCES, RULES AND REGULATIONS; (ii) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE,

POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR OTHER ENCUMBRANCE; AND (iii) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL OR OTHER BODY. GRANTEE ACKNOWLEDGES THAT IT HAS INSPECTED THE PROPERTY AND GRANTEE RELIES SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY GRANTOR, EXCEPT FORTH THE EXPRESS REPRESENTATIONS AND WARRANTIES. GRANTEE FURTHER ACKNOWLEDGES THAT THE INFORMATION PROVIDED AND TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND GRANTOR (x) HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION; AND (y) DOES NOT MAKE ANY REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES. THE CONVEYANCE OF THE PROPERTY PROVIDED FOR HEREIN IS MADE ON AN "AS IS" "WHERE IS" BASIS AND WITH ALL FAULTS, INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL HAZARDS OR CONDITIONS, AND GRANTEE EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE CONVEYANCE BY GRANTOR HEREIN, GRANTOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE IN RESPECT OF THE PROPERTY, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES.

Subject to the foregoing, Grantor hereby covenants and warrants that the interest in the Property being conveyed herein is free and clear of all liens.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereunto in anywise belonging unto the said Grantee, its successors and assigns forever; and Grantor hereby binds itself, its successors and assigns, to warrant and forever defend the above described premises unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same or any part thereof by, through or under Grantor, but not otherwise, and Grantor further covenants and warrants that it is the owner of said Property with the full right to convey same.

[Signature Page Follows]

IN WITNESS whereof, this instrument is executed on this 24th day of April, 2024.

GRANTOR: CUMBERLAND & WESTERN RESOURCES, LLC,
a Wyoming limited liability company

By: _____
Greg Betterton, Manager

THE STATE OF FLORIDA '
'
COUNTY OF SARASOTA '

This instrument was acknowledged before me this 24th day of April, 2024, by Greg Betterton, as Manager of CUMBERLAND & WESTERN RESOURCES, LLC, a Wyoming limited liability company, on behalf of said company, personally known to me, and who did swear an oath.

JEANETTE PETERSON
MY COMMISSION # HH 308967
EXPIRES: August 21, 2025

_____
Notary Public

AFTER RECORDING, PLEASE RETURN TO:
Hornberger Fuller & Garza Incorporated
7373 Broadway, Suite 300
San Antonio, Texas 78209
Attention: Drew Fuller

Exhibits:
Exhibit A – Legal Description of Land
Exhibit B – Permitted Exceptions

EXHIBIT A
Legal Description of Land

Tract I: That certain 10.00 acre tract of land in Midland County, Texas, being more particularly described on Exhibit A-1 attached hereto.

Tract II: That certain 0.72 acre tract of land in Midland County, Texas, being more particularly described on Exhibit A-2 attached hereto.

A depiction of both tracts is attached hereto as Exhibit A-3.

EXHIBIT A-1
Tract I

FIELD NOTE DESCRIPTION OF A 10.00 ACRE TRACT OF LAND, SITUATED IN SECTION 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CALLED 634.887 ACRE "TRACT 8" AS DESCRIBED IN A WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2008-26873 IN VOLUME 3131 ON PAGE 210 OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(y):10692962.99, E.(x):1725178.59, A ONE HALF INCH IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "RPLS 1977", FOUND IN THE SOUTH RIGHT OF WAY OF STATE HIGHWAY 191 AS CONVEYED IN VOLUME 715 ON PAGE 287 OF THE DEED RECORDS OF SAID MIDLAND COUNTY, BEING THE NORTHWEST CORNER OF THE REMAINDER OF A CALLED 30.80 ACRE TRACT OF LAND AS DESCRIBED IN A SPECIAL WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2019-38844 IN SAID "OPR", FROM WHICH A ONE HALF INCH IRON ROD FOUND IN AN OLD STONE MOUND FOR THE SOUTHWEST CORNER OF SAID SECTION 38 BEARS S.14°48'40"E., 5073.54 FEET AND S.75°11'20"W., 3352.31 FEET FOR THE NORTHEAST CORNER HEREOF;

THENCE S.14°45'54"E., ALONG THE WEST LINE OF SAID CALLED 30.80 ACRE TRACT REMAINDER, 717.77 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE MOST NORTH NORTHWEST CORNER OF A CALLED 6.975 ACRE TRACT AS DESCRIBED IN A RIGHT OF WAY DEDICATION DEED RECORDED AS DOCUMENT NUMBER 2018-26065 IN SAID "OPR" FOR THE EAST SOUTHEAST CORNER HEREOF;

THENCE S.30°14'13"W., ALONG A CUTBACK ON SAID CALLED 6.975 ACRE TRACT 21.38 FEET TO A ONE HALF INCH IRON ROD FOUND AT THE NORTH NORTHEAST CORNER OF A CALLED 21.30 ACRE TRACT OF LAND AS DESCRIBED IN CITY OF MIDLAND ORDINANCE 9872 AS RECORDED IN DOCUMENT NUMBER 2019-3041 OF SAID "OPR" FOR THE SOUTH SOUTHEAST CORNER HEREOF;

THENCE S.75°14'39"W., ALONG THE NORTH LINE OF SAID CALLED 21.30 ACRE TRACT, 567.91 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM# 10194514" (RPC) SET, FROM WHICH A ONE HALF INCH IRON ROD WITH A YELLOW PLASTIC CAP MARKED "PLS 1974" FOUND FOR THE NORTHWEST CORNER OF SAID CALLED 21.30 ACRE TRACT BEARS S.75°14'39"W., 344.16 FEET FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.14°45'54"W., SEVERING SAID CALLED 634.887 ACRE TRACT 751.45 FEET TO AN "RPC" SET IN SAID SOUTH RIGHT OF WAY LINE FROM WHICH A POINT WITHIN A BROKEN TYPE I TxDOT MONUMENT BEARS S.75°15'04"W., 3412.36 FEET FOR THE NORTHWEST CORNER HEREOF;

THENCE N.75°15'04"E., ALONG SAID RIGHT OF WAY, 325.73 FEET TO A POINT WITHIN A TYPE I TxDOT MONUMENT FOUND FOR AN ANGLE CORNER HEREOF;

THENCE N.79°21'44"E., CONTINUING ALONG SAID RIGHT OF WAY, 257.97 FEET TO THE POINT OF BEGINNING, CONTAINING 435600 SQUARE FEET OR 10.00 ACRES OF LAND.

EXHIBIT A-2
Tract II

SECTION 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS.

FIELD NOTE DESCRIPTION OF A 0.72 ACRE TRACT OF LAND, SITUATED IN SECTION 38, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CALLED 634.887 ACRE "TRACT 8" AS DESCRIBED IN A WARRANTY DEED RECORDED AS DOCUMENT NUMBER 2008-26873 IN VOLUME 3131 ON PAGE 210 OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(y): 10692250.45, E.(x): 1725350.75, A ONE HALF INCH IRON ROD FOUND IN THE EAST LINE OF SAID CALLED REMAINDER OF "TRACT 8", BEING THE NORTH NORTHEAST CORNER OF A CALLED 21.30 ACRE TRACT OF LAND AS DESCRIBED IN CITY OF MIDLAND ORDINANCE 9872 AS RECORDED IN DOCUMENT NUMBER 2019-3041 OF SAID "OPR", FROM WHICH A ONE HALF INCH IRON ROD FOUND AT THE MOST NORTH NORTHWEST CORNER OF A CALLED 6.975 ACRE TRACT AS DESCRIBED IN A RIGHT OF WAY DEDICATION DEED RECORDED AS DOCUMENT NUMBER 2018-26065 IN SAID "OPR" BEARS N.30°14'13"E. 21.38 FEET FOR THE NORTHEAST CORNER HEREOF;

THENCE S.14°41'51"E., ALONG THE WEST LINE OF SAID CALLED 6.975 ACRE TRACT, 55.00 FEET TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM# 10194514" (RPC) SET, BEING THE NORTHEAST CORNER OF A CALLED 20.16 ACRE TRACT OF LAND DESCRIBED IN DOCUMENT NUMBER 2019-9869 OF SAID "OPR", FOR THE SOUTHEAST CORNER HEREOF;

THENCE S.75°14'08"W., ALONG THE NORTH LINE OF SAID CALLED 20.16 ACRE TRACT, 567.85 FEET TO AN "RPC", FROM WHICH A ONE HALF INCH IRON ROD WITH A YELLOW PLASTIC CAP MARKED "PLS 1974" FOUND FOR THE NORTHWEST CORNER OF SAID CALLED 20.16 ACRE TRACT BEARS S.75°14'08"W., 344.31 FEET FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.14°45'54"W., 55.09 FEET TO AN "RPC" SET FOR THE NORTHWEST CORNER HEREOF;

THENCE N.75°14'39"E., 567.91 FEET TO THE **POINT OF BEGINNING**, CONTAINING 31,258 SQUARE FEET OR 0.72 ACRES OF LAND.

Exhibit A-3

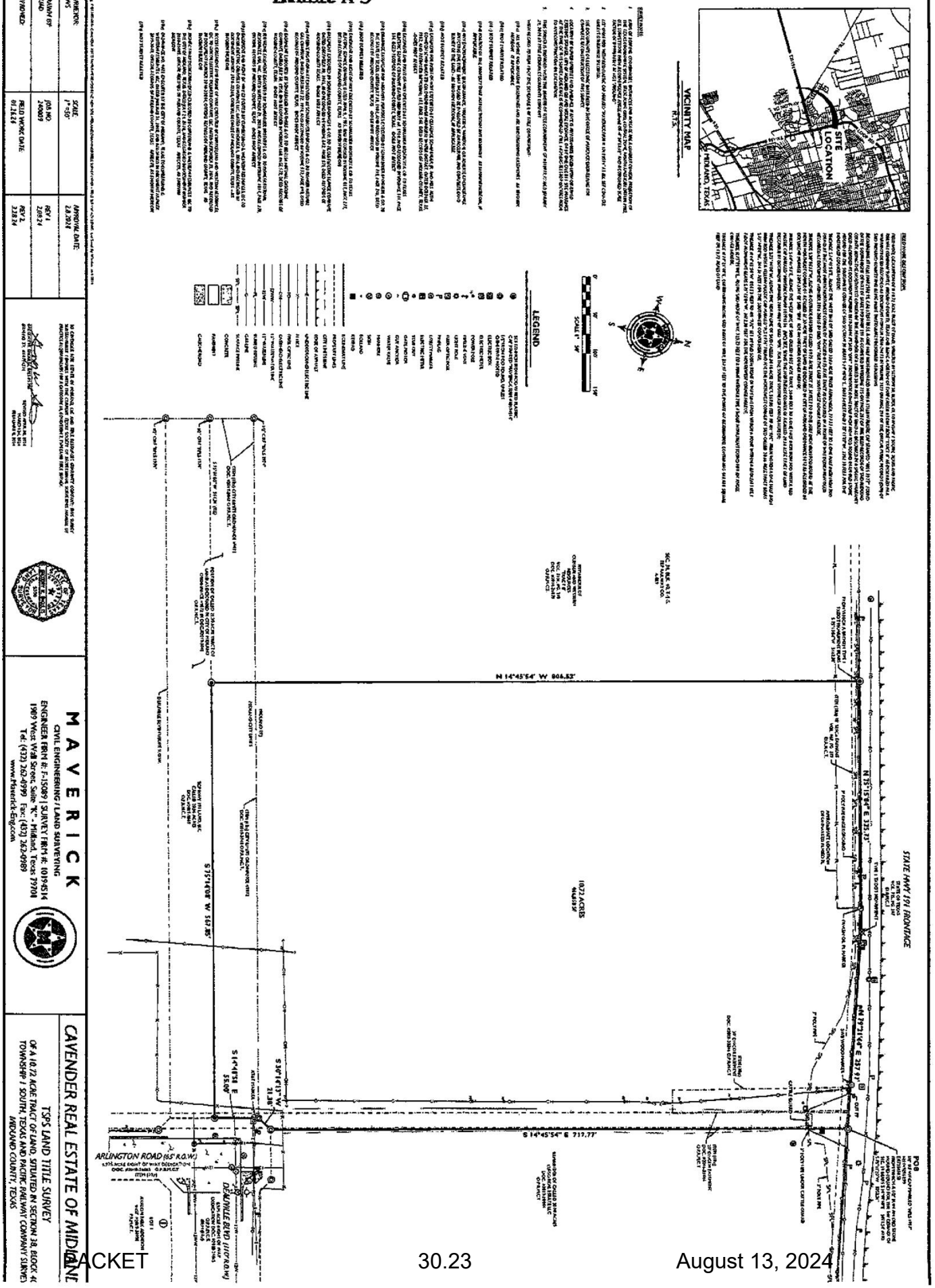

VICINITY MAP
N.T.S.
SITE LOCATION
MIDLAND, TEXAS
LEGEND
SURVEYOR NOTES:
SURVEYOR'S CERTIFICATE
STATE HWY 191 FRONTAGE
ARLINGTON ROAD (65' R.O.W.)
DENVALLE BLVD (107' R.O.W.)
10.72 ACRES
466,915 SF
N 14°45'54" W 806.53'
S 75°14'08" W 167.85'
S 14°45'54" E 55.00'
S 30°14'13" W 21.36'
S 14°45'54" E 717.77'
N 75°14'08" E 335.33'
N 75°14'08" E 357.97'
POB
SCALE: 1" = 100'
JOB NO. 240601
FIELD WORK DATE: 01.24.24
APPROVAL DATE: 2.8.2024
DRAWN BY: BRAD
APPROVED:
SURVEYOR: CWS
DRAWING NO. 1 OF 2
DRAWING NO. 2 OF 2
3.28.24
MAVERICK
CIVIL ENGINEERING / LAND SURVEYING
ENGINEER FIRM #: F-15089 | SURVEY FIRM #: 10194514
1909 West Wall Street, Suite "K" - Midland, Texas 79701
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com
CAVENDER REAL ESTATE OF MIDLAND
TSPS LAND TITLE SURVEY
OF A 10.72 ACRE TRACT OF LAND, SITUATED IN SECTION 38, BLOCK 41
TOWNSHIP 1 SOUTH, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY
MIDLAND COUNTY, TEXAS

EXHIBIT B
Permitted Exceptions

The following matters and all terms of the documents creating or offering evidence of the matters:

1. Designated Acreage Agreement by and between M. W. Branum and Clarence Scharbauer et al, dated May 2, 1984, and recorded in Volume 819, Page 712, Deed Records of Midland County, Texas.

2. Easement and Right-of-Way executed by Scharbauer Brothers & Co. to Texas Electric Service Company, dated April 9, 1985, and recorded in Volume 867, Page 277, Deed Records of Midland County, Texas.

3. Easement and Right-of-Way executed by Cumberland & Western Resources, LLC, to Oncor Electric Delivery Company, LLC, dated November 8, 2016, and recorded in Document No. 2016-33266, Official Records of Midland County, Texas.

4. Access Easement and Right-of-Way executed by Cumberland and Western Resources, LLC, to Oncor Electric Delivery Company, LLC, dated September 28, 2016, and recorded in Document No. 2016-33844, Official Records of Midland County, Texas.

5. Right-of-Way Dedication Deed executed by Cumberland & Western Resources, LLC, to the City of Midland, Texas, dated July 2, 2018, and recorded in Document No. 2018-26065, Official Records of Midland County, Texas.

6. Ordinance No. 9872 executed by the City of Midland, Texas, to Cumberland & Western Resources, LLC, dated January 31, 2018, and recorded in Document No. 2019-3041, Official Records of Midland County, Texas.

7. Unmarked buried pipeline as shown on survey dated February 8, 2024, prepared by Gregory W. Shoults, RPLS No. 5356 on behalf of Maverick Civil Engineering.

8. 3" Poly pipe underground and surface pipeline as shown on survey dated February 8, 2024, prepared by Gregory W. Shoults, RPLS No. 5356 on behalf of Maverick Civil Engineering.

Midland County
Alison Haley
Midland County
Clerk

Instrument Number: 9450

eRecording - Real Property

Recorded On: April 29, 2024 03:34 PM

Number of Pages: 9

" Examined and Charged as Follows: "

Total Recording: $53.00

********** THIS PAGE IS PART OF THE INSTRUMENT **********
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	9450
Receipt Number:	20240429000136
Recorded Date/Time:	April 29, 2024 03:34 PM
User:	Amanda D
Station:	cc10299

Record and Return To:

Corporation Service Company

STATE OF TEXAS
COUNTY OF MIDLAND

I hereby certify that this Instrument was FILED **In the File Number sequence on the date/time printed hereon, and was duly** RECORDED **in the Official Records of Midland County, Texas.**

Alison Haley
Midland County Clerk
Midland County, TX

MIDLAND

Be the Energy!

Cavender

Initial Zoning

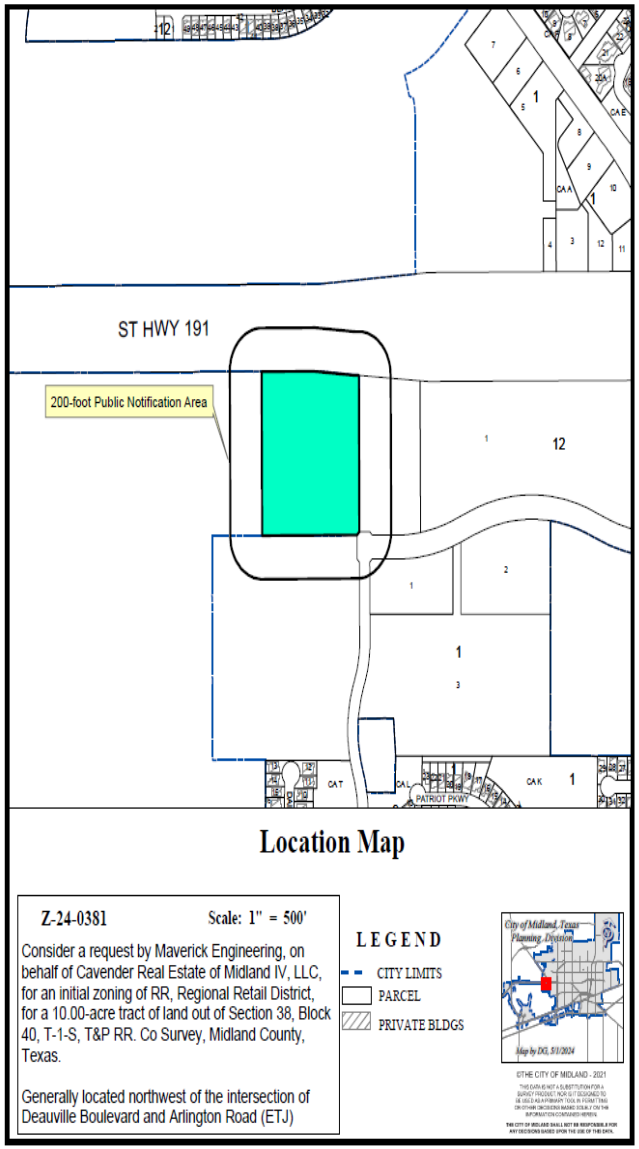
August 13, 2024



Visit Our Website:
MIDLANDTEXAS.GOV

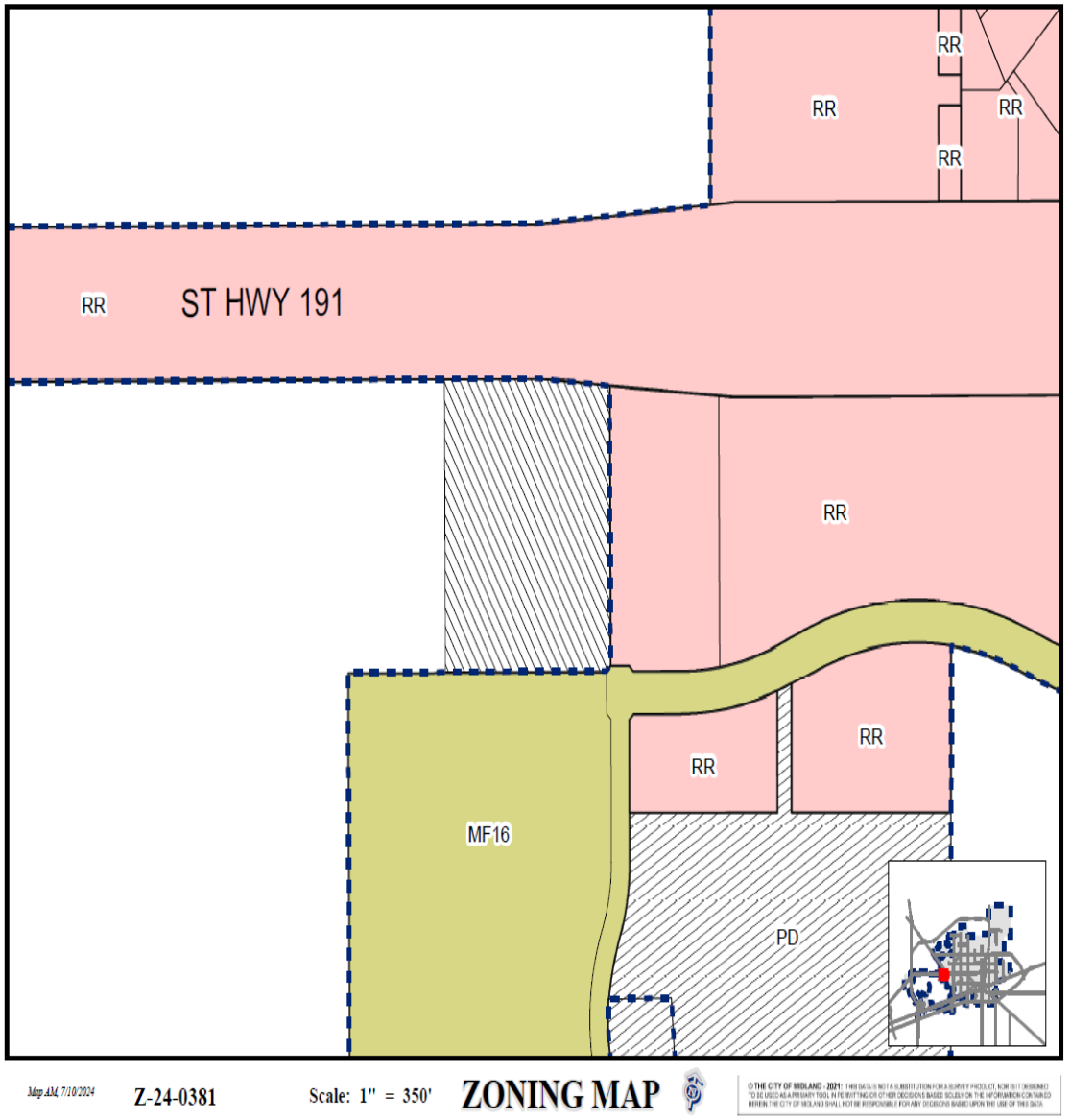
Cavender

- Maverick Engineering, on behalf of Cavender Real Estate of Midland IV, LLC
- Initial Zoning of RR, Regional Retail District
- 6601 Deauville Boulevard
- Approximately 10.00 acres



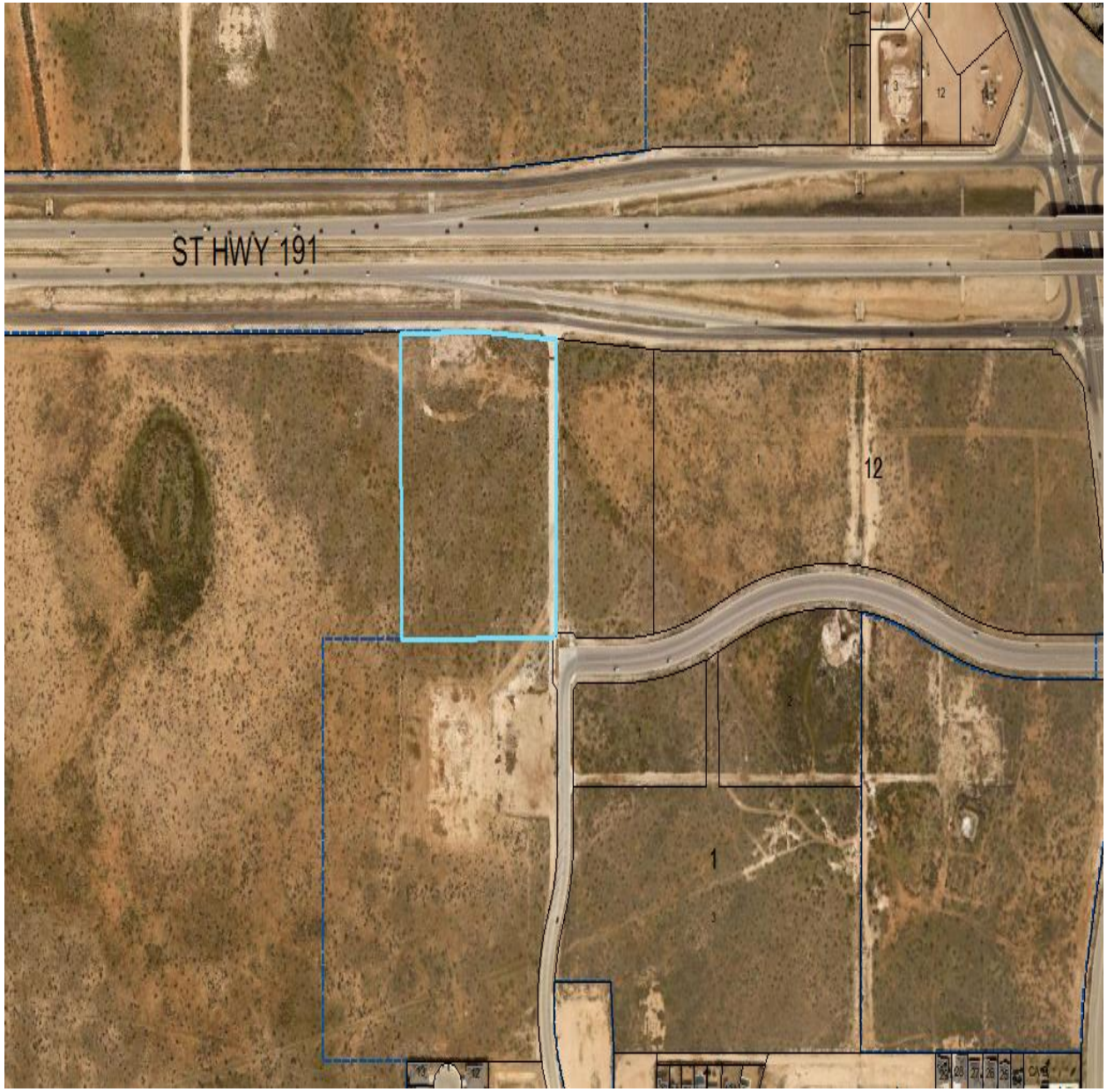
Cavender

- Currently Zoned: ETJ, Extraterritorial Jurisdiction
- Surrounding Zoning of the Property:
  - North and West: ETJ, Extraterritorial Jurisdiction
  - East: RR, Regional Retail District
  - South: MF-16, Multi Family Dwelling District
- Proposed Zoning of the property:
  - RR, Regional Retail District



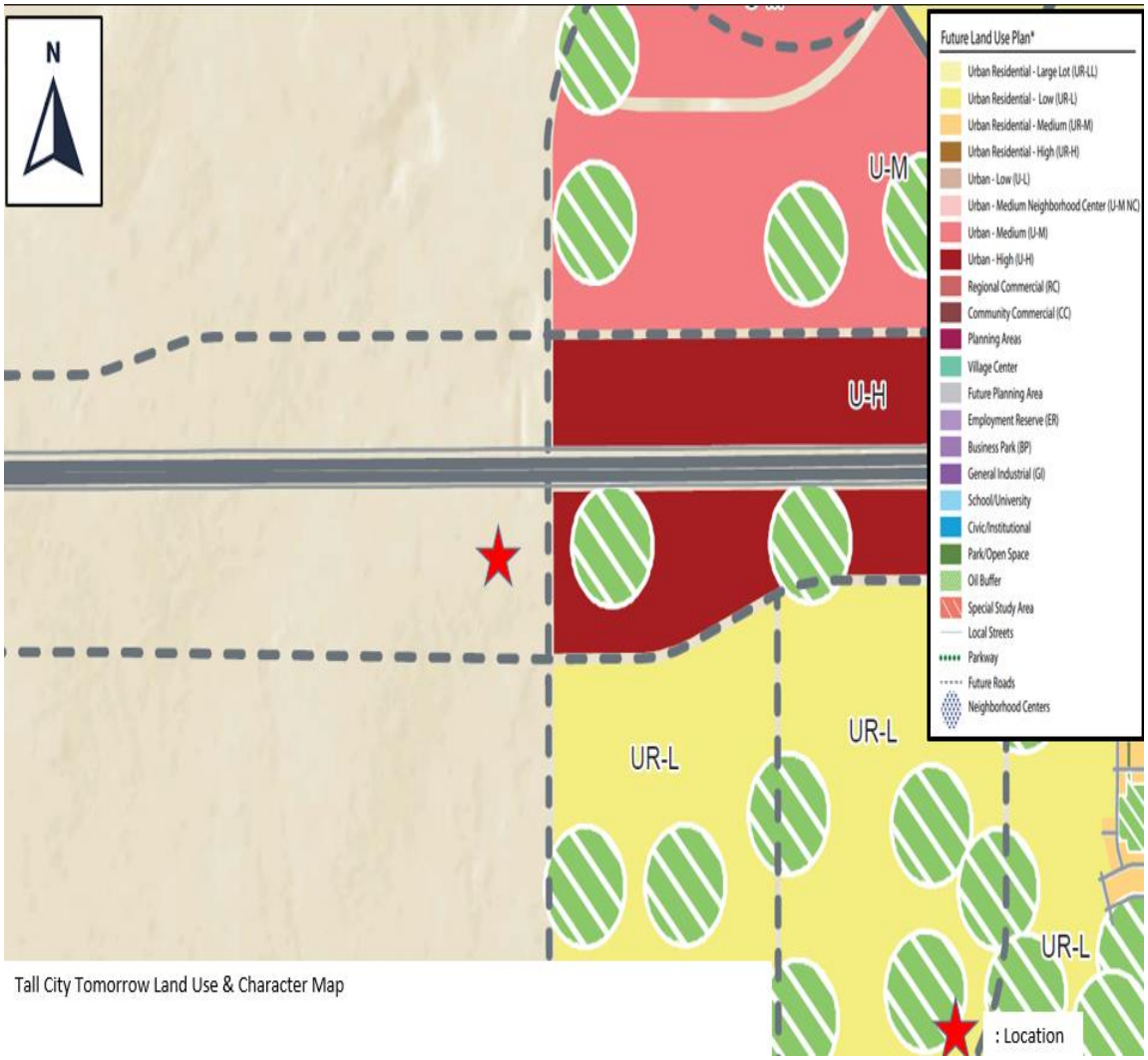
Cavender

- Current Use: Vacant
- Proposed Use: Cavender Mercedes Dealership



Cavender

- Not designated by the Tall City Tomorrow



Tall City Tomorrow Land Use & Character Map



On 191, Looking South

- No objection letters received
- This meets all applicable City Code; therefore, staff recommends *APPROVAL* of this initial zoning.

City Council Meeting

Item Number: 31

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Elizabeth Triggs, Planning & Development Officer

Subject: AN ORDINANCE MAKING CERTAIN FINDINGS PURSUANT TO CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE; AUTHORIZING AND DIRECTING THE MAYOR OR THE CITY MANAGER TO EXECUTE ALL DOCUMENTS AND TAKE ALL ACTIONS NECESSARY TO CONVEY A 3.74-ACRE TRACT OF LAND OUT OF BLOCKS 29 AND 36, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (THE "PROPERTY"), TO MIDLAND SOUP KITCHEN MINISTRY ("GRANTEE") IN EXCHANGE FOR GRANTEE'S AGREEMENT TO USE THE PROPERTY IN A MANNER THAT PRIMARILY PROMOTES A PUBLIC PURPOSE OF THE CITY; SAID PROPERTY BEING A PORTION OF HIDALGO PARK THAT IS MOSTLY UNIMPROVED AND BEING GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF ORCHARD LANE AND CARVER STREET; SAID CONVEYANCE BEING CONDITIONED ON APPROVAL BY A MAJORITY OF VOTES RECEIVED AT AN ELECTION; AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The ordinance proposes to convey a 3.74-acre tract of land, an unimproved portion of Hidalgo Park, to the Midland Soup Kitchen Ministry, a nonprofit organization. The Ministry plans to use the property to expand its soup kitchen operations, which align with a public purpose. The ordinance stipulates that the conveyance is subject to several conditions:

1. **Public Use Requirement:** The Ministry must use the property primarily to promote a public purpose of the City. If it fails to do so, the property ownership automatically reverts to the City.
2. **Approval by Election:** The conveyance must be approved by a majority vote in a public election. If not approved, the ordinance and conveyance will not take effect.

3. **Mineral Rights:** The City retains all rights to any oil, gas, or other minerals under the property.

The ordinance also includes provisions to ensure it remains valid even if certain parts are found unconstitutional or invalid.

Recommended City Council Action:

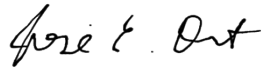
Approve

Fiscal Impact:

This proposal does not have a financial impact to the City.

Strategic Priority:

Quality of Life and Place



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE MAKING CERTAIN FINDINGS PURSUANT TO CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE; AUTHORIZING AND DIRECTING THE MAYOR OR THE CITY MANAGER TO EXECUTE ALL DOCUMENTS AND TAKE ALL ACTIONS NECESSARY TO CONVEY A 3.74-ACRE TRACT OF LAND OUT OF BLOCKS 29 AND 36, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (THE "PROPERTY"), TO MIDLAND SOUP KITCHEN MINISTRY ("GRANTEE") IN EXCHANGE FOR GRANTEE'S AGREEMENT TO USE THE PROPERTY IN A MANNER THAT PRIMARILY PROMOTES A PUBLIC PURPOSE OF THE CITY; SAID PROPERTY BEING A PORTION OF HIDALGO PARK THAT IS MOSTLY UNIMPROVED AND BEING GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF ORCHARD LANE AND CARVER STREET; SAID CONVEYANCE BEING CONDITIONED ON APPROVAL BY A MAJORITY OF VOTES RECEIVED AT AN ELECTION; AND ORDERING PUBLICATION

WHEREAS, Midland Soup Kitchen Ministry ("Grantee"), a nonprofit organization exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986, as amended, has requested that the City convey to Grantee a 3.74-acre tract of land out of Blocks 29 and 36, East Midland Addition, City and County of Midland, Texas (the "Property"), said Property being more fully described in Exhibit "A", which is attached hereto and incorporated herein, in exchange for Grantee's agreement to use the Property in a manner that primarily promotes a public purpose of the City; and

WHEREAS, the Property is a portion of Hidalgo Park that is mostly unimproved; and

WHEREAS, Grantee proposes to use the Property in a manner that primarily promotes a public purpose of the City; specifically, Grantee proposes to use the property primarily to expand its soup kitchen operations; and

WHEREAS, on August 13, 2024, in accordance with Chapter 26 of the Parks and Wildlife Code, the City Council held a public hearing on the proposed conveyance and Grantee's proposed use of the Property (collectively, the "Program"), and to the extent that the Property is a park, the Council finds and determines (1) that there is no feasible and

prudent alternative to the use or taking of the Property and (2) that the Program includes all reasonable planning to minimize harm to the Property, as a park; and

WHEREAS, the City Council finds that all required notices were given in accordance with all applicable laws; and

WHEREAS, the City Council finds it to be in the public interest to authorize the Mayor or the City Manager to convey the Property to Grantee if such conveyance is approved by a majority votes received at an election;

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

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

SECTION TWO. That in accordance with Section 253.001(c) of the Local Government Code, the Mayor or the City Manager is hereby authorized and directed to negotiate and execute an agreement for the conveyance of the Property to Grantee as is and an instrument conveying the Property to Grantee as is, and to execute all other documents and to take all other actions necessary to effectuate said conveyance. All rights, title, and interests in all oil, gas, and other minerals of any kind whatsoever owned by the City in, on, and under the Property shall be reserved and excepted from the conveyance.

SECTION THREE. That in accordance with Section 253.011 of the Local Government Code, the aforementioned agreement shall (i) require Grantee to use the Property in a manner that primarily promotes a public purpose of the City and (ii) indicate that if Grantee at any time fails to use the Property in that manner, ownership of the Property automatically reverts to the City.

SECTION FOUR. That in accordance with Section 253.011 of the Local Government Code, the aforementioned instrument of conveyance shall (i) require Grantee to use the Property in a manner that primarily promotes a public purpose of the City and (ii) indicate that ownership of the Property automatically reverts to the City if Grantee at any

time fails to use the Property in that manner.

SECTION FIVE. That Sections Two, Three and Four of this ordinance shall become effective when the issue of the conveyance of the Property has been submitted to the qualified voters of the City at an election and has been approved by a majority of the votes received at the election. For the avoidance of doubt, if the issue of the conveyance of the Property is not submitted to the qualified voters of the City at an election, or if the conveyance is not approved by a majority of the votes received at such election, then Sections Two, Three and Four of this ordinance shall be of no force or effect, and no action shall be taken thereunder.

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the

following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

MAVERICK
ENGINEERING • SURVEY • WATER RESOURCES
1909 West Wall Street, Suite K • Midland, TX 79701
Tel: 432.262.0999 • Fax: 432.262.0989 • maverick-eng.com
ENGINEER FIRM #: F-15089 | SURVEY FIRM #:10194514

FIELD NOTE DESCRIPTION OF A 3.74 ACRE TRACT OF LAND SITUATED IN BLOCKS 29 AND 36, ALONG WITH THE UNOPENED ROAD BETWEEN SAID BLOCKS, EAST MIDLAND ADDITION, AS SHOWN ON THE PLAT RECORDED IN VOLUME 1, ON PAGES 51 THROUGH 56 OF THE DEED RECORDS OF MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THE LANDS CONVEYED TO THE CITY OF MIDLAND IN VOLUME 34 ON PAGE 12 OF SAID DEED RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT N.(y): 10697977.18, E.(x): 1760567.65 A ONE HALF INCH IRON ROD WITH AN ALUMINUM CAP MARKED "COM" FOUND FOR THE NORTHEAST CORNER OF SAID BLOCK 29, IN THE WEST LINE OF NORTH CARVER AVENUE ON THE SOUTH LINE OF THE MULBERRY CHANNEL (MULBERRY LANE) FOR THE NORTHEAST CORNER HEREOF;

THENCE S.14°27'25"E., ALONG SAID NORTH CARVER AVENUE, 679.99 FEET TO A SPIKE NAIL WITH WHISKERS FOUND IN THE NORTH LINE OF ORCHARD LANE FOR THE SOUTHEAST CORNER HEREOF;

THENCE S.75°31'24"W., ALONG SAID ORCHARD LANE, 60.00 FEET TO A MAG NAIL SET AT THE SOUTHEAST CORNER OF A TRACT CONVEYED TO THE MIDLAND SOUP KITCHEN, INC., IN A SPECIAL WARRANTY DEED FILED AS DOCUMENT NUMBER 2814 ON PAGE 1152 ON PAGE 345 OF SAID DEED RECORDS FOR AN EXTERIOR CORNER HEREOF;

THENCE THE FOLLOWING FOUR COURSES AND DISTANCE AROUND SAID SOUP KITCHEN TRACT;

1. N.14°27'25"W., 160.02 FEET TO A MAG NAIL SET;
2. S.75°31'24"W., 150.00 TO A ONE HALF INCH IRON ROD WITH A RED PLASTIC CAP MARKED "MAVERICK FIRM# 10194514" (RPC) SET;
3. S.14°27'25"E., 99.98 FEET TO AN "RPC" SET;
4. S.75°31'24"W., 90.00 FEET TO A BENT ONE HALF INCH IRON ROD FOUND IN THE WEST LINE OF SAID BLOCK 36 FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.07°25'57"E., 54.57 FEET TO A CHAIN LINK FENCE CORNER FOUND FOR AN INTERIOR CORNER HEREOF;

THENCE N.14°34'39"W., 569.31 FEET TO A ONE HALF INCH IRON ROD FOUND IN THE SOUTH LINE OF SAID MULBERRY CHANNEL FOR THE NORTHWEST CORNER HEREOF;

THENCE N.75°31'24"E., ALONG SAID MULBERRY CHANNEL, 280.85 FEET TO THE **POINT OF BEGINNING**, CONTAINING 162832 SQUARE FEET OR 3.74 ACRES OF LAND.

JULY 10, 2024



Gregory W. Shoults
www.maverick-eng.com
Texas RPLS - No. 5356
Maverick Engineering (FIRM – No. 10194514)

City Council Meeting

Item Number: 32

Meeting Date: August 13, 2024

To: City Council / City Manager

From: Marcia Bentley-German, City Governance Officer/City Secretary

Subject: AN ORDINANCE AMENDING TITLE I , "ADMINISTRATIVE" OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO ADD CHAPTER 14, "TERMINATION OF CAMPAIGN TREASURER APPOINTMENT"; SAID CHAPTER ESTABLISHING A PROCESS BY WHICH TO TERMINATE THE CAMPAIGN TREASURER APPOINTMENT OF AN INACTIVE CANDIDATE OR POLITICAL COMMITTEE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (DISTRICT: ALL) (CITY SECRETARY'S OFFICE) (TRANSPARENT & CONSISTENT COMMUNICATION)

Purpose:

A process by which the clerk or secretary of the political subdivision may terminate the campaign treasurer appointment of an inactive candidate or political committee.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Strategic Priority:

(Transparent & Consistent Communication)

Discussion:

This chapter applies to the termination of the campaign treasurer appointment of an inactive candidate or political committee that is required to file a campaign treasurer appointment with

the City Secretary of the City of Midland and for a period exceeding one year has not filed a report with the City Secretary under Chapter 254, Election Code.

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE I, "ADMINISTRATIVE" OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO ADD CHAPTER 14, "TERMINATION OF CAMPAIGN TREASURER APPOINTMENT"; SAID CHAPTER ESTABLISHING A PROCESS BY WHICH TO TERMINATE THE CAMPAIGN TREASURER APPOINTMENT OF AN INACTIVE CANDIDATE OR POLITICAL COMMITTEE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, Section 252.0131 of the Texas Election Code provides that the governing body of a political subdivision may adopt a process by which the clerk or secretary of the political subdivision may terminate the campaign treasurer appointment of an inactive candidate or political committee; and

WHEREAS, the City Council finds it to be in the public interest to amend Title I, "Administrative" of the City Code of Midland, Texas, so as to add Chapter 14, "Termination of Campaign Treasurer Appointment" to establish a process to terminate the campaign treasurer appointment of an inactive candidate or political committee;

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

SECTION ONE. That Title I, "Administrative" of the City Code of Midland, Texas, is hereby amended by adding Chapter 14, "Termination of Campaign Treasurer Appointment", which shall read in its entirety as follows:

1-14-1. Application. This Chapter applies to the termination of the campaign treasurer appointment of an inactive candidate or political committee that is required to file a campaign treasurer appointment with the City Secretary of the City of Midland

1-14-2. Inactive Candidate or Political Committee. For purposes of this Chapter, a candidate or political committee is inactive if the candidate or political committee:

(A) for a period exceeding one year has not filed a report with the City Secretary under Chapter 254, Election Code;

(B) in the case of a candidate, has not been elected to an office for which a candidate is required to file a campaign treasurer appointment with the City Secretary; and

(C) has not filed:

(1) a final report under Section 254.065 or 254.125, Election Code; or

(2) a dissolution report under Section 254.126 or 254.159, Election Code.

1-14-3. Termination Process.

(A) *Notice of consideration by the City Council.* The City Secretary is hereby authorized to initiate the termination of the campaign treasurer appointment of an inactive candidate or political committee in accordance with this Subsection. Not later than the 30th day before the date that the City Council will consider the proposed termination of the campaign treasurer appointment of an inactive candidate or political committee, the City Secretary shall give written notice to the affected candidate or political committee of:

(1) the proposed termination of the candidate's or political committee's campaign treasurer appointment;

(2) the date, time, and place of the meeting at which the City Council will consider the proposed termination; and

(3) the effect of termination of the candidate's or political committee's campaign treasurer appointment.

(B) *Consideration by the City Council; termination.* The City Council shall consider the proposed termination of the campaign treasurer appointment of an inactive candidate or political committee at a regularly scheduled open meeting. If the termination is approved by the affirmative vote of a majority of the City Council members who are present for the vote, the termination shall take effect on the 30th day after the date of the meeting.

(C) *Notice of termination.* Following the meeting at which the City Council votes to terminate the campaign treasurer appointment of an inactive candidate or political committee, the City Secretary shall promptly give written notice to the affected candidate or political committee that the appointment has been terminated. The notice shall state the effective date of the termination.

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

SECTION THREE. That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not

affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. That this ordinance shall become effective immediately upon final adoption.

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney