

CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
August 22, 2023 - 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 Roy Smith, Tru-Lite Christian Fellowship Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - 3a. Presentation of Proclamation for “Walk to End Alzheimer’s Day”
 - 3b. Presentation of One-Stop Shop; Open for Business.
 - 3c. Presentation regarding pothole repairs on City of Midland Parks parking lots.

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:
 - 4a. REGULAR SESSION OF AUGUST 8, 2023
5. 102-2023 – MOTION APPROPRIATING AND TRANSFERRING THE SUM OF \$20,179,582.68 FROM THE GENERAL FUND TO THE PARKS OIL AND GAS SPECIAL PURPOSE FUND **(DISTRICT: NONE) (FINANCE)**
6. 2023-107 – RESOLUTION APPROVING THE PURCHASE OF A DODGE RAM 5500 POTHOLE PATCHER FROM PB LOADER, INC., THROUGH SOURCEWELL, FOR A TOTAL COST OF \$214,950.23; AND RESCINDING RESOLUTION NO. 2022-008 **(DISTRICT: NONE) (GENERAL SERVICES)**

7. 103-2023 – MOTION APPROVING PLANS AND SPECIFICATIONS FOR THE MIDLAND MANHOLE REHABILITATION PROJECT, SAID SPECIFICATIONS BEING ON FILE IN THE CITY SECRETARY'S OFFICE REFERENCED BY THE NUMBER AND DATE OF THIS MOTION; AND AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE FOR COMPETITIVE BIDS FOR SAID PROJECT PURSUANT TO THE STATUTES OF THE STATE OF TEXAS FOR ACCOMPLISHING THE WORK SET FORTH IN SAID PLANS AND SPECIFICATIONS **(DISTRICT: NONE) (GENERAL SERVICES)**
8. 104-2023 – MOTION AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE A REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGER-AT-RISK SERVICES ASSOCIATED WITH THE DOUG RUSSELL BATH HOUSE 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 **(DISTRICT 3) (GENERAL SERVICES)**
9. 2023-108 – RESOLUTION APPROVING A CONTRACT WITH SPORTS FIELD SOLUTIONS, THROUGH BUYBOARD, FOR THE RENOVATION OF THE INFIELD AT MOMENTUM BANK BALLPARK FOR A TOTAL COST OF \$161,215.35; APPROVING \$16,122.00 FOR PROJECT RELATED COSTS; AND APPROPRIATING FUNDS FOR SAID CONTRACT **(DISTRICT 4) (GENERAL SERVICES)**
10. 2023-109 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC., D/B/A PARKHILL FOR ON-CALL SUPERVISORY CONTROL AND DATA ACQUISITION SUPPORT SERVICES AND AUTOMATED INTEGRATION SERVICES FOR A COST NOT TO EXCEED \$125,000.00 **(DISTRICT: NONE) (GENERAL SERVICES)**
11. 105-2023 – MOTION AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL LANDSCAPE, ARCHITECTURAL, AND ENGINEERING SERVICES ASSOCIATED WITH THE RENOVATION AND CONSTRUCTION OF CERTAIN SPORTS FIELDS, PARKING IMPROVEMENTS, AMPHITHEATER, AND RELATED IMPROVEMENTS AT BEAL PARK, 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 **(DISTRICT 4) (GENERAL SERVICES)**
12. 106-2023 – MOTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH COMMEMORATIVE AIR FORCE, INC., TO PROVIDE FOR THE 2023 AIRSHO AT MIDLAND INTERNATIONAL AIR & SPACE PORT **(DISTRICT 4) (AIRPORTS)**
13. 2023-110 – RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND MIDLAND COLLEGE FOR THE SUPPORT AND EXPANSION OF THE MIDLAND COLLEGE

TRANSPORTATION TRAINING PROGRAM, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE **(DISTRICT: ALL) (CITY MANAGER)**

14. 107-2023 – 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)**
15. 2023-111 – RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE EXECUTIVE COMMITTEE OF CITIES SERVED BY ATMOS WEST TEXAS (“CITIES”) AND ATMOS ENERGY CORP., WEST TEXAS DIVISION (THE “COMPANY”) REGARDING THE COMPANY’S 2023 RATE REVIEW MECHANISM FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; APPROVING AN ATTACHMENT ESTABLISHING A BENCHMARK FOR PENSIONS AND RETIREE MEDICAL BENEFITS; REQUIRING THE COMPANY TO REIMBURSE CITIES’ REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS RESOLUTION WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO DELIVER THIS RESOLUTION TO THE COMPANY AND CITIES’ LEGAL COUNSEL **(DISTRICT: ALL) (CITY MANAGER)**
16. 108-2023 – MOTION APPROVING WITH STAFF’S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF EL ALAMO, SECTION 4, BEING A 201.12-ACRE TRACT OF LAND OUT OF THE NORTHWEST QUARTER OF SECTION 9, BLOCK 38, T-1-S, T&P RR CO. SURVEY, MARTIN COUNTY, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF CROWNRISE DRIVE, APPROXIMATELY 3,210 FEET EAST OF ELKINS ROAD) **(DISTRICT: NONE) (DEVELOPMENT SERVICES)**
17. 109-2023 – MOTION APPROVING WITH STAFF’S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF HANNAH ADDITION, SECTION 5, BEING A 30.67-ACRE TRACT OF LAND OUT OF THE SOUTHEAST PART OF SECTION 13, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH COUNTY ROAD 1232 (ANTELOPE TRAIL), APPROXIMATELY 270 FEET SOUTH OF WEST COUNTY ROAD 126) **(DISTRICT: NONE) (DEVELOPMENT SERVICES)**
18. 110-2023 – MOTION APPROVING WITH STAFF’S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF WEST END ADDITION, SECTION 30, BEING A REPLAT OF LOTS 1-3, BLOCK 75, WEST END ADDITION, AND A 0.069-ACRE PORTION OF VACATED ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1-3 AND LOTS 6-8, BLOCK 75, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF ANDREWS

HIGHWAY AND WEST TEXAS AVENUE) **(DISTRICT 3) (DEVELOPMENT SERVICES)**

19. 111-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (23-329-042) WITH MIDLAND - PETRO D.C. PARTNERS LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 5 AND 44, BLOCK 38, T-1-S AND SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS **(DISTRICT: NONE) (UTILITIES)**
20. 112-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE AMENDMENT (23-329-043) WITH ENTERPRISE NAVITAS PIPELINE TEXAS LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 30, BLOCK 36, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS **(DISTRICT: NONE) (UTILITIES)**

SECOND READINGS

21. 10428 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 45, FAIRMONT PARK ADDITION, SECTION 10, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 1,335 FEET SOUTH OF WEST LOOP 250 FRONTAGE 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 1) (DEVELOPMENT SERVICES)** (FIRST READING HELD AUGUST 8, 2023)
22. 10429 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, WEST 191 INDUSTRIAL PARK, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, APPROXIMATELY 685 FEET EAST OF FARM TO MARKET ROAD 1788); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION **(DISTRICT 4) (DEVELOPMENT SERVICES)** (FIRST READING HELD AUGUST 8, 2023)
23. 10430 – AN ORDINANCE AMENDING TITLE I, “ADMINISTRATIVE”, CHAPTER 12, “RECORDS MANAGEMENT POLICY”, SECTION 4, “RECORDS MANAGEMENT OFFICER” OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO DESIGNATE THE CITY’S RECORDS MANAGER AS THE CITY’S RECORDS MANAGEMENT OFFICER; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION **(DISTRICT: NONE) (CITY SECRETARY’S OFFICE)** (FIRST READING HELD AUGUST 8, 2023)
24. 10431 – AN ORDINANCE RELEASING THE CITY OF MIDLAND’S EXTRATERRITORIAL

JURISDICTION THAT WAS ACQUIRED FROM AN ANNEXATION COMMENCED AFTER JANUARY 1, 2023; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE OF SEPTEMBER 1, 2023; AND ORDERING PUBLICATION **(DISTRICT: NONE) (DEVELOPMENT SERVICES)** (FIRST READING HELD AUGUST 8, 2023)

PUBLIC HEARINGS

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

25. 10432 – GATHER PUBLIC INPUT ON THE PROPOSED 2023-2024 BUDGET; AND CONSIDER AN ORDINANCE OF THE CITY OF MIDLAND PROVIDING FUNDS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024, BY APPROVING THE BUDGET FOR SAID PERIOD AND APPROPRIATING AND SETTING ASIDE THE NECESSARY FUNDS OUT OF THE GENERAL AND OTHER REVENUES AND UNAPPROPRIATED FUND BALANCE OF THE CITY OF MIDLAND FOR SAID FISCAL YEAR FOR THE MAINTENANCE AND OPERATION OF THE VARIOUS DEPARTMENTS AND FOR VARIOUS ACTIVITIES AND IMPROVEMENTS TO THE CITY; AND ORDERING PUBLICATION **(DISTRICT: NONE) (FINANCE)**
26. 10433 – TAX RATE INCREASE FOR FISCAL YEAR 2023-2024; AN ORDINANCE FIXING THE TAX LEVY FOR THE CITY OF MIDLAND, TEXAS, FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2023, AND ENDING ON SEPTEMBER 30, 2024 **(DISTRICT: NONE) (FINANCE)**

MISCELLANEOUS

27. 10434 – AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 10283; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION **(DISTRICT 1) (ENGINEERING SERVICES)**

PUBLIC COMMENT

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

Respectfully Submitted,

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
August 8, 2023**



The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., August 08, 2023.

Council Members present: Amy Stretcher Burkes, Dan Corrales, Robin Poole, Lori Blong, Scott Dufford, Jack Ladd

Council Members absent: John Norman

Staff members present: City Attorney John Ohnemiller, City Manager Tommy Gonzalez, Deputy City Manager Morris Williams Jr., Assistant City Manager Tina Jauz

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

OPENING ITEMS

1. Invocation – Pastor Darin Wood, First Baptist Church of Midland
2. Pledge of Allegiance

CONSENT AGENDA

3. MOTION APPROVING THE FOLLOWING MINUTES:
 - 3a. WORK SESSION OF JULY 25, 2023
 - 3b. REGULAR SESSION OF JULY 25, 2023
 - 3c. REGULAR SESSION OF AUGUST 2, 2023
4. 093-2023 – MOTION TRANSFERRING THE SUM OF \$10,000,000.00 FROM THE WATER & SEWER OPERATING BUDGET TO THE WATER & SEWER DEBT SERVICE FUND; AND APPROPRIATING AND TRANSFERRING THE SUM OF \$952,255.53 FROM THE WATER & SEWER UNAPPROPRIATED FUND BALANCE TO THE WATER & SEWER DEBT SERVICE FUND (DISTRICT: NONE) (FINANCE)
5. 094-2023 – MOTION APPROPRIATING AND TRANSFERRING THE SUM OF \$1,729,421
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FROM THE GENERAL FUND TO THE DEBT SERVICE FUND (DISTRICT: NONE)
(FINANCE)

7. 2023-102 – RESOLUTION AWARDING A CONTRACT FOR THE WATER REHAB PROGRAM 01 PROJECT TO ENTRENCH, INC., FOR AN AMOUNT OF \$2,000,000.00; AND TRANSFERRING AND APPROPRIATING FUNDS (DISTRICT: ALL) (GENERAL SERVICES)
8. 2023-103 – RESOLUTION RATIFYING AND APPROVING THE PAYMENT FOR EMERGENCY PUMP AND MOTOR REPAIRS AT THE T-BAR WELL FIELD BY ADVANCED WATER WELL TECHNOLOGIES, LLC, FOR A TOTAL COST OF \$139,915.00 (DISTRICT: NONE) (GENERAL SERVICES)
9. 2023-104 – RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH LEVEL 5 ARCHITECTURE, PLLC, FOR ARCHITECTURAL, DESIGN AND ENGINEERING SERVICES RELATED TO THE DOUG RUSSELL BATH HOUSE PROJECT FOR A TOTAL COST OF \$175,000.00; AND TRANSFERRING AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 3) (GENERAL SERVICES)
10. 2023-105 – RESOLUTION AMENDING THE CITY OF MIDLAND PERSONNEL POLICIES; AMENDING AND CLARIFYING CERTAIN ATTENDANCE AND LEAVE POLICIES; AND PROVIDING AN EFFECTIVE DATE OF AUGUST 9, 2023 (DISTRICT: NONE) (ADMINISTRATIVE SERVICES)
11. 095-2023 – MOTION RATIFYING AND APPROVING AN AMENDMENT TO THAT CERTAIN NON-EXCLUSIVE COMMERCIAL FIXED BASE OPERATOR LEASE AGREEMENT DATED MARCH 29, 2023, BETWEEN THE CITY OF MIDLAND, TEXAS, AND FRANKLIN MOUNTAIN AVIATION MAF, LLC; SAID AMENDMENT PROVIDING FOR AN EXTENSION OF THE DUE DILIGENCE EXPIRATION DATE FROM JULY 27, 2023, TO NOVEMBER 24, 2023 (DISTRICT 4) (AIRPORTS)
12. 2023-106 – RESOLUTION AUTHORIZING THE ISSUANCE OF AN OPERATING CERTIFICATE FOR B & B PLATINUM LIMO, LLC; SETTING FORTH CONDITIONS ACCOMPANYING THE CERTIFICATE; AND ESTABLISHING THE TERMS OF THE CERTIFICATE (DISTRICT: ALL) (POLICE)
13. 096-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (23-329-026) WITH ENVIRONMENTAL DISPOSAL SYSTEMS, L.L.C., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 24, BLOCK 37, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)
14. 097-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (23-329-039) BETWEEN THE CITY OF MIDLAND AND BRAZOS MIDSTREAM GAS, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 18 AND 19, BLOCK 36, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

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15. 098-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (23-317-041) WITH WTG GAS GATHERING COMPANY, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 36, BLOCK 39, T-1-N, T&P RR CO. SURVEY, MARTIN COUNTY (DISTRICT: NONE) (UTILITIES)
16. 099-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (23-317-037) WITH WTG GAS GATHERING COMPANY, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 23, BLOCK 40, T-1-N, T&P RR CO. SURVEY, MIDLAND COUNTY (DISTRICT 4) (UTILITIES)
17. 100-2023 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (23-317-038) WITH WTG GAS GATHERING COMPANY, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 23 AND 24, BLOCK 40, T-1-N, T&P RR CO. SURVEY, MIDLAND COUNTY (DISTRICT 4) (UTILITIES)

Dan Corrales moved to approve Consent Agenda item(s) items 3 – 17, excluding item 6; seconded by Robin Poole.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd

NAY: None

ABSTAIN: None

ABSENT: Norman

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

6. 2023-101 – RESOLUTION AUTHORIZING THE EXECUTION OF A SOLE-SOURCE CONTRACT WITH UTILIS, INC., FOR SATELLITE LEAK DETECTION SERVICES FOR THE UTILITIES DEPARTMENT AT A TOTAL COST OF \$212,000.00 (DISTRICT: ALL) (GENERAL SERVICES)

Utilities Director Carl Craig gave a brief overview of the satellite leak detection service for the City of Midland. This system will be able to detect underground leaks which will ultimately save both the citizens and the City of Midland money.

Jack Ladd moved to approve Resolution No. 2023-101; seconded by Dan Corrales.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd

NAY: None

ABSTAIN: None

ABSENT: Norman

SECOND READINGS

18. 10427 – AN ORDINANCE ADOPTING A FEE SCHEDULE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN APPEAL PROCESS; ESTABLISHING

PACKET

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AN EFFECTIVE DATE OF OCTOBER 1, 2023; AND ORDERING PUBLICATION (DISTRICT: ALL) (FINANCE) (FIRST READING HELD JULY 25, 2023)

Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10427.

Dan Corrales moved to approve the second and final reading of Ordinance No. 10427; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd

NAY: None

ABSTAIN: None

ABSENT: Norman

PUBLIC HEARINGS

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

19. 10428 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 45, FAIRMONT PARK ADDITION, SECTION 10, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 1,335 FEET SOUTH OF WEST LOOP 250 FRONTAGE 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 1) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10428.

Mayor Blong opened the public hearing at 10:06 a.m.

Dylan Adams, Kimley Horn & Associates, reported this is just an expansion to increase sales. There being no one else wishing to speak, the public hearing was closed at 10:06 a.m.

Dan Corrales moved to approve the first of two readings of Ordinance No. 10428; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd

NAY: None

ABSTAIN: None

ABSENT: Norman

20. 10429 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, WEST 191 INDUSTRIAL PARK, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF

STATE HIGHWAY 191, APPROXIMATELY 685 FEET EAST OF FARM TO MARKET ROAD 1788); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10429.

Mayor Blong opened the public hearing at 10:08 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Robin Poole moved to approve the first of two readings of Ordinance No. 10429; seconded by Dan Corrales.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd

NAY: None

ABSTAIN: None

ABSENT: Norman

MISCELLANEOUS

21. 10430 – AN ORDINANCE AMENDING TITLE I, “ADMINISTRATIVE”, CHAPTER 12, “RECORDS MANAGEMENT POLICY”, SECTION 4, “RECORDS MANAGEMENT OFFICER” OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO DESIGNATE THE CITY’S RECORDS MANAGER AS THE CITY’S RECORDS MANAGEMENT OFFICER; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (DISTRICT: NONE) (CITY SECRETARY’S OFFICE)

Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10430.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10430; seconded by Robin Poole.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd

NAY: None

ABSTAIN: None

ABSENT: Norman

22. 10431 – AN ORDINANCE RELEASING THE CITY OF MIDLAND’S EXTRATERRITORIAL JURISDICTION THAT WAS ACQUIRED FROM AN ANNEXATION COMMENCED AFTER JANUARY 1, 2023; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE OF SEPTEMBER 1, 2023; AND ORDERING PUBLICATION (DISTRICT: NONE) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa Magallanes read the caption of Ordinance No. 10431.

Interim Development Services Director Rolandrea Russell gave a brief overview of the item noting the ordinance is to be uniformed with the Senate Bill that goes into effect September 1, 2023.

Dan Corrales moved to approve the first of two readings of Ordinance No. 10431; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:

AYE: Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd

NAY: None

ABSTAIN: None

ABSENT: Norman

23. 101-2023 – MOTION AUTHORIZING THE CITY MANAGER AND THE MIDLAND DEVELOPMENT CORPORATION CHAIRMAN TO NEGOTIATE AN AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND, THE MIDLAND DEVELOPMENT CORPORATION, AND C. HODGES DEVELOPMENT SERVICES, L.P.; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AMENDMENT TO THE CHAPTER 312 TAX ABATEMENT AGREEMENT BETWEEN THE CITY OF MIDLAND AND C. HODGES DEVELOPMENT SERVICES, L.P.; AND PROVIDING THAT ANY SUCH AMENDMENTS SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE MIDLAND CITY COUNCIL (DISTRICT 4) (CITY MANAGER)

This item was pulled by Council; no action was taken.

PUBLIC COMMENT

24. 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.)

Mrs. Shirley Howard, 405 Magnolia, reported that City Hall is not ADA compliant and she would like to see this changed. Mrs. Howard also reported that citizens have told her there is a problem with Police Dogs being let out to attack people. She would like more information on this situation.

EXECUTIVE SESSION

25. 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 meeting to go into Executive Session at 10:17 a.m.

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.

b. Section 551.087, Deliberate Economic Development Negotiations

- b.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 10:17 a.m.

PASSED AND APPROVED August 22, 2023.

Lori Blong, Mayor

ATTEST:

Marcia Bentley-German
City Governance Officer/City Secretary



City Council Meeting

Item Number: 5
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Christy Weakland, Director
Subject: MOTION APPROPRIATING AND TRANSFERRING THE SUM OF \$20,179,582.68 FROM THE GENERAL FUND TO THE PARKS OIL AND GAS SPECIAL PURPOSE FUND (DISTRICT: NONE) (FINANCE)

Purpose:

To appropriate and transfer funds from the General Fund to the Oil and Gas Special Purpose Fund in accordance with Resolution 2023-046.

Recommended City Council Action:

Approve

Fiscal Impact:

\$20,179,582.68 will be appropriated from the General Fund unappropriated fund balance and will be transferred to the Parks Oil and Gas Special Purpose Fund.

Discussion:

Resolution 2023-046 established an appropriation policy for oil and gas revenues generated by City-owned park property. This policy indicated oil and gas revenue on park property is to be collected in a special revenue fund to be used on parks improvements and maintenance. This motion is to transfer the funds that were accumulated from oil and gas properties in FY2020 and FY2021, keeping with the purpose of the resolution.

Morris Williams Jr.

City Manager's Office

RESOLUTION NO. 2023-046

**RESOLUTION ESTABLISHING AN APPROPRIATION
POLICY FOR OIL AND GAS REVENUES GENERATED
BY CITY-OWNED PARK PROPERTY**

WHEREAS, the City of Midland, Texas, owns and operates certain park properties within its corporate limits; and

WHEREAS, the City has received revenues, and expects to receive future revenues, generated by the oil and gas reserves under City-owned park property; and

WHEREAS, the City Council is committed to maintaining and improving City-owned park properties and related facilities and improvements for the benefit of the general public; and

WHEREAS, the City Council finds it to be in the public interest to establish an appropriation policy for oil and gas revenues generated by City-owned park property;

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

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

SECTION TWO. That an appropriation policy for oil and gas revenues generated by City-owned park property is hereby established so that one hundred percent (100%) of all oil and gas revenues generated by City-owned park property shall be appropriated for improvements and maintenance of City-owned park property and related facilities and improvements, subject to applicable rules, regulations, and law.

On motion of Council member Corrales, seconded by Council member Dufford, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the 28th day of March, A.D., 2023, by the following vote:

Council members voting "AYE": Stretcher Burkes, Corrales, Poole, Blong, Dufford, Ladd, Norman

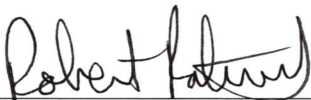
Council members voting "NAY": None


Lori Merritt Blong, Mayor

ATTEST:


Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:


Robert Patrick, City Manager

APPROVED AS TO FORM ONLY:


John Ohnemiller, City Attorney





City Council Meeting

Item Number: 34
Meeting Date: March 28, 2023
To: City Council / City Manager
From: Cristina Odenborg Burns, Director of Community Services
Subject: RESOLUTION ESTABLISHING AN APPROPRIATION POLICY FOR OIL AND GAS REVENUES GENERATED BY CITY-OWNED PARK PROPERTY (DISTRICT: ALL) (COMMUNITY SERVICES)

Purpose:

Resolution appropriating the oil and gas revenue generated from parks properties for improvements and maintenance of parks.

Recommended City Council Action:

Approve

Fiscal Impact:

Oil and gas revenue collected from parks properties will be deposited into the Parks Special Purpose Fund (077) and will be used for improvements and maintenance of existing or new parks.

Discussion:

There is already an internal policy that the the oil and gas revenue generated from parks properties is to be used for improvements to parks. However, this resolution will formalize that policy as well as allow for the revenue to be used for maintenance.

PACKET

34.1

March 28, 2023

PACKET

5.6

August 22, 2023

PACKET

34.2

March 28, 2023

PACKET

5.7

August 22, 2023



City Council Meeting

Item Number: 6
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION APPROVING THE PURCHASE OF A DODGE RAM 5500 POTHOLE PATCHER FROM PB LOADER, INC., THROUGH SOURCEWELL, FOR A TOTAL COST OF \$214,950.23; AND RESCINDING RESOLUTION NO. 2022-008 (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution approving the purchase of one (1) Dodge Ram 5500 Pothole Patcher from PB Loader, Inc. through the Sourcewell contract 106268 for a total cost of \$214,950.23; and rescinding Resolution No. 2022-008.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the FY23 Garage Operating Budget.

Discussion:

Staff is recommending the purchase of one (1) Dodge Ram 5500 Pothole Patcher from PB Loader, Inc. through the Sourcewell contract 106268. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. This truck is a replacement for a unit that has gone beyond its serviceable life. This Pothole Patcher was originally purchased through Rush Truck Center but unfortunately, they were unable to fulfill the order. Please see the attached memo from Manuel Salinas, Garage Superintendent, for more information.

Therefore, please consider a resolution approving the purchase of one (1) Dodge Ram 5500 Pothole Patcher from PB Loader, Inc. of Fresno, California through Sourcewell contract 106268 for a total cost of \$214,950.23; and rescind Resolution No. 2022-008.

Jina Gang

City Manager's Office



Fleet Services Division

INTEROFFICE MEMORANDUM

TO: Regina Stephenson

FROM: Manuel Eloy Salinas

SUBJECT: Sourcewell # 106268 Pothole Patcher

DATE: 07/18/2023

Fleet services has requested for the purchase of (1) one pothole patcher. The purchase was going to be through Rush Truck Center in the amount of \$186,723.00. Due to manufacturing issues with the cab and chassis, Rush Truck Center was not able to fulfill the order. Fleet services will accept the purchasing quote that was submitted by PB Loader Corporation through Sourcewell # 106268 for the purchase amount of \$214,950.23 for (1) one pothole patcher.

Sincerely,

Manuel Eloy Salinas

City of Midland Garage Superintendent

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF A
DODGE RAM 5500 POTHOLE PATCHER FROM PB
LOADER, INC., THROUGH SOURCEWELL, FOR A
TOTAL COST OF \$214,950.23; AND RESCINDING
RESOLUTION NO. 2022-008**

WHEREAS, the Sourcewell is a cooperative purchasing agency with which the City participates with on purchases through a cooperative purchasing program in accordance with TEX. LOC. GOV'T CODE § 271.102; and

WHEREAS, the City Council approved Resolution 2022-008, which provides for the purchase of a Ford F-550 Pothole Patcher from Rush Truck Centers of Texas, LP, for a total cost of \$186,723.00; and

WHEREAS, Rush Truck Centers of Texas, LP, is unable to fulfill said purchase; and

WHEREAS, PB Loader, Inc., is able to fulfill a purchase order for a Dodge Ram 5500 Pothole Patcher for a total cost of \$214,950.23 through Sourcewell, as shown on the quote attached hereto as Exhibit A and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by PB Loader, Inc., for said pothole patcher to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to: (i) rescind Resolution No. 2022-008 for the purchase a Ford F-550 Pothole Patcher from Rush Truck Centers of Texas, LP; and (ii) approve the purchase of a Dodge Ram 5500 Pothole Patcher from PB Loader, Inc., through Sourcewell for a total cost of \$214,950.23;

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

SECTION ONE. That the recitals stated above are hereby adopted and Resolution 2022-008 is hereby rescinded and made of no further force or effect.

SECTION TWO. That the City Manager is hereby authorized and directed to purchase a Dodge Ram 5500 Pothole Patcher from PB Loader, Inc., through Sourcewell for a total cost of \$214,950.23.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay for said pothole patcher from funds available in the FY 2023 Garage Operating Budget upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2023, 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



QUOTATION
NO. 10769R1

CITY OF MIDLAND
1602 ORCHARD LN BLDG 3
MIDLAND, TX 79701-3735
SOURCEWELL MEMBER ID NO. 106268

DATE: 7/9/2023
TERMS: NET 30
F.O.B: FRESNO
MFG PRODUCT: SEE BELOW
INSTALL: SEE BELOW

QTY	PART NO.	DESCRIPTION	PRICE	EXTENSION
1	51533-15	PATCHER BOX & ACCESSORIES MODEL B-1.8 HOT BOX (1.8 CUBIC YARD CAPACITY) ABOVE MODEL EQUIPPED WITH RADIANT HEATER, THERMOSTATICALLY CONTROLLED LPG BURNER, HYDRAULIC TOP LIDS AND DOORS, SPREADER APRON, NTEA CLASS 30 HOIST, HAND TORCH, 25 GAL. LPG TANK, INSTALLATION AND PAINT BLACK	\$69,674.00	\$69,674.00
1	50630-02	ELECTRIC HEATING SYSTEM - 208 VAC		\$3,028.00
1	7065-00	25' POWER CABLE 220 VOLT		\$555.00
1	5978-00	AIR BLOW GUN W/ 25' HOSE		\$1,671.00
1	50635-00	CAB CONTROLS (TOP LIDS)		\$660.00
1	MODS-57	SMALL SPOILS BIN 18"		\$2,423.00
1	7000-11	TOOL BASKET - SMALL		\$637.00
1	6024-00	THERMOMETER 0-300		\$224.00
1	50553-10	PIVOTAL ASPHALT CHUTE - SMALL		\$1,223.00
1	50560-00	SOLVENT PUMP & WAND		\$1,379.00
1	2120-00	DUAL ASPHALT LUTE HOLDER - BRKT		\$173.00
1	130-08	8 GAL POLY WATER TANK W/ 10' HOSE & SPIGOT		\$376.00
1	MODS-61	12" WORK PLATFORM/CATWALK WITH HAND RAILS AND LADDERS		\$2,556.00
1	5437-00	HOSE REEL - 3/8" X 25' FOR SOLVENT		\$477.00
1	5437-00	HOSE REEL - 3/8" X 25' FOR TORCH		\$477.00
1	5437-00	HOSE REEL - 3/8" X 25' FOR AIR		\$477.00
1	7000-18	TOOL BOX 18"		\$714.00
1	CUSTOM	6" X 6" BOLT-ON CLEAN-OUT FOR BH EMULSION TANK		\$584.00
1		DUAL FRONT BUMPER CONE HOLDER (MALE) - FORD		\$334.00
1	CUSTOM	TUBE-STYLE TOOL HOLDERS		\$328.00
1	50480-00	HYDRAULIC TOOL CIRCUIT & EQUIPMENT OR COMPRESSOR & EQUIPMENT HYDRAULIC TOOL CIRCUIT		\$2,788.00
1	MODS-61	ELECTRIC COMPRESSOR		\$2,079.00
1	7020-11	HYDRAULIC HAMMER BR-67 W/ ASPHALT CUTTER AND TAMPER PAD		\$4,078.00
1	7024-01	LOCKABLE HAMMER HANGER		\$333.00
1	5399-00	HOSE REEL - DUAL 1/2" X 25' FOR HYD HAMMER		\$1,525.00
1	50640-60	COMPACTOR LIFT OR ROLLER LIFT & ACCESSORIES COMPACTOR LIFT PLATFORM - HYDRAULIC		\$2,575.00
1	7100-20	COMPACTOR PLATE - MULTQUIP MVC90L		\$4,022.00
1	MODS-80	LIGHTS & SAFETY EQUIPMENT WHELEN EDGE FREEDOM IV LIGHT BAR MODEL F4X2AAAA, 55"		\$2,759.00
2	695-240	WHELEN LED MICRONS MCRNSA	\$573.00	\$1,146.00
2	695-058V	WHELEN 500V LED 5V3A	\$774.00	\$1,548.00
1	695-950	ECCO K7000B BACKUP CAMERA SYSTEM (MONITOR + 1 CAM)		\$935.00
1	BH-45-10	EMULSION SYSTEM & ACCESSORIES PB MODEL BH-45-10 EMULSION SPRAY UNIT HEATED BY TRUCK COOLING SYSTEM, , Y STRAINER, FILL BASKET, HYDRAULICALLY POWERED, 10 GAL. SOLVENT TANK, 35 GAL. EMULSION, WAND WITH 25' HOSE , AUXILIARY ELECTRIC HEAT SYSTEM, INSTALLATION AND PAINT BLACK		\$8,909.00
1	5438-00	HOSE REEL - 1/2" X 25' FOR EMULSION		\$537.00
1		EXTRA 'Y' STRAINER SCREENS		\$59.00
	CHASSIS	CHASSIS 2022 DODGE RAM 5500 REG CAB CHASSIS, 19500 GCWR, 6.7 V8 DIESEL ENGINE, SIX SPEED HD AUTOMATIC TRANSMISSION, MID SHIP FUEL TANK, CAB PAINTED WHITE		\$89,487.23
TOTAL:				\$210,750.23
FREIGHT:				\$4,200.00
TOTAL WITH FREIGHT:				\$214,950.23
NOTES: 1.LEAD TIME FOR PATCHER UNIT PRODUCTION & INSTALLATION IS 210-240 DAYS; 90 DAYS FOR PRODUCTION AND ADDITIONAL 120-150 DAYS TO INSTALL AFTER RECIEPT OF CHASSIS. 2. CAB TO AXLE REQUIREMENT MUST TO BE MUTUALLY AGREED UPON WITH PB LOADER PRIOR TO ORDERING THE CHASSIS. PB LOADER WILL NOT BE RESPONSIBLE FOR FRAME CHANGES DUE TO INSUFFICIENT CHASSIS FRAME SPACE. CA: 84 3. CHASSIS REQUIREMENT, 19,500 GVW, PTO OUTLET, MIDSHIP FUEL TANK Delivery times are approximate.				

PACKET

Exhibit A
8.7

August 22, 2023



QUOTATION
NO. 10769R1

CITY OF MIDLAND
1602 ORCHARD LN BLDG 3
MIDLAND, TX 79701-3735
SOURCEWELL MEMBER ID NO. 106268

DATE: 7/9/2023
TERMS: NET 30
F.O.B: FRESNO
MFG PRODUCT: SEE BELOW
INSTALL: SEE BELOW

QTY	PART NO.	DESCRIPTION	PRICE	EXTENSION
1	51533-15	PATCHER BOX & ACCESSORIES MODEL B-1.8 HOT BOX (1.8 CUBIC YARD CAPACITY) ABOVE MODEL EQUIPPED WITH RADIANT HEATER, THERMOSTATICALLY CONTROLLED LPG BURNER, HYDRAULIC TOP LIDS AND DOORS, SPREADER APRON, NTEA CLASS 30 HOIST, HAND TORCH, 25 GAL. LPG TANK, INSTALLATION AND PAINT BLACK	\$69,674.00	\$69,674.00
1	50630-02	ELECTRIC HEATING SYSTEM - 208 VAC		\$3,028.00
1	7065-00	25' POWER CABLE 220 VOLT		\$555.00
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1	50635-00	CAB CONTROLS (TOP LIDS)		\$660.00
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1	50560-00	SOLVENT PUMP & WAND		\$1,379.00
1	2120-00	DUAL ASPHALT LUTE HOLDER - BRKT		\$173.00
1	130-08	8 GAL POLY WATER TANK W/ 10' HOSE & SPIGOT		\$376.00
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1	CUSTOM	6" X 6" BOLT-ON CLEAN-OUT FOR BH EMULSION TANK		\$584.00
1		DUAL FRONT BUMPER CONE HOLDER (MALE) - FORD		\$334.00
1	CUSTOM	TUBE-STYLE TOOL HOLDERS		\$328.00
1	50480-00	HYDRAULIC TOOL CIRCUIT & EQUIPMENT OR COMPRESSOR & EQUIPMENT HYDRAULIC TOOL CIRCUIT		\$2,788.00
1	MODS-61	ELECTRIC COMPRESSOR		\$2,079.00
1	7020-11	HYDRAULIC HAMMER BR-67 W/ ASPHALT CUTTER AND TAMPER PAD		\$4,078.00
1	7024-01	LOCKABLE HAMMER HANGER		\$333.00
1	5399-00	HOSE REEL - DUAL 1/2" X 25' FOR HYD HAMMER		\$1,525.00
1	50640-60	COMPACTOR LIFT OR ROLLER LIFT & ACCESSORIES COMPACTOR LIFT PLATFORM - HYDRAULIC		\$2,575.00
1	7100-20	COMPACTOR PLATE - MULTQUIP MVC90L		\$4,022.00
1	MODS-80	LIGHTS & SAFETY EQUIPMENT WHELEN EDGE FREEDOM IV LIGHT BAR MODEL F4X2AAAA, 55"		\$2,759.00
2	695-240	WHELEN LED MICRONS MCRNSA	\$573.00	\$1,146.00
2	695-058V	WHELEN 500V LED 5V3A	\$774.00	\$1,548.00
1	695-950	ECCO K7000B BACKUP CAMERA SYSTEM (MONITOR + 1 CAM)		\$935.00
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1	5438-00	HOSE REEL - 1/2" X 25' FOR EMULSION		\$537.00
1		EXTRA "Y" STRAINER SCREENS		\$59.00
	CHASSIS	CHASSIS 2022 DODGE RAM 5500 REG CAB CHASSIS, 19500 GCWR, 6.7 V8 DIESEL ENGINE, SIX SPEED HD AUTOMATIC TRANSMISSION, MID SHIP FUEL TANK, CAB PAINTED WHITE		\$89,487.23
TOTAL:				\$210,750.23
FREIGHT:				\$4,200.00
TOTAL WITH FREIGHT:				\$214,950.23
NOTES: 1.LEAD TIME FOR PATCHER UNIT PRODUCTION & INSTALLATION IS 210-240 DAYS; 90 DAYS FOR PRODUCTION AND ADDITIONAL 120-150 DAYS TO INSTALL AFTER RECIEPT OF CHASSIS. 2. CAB TO AXLE REQUIREMENT MUST TO BE MUTUALLY AGREED UPON WITH PB LOADER PRIOR TO ORDERING THE CHASSIS. PB LOADER WILL NOT BE RESPONSIBLE FOR FRAME CHANGES DUE TO INSUFFICIENT CHASSIS FRAME SPACE. CA: 84 3. CHASSIS REQUIREMENT, 19,500 GVW, PTO OUTLET, MIDSHIP FUEL TANK Delivery times are approximate.				

PACKET

6.8

August 22, 2023

RESOLUTION NO. 2022-008

**RESOLUTION APPROVING THE PURCHASE OF A
FORD F-550 POTHOLE PATCHER FROM RUSH
TRUCK CENTERS OF TEXAS, LP, THROUGH
BUYBOARD FOR A TOTAL COST OF \$186,723.00**

WHEREAS, Buyboard is a cooperative purchasing agency with which the City participates with on purchases through a cooperative purchasing program in accordance with TEX. LOC. GOV'T CODE § 271.102; and

WHEREAS, Rush Truck Centers of Texas, LP, has submitted a total proposed cost to the City of \$186,723.00 for the purchase of a Ford F-550 pothole patcher through Buyboard, as shown on the quote attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the Council finds the price proposed by Rush Truck Centers of Texas, LP, for the purchase of a Ford F-550 pothole patcher to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase a Ford F-550 pothole patcher from Rush Truck Centers of Texas, LP, through Buyboard;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase a Ford F-550 pothole patcher from Rush Truck Centers of Texas, LP, through Buyboard for a total cost of \$186,723.00.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Rush Truck Centers of Texas, LP, for a Ford F-550 pothole patcher from funds available in the FY22 Garage Fund Operating Budget upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member Dufford, seconded by Council member Corrales, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the 11th day of January, A.D., 2022, by

the following vote:

Council members voting "AYE": Corrales, Poole, Blong, Payton, Dufford, Ladd, Norman

Council members voting "NAY": None


Patrick N. Payton, Mayor

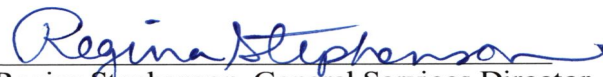
ATTEST:


Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:


Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:


Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:


John Ohnemiller, City Attorney





City Council Meeting

Item Number: 14
Meeting Date: January 11, 2022
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION APPROVING THE PURCHASE OF A FORD F-550 POTHOLE PATCHER FROM RUSH TRUCK CENTERS OF TEXAS, LP, THROUGH BUYBOARD FOR A TOTAL COST OF \$186,723.00 (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Resolution approving the purchase of one (1) Ford F-550 Pothole Patcher from Rush Truck Center of Texas, LP through the Buyboard contract 601-19 for a total cost of \$186,723.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Financing of \$186,723.00 is available in the FY22 Garage Operating Budget.

Discussion:

Staff is recommending the purchase of one (1) Ford F-550 Pothole Patcher from Rush Truck Center of Texas, LP through the Buyboard contract 601-19. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. This truck is a replacement a unit that has gone beyond its serviceable life. Please see the attached memo from Manuel Salinas, Garage Superintendent, for more information.

Therefore, please consider a resolution approving the purchase of one (1) Ford F-550 Pothole Patcher from Rush Truck Center of Texas, LP of New Braunfels, Texas through the Buyboard

contract 601-19 for a total cost of \$186,723.00.

Jina Gang

City Manager's Office

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14.2
6.13

January 11, 2022
August 22, 2023



Fleet Services Division

INTEROFFICE MEMORANDUM

TO: Regina Stephenson

FROM: Manuel Eloy Salinas

SUBJECT: Buyboard 601-19 for a Pothole Patcher

DATE: 12/18/21

Fleet services is requesting the purchase of (1) one Pothole Patcher. This new unit will be a replacement for a unit that has gone beyond its serviceable use. Budgeted amount for FY 2022 is \$180,000 for (1) one Pothole Patcher. Purchasing price for (1) one Pothole Patcher will be \$186,723 offered through Buyboard 601-19 by Rush Truck Center. Due to manufacturing issues the price is slightly higher than the budgeted amount.

Sincerely,

Manuel Eloy Salinas

City of Midland Garage Superintendent



Vendor Contract Information Summary

Vendor Name Rush Truck Centers of Texas, LP
Contact Drew Neubauer
Phone Number 8303025254
Email munisales@rushenterprises.com
Website www.rushtruckcenter.com
Federal ID 74-2786264
Accepts RFQs Yes
Address Line 1 555 IH 35 South, Suite 500
Vendor City New Braunfels
Vendor Zip 78130
Vendor State TX
Vendor Country USA
Delivery Days 90
Freight Terms FOB Destination
Payment Terms Net 30 days
Shipping Terms Pre-paid and added to invoice
Ship Via Common Carrier
Is Designated Dealer No
EDGAR Forms Received Yes
Service-Disabled Veteran Owned No
Minority Owned No
Women Owned No
Is National Yes
No Excluded Foreign Terrorist Orgs Yes
No Israel Boycott Certificate Yes
Is MWBE No
Regions Served All Texas Regions
States Served All States
Contract Name Vehicles, Heavy Duty Trucks, Police Motorcycles, Parts, and Service Labor
Contract # 601-19
Effective Date 12/01/2019
Expiration Date 11/30/2022
Service Fee Note Vehicle purchase orders are subject to a \$400 service fee
Quote Reference Number Rush Truck Centers of Texas, LP
Return Policy Parts - 14 days, Truck sales - no stated return policy

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14.8
6.15

January 11, 2022 12/29/2021 10:38 AM
August 22, 2023



Vendor Contract Information Summary

Additional Dealers See Dealer Distributor link for dealer list

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14.9
6.16

January 11, 2023
12/29/2021 10:38 AM
August 22, 2023



City Council Meeting

Item Number: 7
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: MOTION APPROVING PLANS AND SPECIFICATIONS FOR THE MIDLAND MANHOLE REHABILITATION PROJECT, SAID SPECIFICATIONS BEING ON FILE IN THE CITY SECRETARY'S OFFICE REFERENCED BY THE NUMBER AND DATE OF THIS MOTION; AND AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE FOR COMPETITIVE BIDS FOR SAID PROJECT PURSUANT TO THE STATUTES OF THE STATE OF TEXAS FOR ACCOMPLISHING THE WORK SET FORTH IN SAID PLANS AND SPECIFICATIONS **(DISTRICT: NONE) (GENERAL SERVICES)**

Purpose:

Motion approving specifications for the Midland Manhole Rehabilitation Project, said specifications being on file in the City Secretary's Office referenced by the number and date of this motion, and authorizing the City Manager or the City Manager's Designee to advertise for competitive bids for said project pursuant to the statutes of the State of Texas for accomplishing the work set forth in said specifications.

Recommended City Council Action:

Approve

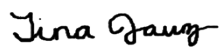
Fiscal Impact:

Funding is not required at this time.

Discussion:

Please consider approving a motion authorizing the City Manager or the City Manager's designee to advertise a request for bids for the Midland Manhole Rehabilitation Project. The Midland Manhole Rehabilitation Program consists of the rehabilitation of existing concrete

sanitary sewer manholes lying within Midland draws. Please see the attached memo from Carl Craig, Utilities Director, for more information.



City Manager's Office



INTEROFFICE MEMORANDUM

TO: Erika Martinez, Purchasing Manager

FROM: Carl Craig, P.E., Utilities Director

SUBJECT: Consider a Resolution Approving the Request for Bids, Authorizing Advertisement for Bids for the Midland Manhole Rehabilitation Program.

DATE: August 22, 2023

Utilities request approval to advertise for bids for the Midland Manhole Rehabilitation Program which consists of the rehabilitation, as required, of existing concrete sanitary sewer manholes lying within Midland draws. Included is the inspection and rehabilitation, as required, of approximately 100 known concrete manholes as well as confirming the location and condition of unknown concrete manholes. Jacobs Engineering an approved on-call engineer (Resolution 2020-137) has prepared plans and specifications for the initial phase.

The initial phase of the program is to commence within 15 calendar days of a written notice to proceed. The cost for the initial phase of the program is not to exceed \$2,000,000.00 and the construction deadline is September 30, 2024 with an option of renewing the program no more that three (3) additional one (1) year terms after the initial construction deadline for an amount not to exceed \$2,000,000.00 per term. The Utilities Department annual budget accounts for and will account for the annual operating budget.

Contract Documents

Midland Manhole Rehabilitation Program – Phase 1

City of Midland
Midland, Texas



Jeffrey Allen Miner AUGUST 8, 2023

Issued for Bid

August 2023

Prepared By:

Jacobs

City of Midland

Midland, Texas

**BIDDING REQUIREMENTS AND
CONTRACT DOCUMENTS**

for the construction of the

Midland Manhole Rehabilitation Program – Phase 1

JACOBS

Dallas, Texas

August 2023

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NOTICE TO BIDDERS

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

USPS Mailing Address:

City of Midland, Texas

Attn: City Secretary's Office

P O Box 1152

Midland, TX 79702

OR

Physical Address for mail carriers other than USPS:

City of Midland, Texas

Attn: City Secretary's Office

300 North Loraine St, Suite 330

Midland, TX 79701

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

Sealed proposals, addressed to the Mayor and City Council of the City of Midland, Texas, for the furnishing of materials and labor together with other miscellaneous and appurtenant work will be received at the office of the City Secretary, City Hall, Midland, Texas, until 2:00 p.m. on the 13th day of September, 2023, and publicly opened and read aloud at that time.

Delivery of Submittals

Bid packets must be received in the City Secretary's Office no later than September 13, 2023 at 2:00 p.m. Bidders are responsible for the means of timely delivering the bid packet. Delays due to any instrumentality used to transmit the bid packet (e.g., delay occasioned by a bidder, City's internal mailing system, etc.) are the sole responsibility of the bidder. **Late bid packets will not be accepted under any circumstances.**

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

The Proposed Work provides for the furnishing of materials and labor for **Midland Manhole Rehabilitation Program – Phase 1** together with other miscellaneous and appurtenant work.

ATTENTION: A NON-MANDATORY PRE-BID MEETING will be held at 3:00 p.m. on Wednesday, September 6th, 2023 in the basement conference room of City Hall, 300 N. Loraine Street, Midland, Texas.

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

purchasing@midlandtexas.gov

The deadline for submitting additional questions after the Non-Mandatory Pre-Bid Meeting is Noon on Friday, September 8, 2023. Questions submitted before the Noon deadline will be included in the Addendum that will go out that same day along with all discussion items, questions, answers, and any new information resulting from the Non-Mandatory Pre-Bid Meeting. Questions submitted after the Noon deadline will not receive any additional information and will instead only be directed to the information already provided.

Bids will be received on a unit price basis.

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

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

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

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

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

WAIVER OF ATTORNEY FEES

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

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

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

WAIVER

BIDDER'S WAIVER:

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

- 1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY BID;**

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

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

City of Midland

Marcia Bentley-German
City Secretary

Form Revised June 2023

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APPENDIX A GEOPOLYMER RESTORATION MORTAR (MAINSTAY GEOSPIN™)

APPENDIX B CURED-IN PLACE MANHOLE REHABILITATION

APPENDIX C MANHOLE REHABILITATION PICTURES

SECTION 00 41 13 BID PROPOSAL

Bid of _____ Date _____
(Name of Firm)

TO: Honorable Mayor and City Council
City of Midland
300 North Lorraine
Midland, Texas 79701

FOR: MIDLAND MANHOLE REHABILITATION PROGRAM – PHASE 1

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

**MIDLAND MANHOLE REHABILITATION PROGRAM – PHASE 1
BID PROPOSAL**

Base Bid: Miscellaneous Items				
Item No.	Quantity	Description	Unit Price	Total Amount
1)	1 MO	Mobilization, furnished, installed, complete and in place, for the sum of: _____ dollars and _____ cents per month. (Pay Note M1)	\$	\$
2)	EA	Traffic Control, furnished, installed, complete and in place, for the sum of: _____ dollars and _____ cents per month. (Pay Note M2)	\$	\$
3)	1 MO	Job Site Safety, furnished, installed, complete and in place, for the sum of: _____ dollars and _____ cents per month. (Pay Note M3)	\$	\$
4)	Enter percentage	Material Mark-up, complete and in place, for the sum of: _____ percent. (Pay Note M4)	%	\$

**MIDLAND MANHOLE REHABILITATION PROGRAM – PHASE 1
BID PROPOSAL**

Base Bid: Miscellaneous Items				
Item No.	Quantity	Description	Unit Price	Total Amount
5)	Enter percentage	Labor Mark-up, complete and in place, for the sum of: _____ percent. (Pay Note M5)	%	\$
6)	Enter percentage	Equipment Rental Mark-up, complete and in place, for the sum of: _____ percent. (Pay Note M6)	%	\$
Total Base Bid: Miscellaneous Items 1-7			\$	

Base Bid: Wastewater Items				
Item No.	Quantity	Description	Unit Price	Total Amount
7)	EA	Inspect Manhole, complete Inspection Form and provide photographs for the sum of _ dollars and _____ cents per each	\$	\$
8)	1 LS	Temporary bypass pumping, all work fully performed for _ dollars and _____ cents per Lump sum (Pay Note S1)	\$	\$
9)	EA	Concrete Manhole Rehabilitation (up to 10 feet depth), complete and in place, for the sum of _____ dollars and _____ cents per each (Pay Note WW1)	\$	\$
10)	VF	Extra-Depth Concrete Manhole Rehabilitation (over 10 feet depth) complete and in place, for the sum of _____ dollars and _____ cents per vertical foot (Pay Note WW1)	\$	\$
Total Base Bid: Wastewater Items 8-10			\$	

Midland Manhole Rehabilitation Program – Phase 1
City of Midland

Base Bid: Wastewater Items				
Item No.	Quantity	Description	Unit Price	Total Amount
Total Base Bid			\$	

In addition to providing the individual prices for the items above, Contract shall write the total bid amount in the sum of dollars and cents total.

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

Bidder agrees to substantially complete all work within 30 calendar days after receipt of notice to proceed.

PUBLIC INFORMATION

To the extent that Bidder is submitting a bid for a Contract described by Section 552.371 of the Texas Government Code, Bidder agrees as follows in accordance with Section 552. 372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this bid, and the Contractor or vendor agrees that the Contract can be terminated if the Contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

Enclosed herewith in this proposal is a cashier's check, cash or bid bond on a form approved by the City Attorney, for

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

Name of Contractor _____

Submitted By: _____

Print Name and Title

Signature _____

Mailing Address (PO Box, City, State, Zip)

PAY NOTES

Midland Draw Manhole Rehabilitation

Bid Item	Pay Quantity Note
Miscellaneous Items	
1. Mobilization and Demobilization	M1
2. Traffic Control	M2
3. Job Safety	M3
4. Material Mark-up	M4
5. Labor Mark-up	M5
6. Equipment Rental Mark-up	M6
Wastewater Items	
1. Inspect Manhole	WW1
2. Temporary Bypass Pumping	WW2
3. Concrete Manhole Rehabilitation	WW3
4. Extra-Depth Concrete Manhole Rehabilitation	WW4

PAY QUANTITY NOTES

- M1 Includes the necessary equipment, labor, materials, and incidentals for all Mobilization and Demobilization to and from the job site complete and in place. Measurement and payment to be made per month.
- M2 Includes the necessary equipment, labor, materials, and incidentals to implement the Traffic Control per the approved Traffic Control Plan. Any required traffic control devices are to meet the City of Midland Traffic Division Standards. Measurement and payment to be made per each.
- M3 Includes the necessary equipment, labor, materials, and incidentals to implement Job Site Safety and to provide a safe work environment for the project work area (including all personal protection equipment, trench safety, etc.) per the construction drawings and in compliance with all applicable Federal, State, and Local requirements or regulations including those of OSHA and the City of Midland. JOB SITE SAFETY IS THE RESPONSIBILITY OF THE CONTRACTOR. Measurement and payment to be made per month.
- M4 Includes the Material Mark-up for materials and material sizes (pipe, valve, manhole, etc.) required to complete work for improvements not covered by the bid items listed in the Proposal for this project per the construction drawings and the City of Midland standards and specifications. Measurement and payment to be made per the cost of the material in

question plus the set percent increase established by this bid item. The Contractor must provide a copy of the invoice for the material cost from the supplier to the Engineer of Record or the City of Midland designee before this bid item may be claimed for any material. This will be applied solely at the discretion of the Engineer of Record or the City of Midland designee.

- M5 Includes the Labor Mark-up (Regular Work Hours) for labor required to complete work for improvements not covered by the bid items listed in the Proposal for this project per the construction drawings and the City of Midland standards and specifications. Measurement and payment to be made per the cost of labor in question plus the set percent increase established by this bid item. The Contractor must provide a typical hourly pay rate for work crews prior to the percent increase along with the number of workers on the crew and the number of hours worked by the crew for the project in question to the Engineer of Record or the City of Midland designee before this bid item may be claimed for any labor. This will be applied solely at the discretion of the Engineer of Record or the City of Midland designee.
- M6 Includes the Equipment Rental Mark-up (non-standard equipment only) required to complete work for improvements not covered by the bid items listed in the Proposal for this project per the construction drawings and the City of Midland standards and specifications. Measurement and payment to be made per the cost of the equipment rental in question plus the set percent increase established by this bid item. The Contractor must provide a copy of the invoice for the rented equipment from the equipment supplier to the Engineer of Record or the City of Midland designee before this bid item may be claimed for any rented equipment. This will be applied solely at the discretion of the Engineer of Record or the City of Midland designee.
- WW1 Includes the necessary equipment, labor, materials and incidentals to inspect existing manholes providing an Inspection Form and photograph for concrete manholes. Measurement and payment to be made per each.
- WW2 Includes the necessary materials, equipment, transportation, labor, and other items required for the completion of the work including pumps, piping, generators, traffic control for lane closures, redundancy of all equipment, contingency and emergency cleanup plans, and equipment, complete with all appurtenances to completely bypass the sewer line during installation in accordance with construction drawings and City of Midland standards and specifications. Measurement and payment shall be per week.
- WW3 Includes the necessary equipment, labor, materials, and incidentals for concrete manhole, up to 10 ft depth, rehabilitation per the City of Midland Standards & Specifications. Rehabilitation includes shaping/lining the invert as needed. Lining shall be per the Geopolymer Liner System Specification or Cured-in-Place Manhole Liner Specification, reference Appendix A and Appendix B, respectively. Material submittal for lining requires submittal to Engineer for the Engineer/City of Midland approval. Reference Appendix C for required rehabilitation documentation. Measurement and payment to be made per each.
- WW4 Includes the necessary equipment, labor, materials, and incidentals for concrete manhole, over 10 feet depth, rehabilitation per the City of Midland Standards and Specifications. Lining shall be per the Geopolymer Liner System Specification or Cured-in-Place Manhole Liner Specification, reference Appendix A and Appendix B, respectively. Material submittal for lining requires submittal to Engineer for the Engineer/City of Midland approval. Reference Appendix C for required rehabilitation documentation. Measurement and payment to be made per vertical foot.

END OF SECTION

INSTRUCTION AND INFORMATION FOR BIDDERS

LOCATION AND EXTENT OF WORK

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

The location and details for the construction and related work are shown upon a set of drawings dated on or after June 13, 2023. These drawings and plans, together with the specifications, form a part of the Contract. Where figures are shown on the drawings, they shall take precedence over scaled distances and dimensions.

TIME AND PLACE OF RECEIVING BIDS

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

PREPARATION OF BID FORM

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

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

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

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

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

EXAMINATION OF SITE, DRAWINGS, ETC

Each Bidder is requested to visit the site of the proposed work and fully acquaint himself with the conditions relating to the construction and labor so that he may fully understand the facilities, difficulties and restrictions attending the

execution of the work under the Contract. Bidders shall thoroughly examine and be familiar with the Plans and the Specifications. The failure or omission of any Bidder to receive or examine any form, instrument, addendum or other document or to visit the site and acquaint himself with conditions there existing shall in no way relieve any Bidder from obligations with respect to his bid or to the Contract. The submission of a bid shall be taken as prima-facie evidence of compliance with this section.

WITHDRAWAL OF BIDS

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

AGREEMENT AND BONDS

The successful Bidder will be required to furnish a Performance Bond, and a Payment Bond, in an amount equal to one hundred percent (100%) of the total Contract price, such bond to be executed in five (5) original counterparts by a Corporate Surety authorized to do business in the State of Texas, and acceptable to the City of Midland. All Bonds must be executed on forms contained in these Contract Documents. The form of Agreement which the successful Bidder, and Contractor will be required to execute is also included herewith. The form of Agreement and the form of the Bonds should be carefully examined by the Bidder.

INTERPRETATION OF PLANS AND DOCUMENTS

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

BIDDERS INTERESTED IN MORE THAN ONE BID

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

AWARD OF CONTRACT

The Owner reserves the right to reject any or all bids submitted and not make an award. The Owner also reserves the privilege of accepting any item as a separate contract or the combination of items of a contract. The Owner and Bidder agree that, if the Contract is awarded, that it will be awarded to either the lowest responsible bidder/proposer, or to the bidder/proposer 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. Further, the Owner reserves all rights granted by Section 271.027 of the Texas Local Government Code. The Owner reserves the right to award the bid to the lowest responsible bidder.

OPENING OF BIDS

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

COMPARISON OF BIDS

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

BID GUARANTY

A Certified Check, Bank Money Order, issued by a bank satisfactory to the Owner, or a Bidder's Bond on the form provided and approved by the City Attorney, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the Owner, must accompany the Bidder's Proposal, as a guaranty that the Bidder will enter into a Contract and execute the required Performance Bond and Guaranty in the forms provided within fifteen (15) days after notice of award of Contract to him. Bids or Proposals without the required Bid Guaranty will not be considered. All Proposals shall remain in effect for a period of thirty (30) days after date of bid opening.

CONTRACT DOCUMENTS

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

TIME ELEMENT

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

PAYMENTS

Payments to the Contractor will be based upon the prices stated in the proposal and upon basis of the work performed as determined by the Engineer. The Engineer's determination shall be considered as final unless changes are authorized by the City in writing which shall affect the work. Upon issuance of the Certificate of Completion, the Engineer shall proceed to take final measurements and prepare a final statement of the value of all work performed and materials furnished under the terms of the agreement and shall certify same to the Owner who shall pay to the Contractor on or after the 30th day, and before the 35th day, after the date of the Certificate of Completion, the balance due the Contractor under the terms of this agreement, provided he has fully performed his contractual

Midland Manhole Rehabilitation Program – Phase 1
City of Midland

obligations under the terms of this Contract, and said payment shall become due in any event upon said performance by the Contractor. Notwithstanding any provision of these Contract documents to the contrary, it is expressly understood and agreed by the parties hereto that neither the Certificate of Acceptance, nor the final or any other payment hereunder, nor any partial or total occupancy or possession of the project by the Owner, shall relieve the Contractor of his responsibility for completion of the entire project in a good workmanlike manner and in full compliance with the plans and specifications and the fulfillment of any warranties which may be required in the Contract documents.

Revised June 2023



THE CITY OF MIDLAND CONTRACT

Contract No. 23004619

THIS CONTRACT, effective the ____ day of _____, 20__, by and between the City of Midland, hereinafter referred to as "CITY", and _____, hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: \$ _____ DOLLARS
2. **Scope of Work:** COMPANY shall perform all work described for Midland Manhole Rehabilitation Project. 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 Carl Craig 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,

PACKET

7.19

August 22, 2023

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

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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 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

16. **Payment; Retainage:** After all work is completed by COMPANY, including all Change Orders altering the original scope and amount of the contract are completed, and the CITY has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, the CITY may thereafter issue payment to COMPANY in the amount of the contract and all Change Orders. The CITY shall be the final judge of when the work is completed by COMPANY. The CITY, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to the CITY's requirements.

16.1. The CITY may make periodic payments to COMPANY; provided, however, such periodic payments may only be made pursuant to this section, and only after all work and all Change Orders are completed by COMPANY and approved by the CITY. The approval shall be in the CITY's sole discretion. Requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the CITY or the CITY's representative, the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

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

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

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

17.3. It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that COMPANY shall not be charged with liquidated damages or any excess cost when the CITY determines, in its sole discretion, that COMPANY is without fault and COMPANY's reasons for the time extension are acceptable to the CITY. Provided, further, that COMPANY shall not be charged with liquidated damages or excess cost when the delay in completion of the work is due: August 22, 2023

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

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

17.5. COMPANY AGREES THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES MAY BE RECOVERED BY THE CITY FROM RETAINAGE HELD BY THE CITY. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING FROM THE CITY WITHHOLDING PAYMENT FROM COMPANY AS LIQUIDATED DAMAGES FOR COMPANY'S FAILURE TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED HEREIN, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

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

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

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

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

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

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

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

21. Insurance:

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Workers' Compensation: Statutory limits

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

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

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

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

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

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

subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

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

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

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

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

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

25. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be

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

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

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

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. ~~Nothing~~ ~~withstanding~~ any other provision to the contrary, COMPANY's failure to comply with the

requirements of this Section shall perpetually bar COMPANY's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

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

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

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

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

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

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

31. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements

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

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
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 _____, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

PACKET

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Notary Public, State of _____ ~~August 22, 2023~~

EXHIBIT C

Bonding Requirements

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

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

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



On-line responses will not be allowed for this solicitation.

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

Please print these documents and submit your bid in a sealed envelope to:

Mailing Address:

The City Secretary's Office
City of Midland
P. O. Box 1152
Midland, TX 79702

OR

Physical Address:

The City Secretary's Office
City of Midland
300 N. Loraine, Suite 330
Midland, TX 79701

ATTENTION: The deadline for submitting additional questions is 72 working hours before the bid opening date. Questions submitted before the Noon deadline will be included in the Addendum. Questions submitted after the Noon deadline will not receive any additional information and will instead only be directed to the information already provided.

BID BOND

THE STATE OF TEXAS §
COUNTY OF MIDLAND §

SURETY NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

(hereinafter called the Principal), as Principal, and _____

(hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of _____ DOLLARS

(\$ _____), for the payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid or Proposal to enter into a certain written Contract with the obligee to _____

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: **PACKET**
ATTACH POWER OF ATTORNEY

7.35

August 22, 2023

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

"General Decision Number: TX20220002 02/25/2022

Superseded General Decision Number: TX20210002

State: Texas

Construction Types: Heavy and Highway

Counties: Armstrong, Carson, Crosby, Ector, Irion, Lubbock, Midland, Potter, Randall, Taylor and Tom Green Counties in Texas.

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

Note: 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)(2)-(60).

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 \$15.00 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 2022.
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 \$11.25 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 2022.

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

Modification Number
8
Publication Date
01/07/2022

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August 22, 2023

1

02/25/2022

* SUTX2011-002 08/02/2011

Rates Fringes

CEMENT MASON/CONCRETE

FINISHER (Paving & Structures)...\$ 13.55 **

ELECTRICIAN.....\$ 20.96

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 12.36 **

Structures.....\$ 13.52 **

LABORER

Asphalt Raker.....\$ 12.28 **

Flagger.....\$ 9.30 **

Laborer, Common.....\$ 10.30 **

Laborer, Utility.....\$ 11.80 **

Work Zone Barricade

Servicer.....\$ 10.30 **

POWER EQUIPMENT OPERATOR:

Asphalt Distributer.....\$ 14.87 **

Asphalt Paving Machine.....\$ 13.40 **

Broom and Sweeper.....\$ 11.21 **

Crane, Lattice Boom 80

Tons or Less.....\$ 16.82

Crawler Tractor Operator....\$ 13.96 **

Excavator, 50,000 lbs or

less.....\$ 13.46 **

Front End Loader Operator,

Over 3 CY.....\$ 12.77 **

Front End Loader, 3CY or

less.....\$ 12.28 **

Loader/Backhoe.....\$ 14.18 **

Mechanic.....\$ 20.14

Milling Machine.....\$ 15.54

Motor Grader, Rough.....\$ 16.15

Motor Grader, Fine.....\$ 17.49

Pavement Marking Machine...\$ 16.42

Reclaimer/Pulverizer.....\$ 12.85 **

Roller, Asphalt.....\$ 10.95 **

Roller, Other.....\$ 10.36 **

Scraper.....\$ 10.61 **

Spreader Box.....\$ 12.60 **

Servicer.....\$ 13.98 **

Steel Worker (Reinforcing).....\$ 13.50 **

TRUCK DRIVER

Lowboy-Float.....\$ 14.46 **

Single Axle.....\$ 12.74 **

Single or Tandem Axle Dump..\$ 11.33 **

Tandem Axle Tractor with

Semi.....\$ 12.49 **

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

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

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) (ii)).

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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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
1400 Constitution Avenue, N.W.
Washington, DC 20210

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

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

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

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

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

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

=====

END OF GENERAL DECISIO"

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

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~~PACKET~~ ~~7/46~~ ~~Signature of vendor doing business with the governmental entity~~

~~August 22, 2023~~ ~~Date~~

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

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

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

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

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

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

- (2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

- (1) the date that the vendor:

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

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

- (2) the date the vendor becomes aware:

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

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

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

CITY OF MIDLAND

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

Affidavit of Eligibility

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

Reseller Permit Number: _____

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

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

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

☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

1. All bids are to be submitted as specified in the procurement document(s).
2. Each Bidder is requested to provide: Descriptive literature clearly marked to show each item on this bid. Any catalog or manufacturer's reference in this proposal is descriptive, but not restrictive, and is used only to indicate type and quality. If, however, the bidder proposes similar but not identical terms, he must furnish all particulars. If no mention is made of any exceptions, it is assumed that he is bidding on the article specified and not on an approved equal and he will be required to deliver exact article specified.
3. Prices should be itemized. (Indicate unit price and extend to show total price.) In case of discrepancy between the unit price and the extension, the unit price shall govern.
4. Unit price for each item offered shall include all discounts; e.g., trade, seasonal, etc. with net 30 days payment terms. Discounts shall not be shown as such but shall be incorporated in the base bid price. Any bid showing discounts will be considered an alternate bid. The City of Midland will not be responsible for any goods delivered without a purchase order number.
5. If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code. The City of Midland reserves the right to award by item or by total bid, or to reject any or all bids or parts of bids. Further, the City of Midland reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City of Midland reserves the right to award the bid to the lowest responsible bidder.
6. Time of proposed delivery shall be stated in number of calendar days.
7. NOTE: The City of Midland, Texas is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.
8. All items are to be delivered, unloaded and stacked at the location indicated on the Bid Request and Purchase Order.
9. All items are to be delivered F.O.B. to the City of Midland, Texas with freight prepaid and included in the bid.
10. Detailed specifications rule over General specifications (headings, etc.)
11. The City of Midland reserves the right to remove a company from the bid list for (1) continued failure to respond to request for bids, (2) failure to deliver merchandise within promised time, or (3) delivery of substandard merchandise.
12. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any lands, materials, supplies or services except as allowed under chapter 176 of the Local Government Code. Form CIQ shall be submitted and placed on file with the City of Midland.
13. The City shall determine the most advantageous bid for the City and accept the proposal of the responsible party submitting the lowest and/or most advantageous bid or reject any and all bids.
14. The City of Midland, Texas may consider as informal any bid not prepared and submitted in accordance with the provisions hereof, and may waive, in its sole discretion, any informalities.

15. 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.

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

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

Seller and Buyer agree as follows:

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

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

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

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

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

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

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

8. WARRANTY - PRICE -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. INSURANCE –

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

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

Commercial General Liability (including Contractual liability):

-Personal Injury:	\$1,000,000.00 per person
	\$1,000,000.00 per occurrence
-Property Damage:	\$500,000.00 per occurrence
<u>Business Automobile Liability:</u>	\$250,000.00 combined single limit -
	Personal Injury and Property Damage
<u>Worker's Compensation:</u>	Statutory limits
<u>Employers' Liability:</u>	\$500,000.00 per accident or occurrence

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

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

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

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

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

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Seller and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GENERAL CONDITIONS AND PROVISIONS

1. DEFINITIONS

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

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

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

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

- h) "Work on the Project": Such work as is performed or ordinarily would be performed at the site of the project.
- i) "Surety": Any firm or corporation executing a Surety Bond or Bonds payable to the Owner securing the performance of the Contract either in whole or in part.

Whenever certain articles are specifically mentioned, by brand name or name of the manufacturer, such materials shall be taken as standard and guide for quality, operation, capacity, etc. The term "or equal" shall mean that articles of equal characteristics as required, but of different brand or manufacturer, may be substituted and accepted, subject in all instances to the approval of the Engineer.

- j) "Special Provisions", "Special Conditions", "Project Specific Specification" or "Job Specific Specifications" are included as amendment of and/or additions to the General Conditions and/or Standard Specifications for the particular project in which they are included and will take precedence over the General Conditions and Standard Specifications only in so far as the amendments and/or additions. All other provisions in the General Conditions and/or Standard Specifications will not be affected.
- k) "Drawings" "Contract Drawings", "Plans" "Detail Drawings" "Detail Sheets" or "Plans and Details" refers to the set of drawings which show the details for the construction and related work anticipated on this project and upon which bids are being solicited.

2. CONFLICT OF PROVISIONS

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

3. DUTIES AND RESPONSIBILITIES OF THE CONTRACTOR

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

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

4. TIME ELEMENT

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

The time of completion of this Contract is an essential element and consideration. Since, therefore, time is of the essence thereof, and in the event of delay in the completion of the entire work required hereunder beyond the period prescribed, or beyond the period for which

time may be extended by authority of the Owner for good cause shown, the Owner shall be paid damages for such delay. Inasmuch as the amount of such damages is difficult to ascertain, it is hereby stipulated and agreed that such damages shall be liquidated and the Owner shall be paid damages at the rate as set forth in the Special Provisions, said damages to be paid to the Owner for each and every day that the Contractor be in default in completing the entire work required under this Contract. The Owner shall have the right to deduct such amounts from any monies due, or which may become due, under this Contract. In the event that no amount for such damages is shown in the Special Provisions of these specifications, it is agreed that the amount of damages shall be Five Hundred dollars (\$500.00) per day.

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

5. PAYMENT TO CONTRACTOR

ESTIMATED QUANTITIES:

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

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

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

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

PAYMENT RETAINAGE:

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

After all work is completed by Contractor, including all Change Orders altering the original scope and amount of the Contract are completed, and the City has inspected and approved that the work is completed and in compliance with the Contract and all subsequent Change Orders, the City may thereafter issue payment to Contractor in the amount of the Contract and all Change Orders. The City shall be the final judge of when the work is completed by Contractor. The City, in its sole discretion, shall determine if the work under the Contract and under any Change Orders has been done to the City's requirements.

The City may make periodic payments to Contractor; provided, however, such periodic payments may only be made pursuant to this section, and only after all work and all Change Orders are completed by Contractor and approved by the City. The approval shall be in the City's sole discretion. Requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the City or the City's representative, the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95 percent of the total Contract amount.

FINAL COMPLETION AND ACCEPTANCE:

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

FINAL PAYMENT:

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

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

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

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

7. CERTIFICATE OF PAYMENT

Contractor shall, prior to issuance of final payment pursuant to the terms herein stated, provide proof satisfactory to the Owner that all debts, bills, and expenses incurred by the Contractor, his agents, employees, or subcontractors employed by him, for labor, wages, materials, and other purposes, in the furtherance of this project, have been paid and satisfied in full. Satisfactory proof shall consist of an executed Certificate of Payment.

8. EXTRA, ADDITIONAL OR OMITTED WORK PAYMENT

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

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

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

- a) By an acceptable lump sum proposal from the Contractor.

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

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

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

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

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

9. ASSIGNMENT OF CONTRACT

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

10. SUBCONTRACTORS

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

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

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

11. SUSPENSION OF WORK

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

12. RIGHT OF OWNER TO TERMINATE CONTRACT

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

the same manner as was followed in the letting of this Contract, and any excess of cost arising there from over and above what would have resulted from the prices set forth in this Contract will be charged against the Contractor and his surety or sureties hereto, who shall be liable, therefore.

13. RIGHT OF CONTRACTOR TO TERMINATE CONTRACT

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

14. INCIDENTAL WORK

Any and all minor details of the work not specifically mentioned in the Specifications but obviously necessary for the proper completion of the work, such as the proper connection of new work to old, shall be considered as incidental to and a part of and included with the work for which the prices are named in the Contract Documents. The Contractor will not be entitled to any extra or additional compensation therefore, unless specifically stated otherwise.

15. PERMITS – COMPLIANCE WITH LAW

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

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

16. INSPECTION BY OWNER

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

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

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

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

17. PATENTS

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

18. MUTUAL RESPONSIBILITY OF CONTRACTORS

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

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

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

19. NOTICE AND SERVICE THEREOF

Any notice from one party to another under the Contract shall be in writing and shall be dated and signed by the party giving such notice or by duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner; namely, if the notice is given to the

Owner, (a) by personal delivery thereof to the individual duly authorized to direct and supervise the project of the Owner, or (b) by depositing the same in the United States Mail, enclosed in a sealed envelope, addressed to the City of Midland, 300 North Loraine Street, Midland, Texas, 79701, postage prepaid and certified; or if the notice is given to the Contractor (a) by personal delivery thereof to the project superintendent or other person authorized to act for the Contractor, or (b) by depositing the same in the United States Mail, enclosed in a sealed envelope, addressed to the Contractor at his regular place of business or at such other address as may have been established for the conduct of the work under this Contract, postage prepaid and certified; or (c) if the notice is given to the Surety or any other person by personal delivery to such Surety or other person, or by depositing the same in the United States Mail, enclosed in a sealed envelope addressed to such Surety or other person, at the address of such surety or other person last communicated by him to the party giving the notice, postage prepaid and certified.

20. QUALITY OF MATERIALS AND WORKMANSHIP

It is the intention of this Contract to have only first-class materials and the best workmanship throughout, and the methods and appliances adopted by the Contractor must be such as will secure a satisfactory quality of work and will enable him to complete the work in the time agreed upon. If at any time such methods and appliances appear inadequate, the Engineer may order the Contractor to improve their character or increase their efficiency, and the Contractor must conform to such order; but the failure of the Engineer to order such improvement of methods or increase of efficiency will not relieve the Contractor from his obligations to

perform good work or finish it in the time agreed upon. The Contractor shall submit samples or specimens of any and all materials proposed to be used in the work when required to do so by the Engineer. All materials must be of specified quality and fully equal to approved samples. All work must be done and completed in a thorough and workmanlike manner. All materials furnished and all work done must be satisfactory to the Engineer and will be subject to rigid inspection, and if not in accordance with the Specifications in the opinion of the Engineer, shall be made to conform thereto.

It is understood that except as otherwise specifically stated in the Contract, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence of temporary construction of every nature, and all other services and facilities required for the completion of the Contract within the specified time.

21. SPECIAL METHODS

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

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

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

23. COVERING WORK

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

24. UNFAVORABLE WEATHER

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

25. ALL WORK SUBJECT TO FINAL INSPECTION

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

26. PUBLIC CONVENIENCE

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

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

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

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

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

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

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

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

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

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

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

27. TRAFFIC CONTROL

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

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

Traffic control signs, such as stop signs, yield signs, etc., are placed in various intersections for the safety and protection of the traveling public. The Contractor shall not move, alter or damage said signs for any reason. If said signs must be removed for construction purposes, Contractor shall notify the City of Midland, Traffic Division Operations Superintendent at least 48 hours (not including weekends) before construction activities are scheduled to begin. All construction barricading, warning signs, and other construction traffic control devices shall be in place and shall be in accordance with the Texas Manual on Uniform Traffic Control Devices and approved Barricading Standards included in plans before traffic signs can be removed. The Contractor shall notify the Traffic Division Operations Superintendent at least 72 hours (not including weekends) before scheduled removal of construction barricades, warning signs, and traffic control devices. But in all cases the Contractor shall not remove said barricades, warning signs, and traffic control devices until the City of Midland's Traffic Department has replaced stop signs, yield signs, etc., in their proper location. The Contractor shall notify Traffic Engineering Division at least 24 hours in advance of any Traffic Signal modification due to construction (i.e., eliminating left turn phases). Notice shall also be given to the Traffic Engineering Division at least 24 hours prior to removing barricades at signalized intersections.

28. PROTECTION OF NEW WORK

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

29. MONUMENTS OR STAKES

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

30. USE OF COMPLETED PORTIONS

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

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

31. USE OF PREMISES

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

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

32. SAFETY RESTRICTIONS

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

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

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

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

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

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

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

33. INSURANCE REQUIREMENTS AND WORKERS COMPENSATION

INSURANCE REQUIREMENTS

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

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

<u>Business Automobile Liability:</u>	\$250,000.00 combined single limit - Personal Injury and Property Damage
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<u>Workers' Compensation:</u>	Statutory limits
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<u>Employers' Liability:</u>	\$500,000.00 per accident or occurrence
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The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis. This insurance shall name the City as an additional insured and waive subrogation in favor of the City.

The Business Automobile Liability insurance provided by Contractor shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the

work that is the subject of this Contract. This insurance shall name the City as an additional insured and waive subrogation in favor of the City.

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

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

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

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

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

34. INDEMNIFICATION

Indemnity: the Contractor shall indemnify and hold harmless and defend the Owner and all of the Owner's officers, agents and employees from all suits, actions, claims, damages, personal injuries, losses, property damage and expenses of any character whatsoever, including attorney's fees, brought for or on account of any injuries or damages received or sustained by any person or persons or property, on account of any negligent act of the Contractor, their agents or employees, or any subcontractor, in the execution, supervision and operations growing out of or in any way connected with the performance of this Contract, and Contractor will be required to pay any judgment with costs which may be obtained against the Owner or any of its officers, agents, or employees, including attorney's fees.

The Contractor shall indemnify and hold harmless and defend the Owner and all of the Owner's officers, agents and employees from all suits, actions, claims, damages, personal injuries, accidental death, property damage, losses, and expenses of any character whatsoever including attorney's fees, brought for or on account of any injuries or damages received or sustained by any person or persons or property, on account of any negligent act of the Owner, the Owner's

officers, agents and employees, whether such negligent act was the sole proximate cause of the injury or damage or a proximate cause jointly and concurrently with the Contractor or the Contractor's employees, agents or subcontractors negligence in the execution, supervision and operations growing out of or in any way connected with the performance of this Contract, and Contractor will be required to pay any judgment with costs which may be obtained against the Owner or any of its officers, agents or employees, including attorney's fees.

The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, all supplies, including commissary incurred in the furtherance of the performance of this Contract.

When Owner so desires, the Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived. The Contractor, its sureties and insurance carriers shall defend, indemnify and save harmless the Owner and all of its officers, agents and employees from all suits, actions, or claims of any character whatsoever, brought for or on account of any injuries or damages received or sustained by any person or persons or property, arising from any act of the Contractor or any subcontractor, their agents or employees, in the execution and supervision of this Contract, and will be required to pay any judgment with costs which may be obtained against the Owner or any of its officers, agents, or employees including attorney's fees.

35. RELEASE

Notwithstanding any other provision, Contractor hereby releases, acquits, relinquishes and forever discharges Owner, Owner's employees and officers, from any and all demands, claims, damages or causes of action of any kind whatsoever which Contractor has or might have in the future, including but not limited to breach of Contract, quantum meruit, claims under the due process and taking clauses of the Texas and United States constitutions, tort claims or Owner's negligence.

36. INDEPENDENT CONTRACTOR

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

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

37. QUALIFICATIONS FOR EMPLOYMENT

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

38. PAYROLLS OF CONTRACTOR AND SUBCONTRACTORS

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

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

39. POSTING WAGE RATES

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

40. PAYMENT OF EMPLOYEES

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

41. WAGE UNDERPAYMENT AND ADJUSTMENTS

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

42. COMPUTATION OF WAGES ON 8 – HOUR DAY

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

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

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

43. OVERTIME WORK AND WORK ON SUNDAYS AND LEGAL HOLIDAYS

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

Any work necessary to be performed after regular working hours and when permitted on Sundays or legal holidays, shall be performed without additional expense to the Owner. No work on any Contract item will be permitted before daylight or later than one hour after sundown.

44. CONTRACT SECURITY

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

45. DELAYS

The Contractor shall receive no compensation for delays or hindrances to the work, except when, in the judgment of the Engineer, direct or unavoidable extra cost to the Contractor is caused by such hindrances or delays.

When such extra compensation is claimed, a written statement thereof shall be presented by the Contractor, as provided in Paragraph 18 hereof. Such claim, if found correct, will be approved, and the decision of the Engineer whether extra cost has been incurred and the amount thereof, shall be final. If delays are caused by specific orders to stop work, given by the Engineer, or by the performance of extra work, or by unforeseen causes beyond the control of the Contractor, or by the failure of the Owner to provide materials or necessary instructions for carrying on the work, or to provide the necessary right-of-way or site for installation, then delay will entitle the Contractor to an equivalent extension of time. Application for extension of time must be approved by the Owner and shall not release the Sureties from their obligations, which shall remain in full force until the discharge of the Contract.

LATE COMPLETION; LIQUIDATED DAMAGES:

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

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

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

It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. Provided, that Contractor shall not be charged with liquidated damages or any

excess cost when the City determines, in its sole discretion, that Contractor is without fault and Contractor's reasons for the time extension are acceptable to the City. Provided, further, that Contractor shall not be charged with liquidated damages of any excess cost when the delay in completion of the work is due:

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

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

Contractor agrees that the payment of such liquidated damages may be recovered by the city from retainage held by the City. Notwithstanding any other provision hereof, Contractor hereby releases, acquits, relinquishes and forever discharges City, City's employees and officers from any and all demands, claims, damages, or causes of action of any kind whatsoever arising from the city withholding payment from Contractor as liquidated damages for Contractor's failure to complete the work within the time specified herein, including but not limited to breach of Contract, quantum meruit, claims under the due process and takings clauses of the Texas and United States constitutions, tort claims, or city's negligence.

Contractor shall receive no financial compensation for delay or hindrance to the work. In no event shall the city be liable to Contractor or any subcontractor or supplier, any other person or any surety for or any employee or agent of any of them, for any damages arising out of or associated with any delay or hindrance to the work, regardless of the source of the delay or hindrance, including events of force majeure, and even if such delay or hindrance results from, arises out of or is due, in whole or in part, to the negligence of the city. Contractor's sole remedy in any such case shall be an extension of time.

46. ERRORS AND OMISSIONS

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

47. SPECIFICATIONS AND DRAWINGS

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

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

48. CONSTRUCTION STAKING

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

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

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

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

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

49. SANITATION

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

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

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

50. WATER FOR CONSTRUCTION

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

51. SEQUENCE AND SPEED OF WORK

The Engineer shall direct the order and sequence of the work. If at any time before the commencement or during the progress of the work, the materials and appliances used appear to the Engineer as insufficient and improper for securing the quality of work required or the required rate of progress, he may order the Contractor to increase their efficiency or to improve their character and the Contractor shall conform to such order. The failure of the Engineer to demand any increase of such efficiency or improvement shall not release the Contractor from his obligations to secure the quality of work or the rate of progress specified.

52. INSPECTION AND TESTING OF MATERIAL

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

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

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

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

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

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

53. CONSTRUCTION SCHEDULE

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

54. PROFILES AND ELEVATIONS

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

55. CLEANUP

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

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

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

56. GUARANTEE

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

57. WAIVER OF ATTORNEY FEES:

By executing this Contract, Contractor agrees to waive and does hereby knowingly, conclusively, voluntarily, and intentionally waive any claim it has or may have in the future against the Owner, regarding the award of attorney's fees, which are in any way related to the Contract, or the construction, interpretation or breach of the Contract. The Contractor specifically agrees that if the Contractor brings or commences any legal action or proceeding related to this Contract, the construction, interpretation, validity or breach of this Contract, including but not limited to any action pursuant to the provisions of the Texas uniform declaratory judgments act (Texas civil practice and remedies code section 37.001, et. Seq., as amended), or chapter 271 of the Texas local government code, the Contractor agrees to abandon, waive and relinquish any and all rights to the recovery of attorney's fees to which Contractor might otherwise be entitled.

Contractor agrees that this is the voluntary and intentional relinquishment and abandonment of a presently existing known right. The Contractor acknowledges that it understands all terms and conditions of the Contract. The Contractor further acknowledges and agrees that there was and is no disparity of bargaining power between the Owner and the Contractor. This section shall not be construed or interpreted as a waiver of sovereign immunity.

The Contractor and Owner are relying on their own judgment. Each party had the opportunity to discuss this Contract with competent legal counsel prior to its execution.

58. GOVERNING LAW AND VENUE

This Contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Contract shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Contract, or the performance of this Contract shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Contract shall be deemed to have occurred in Midland County, Texas. This Contract shall be governed by, interpreted, enforced, and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe, and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way that would direct application of the laws of another jurisdiction.

59. SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

60. NO THIRD – PARTY BENEFICIARY

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

61. NOTICE OF ALLEGED BREACH, STATUTORY PREREQUISITES

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

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

62. ASSIGNMENT

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

63. FEDERAL WAGE REQUIREMENTS

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

64. PROMPT PAY ACT

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

65. OTHER FEDERAL REQUIREMENTS

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

Updated September 2014

SPECIAL PROVISIONS

ATTENTION: All Bidders are directed to pay special attention to the NOTICE TO BIDDERS section of the bid packet. The Coronavirus (COVID-19) pandemic has resulted in several changes to the City of Midland’s normal bid process, and bidders have sole responsibility for complying with the current bid process requirements. Bidders also have sole responsibility for verifying that any bid submitted is completed correctly and includes all of the required documentation, including addendums.

1. SCOPE OF WORK:

The Midland Sewer Manhole Rehabilitation Program – Phase 1 consists of the rehabilitation, as required, of existing concrete sanitary sewer manholes lying within Midland Draw, from East Golf Course Rd. to North A St., Jal Draw, from its confluence with Midland Draw to Holiday Hill Rd., and Scharbauer Draw, from its confluence with Midland Draw to North Lamesa Rd. Work to be performed is as outlined in the Plans and Specifications.

The project base bid will include inspection of existing sanitary sewer manholes within the project limits and rehabilitation, as required, of the concrete sanitary sewer manholes including all necessary mobilization as well as bypass pumping, traffic control, coordination with City of Midland staff and organizations such as TxDOT, OSHA, franchise utilities, etc. as needed, One Call (Texas 811) notifications for pending work, notifications to adjacent property owners as directed by City of Midland staff, and all other work to be performed as outlined in the Plans and Specifications. Note: Rehabilitation of manholes is to commence and run concurrently with the inspection of manholes.

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

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

2. ORDER OF PRECEDENCE:

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

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

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

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

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

3. EXAMINATION OF SITE:

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

4. PAYMENT:

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

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

5. SAFETY REQUIREMENTS:

It is the responsibility of the Contractor to follow and comply at all times with Occupational Safety and Health Administration (OSHA) and all other applicable safety regulations and requirements throughout the course of the project's work.

6. SAFETY RESTRICTIONS – WORK NEAR HIGH VOLTAGE LINES:

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

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

**“WARNING – UNLAWFUL TO OPERATE THIS EQUIPMENT
WITHIN SIX FEET OF HIGH VOLTAGE LINES”**

- 2) Equipment that may be operated within ten feet of high voltage lines shall have an insulation cage-type of guard about the boom or arm, except back hoes or dippers, and insulator links on the lift hook connections.
- 3) When necessary to work within six feet of high voltage electric lines, notification shall be given to the power company of who will erect temporary mechanical barriers, de-energize the line, or raise or lower the line. The notifying department shall maintain an accurate log of all such calls to the Power Company and shall record action taken in each case.

- 4) The Contractor is required to make arrangements with the Power Company for the temporary relocation or raising of high voltage lines at the Contractor's sole cost and expense.
- 5) No person shall work within six feet of a high voltage line without protection having been taken as outlined in Paragraph (3).

7. TRAFFIC CONTROL:

All proposed traffic control shall be approved by the City where applicable. All traffic control plans must be submitted to and approved by the Traffic Operations Division no less than five (5) business days prior to starting the construction work. Traffic control for each phase of work must be approved prior to starting that work.

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

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

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

8. DETOURS:

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

9. PROPERTY AND RIGHT-OF-WAY ACCESS:

Access to adjacent property must be maintained at all times unless otherwise directed by the Engineer. If the Contractor will not be working in an area for a period of one week or more, special care is to be taken to address any unsafe conditions such as excavated areas or obstructions outside the worked area that could be tripping hazards, etc.

10. CONSTRUCTION SCHEDULE:

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

11. CONSTRUCTION STAKING:

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

12. SURVEY:

Survey data is to be shot in Texas Central Zone with 1983 NAD at 1.0' accuracy or better. Survey data is to be provided in Excel csv. file format with all rounding functions turned off.

13. WATER FOR CONSTRUCTION:

A fire hydrant meter is required. The Contractor is to submit the proposed location to the Engineer for the City of Midland for approval.

14. CONSTRUCTION MATERIALS:

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

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

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

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

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

15. EROSION CONTROL:

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

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

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

The project is in a large drainage channel, and it is subject to flooding during small rain events. The Contractor is to install a gabion outfall protection wall intended to protect downstream infrastructure from accumulated sediment. Any sediment accumulated along the wall is to be removed and replaced after each event. The gabion wall is to remain in place until final stabilization of the project is achieved. The Contractor shall remove the wall at the end of the final stabilization period.

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

16. WASTE MATERIAL:

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

Demolished material will become the property of the Contractor. Demolished material is to be disposed in accordance with Federal, State and Local regulations.

With the exception of topsoil and excess material from excavation, no other material is to be placed on City property or private property without the approval of the Engineer and the property Owner. Material from excavation shall be reused on fill areas. All remaining excess material from excavation is to be hauled away to a designated stockpile location with the approval from the City.

17. TESTING:

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

Required testing includes:

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

- A. Every 50 cubic yards of concrete placed.

Wastewater Gravity Pipes/Manholes – Perform air testing, mandrel testing, hydrostatic testing, and closed- circuit televising (CCTV) for all wastewater mains and manholes.

- A. Air Test – Perform test as described in the City of Midland Gravity Flow Pipe Sewers and Fittings for Wastewater and Storm Water, Part 3.14, Testing Gravity Mains and Manholes.

18. COMPLIANCE:

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

19. PERSONNEL:

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

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

20. INTENT OF THE PROPOSAL:

The intent of the proposal is to determine the lowest responsible bidder based on the total of the quantities and unit prices. Once the lowest responsible bidder is selected, the project will be awarded based on the terms and requirements of the Contract outlined in the bid packet and construction drawings.

21. CONTRACT TERM:

Anticipate construction through the remainder of the year with three one year extensions.

22. WARRANTY PERIOD:

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

23. BID PACKET COMPLETION ITEMS OF NOTE:

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

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

All bid items in the Proposal section must be completed for a bid submittal to be considered complete. Any bid item left blank or that the bidder indicates they chose to not provide a bid for will be considered incomplete, and the entire bid submittal will also be deemed incomplete, the bid submittal will be deemed 'Non- Responsive', and the bid will not be accepted. Bidders bear sole responsibility for making sure that the Proposal is complete and in accordance with the instructions provided to bidders in the bid packet.

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

24. MANHOLE INSPECTION:

It is the Contractor's responsibility to inspect the manholes and determine if they are suitable for rehabilitation. For each manhole, Contractor must fill out the inspection form provided at the end of this section. It is the responsibility of the Contractor to follow OSHA safety guidelines to safety inspect the manholes. As part of the inspection, Contractor is also responsible to provide annotated photographs to Engineer/Owner for each of the manholes inspected preferably in a thumb drive. For each manhole,

- a. One picture will be taken to identify the general area of the manholes including a landmark, if possible, sufficient to identify location.
- b. One close up picture of the frame and cover
- c. At least one picture with the cover removed and the camera centered in the manhole at the top looking downward.

25. POST MANHOLE REHABILITATION DOCUMENTATION

Submit post rehabilitation documents for each manhole in both hard copies and electronic format.

1. Hard copies

Hard copies shall be provided in 3-ring binders with divider tabs for each manhole. Each tab shall be labelled with Manhole's ID.

2. Electronic Media

Electronic files shall be submitted on workable, unlocked/unrestricted computer media format (USB Drive) including compatible Microsoft Word *.doc* (93-2003) format and jpeg image format. Each manhole shall be provided in its own folder. The folder shall be labelled with the Manhole's ID. All electronic files name format shall be per below:

MANHOLE ID_MM_DD_YYYY_1...2...3...4

3. Photographs for each manhole shall clearly identifying the manhole number referenced in the Contract Drawings and the post rehabilitation work completed. Photographs shall include multiple pictures including:
- Overview photograph of the manhole and the location of the surrounding area. Photograph is required to show the manhole with its lid open, a dry erase board with the manhole number and inspection date and the surrounding area. The photograph should be taken approximately 15 feet away from the manhole.
 - Top view photographs of the manhole clearly showing the top frame, surface grade around the frame, and full height of the manhole.
 - Intermediate view photographs clearly showing the walls, bench, and channel of the manhole.
 - Post rehabilitation photographs showing specific rehab done to the manhole.
4. Documents for each manhole shall include list of rehabilitation completed for each manhole in a table format similar to manhole inspection form. Provide list of work perform for each manhole. Provide list of work not performed as original scope in the Contract Documents.
5. Only final complete manhole rehabilitation shall be submitted for review. Submittals of manholes with incomplete rehabilitation work will result in complete rejection of the submittal.
6. Any incomplete, unreadable, or poorly taken pictures will results in complete rejection of the submittal.
7. No payment shall be made until all required submittals including post rehabilitation submittals are received and accepted by the Engineers.

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* For each Manhole, fill the following inspection Form
* Provide photographs according to the inspection specification stated under special provisions

General Information		
Surveyed By		Date (MMDDYY)
MH No.		
MH (Northing/Easting)		
Location Details (Street Name etc.)		
Manhole Component Observation		
Cover Condition		
Cover Ring Condition		
Frame Condition		
Chimney Condition		
Cone Condition		
Wall Condition		
Bench Condition		
Channel Condition		
Additional Information		
Recommend Rehab (Y/N)		

TECHNICAL SPECIFICATIONS

FOR: Midland Draw Manhole Rehabilitation Project – From East Golf Course Rd. to North A St; Jal Draw, from its confluence with Midland Draw to Holiday Hill Rd.; and Scharbauer Draw, from its confluence with Midland Draw to North Lamesa Rd.

All construction for this project must conform to the City of Midland “STANDARD SPECIFICATIONS” issued by the Engineering Services Department.

The “STANDARD SPECIFICATIONS” are available from the Department of Engineering Services, City Hall, 300 North Loraine Street, Suite 510, Midland, Texas. The bidder/Contractor is to pay particular attention to the lining specifications provided with Appendices.

APPENDIX A

GEPOLYMER RESTORATION MORTAR (MAINSTAY GEOSPIN™)

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Materials, work, and equipment required for the preparation and application of geopolymer restoration mortar to concrete structures and corrugated metal pipe.

1.02 REFERENCES

- A. ACI 305R - Hot Weather Concreting
- B. ASTM C 109 - Standard Test Method for Compressive Strength of Hydraulic Cement Mortars (Using 2-in. or 50-mm Cube Specimens)
- C. ASTM C 78 - Standard Test Method for Flexural Strength of Concrete (Using Simple Beam with Third-Point Loading)
- D. ASTM C 496 - Standard Test Method for Splitting Tensile Strength of Cylindrical Concrete Specimens
- E. ASTM C 596 - Standard Test Method for Drying Shrinkage of Mortar Containing Hydraulic Cement
- F. ASTM C 1042 - Bond Strength of Latex Systems Used with Concrete by Slant Shear
- G. International Concrete Repair Institute (ICRI) Technical Guideline No.03730 - Surface Preparation Guidelines for the Repair of Deteriorated Concrete Resulting from Reinforcing Steel Corrosion

1.03 SUBMITTALS

- A. Submittal shall be prepared and submitted in accordance with the General Conditions of the project.
 - 1. Product substitutions to be submitted by Contractor and approved by Engineer at least ten (10) days before bid date.
- B. Product Data: Submit manufacturer's product data, including physical properties, surface preparation, and application and curing procedures.
- C. List of three (3) geopolymer restoration mortar projects with at least three (3) years of successful service history, including project name and location, name of owner and engineer, and a description of the products used, substrate conditions, and application procedures.
- D. Applicator Qualifications: Submit qualifications of applicator.
 - 1. CURRENT certification is to be submitted by the manufacturer stating that the applicator is trained and approved in the application of the specified products.

1.04 QUALITY ASSURANCE

- A. Applicator Qualifications:
 - 1. Trained and approved by the manufacturer in the application of the specified products.
 - 2. Employs persons trained for the application of the specified products.

- B. Pre-Application Meeting: Convene a pre-application meeting two (2) weeks before the start of the application of the geopolymer restoration mortar. Require attendance of parties directly affecting work of this section, including the Contractor, Engineer, applicator, and manufacturer's representative. Review surface preparation, application, curing, field quality control, and coordination with other work.

1.05 DELIVERY, STORAGE, AND HANDLING

- A. Delivery: Deliver materials to the site in the manufacturer's original, unopened containers and packaging with labels clearly identifying product name and manufacturer.
- B. Storage:
 - 1. Store materials in accordance with manufacturer's instructions.
 - 2. Keep containers sealed until ready for use.
 - 3. Store materials in a cool, dry environment.
- C. Handling: Protect materials during handling and application to prevent damage.

1.06 ENVIRONMENTAL CONDITIONS

- A. Do not apply materials under the following conditions:
 - 1. Temperatures above or below the manufacturer's recommended maximum or minimum allowable.
 - 2. Overflowing water

PART 2 PRODUCTS

2.01 MANUFACTURER

- A. Madewell Products Corporation 7561 Industrial Court, Alpharetta, Georgia 30004.
Craig Closser Phone (765) 810-3497 craig@madewell.net.
Fax (770) 475-8167. Internet: www.madewell.net

2.02 GEOPOLYMER RESTORATION MORTAR

- A. General Requirements:
 - 1. Material is compatible with the substrate.
 - 2. A minimum of three (3) years of successful service history in aggressive sewer environments where the geopolymer restoration mortar was applied.
- B. Hydraulic Cement Mortar: Mainstay ML-10 Hydraulic Cement Mortar. Fast-setting mortar used to stop leaks through cracks and holes.
 - 1. Composition: Blend of hydraulic cements and fillers
 - 2. Working Time: 45 to 90 seconds at 77 degrees Fahrenheit (F)
 - 3. Color: Dark gray
- C. Restoration Mortar: Mainstay GeoSpin Geopolymer Restoration Mortar. Low shrinkage, high strength, polymer modified, geopolymer mortar.

1. Chemical Composition:
 - a. 70% pozzolanic material (consisting of SiO₂, Al₂O₃, Fe₂O₃, and MgO) and less than 30% CaO as determined by X-ray fluorescence (XRF) measured using ASTM C 114.
2. Physical Test Requirements:
 - a. Compressive Strength, ASTM C 109:
 1. 24 hours: 8,000 psi
 2. 28 days: 12,000 psi
 - b. Flexural Strength, ASTM C 78:
 1. 24 hours: 600 psi
 2. 28 days: 700 psi
 - c. Tensile Strength, ASTM C 496:
 1. 28 days: 600 psi
 - d. Shrinkage, ASTM C 596:
 1. 28 days: 0.0%
 - e. Bond Strength, ASTM C 882:
 1. 28 days: 1,500 psi
 - f. Color: light gray

D. Design Thickness

1. For structures less than 25' deep, a minimum of 1" thickness is recommended.
2. For structures greater than 25' deep, liner thickness calculations must be performed and submitted by a licensed engineer.

PART 3 EXECUTION

3.01 EXAMINATION

- A. Examine surfaces to receive the geopolymer restoration mortar. Notify the Engineer in writing if surfaces are not acceptable. Do not begin surface preparation or application until unacceptable conditions have been corrected.

3.02 SURFACE PREPARATION

- A. Prepare surfaces in accordance with manufacturer's instructions.
- B. Cleaning: Clean surfaces by Low Pressure Water Cleaning (LP WC, 4,000 psi minimum), abrasive blasting, by hand, or with power tools as required to remove all unsound concrete, contaminants, dirt, debris, and deteriorated reinforcing steel. Prepared surfaces should have a minimum ICRI Concrete Surface Profile (CSP) #4 (preferably with aggregate exposed).
- C. Inspection: Inspect cleaned surfaces to identify and mark corroded reinforcing steel and locate cracks, leaks, and joints.

- D. Replace or treat corroded reinforcing steel, repair cracks and leaks, and treat joints in accordance with manufacturer's instructions and as approved by the Engineer.
- E. Refer to ICRI Technical Guideline No. 03730 - *Surface Preparation Guidelines for the Repair of Deteriorated Concrete Resulting from Reinforcing Steel Corrosion*.
- F. Madewell 1312P Epoxy Putty may be used to coat prepared exposed reinforcing steel to reduce the likelihood of the formation of galvanic corrosion.
- G. Inspect surfaces for soundness.
- H. Saturate all surfaces thoroughly with clean water.
- I. Apply restoration mortar to prepared substrate as soon as water sheen is no longer visible (saturated surface dry).
- J. Hydrostatic Leak Correction:
 - 1. Stop visible hydrostatic leaks by application of Mainstay ML-10 Hydraulic Cement Mortar after completion of surface preparation.
 - a. Mix only one (1) to two (2) pounds of Mainstay ML-10 at a time.
 - b. Add water to form a viscous mass with consistency of modeling clay.
 - c. Apply by hand or trowel.
 - d. Press mixed material firmly into place, starting at the top of the leak and working downward.
 - 2. Inject flowing leaks or cracks using a suitable polymer gel or foam. Remove excess or spilled material from concrete surface before application of restoration mortar.

3.03 APPLICATION OF GEOPOLYMER RESTORATION MORTAR

- A. Apply Mainstay GeoSpin Geopolymer Restoration Mortar in accordance with manufacturer's instructions.
- B. Apply using one of the following methods:
 - 1. Low to medium velocity wet mix shotcrete application
 - 2. Hand trowel into place
 - 3. Horizontal centrifugal application by use of the Mainstay Horizontal Mortar Spinner & Precision Cable Puller
- C. Apply uniformly to the substrate to the specified thickness.
- D. Do not trap air in corners, behind exposed reinforcing steel, or between lifts.
- E. Mortar Thickness: Apply a minimum thickness of 1/2 inch above peaks of existing surface profile after surface preparation.
- F. Hot Weather Application:
 - 1. Reduce evaporation rate of surface moisture. If applying the restoration mortar under conditions such as high temperatures, wind, or low humidity (alone or in combination), rapid evaporation of surface moisture can occur, which may cause

plastic shrinkage cracking. Use of a curing compound (such as Sakrete^R Cure N'Seal) is advised under such conditions and should be applied as soon as possible after placing Mainstay Geospin Geopolymer Restoration Mortar.

G. Cold Weather Application:

1. Place Mainstay GeoSpin Geopolymer Restoration Mortar at a minimum temperature of 55 degrees F and protect mortar from freezing for a minimum period of three (3) days.

END OF SECTION

APPENDIX B

CURED-IN-PLACE MANHOLE REHABILITATION

PART 1 – GENERAL

This section covers the lining and rehabilitation of structures within sanitary and storm water collection systems with the use of a cured-in-place laminated composite bonded to the host structure. It shall be comprised of a three-layered, laminated structural system containing a non-porous membrane layered between two structural layers of woven roving fiberglass.

Any alternative product being submitted for pre-approval must provide third party test certification that the product will meet or exceed the physical properties named herein in Section 2.1.G, Table 1. Proposed product and Contractor must also meet or exceed the installation standards, experience and performance qualifications as herein described in this specification. If approved, notice from the Owner/Engineer shall be delivered to all plan holders and potential bidders a minimum of seven calendar days prior to date of bid opening, in the form of a written addendum. Spray and hand applied coatings shall not be considered for use on this project.

Any product used must provide warranty that infiltration, further deterioration and root intrusion shall be prevented for the warranty period. Said warranty shall be unlimited and non-prorated for 20-year liner materials and 1-year labor.

1.1 DESCRIPTION OF WORK

- A. Liner material and components shall have been custom fabricated to fit the specific configuration of each structure prior to the commencement of the liner installation. Liner shall be of the type that allows rehabilitation of concentric, eccentric or flat top manholes without removing manhole ring, top section, flat-top, or corbel.
- B. Cured-in-place manhole (CIPM) liner shall completely seal the manhole, shelf, pipe inlet and outlets, and the lid ring frame in a monolithic method, as required, or as shown on the plans, and that no holes, cracks or seams in the liner are left unsealed, which would allow gases or fluids to flow behind the CIPM manhole liner.
- C. Contractor shall furnish all labor, materials, equipment, and incidentals required to supply and install a chemical resistant CIPM Liner as required or as shown on the plans.
- D. The CIPM Liner shall be designed and installed to protect concrete, brick and other manhole surfaces from corrosion. The CIPM liner product shall be designed to stop infiltration, root intrusion, and further deterioration in the structure. The interior surfaces to be protected shall include the walls, shelves, pipe junctions and the lid ring frame.

- E. Omission of a specific item or component obviously necessary for the proper installation and functioning of the system shall not relieve the Contractor from the responsibility of supplying that specific item or component at no additional expense to the Owner.

1.2 REFERENCED SPECIFICATIONS

The CIPM corrosion resistant liner system shall be manufactured and installed as to be in compliance with the listed minimum values of the applicable ASTM testing requirements.

ASTM D-638	Tensile Strength
ASTM D-790	Flexural Strength and Flexural Modulus
ASTM D-5813	Standard Specification for Cured-in-Place Thermosetting Resin Sewer Piping Systems

1.3 SUBMITTALS

- A. The Contractor shall submit for review, complete detailed shop drawings and schedule for all materials furnished under this section.
- B. The Contractor shall submit for approval all manufacturer warranties for all materials furnished under this section and Manufacturer's certification that the materials supplied are in compliance with this specification.
- C. The Contractor shall submit for approval, the Manufacturer's Licensee Certification that the Contractor is trained in the installation process and procedures for the proposed liner system under this section.
- D. The Contractor shall provide a reference list of manhole rehabilitation projects that are of the same typical scope of work as this project. Reference shall include: Name and address of Client, project name, contact person, phone, scope including number of structures lined, and gross dollar amount of the project.
- E. Contractor shall submit the Manufacturer's affidavit showing that the product meets or exceeds the physical properties named herein on Table 1, Test Property Values, and that the CIPM liner material has passed a 30-day chemical immersion test in 20 percent sulfuric acid concentration with less than a 20 percent loss in flexural modulus.

1.4 WARRANTY AND REPAIRS

- A. Manufacturer shall provide unlimited and non-prorated warranty on the performance of the CIPM Liner materials for 20 years and Certified Installer shall provide 1-year labor warranty to repair or replace any failing conditions of the liner in the structure. Certification of the conforming warranty shall be provided prior to approval of the submittals and award of contract.

- B. The cured-in-place liner system shall be flexible, and have an elongation sufficient to bridge up to a 1/4-inch settling crack, without damage to the lining. The liner shall be able to bridge expansion cracks that may occur.
- C. The cured-in-place liner system shall be repairable at any time during the life of the structure, with the same type of liner system materials used in the original installation, including repair or lining of the upper chimney portion where grade adjustments have been made. Repair/lining materials shall be of the type that will bond to the original liner materials.

PART 2 – PRODUCTS 2.1 MATERIALS AND DESIGN GUIDE

- A. The design guide below for Type 1, II, III, and IV is intended as a general guide for the CIPM liner products, and is not intended to limit the manufacturer's and authorized installer's judgment to use a heavier liner in determining the appropriate thickness and type of liners for individual structures based upon the specific conditions encountered in each structure. Any variation of the liner thickness requirements detailed below in section 2.1-B, C, D, and E, shall be approved by the manufacturer in writing, and mutually agreed upon between the Owner and Contractor, prior to commencement of the work. Variation in liner thickness by the manufacturer or authorized installer will not affect the warranty requirement.
- B. Type 1: In structures up to 8 feet in depth (depending on specific local conditions), the liner shall be not less than a three-layered composite system (see table 1 below). Layer #1 is 12-oz. structural fiberglass impregnated with a modified epoxy resin and bonded to the existing substructure. Layer #2 is to be a gas and liquid impermeable membrane of special non-porous materials, bonded to layer #1 and layer #3. Layer #3 will consist of 12-oz. structural fiberglass saturated with epoxy and bonded to the non-porous membrane, forming a smooth interior wall to the host structure. The nonporous water and gas shield shall be imbedded between the structural layers of epoxy-fiberglass to guard against nicks, tears and damage to the gas protection membrane.
- C. Type II: In structures up to 13 feet deep (depending on specific local conditions), the liner shall be a three-layered composite system (see table 1 below). Layer #1 is 18-oz. structural fiberglass impregnated with a modified epoxy resin and bonded to the existing substructure. Layer #2 is to be a gas and liquid impermeable membrane of special non-porous materials, bonded to layer #1 and layer #3. Layer #3 will consist of 18-oz. structural fiberglass saturated with epoxy and bonded to the non-porous membrane, forming a smooth interior wall to the host structure. The non-porous water and gas shield shall be imbedded between the structural layers of epoxy-fiberglass to guard against nicks, tears, and damage to the gas protection membrane.

- D. Type III: In structures from 13-30 feet, (or with site conditions requiring structural enhancement), the liner shall be a three-layered composite system (see table 1 below). Layer #1 will be a 24-oz. structural fiberglass impregnated with modified epoxy resins and bonded to the existing substructure. Layer #2 is to be a gas and liquid impermeable membrane of special non-porous materials, bonded to layer #1 and layer #3. Layer #3 will consist of a 24-oz. structural fiberglass saturated with epoxy and bonded to the non-porous membrane, forming a smooth interior wall to the host structure. The non-porous water and gas shield shall be imbedded between the structural layers of epoxy-fiberglass to guard against nicks, tears, and damage to the gas protection membrane.
- E. Type IV: In structures deeper than 30 feet or for portions of structures deeper than 30', (or with site conditions requiring additional structural enhancement), the liner shall be a five-layered composite system (see table 1 below). Layer #1 will be (2) 24-oz. structural fiberglass layers impregnated with modified epoxy resins and bonded to the existing substructure. Layer #2 is to be a gas and liquid impermeable membrane of special non-porous materials, bonded to layer #1 and layer #3. Layer #3 will consist of (2) 24-oz. structural fiberglass layers saturated with epoxy and bonded to the nonporous membrane, forming a smooth interior wall to the host structure. The non-porous water and gas shield shall be imbedded between the structural layers of epoxy-fiberglass to guard against nicks, tears, and damage to the gas protection membrane. There is no minimum or maximum manhole depth limit on this liner.
- F. The CIPM liner shall be constructed such that the non-porous PVC inner membrane is protected from damage by the use of a structural fiberglass and epoxy layer on both sides. This inside surface protective layer is to protect the CIPM liner from impact damage e.g. nicks from rodders and root cutters, hydro-vacuum nozzles, inspection cameras, survey equipment, and construction techniques used in pipeline rehabilitation. The non-porous PVC membrane shall not be exposed on the inside of the manhole. The importance of this protective layer cannot be overemphasized to protect the manhole from sulfides and other gases penetrating through nicks and cuts in an unprotected membrane. This CIPM liner must be impervious and without pinholes that will allow hidden corrosion on the concrete behind the liner, which can cause the eventual failure of the liner and the manhole.
- G. The CIPM Lining System shall be applied by a manufacturer Certified Licensed Installer and shall be installed in strict accordance with Manufacturer's specifications. Liner Installer shall be trained in handling and application of the materials, and will custom fit the liner to the manhole in order to protect the concrete and brick surfaces from sewer gases.

TABLE 1, Test Property Values

The Manufacturer must provide an affidavit certifying that the liners to be installed will meet or exceed the following test values. Furthermore, Manufacturer must provide a warranty certificate that clearly states that the 10 year materials warranty shall be unlimited and non-prorated for the entire period of the warranty.

<u>Materials Section</u>	<u>Type I</u>	<u>Type II</u>	<u>Type III</u>	<u>Type IV</u>
ASTM-D-790				
Flexural Strength	15,000 psi	18,000 psi	22,000 psi	28,000 psi
Flexural Modulus	700,000 psi	800,000 psi	900,000 psi	1,000,000 psi
ASTM-D-638				
Tensile Strength	5,000 psi	8,000 psi	12,000 psi	20,000 psi
Engineered Life Expectancy	100 Years	100 Years	100 Years	100 Years Installation
Warranty	1 Year	1 Year	1 Year	1 Year
Materials Warranty	10 Years	10 Years	10 Years	10 Years

PART 3 – INSTALLATION

3.1 STRUCTURE PREPARATION-CIPM REHABILITATION

- A. The Contractor shall remove and replace and/or make grade adjustment to ring and cover as needed using the City of Midland Standard Details and Specifications, prior to the installation of the liner system.
- B. Contractor will perform preliminary cleaning the structure with a high pressure water jet blast at a minimum of 3500 psi with a rotating pencil tip nozzle to prepare the structure for any necessary grouting or other preparation.
- C. The Contractor shall remove the existing manhole steps. The metal portion of all steps will be removed flush with the manhole interior wall surface, and any remaining holes are to be patched flush prior to applying the CIP manhole rehabilitation system. The final coated surface shall have a smooth uniform appearance.
- D. Prior to patching severe defects in the manhole, all loose and deteriorated material shall be removed and disposed of by the Contractor. The bench areas shall be repaired as and contoured to promote hydraulic flow. The prepared surface of the shelves shall be smooth and shall be sloped to allow for all bench areas to drain to the pipe invert.
- E. Manhole chimney, wall and shelf repair shall include plugging, and/or patching as necessary, with specified grout, plugging or patching compounds, hydraulic and/or Type II Portland cement or equal.

- F. All active hydrostatic water leakage shall be stopped within four (4) inches of where the liner will end around pipes or the shelf area in accordance with manufacturer's instruction.
- G. Contractor shall plug the inlet pipe, inspect for infiltration leaks around the inlet and outlet pipes as well as in the invert channel. All leaks present shall be stopped by the use of chemical foam grout injection with Avanti 202 or equal and/or by the use of hydraulic cement. After stopping leaks with chemical grout, hydraulic cement shall be used to refinish the surface where the leak was occurring.
- H. All cracked or disintegrated material shall be removed from the area to be patched exposing a sound substrate. Patches of filling of voids shall be allowed to cure according to the manufacturer's specifications before continuing with the CIPM rehabilitation process.
- I. Contractor shall remove any drop pipes to within 2 inches of the wall. All other incoming laterals shall be trimmed within 2 inches of the interior wall and sewer main line inlet and outlet openings shall be properly trimmed within 4 inches of the wall in areas where such pipes protrude above the benches that form the invert channel. All incoming and outgoing lines shall be grouted with an approximate 60° taper with hydraulic cement, Portland type II cement, or 50/50 combination of hydraulic and Portland, forming a filet (not less than a 6 inch radius) between the structure wall and each pipe. Such application of grout shall extend at least four inches from the outlet onto the wall area making a smooth transition for the liner connection to the pipe openings.
- J. Prior to liner installation, Manufacturer's Authorized Licensed Installer shall clean all surfaces of the host structure with a high-pressure sprayer having an operating pressure of at least 3,500-psi with a rotating pencil tip nozzle. After pressure cleaning, installer may clean structure with degreaser or other solvents as needed to remove any film or residue on the surface. Structure shall then be pressure rinsed with clean water.

3.2 CIPM LINER INSTALLATION

Manufacturer's Authorized Licensed Installer shall typically install the CIPM liner with simultaneously combined air pressure and steam heat injection, except where jobsite conditions restrict use. The liner may also be installed with or without other heat methods including ambient curing under longer periods of time in accordance with the manufacturer's written instructions. Epoxy resin as specified herein does not have a flash cure, but rather is typically a condition of liner thickness, time and temperature. Hand applied fiberglass and epoxy application shall not be accepted. Installer shall line manhole shelf/bench areas and pump station floors with CIPM Liner System materials that have been saturated with the epoxy resin and placed

in the bottom to extend approximately three inches up the wall section, so as to overlap with the liner wall section. The CIPM Liner shall be made longer than the structure to overlap and reinforce the bench/floor transition area, providing overlap and double liner thickness in the critical corner section where the wall meets the bench.

3.3 FINAL INSPECTION AND ACCEPTANCE

- A. The installation of the approved liner system shall be in strict accordance with the manufacturer's written instructions. Contractor may submit alternate thicknesses as per the manufacturer's recommendations. The work shall include re-grouting all inlet and outlet lines and benches, as needed, including all preparation, installation, curing and finish operations for the complete rehabilitation process. The liner shall be installed and cured-inplace via a simultaneous pressurization blower system with steam heat injection, or other manufacturer approved process. The curing process will be typically completed in manholes in approximately four hours. Inlet and outlet lines must be reopened within one hour from the time the curing process is completed.
- B. The CIPM lining of the structure shall result in a monolithic structure, bonded to the contours of the existing host structure. The liner shall be adequately bonded to the interior structure surface, and be completely water tight from the ring and cover area to the transition area where the shelf and invert channel connects, including completely sealing the manhole wall and shelf areas to the inlet and outlet pipes.
- C. Qualification testing of the CIPM liner materials shall have been completed prior to installation. The initial structural properties shall meet or exceed the properties shown in Table 1. Any pertinent qualification testing shall be completed according to ASTM D 5813 as agreed upon between the owner and manufacturer.
- D. Cleaned Structure--All surfaces of the host structure shall be clean to the concrete substrate, acceptable to the Owner/inspector and ready to receive the liner.
- E. Resin Quantity--The liner manufacturer shall provide a tag on each CIPM liner indicating the amount of catalyzed resin necessary for impregnation purposes in order to meet structural properties. This will be acceptable with a tolerance variation of plus or minus 5 percent.
- F. The completed installation should be visually inspected to assure that dry spots are not present in the finished liner. This can also be accomplished by closed circuit television if usual inspection cannot be accomplished. No infiltration of groundwater should be observed coming through the CIPM liner or coming out at any place where the liner ends.

- G. Curing logs shall be filled out and kept on every structure that is lined. Such curing forms shall be provided by the manufacturer, and shall be maintained for the duration of the 20-year warranty period.

END OF SECTION

APPENDIX C

MAN HOLE REHABILITATION PICTURES



EXIST CONCRETE MH
PRESSURE WASHED



CONCRETE MH REHAB
INVERT SHAPED & INVERT/MH LINED

CITY OF MIDLAND

MIDLAND MANHOLE REHABILITATION PROGRAM - PHASE 1

AUGUST, 2023



MAYOR
LORI BLONG
COUNCIL MEMBERS

SCOTT DUFFORD	DISTRICT 1
JOHN NORMAN	DISTRICT 2
JACK LADD	DISTRICT 3
AMY STRETCHER BURKES	DISTRICT 4
DAN CORRALES	AT LARGE
ROBIN POOLE	AT LARGE

CITY MANAGER
TOMMY GONZALES
DIRECTOR OF UTILITIES
CARL CRAIGO, P.E.
ASSISTANT DIRECTOR OF UTILITIES
KERRY J KOEHLER, P.E.

CITY OF MIDLAND, 300 N. LORAIN ST.
MIDLAND, TEXAS 79701

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GENERAL NOTES:

A. THE MIDLAND DRAW SEWER MANHOLE REHABILITATION PROJECT CONSISTS OF THE REHABILITATION, AS REQUIRED, OF EXISTING CONCRETE SANITARY SEWER MANHOLES LYING IWITHIN MIDLAND DRAW, FROM EAST GOLF COURSE RD. TO NORTH A ST.; JAL DRAW, FROM ITS CONFLUENCE WITH MIDLAND DRAW TO HOLIDAY HILL RD.; AND SCHARBAUER DRAW, FROM ITS CONFLUENCE WITH MIDLAND DRAW TO NORTH LAMESA RD.

B. ALL CONTRUCTION TO COMPLY WITH CITY OF MIDLAND STANDARDS AND SPECIFICATIONS WHEREVER APPLICABLE. ALL OTHER STANDARDS AND REQUIREMENTS ARE TO COMPLY WITH ALL APPLICABLE FEDERAL AND STATE REGULATIONS, REQUIREMENTS, AND STANDARDS. WHEREVER CITY OF MIDLAND STANDARDS AND FEDERAL, OR STATE REQUIREMENTS DIFFER THE MORE RESTRICTIVE STANDARD REQUIREMENT, OR REGULATION WILL GOVERN.

C. ALL BEARINGS, DIMENSIONS, AND COORDINATES SHOWN IN THIS CONSTRUCTION DRAWING SET ARE RELATED TO TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM 1983. ALL ELEVATIONS ARE RELATED TO NORTH AMERICAN VERTICAL DATUM 1988.

D. EXISTING ELEVATIONS AND TOPOGRAPHIC FEATURES SHOWN IN THIS CONSTRUCTION DRAWINGS SET HAVE BEEN LOCATED USING CITY OF MIDLAND RECORDS, SITE INSPECTIONS, SURVEYS, ONE CALL MARKINGS, AND CONSTRUCTION AD RECORD DRAWINGS. CONTRACTOR IS RESPONSIBLE FOR VERIFYING THIS INFORMATION PRIOR TO CONSTRUCTION AND NOTIFYING THE ENGINEER OF ANY CONFLICTS BETWEEN EXISTING CONDITIONS AND PROJECT DESIGN.

E. EXISTING UTILITIES, INFRASTRUCTURE, AND OTHER OBJECTS INDICATED IN THIS CONSTRUCTION DRAWING SET HAVE BEEN LOCATED USING CITY OF MIDLAND RECORDS, SITE INSPECTIONS, SURVEYS, ONE CALL MARKINGS, AND CONSTRUCTION AND RECORD DRAWINGS. CONTRACTOR IS RESPONSIBLE FOR VERIFYING THIS INFORMATION PRIOR TO CONSTRUCTION AND NOTIFYING THE ENGINEER OF ANY CONFLICTS BETWEEN EXISTING CONDITIONS AND PROJECT DESIGN.

F. CONTRACTOR IS TO TAKE ALL NECESSARY PRECAUTIONS TO PROTECT ALL EXISTING FACILITIES THAT ARE ENCOUNTERED REGARDLESS OF WHETHER OR NOT THEY APPEAR IN THIS CONSTRUCTION DRAWING SET.

G. ANY ISSUES, CONFLICTS, OR DISCREPANCIES ENCOUNTERED IN FIELD THAT CONFLICT WITH THIS CONSTRUCTION DRAWING SET ARE TO BE BROUGHT TO ATTENTION OF THE ENGINEER PRIOR TO MAKING ANY DESIGN CHANGES IN FIELD.

H. TRAFFIC CONTROL FOR THIS PROJECT WILL BE CONTRACTOR'S RESPONSIBILITY. CONTRACTOR MUST SUBMIT TRAFFIC CONTROL PLAN, IN ACCORDANCE WITH TMUTCD, TO CITY OF MIDLAND FOR REVIEW AND APPROVAL NO LESS THAN FIVE (5) BUSINESS DAYS BEFORE CONTRACTOR BEGINS ANY CONSTRUCTION ACTIVITY.

I. CONTRACTOR IS TO NOTIFY ALL AFFECTED PROPERTIES AT LEAST FORTY-EIGHT (48) HOURS IN ADVANCE OF ANY KNOWN OR PLANNED INTERRUPTION OF SERVICE OR ACCESS DUE TO ANY CONSTRUCTION ACTIVITY PERFORMED BY CONTRACTOR.

J. ALL EXCESS MATERIAL SHALL BECOME THE PROPERTY OF THE CONTRACTOR AND WILL BE REMOVED FROM THE PROJECT SITE.

K. OSHA REQUIREMENTS AND ALL OTHER APPLICABLE FEDERAL, STATE, OR CITY OF MIDLAND SAFETY REQUIREMENTS ARE TO BE FOLLOWED AND COMPLIED WITH AT ALL TIMES.

L. CONTRACTOR MUST COMPLY WITH ALL STAKING AND TESTING REQUIREMENTS AS DESCRIBED IN PROJECT BID PACKET

M. CONTRACTOR IS REMINDED THAT THIS PROJECT IS LOCATED IN AN URBAN ENVIRONMENT. TREES AND OVERHEAD LINES ARE COMMON, AND CONTRACTOR IS TO PROVIDE PROPER EQUIPMENT TO COMPLETE ALL REQUIRED WORK FOR THIS PROJECT IN AN URBAN ENVIRONMENT.

N. EXISTING CONDITIONS AT PROJECT LOCATION ARE COMPLEX AND FLUID. THERE ARE MULTIPLE OR SIGNIFICANT CHANGES IN FIELD CONDITIONS AT THIS LOCATION, AND EXISTING SURFACE OR SUB-SURFACE CONDITIONS SHOWN IN THIS CONSTRUCTION DRAWING SET MAY NOT REFLECT ALL EXISTING CONDITIONS WHEN CONSTRUCTION COMMENCES. CONTRACTOR IS REMINDED TO VERIFY ALL EXISTING CONDITIONS BEFORE DEMOLITION, EXCAVATION, OR CONSTRUCTION.



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7.114

EROSION CONTROL NOTES:

A. INSTALL TEMPORARY EROSION CONTROL MEASURES PRIOR TO BEGINNING ANY CONSTRUCTION ACTIVITY ON PROJECT SITE.

B. CONTRACTOR IS TO MAINTAIN EROSION CONTROL MEASURES AT ALL TIMES. REPAIRS TO EXISTING EROSION CONTROL MEASURES ARE TO BE MADE IMMEDIATELY UPON DISCOVERY THAT SUCH REPAIRS ARE NEEDED. ALL EROSION CONTROL MEASURES AT PROJECT SITE ARE TO BE INSPECTED IMMEDIATELY FOLLOWING ANY STORM EVENT.

C. CONTRACTOR TO MAINTAIN A REASONABLE CLEAN PROJECT SITE AT ALL TIMES. ANY SEDIMENT, DEBRIS, ETC. OUTSIDE PROJECT SITE ARE TO BE REMOVED PROMPTLY.

D. ANY ON-SITE STORAGE OF SPOILS, MATERIALS, OR EQUIPMENT ARE TO BE LOCATED WITHIN PERMISSIBLE STAGING AND STORAGE AREA. THIS AREA NEED NOT BE REVEGATED ON COMPLETION OF PROJECT.

E. ON-SITE STORAGE OF SPOILS, MATERIALS, OR EQUIPMENT ARE NOT PERMITTED IN THE CHANNEL BOTTOM. IF ADDITIONAL STORAGE AREAS ARE NEEDED. THEY SHOULD BE APPROVED BY THE CITY OF MIDLAND AND LOCATED EITHER OFF-SITE OR ON THE UNEXCAVATED AREAS ABOVE THE TOP OF BANK.

F. ALL STOCKPILES ARE TO BE SURROUNDED BY SILT FENCE OR EQUIVALENT MEASURES AS APPROVED BY ENGINEER TO PROPERLY CONTROL SEDIMENT RUNOFF.

G. CONCRETE TRUCKS CANNOT UNDER ANY CIRCUMSTANCE WASHOUT IN UTILITY TRENCH. CONTRACTOR IS TO PROVIDE A WASHOUT CONTAINER FOR CONCRETE TRUCKS AND MUST REMOVE ALL WASHOUT AND SPOILS FROM PROJECT SITE.

H. IMPLEMENT SUPPLEMENTAL EROSION CONTROL MEASURES AS NEEDED DURING STORM EVENTS. ADDITIONAL EROSION CONTROL MEASURES MAY BE REQUIRED AT SOLE DISCRETION OF ENGINEER IF AT ANY TIME ENGINEER BELIEVES EXISTING EROSION CONTROL MEASURES ARE INSUFFICIENT FOR NEEDS OF PROJECT SITE.

I. CONTRACTOR IS REQUIRED AT A MINIMUM TO REMOVE AND DISPOSE OF ACCUMULATED SILT, SEDIMENT, OR OTHER DEBRIS FROM EROSION CONTROLS WHEN SILT, SEDIMENT, OR OTHER DEBRIS HAVE REACHED A HEIGHT EQUAL TO HALF THAT OF EROSION CONTROLS PLACED OR IMPEDE THEIR EFFECTIVENESS.

J. NO MORE THAN THREE (3) CALENDAR DAYS ARE TO ELAPSE AFTER COMPLETION OF CONSTRUCTION BEFORE THE FINAL ROADWAY AND RIGHT-OF-WAY CLEANUP HAS BEEN COMPLETED TO THE SATISFACTION OF THE ENGINEER.

K. DAMAGES TO ADJACENT PROPERTY OR TO RECEIVING WATERS CAUSED BY IMPROPERLY INSTALLED OR POORLY MAINTAINED EROSION CONTROL MEASURES ARE SOLE RESPONSIBILITY OF CONTRACTOR.

L. CONTRACTOR IS NOT TO BACKFILL OVER MANHOLES THAT ARE SET OR ADJUSTED BELOW EXISTING GROUND.

M. LOCATE CONCRETE WASHOUT WITHIN PROJECT AREA AND SHIFT AS NECESSARY FOR CONSTRUCTION ACTIVITY. ALL WASHOUT AND OTHER SPOILS ARE TO BE REMOVED FROM SITE.

PACKET

7.115

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ALL PRECAST CONCRETE SEWER MANHOLES IN DRAWS

Man Hole_ID	Sheet	Diameter	Elevation	Invert Elevation	Manhole Depth
7581	M-101	24	Unknown	Unknown	11.29
7580	M-101	24	2783.30	2772.05	11.25
7579	M-101	24	2783.80	2773.14	10.66
5085	M-102	24	2762.19	2752.65	9.54
7595	M-102	24	2777.34	2767.27	10.07
7570	M-102	24	2776.01	2767.79	8.22
7571	M-102	24	2777.11	2768.53	8.58
1524	M-102	24	2785.84	2769.54	16.30
8606	M-102	24	2791.57	2771.35	20.22
5094	M-103	24	2755.43	2746.48	8.95
5092	M-103	24	2769.63	2760.75	8.88
5091	M-103	24	2770.41	2761.66	8.75
5090	M-103	24	2771.34	2762.50	8.84
5061	M-103	24	2771.91	2763.12	8.79
5089	M-103	24	2771.95	2763.47	8.48
5087	M-103	24	2760.96	2751.47	9.49
5086	M-103	24	2760.63	2751.90	8.73
807	M-104	24	2768.79	2754.99	13.80
1564	M-104	24	2764.41	2757.87	6.54
805	M-104	24	2770.20	2756.78	13.42
1565	M-104	24	2765.24	2758.35	6.89
809	M-104	24	Unknown	Unknown	14.57
810	M-104	24	2763.92	2754.23	9.69
9542	M-104	24	2771.38	2756.16	15.22
5100	M-104	24	2765.45	2755.28	10.17
5099	M-104	24	2765.63	2756.35	9.28
5101	M-104	24	2772.07	2757.94	14.13
685	M-104	24	2772.45	2758.64	13.81
5098	M-104	24	2765.87	2757.04	8.83
5097	M-104	24	2753.80	2744.38	9.42
5096	M-104	24	2753.51	2744.85	8.66
5095	M-104	24	2754.38	2745.65	8.73
686	M-105	24	2761.94	2750.58	11.36
3044	M-105	24	2762.58	2750.68	11.90
688	M-105	24	2764.74	2751.11	13.63
7904	M-105	24	2764.18	2751.59	12.59
687	M-105	24	2766.61	2751.46	15.15
3656	M-105	24	2758.77	2748.61	10.16
802	M-105	24	2768.28	2752.97	15.31
3373	M-105	0	2762.04	2754.90	7.14
689	M-105	24	2761.17	2749.89	11.28

PACKET

7.116



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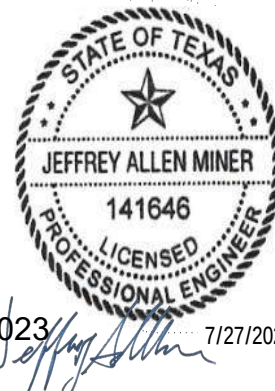
7/27/2023

ALL PRECAST CONCRETE SEWER MANHOLES IN DRAWS

Man Hole_ID	Sheet	Diameter	Elevation	Invert Elevation	Manhole Depth
3036	M-105	24	2768.43	2753.63	14.80
1562	M-105	24	2763.93	2756.98	6.95
1563	M-105	24	2764.35	2757.44	6.91
7224	M-106	24	2762.18	2748.52	13.66
6182	M-107	24	Unknown	Unknown	10.05
3653	M-107	24	2756.20	2746.58	9.62
8122	M-108	24	2752.77	2740.76	12.01
9656	M-109	24	2792.59	2786.99	5.60
5442	M-109	24	2802.02	2787.52	14.50
636	M-109	24	2801.21	2794.05	7.16
9655	M-110	24	2793.76	2788.42	5.34
7349	M-110	24	2795.37	2789.96	5.41
9651	M-110	24	2806.64	2793.24	13.40
9653	M-110	24	2795.76	2790.22	5.54
9648	M-110	24	2806.61	2795.00	11.61
9796	M-110	0	2806.61	2795.93	10.68
9800	M-110	24	2806.27	2798.27	8.00
9802	M-110	24	2807.28	2796.92	10.36
9684	M-111	24	2816.22	2808.77	7.45
9683	M-111	24	2811.39	2799.39	12.00
9685	M-111	24	2814.96	2807.96	7.00
9687	M-111	24	2814.87	2803.18	11.69
9688	M-111	24	2809.96	2797.93	12.03
697	M-111	24	2812.53	2802.53	10.00
9689	M-111	24	2811.55	2797.59	13.96
5889	M-111	24	2812.94	2801.94	11.00
5888	M-111	24	2812.50	2801.50	11.00
5141	M-111	24	2811.26	2796.31	14.95
5831	M-111	24	2811.99	2800.94	11.05
9695	M-111	24	2805.63	2795.64	9.99
9694	M-111	24	2807.33	2796.38	10.95
3583	M-112	24	2820.63	2814.19	6.44
6268	M-112	24	2816.06	2806.52	9.54
3581	M-112	24	2819.86	2813.42	6.44
7607	M-112	24	2816.47	2805.46	11.01
5497	M-112	24	2800.20	2791.05	9.15
4799	M-112	0	2820.01	2814.41	5.60
6495	M-112	24	2813.17	2801.21	11.96
5295	M-112	24	2817.21	2806.57	10.64
8900	M-113	0	2829.70	2821.84	7.86
8895	M-113	24	2822.52	2813.01	9.51
8894	M-113	24	2822.01	2811.55	10.46
8891	M-113	24	2819.77	2809.53	10.24
3574	M-113	24	2823.58	2817.39	6.19
8890	M-113	24	2819.40	2808.58	10.82
3575	M-113	24	2821.51	2815.03	6.48

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August 22, 2023 *Jeffrey Allen Miner* 7/27/2023

ALL POURED CONCRETE SEWER MANHOLES IN DRAWS

Jacobs

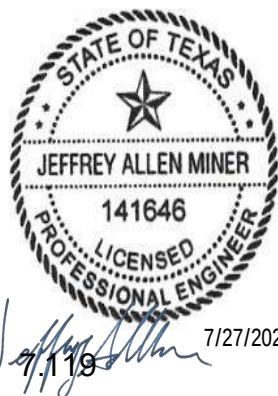
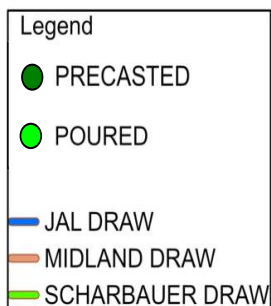
Man Hole_ID	Sheet	Diameter	Elevation	Invert Elevation	Manhole Depth
5093	M-103	24	2755.80	2747.04	8.76
3051	M-104	24	0.00	0.00	8.47
5103	M-104	24	2764.32	2754.66	9.66
3658	M-105	24	0.00	0.00	10.36
3048	M-105	24	0.00	0.00	9.90
3050	M-105	24	0.00	0.00	9.45
637	M-109	24	2801.74	2787.80	13.94
9646	M-110	24	2806.22	2800.92	5.30
9792	M-110	24	2805.96	2797.72	8.24
9686	M-111	24	2814.79	2805.38	9.41
5877	M-111	24	2801.73	2791.43	10.30
5838	M-111	24	2809.60	2799.68	9.92
9690	M-111	24	2813.66	2802.38	11.28
9691	M-111	24	2813.56	2802.98	10.58
9674	M-112	24	2819.82	2808.82	11.00
6494	M-112	24	2817.58	2806.58	11.00
2993	M-114	24	2832.35	2817.55	14.80

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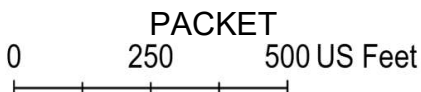
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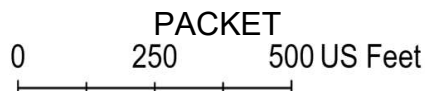
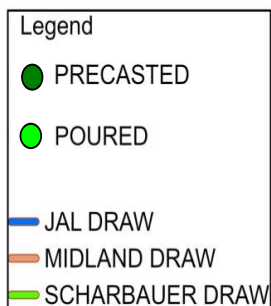
August 22, 2023 7/27/2023



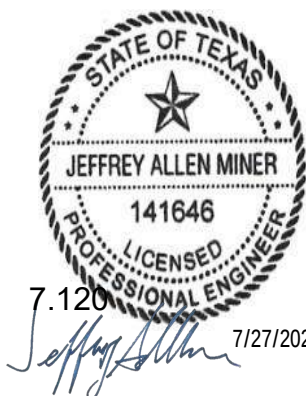
NOTE: CONCRETE MANHOLES SHOWN ARE PER CITY OF MIDLAND GIS INFO. CONFIRM THE MANHOLES ARE CONCRETE, THE CONDITION OF THE CONCRETE MANHOLES AND IF ANY ADDITIONAL CONCRETE MANHOLES EXIST.



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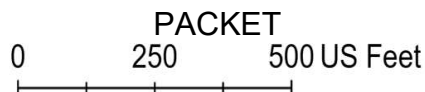
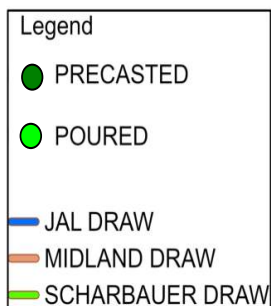
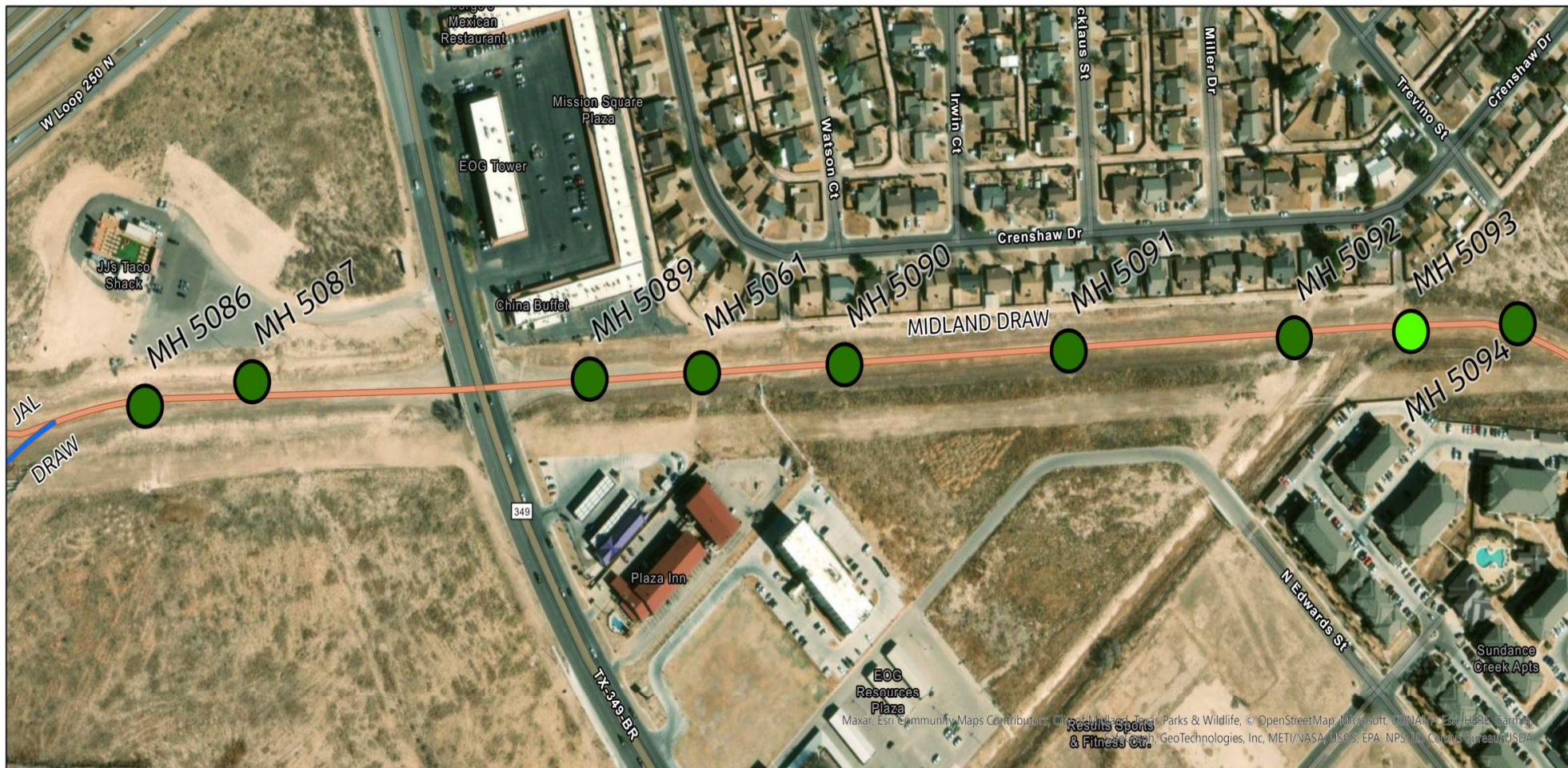


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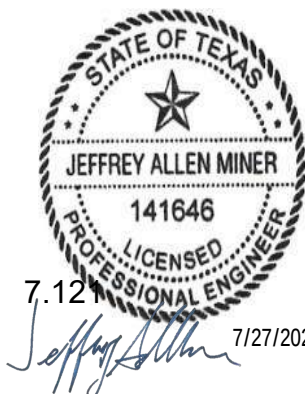


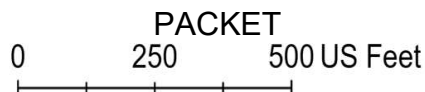
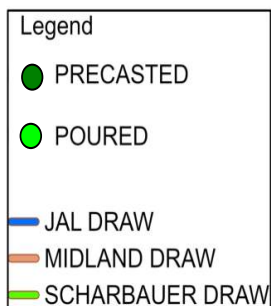
Esri, NASA, NGA, USGS, FEMA, Texas Parks & Wildlife, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA

August 22, 2023

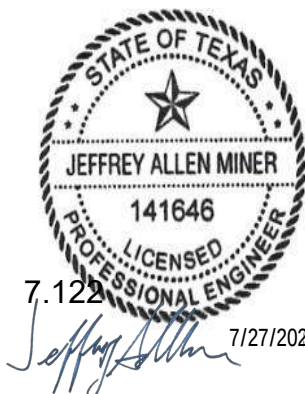


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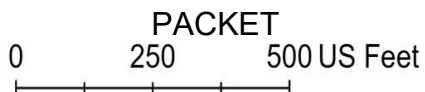
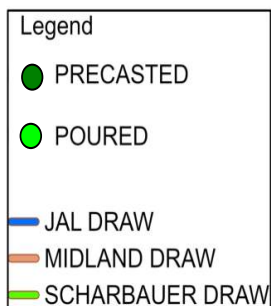
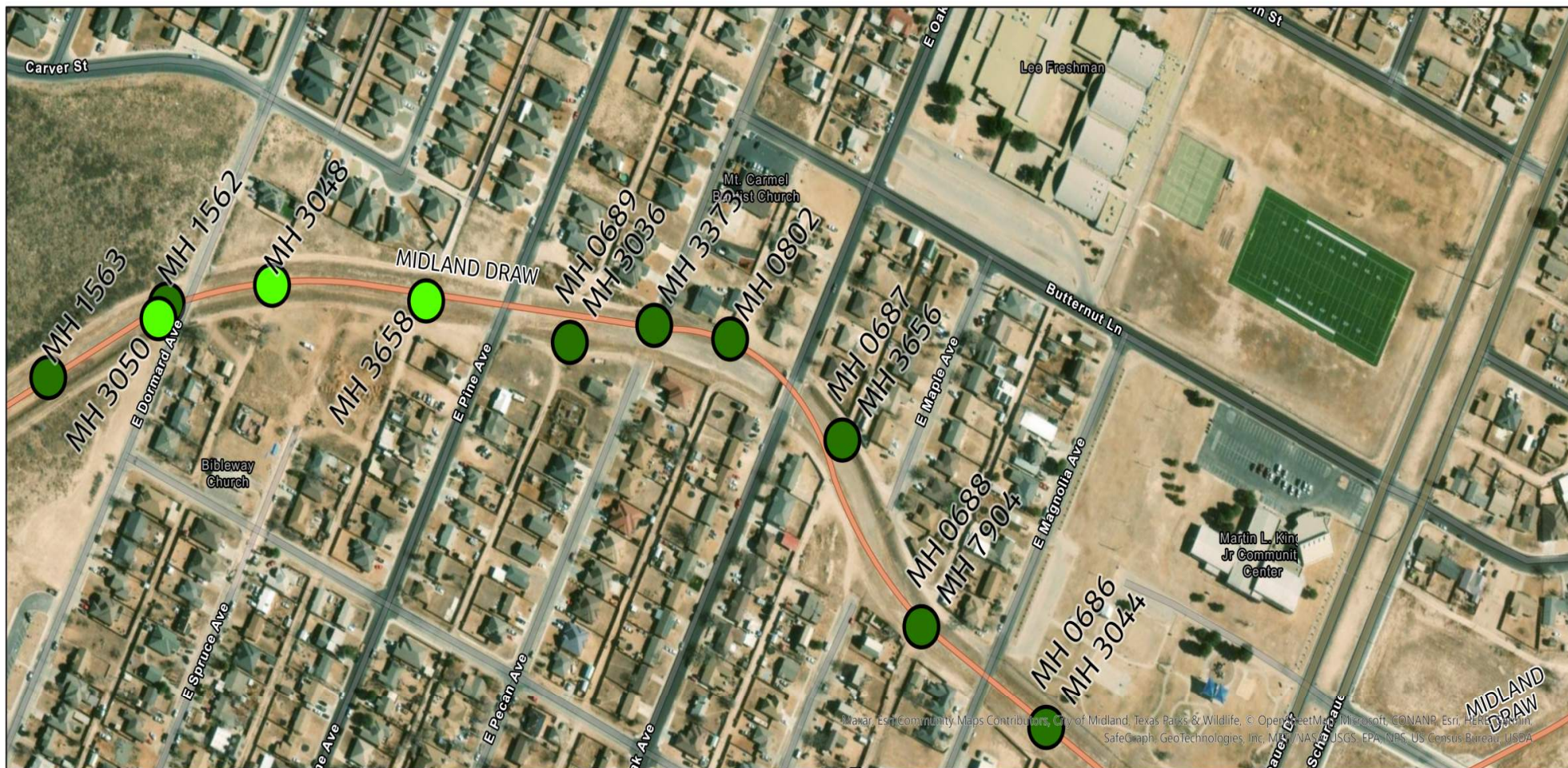




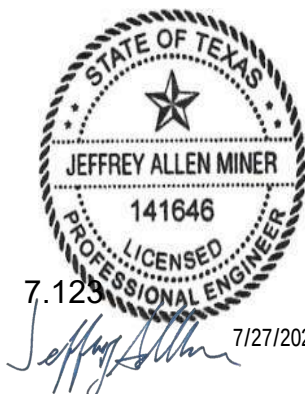
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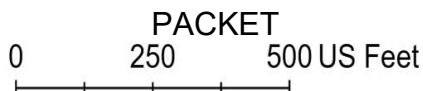
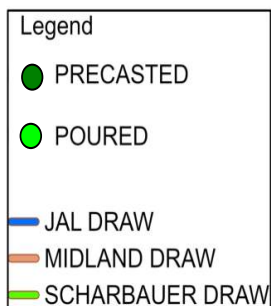
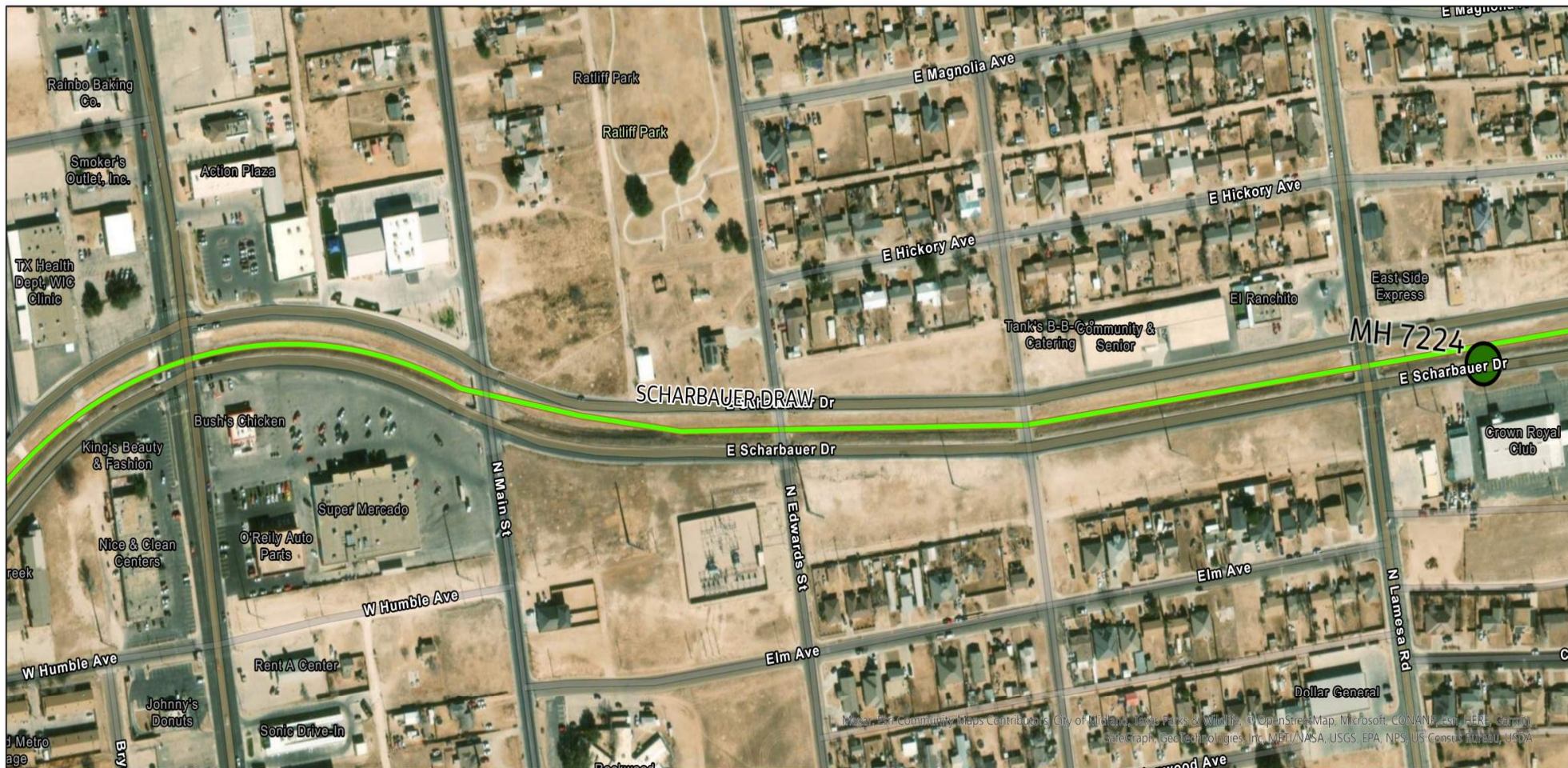


August 22, 2023



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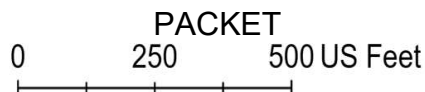
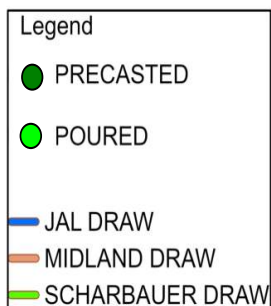


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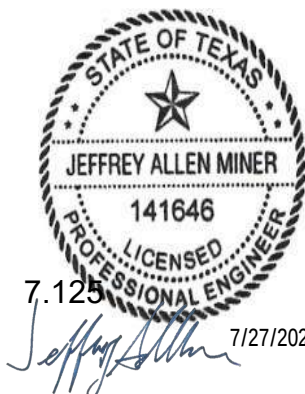


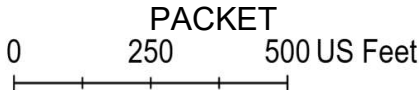
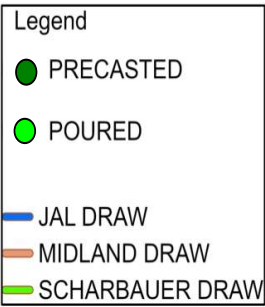
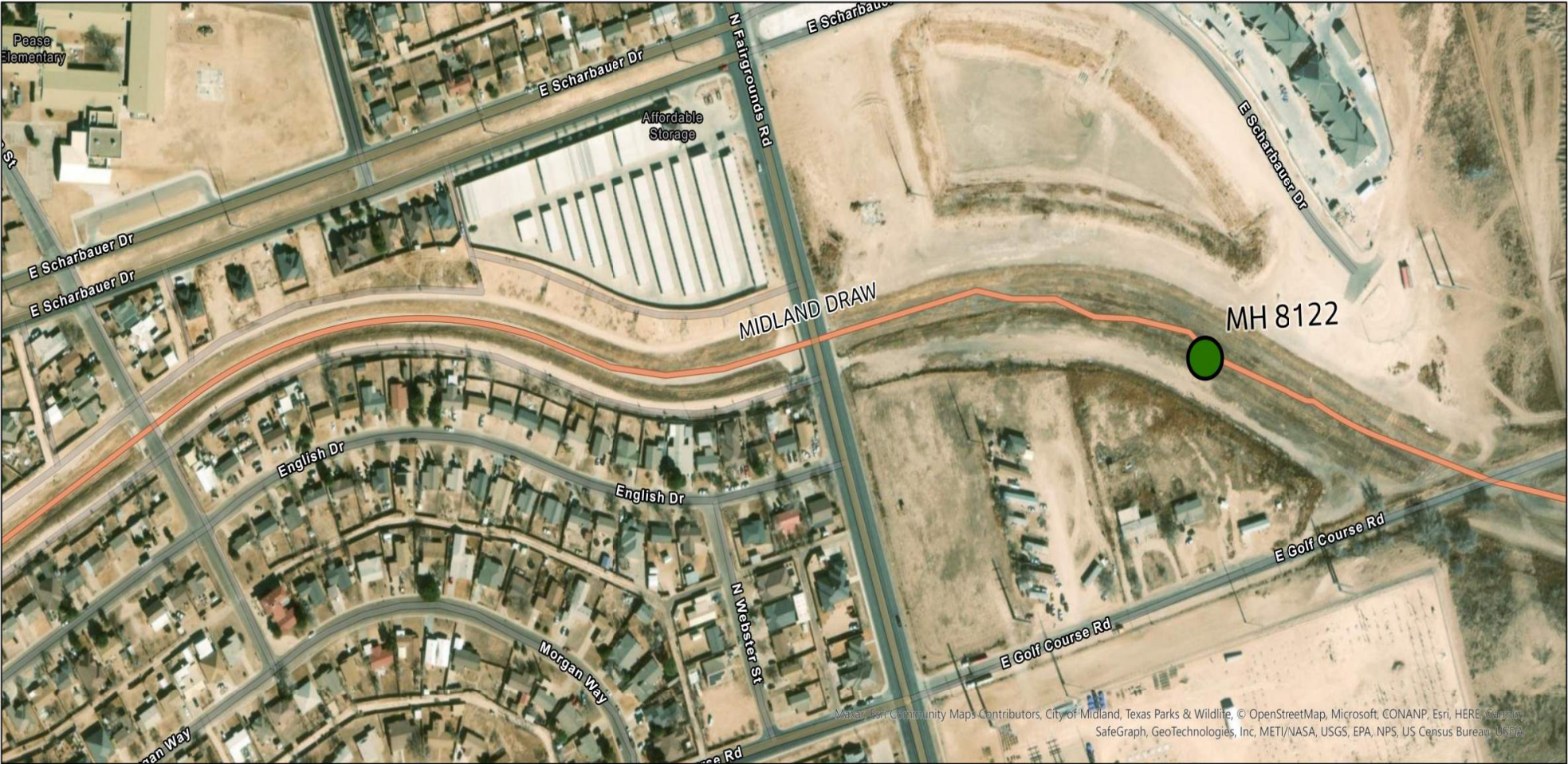
7.124
Jeffrey Allen Miner
7/27/2023



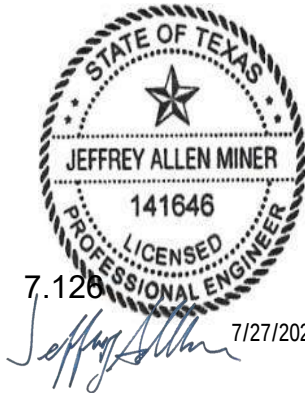


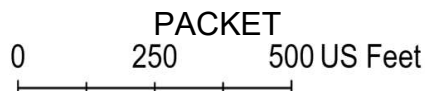
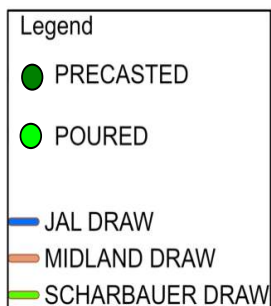
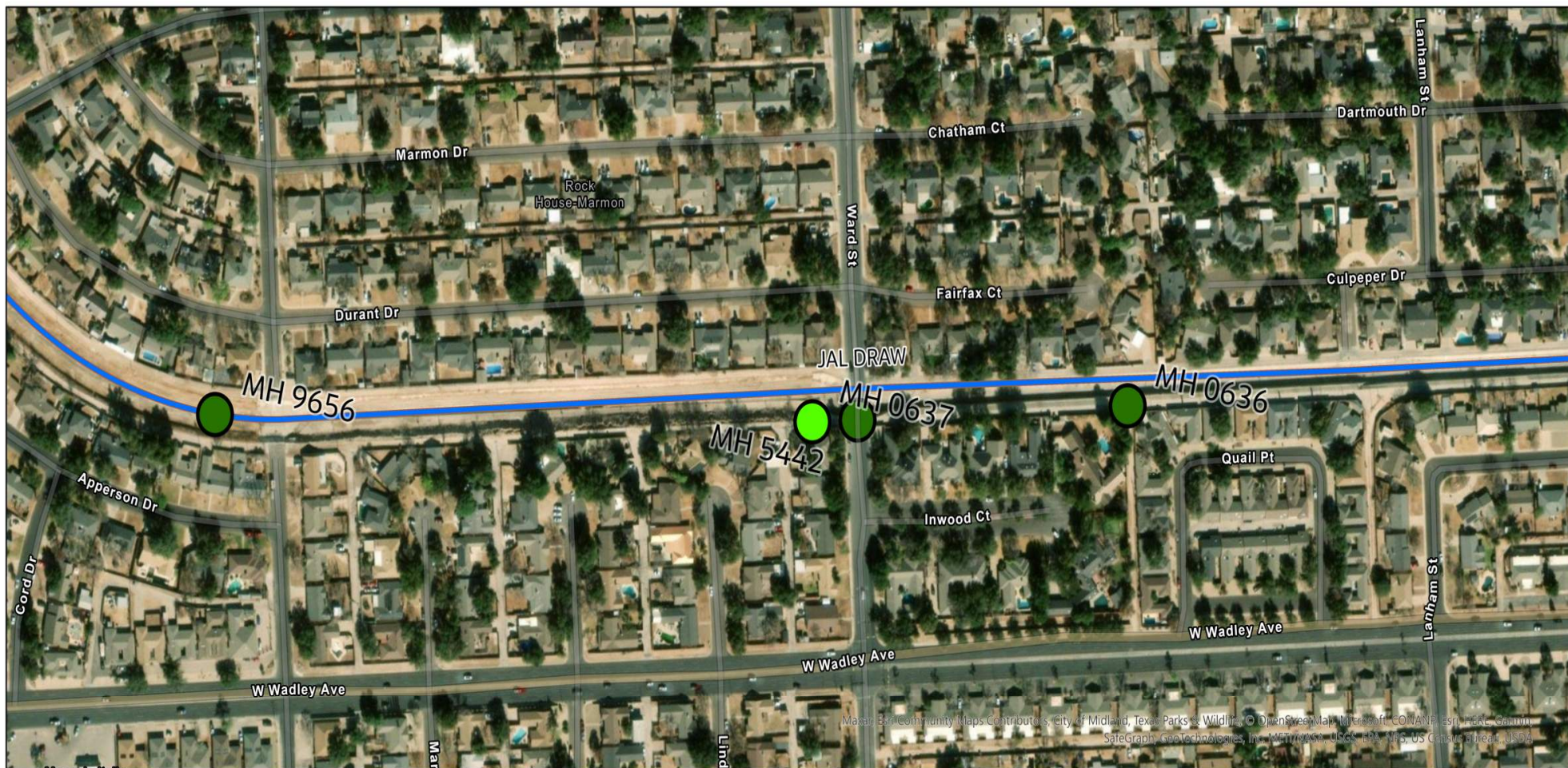
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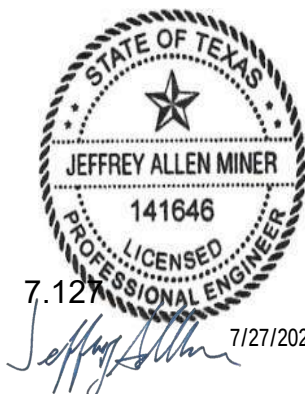


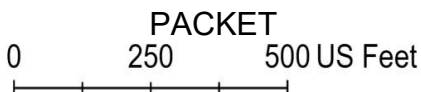
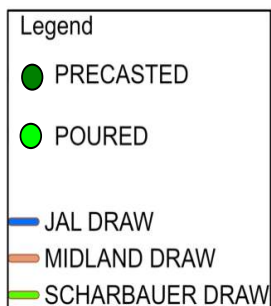
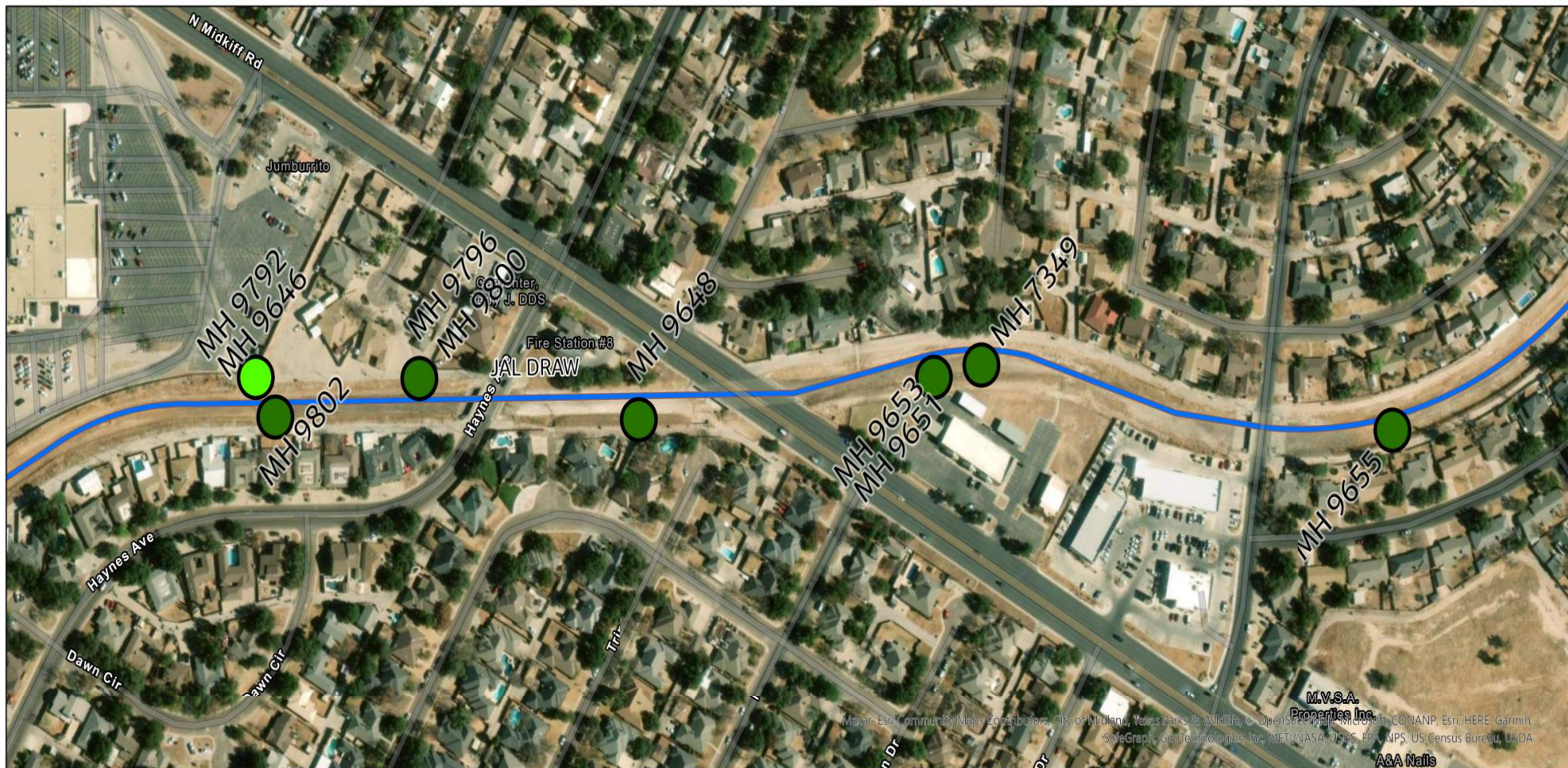
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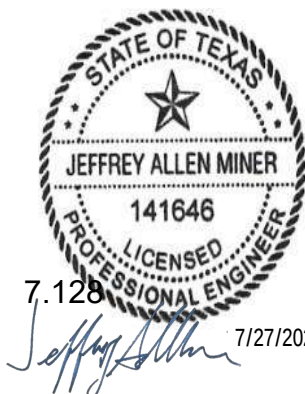


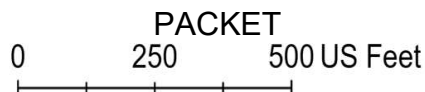
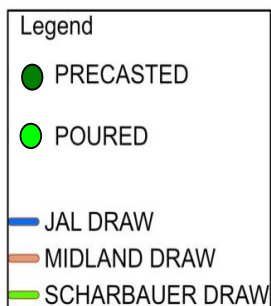
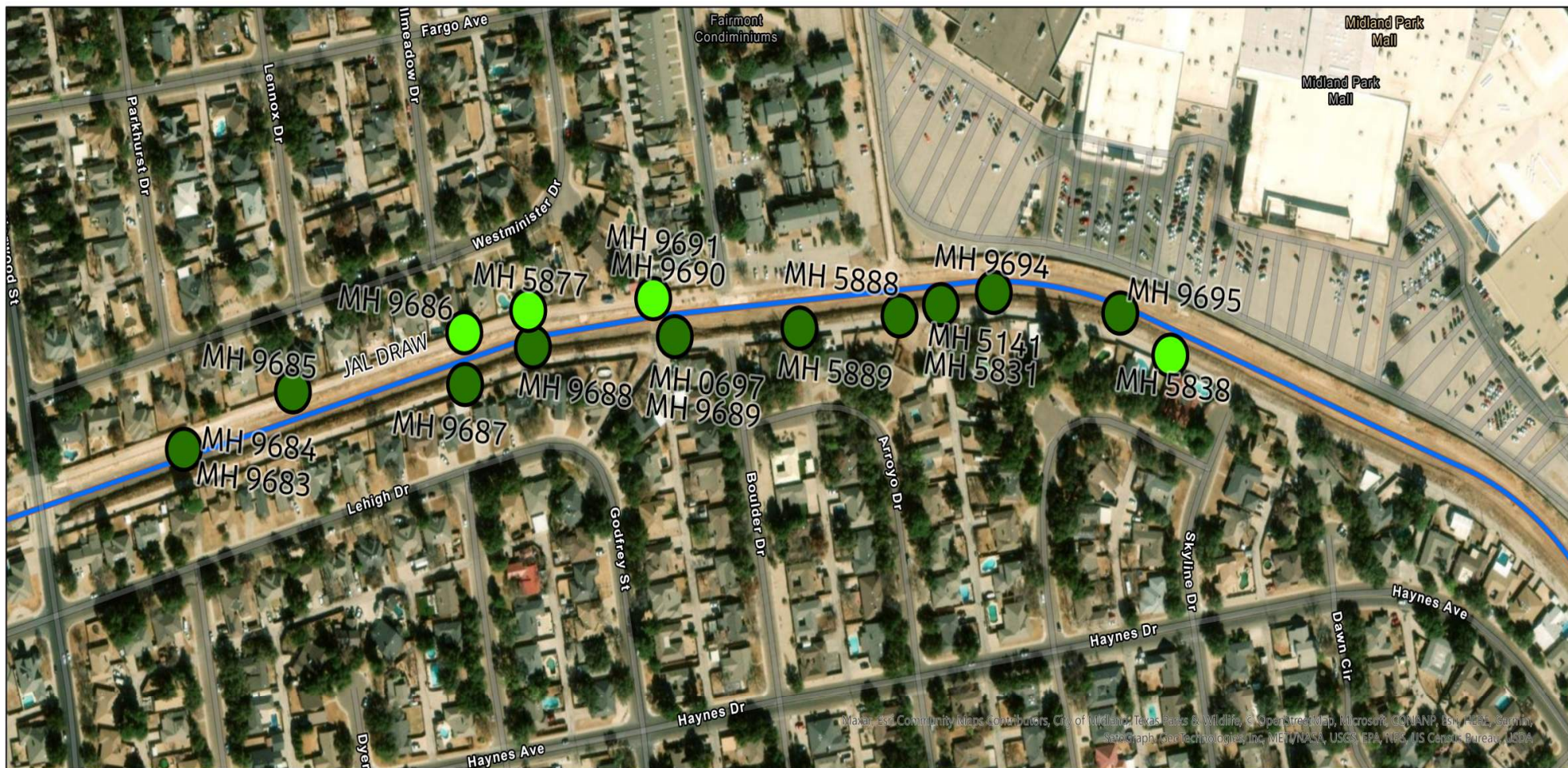
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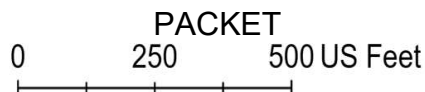
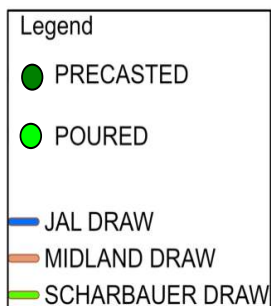
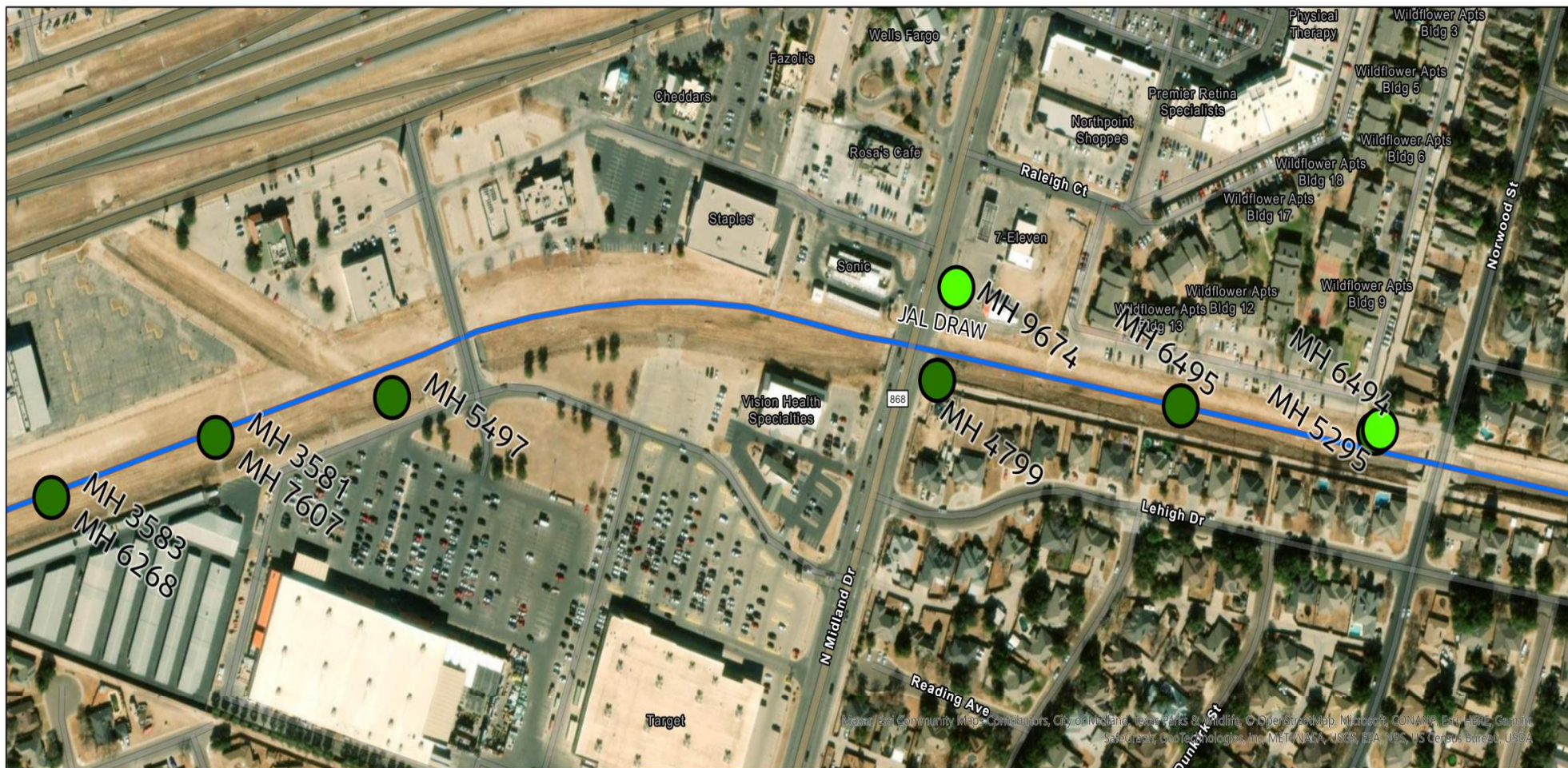
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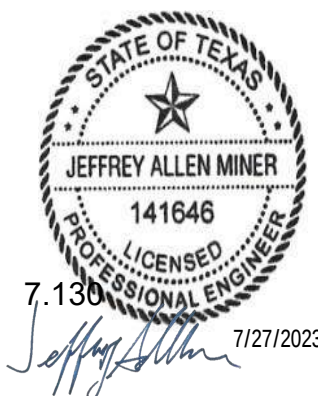
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Jeffrey Allen Miner
7/27/2023

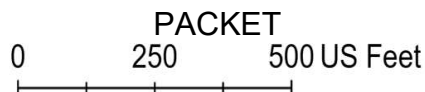
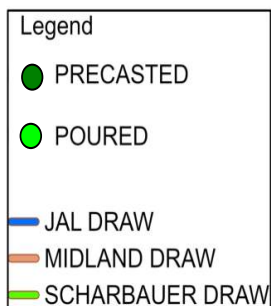


August 22, 2023

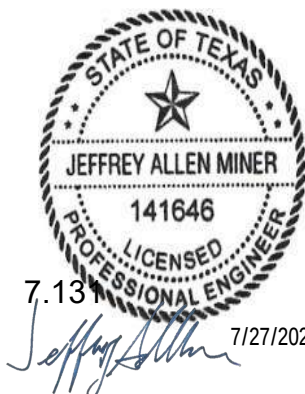


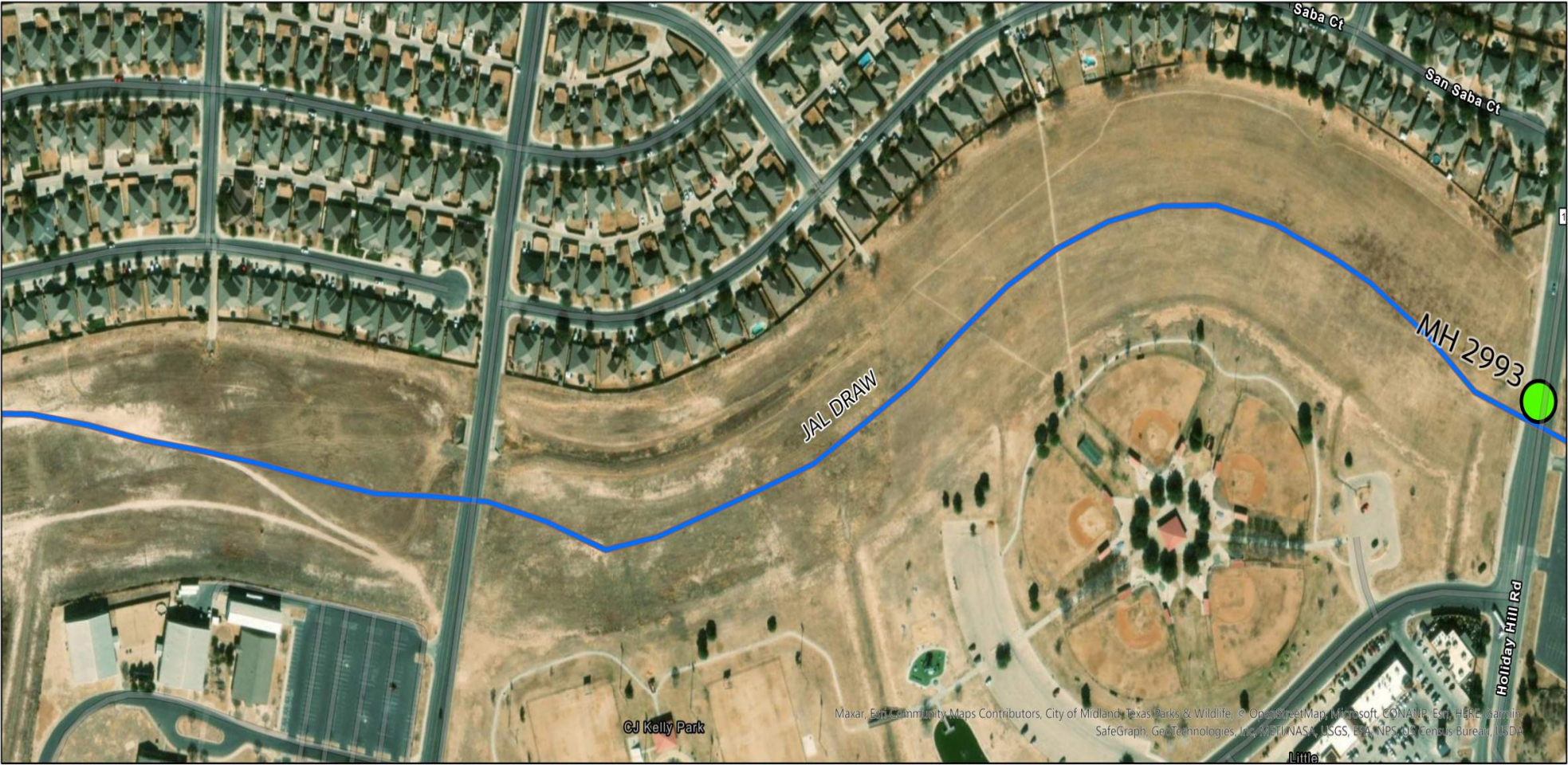
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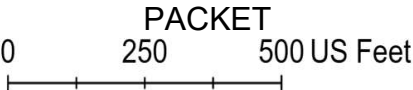
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Legend

- PRECASTED
- POURED
- JAL DRAW
- MIDLAND DRAW
- SCHARBAUER DRAW



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7.132

Jeffrey Allen Miner
7/27/2023





City Council Meeting

Item Number: 8
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: MOTION AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE A REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGER-AT-RISK SERVICES ASSOCIATED WITH THE DOUG RUSSELL BATH HOUSE 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 **(DISTRICT 3)**
(GENERAL SERVICES)

Purpose:

Motion approving specifications for the Construction Manager at Risk (CMAR) services for the Doug Russell Bath House project, said specifications being on file in the City Secretary's Office referenced by the number and date of this motion, and authorizing the City Manager or the City Manager's Designee to advertise for competitive qualifications for said project pursuant to the statutes of the State of Texas for accomplishing the work set forth in said specifications.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is not required at this time.

Discussion:

Please consider approving a motion authorizing the City Manager or the City Manager's designee to advertise a request for the Construction Manager at Risk (CMAR) services for the Doug Russell Bath House project. Please see the attached memo from Cristina Burns, Community Services Director, for additional information.

Jina Gang

City Manager's Office



**Recreation Division
Interoffice Memorandum**

Date: August 9, 2023
To: Regina Stephenson, General Services Director
From: Cristina O. Burns, Community Services Director
Subject: Request for Qualifications – Construction Manager at Risk for Doug Russell Pool Bath House Project

This Request for Qualifications is to engage a Construction Manager at Risk (CMAR) firm to provide pre-construction and construction services for the Doug Russell Bath House project.

As the construction project will need to be completed by May 2024 in time for the 2024 pool season, Level 5 Architecture, PLLC, the design firm selected for the Doug Russell Bath House project, has recommended we contract with a CMAR to ensure the project is completed within the tight schedule. The firm must be qualified to provide the following services in the scope of their work:

- Pre-construction services:
 - Cost estimating during all design stages
 - Budgeting
 - Scheduling for the pre-construction and construction phases of the project
 - Participation in all programming, design, and project meetings and reviews
 - Subcontractor prequalification, solicitation, and bidding
- Construction services:
 - Procure and furnish all materials, equipment, tools, services, and labor required to complete the work
 - Conduct regular progress/coordination meetings
 - Prepare and submit monthly cost and schedule updates

Since there is a tight schedule for completion of the project, we are offering the following financial incentives to the selected CMAR firm:

- If the project is completed before the deadline of May 24, 2024, the CMAR will get an additional 1% of the total project cost.
- If the project is completed below budget, the CMAR will receive 25% of the difference between the budget and total project cost.

The deadline for statement of qualifications will be September 8, 2023. The City will work with Level 5 to select the most qualified firm, and a Professional Service Agreement for the Construction Management at Risk services for the Doug Russell Bath House Project would be executed on September 26, 2023.

Request for Qualifications

RFQ 23005078

for

Construction Manager at Risk (CMAR)
for Doug Russell Pool Bath House Project

Proposals for this requirement will be accepted until 2:00 P.M. on September 8, 2023

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. IF THE SELECTED PROPOSER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 1, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER PROPOSER.
2. **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
3. **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.
5. **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.

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SCHEDULE OF EVENTS

RFQ 23005078

For

Construction Manager at Risk (CMAR)
for Doug Russell Pool Bath House Project

Event	Date*
RFQ Released	August 24, 2023
Cutoff Date for inquiries and clarification.....	September 1, 2023
Proposal Due Date	September 8, 2023
Notification of Vendor Interviews / Product Demonstrations	To Be Determined
Intended Date for Contract Award.....	September 26, 2023

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

NOTE:

From the issuance date of this RFQ 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 RFQ, 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 RFQ 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 RFQ 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 RFQ.

Conditions

The City of Midland is requesting proposals with the intent of awarding a contract for the requirement contained in this RFQ. 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 RFQ are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by an offeror in response to this RFQ.
2. No public disclosures or news releases pertaining to this RFQ 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 RFQ 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 RFQ 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 Recreation Division (hereinafter referred to as "the City") is seeking a highly qualified Construction Manager at Risk (CMAR) firm interested in providing pre-construction and construction services for the rebuild of the Doug Russell Pool buildings located at 900 N. Midland Drive, Midland, Texas 79703.

Request for Qualifications Standard Information

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

1.9. CLARIFICATION/ INTERPRETATION

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

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

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.10. FORMAT FOR INQUIRIES:

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

1.11. INTERPRETATION:

Any interpretation, correction or change of this RFQ will be made by written Addendum. Interpretations, corrections or changes of this RFQ 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.

1.12. PROPOSAL ORGANIZATION AND SUBMISSION

Offerors must organize proposals into sections following the format of this RFQ, with tabs separating each section. If no exception, explanation, or clarification is required in the offeror's response to a specific subsection, the offeror shall indicate so in the point-by-point response with the following:

“(Offeror's Name)", understands and will comply.

1.13. ALTERNATE PROPOSALS

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

1.14. SUBMITTING A SEALED PROPOSAL

1.14.1. Number of copies and Location:

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

1.14.2. Each Offeror who submits a proposal represents that:

- 1.14.2.1. The proposal is based upon an understanding of the specifications and requirements described in this RFQ.
 - 1.14.2.2. Costs for developing and delivering responses to this RFQ 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.
 - 1.14.2.3. All materials submitted in response to this RFQ 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 RFQ process.
- 1.14.3. The proposals must be signed in ink by an individual authorized to legally bind the business submitting the proposal.**
- 1.14.4. 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.**

1.15. RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFQ, issuance of the RFQ 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 RFQ;
- 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.

1.16. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

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

1.17. SUBCONTRACTING

- 1.17.1. 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.

1.17.2. 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 RFQ shall create any contractual relationships between any subcontractor and the City.

1.18. INSURANCE REQUIREMENTS

See Contract or Agreement

1.19. 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.

1.20. 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 RFQ 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.

1.21. CONTRACT PROVISIONS AND TERMS

1.21.1. Contract Execution

1.21.1.1. The City will execute a contract with the successful offeror(s). The City requires that the RFQ 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 RFQ be included as part of any contract documents.

1.21.2. Terms and Conditions

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

1.21.3. 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 RFQ or add unnecessary cost.

Section 1.15.3 is optional depending on the nature of the project.

1.21.4. 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.

Section 1.21.5 is optional depending on the nature of the project. The rates need to be adjusted per project.

1.21.5. 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. OFFEROR 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

The City has awarded a contract to Level 5 Architecture to design and develop construction documents for new buildings at Doug Russell Pool. Since the construction of the new buildings will need to be completed before the opening of the 2024 pool season (Memorial Day Weekend), we are seeking a highly qualified CMAR firm to provide the following services:

- **PRE-CONSTRUCTION SERVICES:** The selected firm will perform the following functions during the pre-construction phase of the project:
 - Cost estimating during all design stages
 - Budgeting
 - Scheduling for the pre-construction and construction phases of the project
 - Constructability and value engineering reviews to ensure current estimated construction cost is within project budget parameters
 - Participation in all programming and design phases project team meetings and formal design reviews
 - Subcontractor prequalification, solicitation, and bidding
 - Preparation of GMP estimate
 - Market surveys of material and labor
- **CONSTRUCTION SERVICES:** The selected firm will perform the following functions during the construction phase of the project:
 - Procure and furnish all materials, equipment, tools, services and labor required to complete all work shown or described in the Contract Documents
 - Conduct weekly, and special as needed, progress/coordination meetings with project team members on project site
 - Coordinate and manage work of all entities performing activities on the project site related to the Work required to construct the project
 - Maintain a safe work environment at all times at the project site
 - Prepare and submit monthly cost and schedule updates for Owner review

Since the timeline for this project is tight, we will provide incentives for the CMAR to complete the project before the deadline and below budget:

- If the project is completed before the deadline of May 24, 2024, the CMAR will get an additional 1% of the total project cost.
- If the project is completed below budget, the CMAR will receive 25% of the difference between the budget and total project cost.

4. NARRATIVE

The project consists of the demolition of the existing buildings, and the construction of new buildings to house the bathrooms, concession area, staff area, and ticket box, for the City of Midland's Doug Russell Pool.

5. VENDOR QUALIFICATIONS

5.1. INFORMATION VERIFICATION

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

5.2. RIGHT TO REJECT

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

5.3. VENDOR CAPABILITIES

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

5.3.1. References

- 5.3.1.1. Offeror shall provide a minimum of 3 references that are using services of the type proposed in this RFQ. 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.
- 5.3.1.2. These references should include City government and universities where the offeror, preferably within the last 5 years, has successfully provided these services.

5.3.2. Vendor Stability

- 5.3.2.1. Offerors shall demonstrate their financial stability to supply, install and support the services specified.
- 5.3.2.2. Provide financial statements, preferably audited, for the five (5) consecutive years immediately preceding the issuance of this RFQ.
- 5.3.2.3. Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.
- 5.3.2.4. Offerors shall specify how long the company submitting the proposal has been in business (doing similar projects) Construction Manager at Risk.

6. EVALUATION PROCESS

EVALUATION PROCEDURE

6.1.1. Committee Actions

- 6.1.1.1. The evaluation committee will separate proposals into “responsive” and “non-responsive” proposals. Non-responsive proposals will be eliminated from further consideration.
- 6.1.1.2. The evaluation committee will evaluate the remaining proposals and determine whether to award the contract to the best proposal or to seek a best and final offer before awarding a contract. Selection and award will be based on the offeror’s proposal and other items outlined in this RFQ.
- 6.1.1.3. Responses must be complete and address all the criteria listed. Information or materials presented by offerors outside the formal response or subsequent “best and final offer,” if requested, will not be considered and will have no bearing on any award.

6.2. EVALUATION CRITERIA

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

The RFQs will be ranked based on the selection criteria & weights set out below. Respondents can receive up to 100 points. Respondents may have points deducted within each section below for failure to follow instructions.

- 6.2.1. **Pre-construction Experience (up to 25 points)**
- 6.2.2. **Commercial Construction Experience (up to 25 points)**
- 6.2.3. **Key Personnel Experience (up to 30 points)**
- 6.2.4. **References (up to 10 points)**
- 6.2.5. **Claims History (up to 10 points)**

7. PROPOSAL CONTENTS

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

7.1. THE RFQ

- 8.1.1 Each RFQ shall be organized in the following order:

1. **Outside Cover of Binder:** This shall clearly identify the Project, Qualifications Submittal Date, and Respondent’s name.

2. **Section 1: Pre-construction Experience (up to 30 points)**

- Provide examples of three public Construction Manager at Risk or Design/Build projects of similar size and complexity that demonstrate your ability to perform pre-construction services. Include the dollar amount of projects and brief descriptions of those projects.
- Provide a narrative describing your process and approach to review of drawings and specification for cost savings, constructability, and coordination.
- Provide a narrative describing your cost estimating approach.
- Provide a narrative describing your ability to work as a team with Architect and Owner.

3. **Section 2: Commercial Construction Experience (up to 30 points)**

- Provide examples of three public construction projects of similar size and complexity that demonstrate your ability to perform construction. Include the dollar amount of projects and brief descriptions of those projects. If you did not use the same three examples as Tabbed Section 1, please explain why.
- Provide years in business. Provide evidence from Secretary of State or State Comptroller.
- Provide safety plan, a list and explanation of all OSHA citations issued over the last five years, and workers' compensation modifier.
- Describe your previous experience working with other governmental entities
- Describe your previous experience with the Construction Manager at Risk bidding process.

4. Section 3: Key Personnel Experience (up to 20 points)

- Provide Resumes of the Key Personnel to be used for the duration of this Project.
- Describe experience of Key Personnel to perform pre-construction and construction services.
- Provide a narrative describing the quality of relationships between Key Personnel and Owner on past projects.

5. Section 4: References (up to 10 points)

- Provide the current telephone numbers and email address of three references (owners) familiar with the type of work that is similar in scope and that demonstrate the key personnel members' ability and experience to perform pre-construction and construction services phases. Some or all of these individuals may be contacted. Make sure the individuals are willing and available to answer questions.

6. Section 5: Claims History (up to 10 points)

- Provide a list of all lawsuits or arbitrations with an owner over the past five years, in which Respondent was named as a plaintiff or defendant. Describe controversy and outcome even if not final.
- List any construction projects over the past five years your firm failed to complete because of financial reasons, labor disputes, failure of your employees to perform, or any other reason.

7.2. REQUESTED ATTACHMENTS

7.2.1. Examples

7.2.2. Resumes

7.2.3. References

7.2.4. Business Information

7.2.5. Signed Execution of Offer

8. TEXAS PUBLIC INFORMATION ACT

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

EXECUTION OF OFFER

Date:

In compliance with this RFQ, 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: _____

PROFESSIONAL SERVICES AGREEMENT

23005078

Construction Manager at Risk (CMaR) for Doug Russell Pool Bath House Project

THIS AGREEMENT is made and effective the 23 day of August 2023, by and between the CITY OF MIDLAND, TEXAS (“*CITY*”), a home-rule municipal corporation, and _____ (“*COMPANY*”). CITY and COMPANY are at times individually referred to as a “*Party*” and collectively referred to as the “*Parties*.”

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform Construction Manager at Risk services for the Doug Russell Pool Bath House Project (the “*Services*”) for CITY. The Services are more specifically set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

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

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

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

ARTICLE IV. TERM

The term of this Agreement shall be from August 23, 2023 until May 24, 2024, unless the Services are completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform the Services as an independent contractor and not as an officer, agent, servant or employee of CITY. COMPANY shall have exclusive control of and the exclusive

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Workers’ Compensation: Statutory limits

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

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

The Business Automobile Liability policy shall cover any vehicle for bodily injury and

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

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

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

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

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

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

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

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

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

If to COMPANY: _____

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

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

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

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

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

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

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

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

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

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

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

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

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

this Agreement;

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

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

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

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

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

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

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

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

ARTICLE XV. INDEMNITY

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

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

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

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

[Signature Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

Tommy Gonzalez., City Manager

ATTEST:

Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2023 personally appeared, _____, an officer of _____, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the __ day of _____, 2023.

Notary Public, State of Texas

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

Name of Officer

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

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

7

~~PACKET~~ ~~8-32~~
Signed by vendor doing business with the governmental entity

~~Aug~~ August 22, 2023

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

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

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

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

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

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

- (2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

- (1) the date that the vendor:

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

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

- (2) the date the vendor becomes aware:

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

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

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

CITY OF MIDLAND

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

Affidavit of Eligibility

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

Reseller Permit Number: _____

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

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

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

☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

NOTICE TO BIDDERS

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

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

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

COMPLIANCE: Company agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Company agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended. For further instructions on how to comply with Texas Government Code Section 2252.908 and Texas Local Government Code Section 176.006,

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

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

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

1. All bids are to be submitted as specified in the procurement document(s).
2. Each Bidder is requested to provide: Descriptive literature clearly marked to show each item on this bid. Any catalog or manufacturer's reference in this proposal is descriptive, but not restrictive, and is used only to indicate type and quality. If, however, the bidder proposes similar but not identical terms, he must furnish all particulars. If no mention is made of any exceptions, it is assumed that he is bidding on the article specified and not on an approved equal and he will be required to deliver exact article specified.
3. Prices should be itemized. (Indicate unit price and extend to show total price.) In case of discrepancy between the unit price and the extension, the unit price shall govern.
4. Unit price for each item offered shall include all discounts; e.g., trade, seasonal, etc. with net 30 days payment terms. Discounts shall not be shown as such but shall be incorporated in the base bid price. Any bid showing discounts will be considered an alternate bid. The City of Midland will not be responsible for any goods delivered without a purchase order number.
5. If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code. The City of Midland reserves the right to award by item or by total bid, or to reject any or all bids or parts of bids. Further, the City of Midland reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City of Midland reserves the right to award the bid to the lowest responsible bidder.
6. Time of proposed delivery shall be stated in number of calendar days.
7. NOTE: The City of Midland, Texas is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.
8. All items are to be delivered, unloaded and stacked at the location indicated on the Bid Request and Purchase Order.
9. All items are to be delivered F.O.B. to the City of Midland, Texas with freight prepaid and included in the bid.
10. Detailed specifications rule over General specifications (headings, etc.)
11. The City of Midland reserves the right to remove a company from the bid list for (1) continued failure to respond to request for bids, (2) failure to deliver merchandise within promised time, or (3) delivery of substandard merchandise.
12. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any lands, materials, supplies or services except as allowed under chapter 176 of the Local Government Code. Form CIQ shall be submitted and placed on file with the City of Midland.
13. The City shall determine the most advantageous bid for the City and accept the proposal of the responsible party submitting the lowest and/or most advantageous bid or reject any and all bids.
14. The City of Midland, Texas may consider as informal any bid not prepared and submitted in accordance with the provisions hereof, and may waive, in its sole discretion, any informalities.

15. 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.

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

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

Seller and Buyer agree as follows:

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

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

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

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

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

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

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

8. **WARRANTY - PRICE** -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. INSURANCE –

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

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

Commercial General Liability (including Contractual liability):

-Personal Injury:	\$1,000,000.00 per person
	\$1,000,000.00 per occurrence
-Property Damage:	\$500,000.00 per occurrence
<u>Business Automobile Liability:</u>	\$250,000.00 combined single limit -
	Personal Injury and Property Damage
<u>Worker's Compensation:</u>	Statutory limits
<u>Employers' Liability:</u>	\$500,000.00 per accident or occurrence

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

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

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

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

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

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Seller and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



City Council Meeting

Item Number: 9
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION APPROVING A CONTRACT WITH SPORTS FIELD SOLUTIONS, THROUGH BUYBOARD, FOR THE RENOVATION OF THE INFIELD AT MOMENTUM BANK BALLPARK FOR A TOTAL COST OF \$161,216.35; APPROVING \$16,122.00 FOR PROJECT RELATED COSTS; AND APPROPRIATING FUNDS FOR SAID CONTRACT **(DISTRICT 4) (GENERAL SERVICES)**

Purpose:

Resolution approving a contract with Sports Field Solutions of Dallas, Texas through Buyboard contract 641-21 for the purchase and installation for the infield renovation at Momentum Ball Ballpark for a cost of \$161,216.35 approving \$16,122.00 for contingencies.; for a total cost of \$177,338.35.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the FY23 Sports Complex Operating Budget and will be appropriated to a project for said purpose.

Discussion:

Staff is recommending executing a contract for the purchase and installation for the infield renovation at Momentum Ball Ballpark through Buyboard contract 641-21. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. Please see the attached memo from

Cristina Burns, Community Services Director, for additional information.

Therefore, please consider a resolution executing a contract for the purchase and installation for the infield renovation at Momentum Ball Ballpark to Sports Field Solutions of Dallas, Texas through Buyboard contract 641-21 for a cost of \$161,216.35 approving \$16,122.00 for contingencies; for a total cost of \$177,338.35.



City Manager's Office



Scharbauer Sports Complex Division
Interoffice Memorandum

Date: August 10, 2023
To: Morris Williams, Deputy City Manager
From: Cristina Burns, Community Services Director
Subject: Field Grading and Installation of Infield Sod at Momentum Bank Ball Park at Scharbauer Sports Complex

The existing infield turf at Momentum Bank Ball Park needs replacement. The Major League Baseball inspection completed this summer identified areas in the field that do not meet the requirements for grading, so laser grading will be completed prior to the installation of the Latitude 36 Sports Hybrid Bermuda sod. Five (5) inches of infield surface will be removed in order to complete the necessary work. An add alternate for the removal of the excavated material is shown in the quote, but Parks and Recreation will be taking the material to use in Midland parks.

In order to begin work as soon as possible and have installation completed for use during the spring 2024 baseball season, staff recommends the purchase of the sod from Sports Fields Solutions. Their BuyBoard Contract #641-21 bid for the work is \$161,216.35. A 10% contingency (\$16,122.00) is included in the requested funding to cover any unexpected costs that may arise during installation. Total project cost with the contingency allowance is \$177,338.35.

Funds in the amount of \$177,338.35 are available in the 2023 operating budget for the Sports Complex Fund (079620 54010).

RESOLUTION NO. _____

**RESOLUTION APPROVING A CONTRACT WITH
SPORTS FIELD SOLUTIONS, THROUGH BUYBOARD,
FOR THE RENOVATION OF THE INFIELDF AT
MOMENTUM BANK BALLPARK FOR A TOTAL COST
OF \$161,216.35; APPROVING \$16,122.00 FOR PROJECT
RELATED COSTS; AND APPROPRIATING FUNDS FOR
SAID CONTRACT**

WHEREAS, Buyboard is a cooperative purchasing agency with which the City participates with on purchases through a cooperative purchasing program in accordance with TEX. LOC. GOV'T CODE § 271.102; and

WHEREAS, Sports Field Solutions has submitted a total proposed cost to the City of \$161,216.35 for the renovation of the infield at Momentum Bank Ballpark through Buyboard; and

WHEREAS, the Council finds the price proposed by Sports Field Solutions through Buyboard for the renovation of the infield at Momentum Bank Ballpark to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to approve a contract with Sports Field Solutions for the renovation of the infield at Momentum Bank Ballpark through Buyboard; and

WHEREAS, the City Council finds it to be in the public interest to approve \$16,122.00 for project related costs;

**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 renovation of the infield at Momentum Bank Ballpark, through Buyboard, for a total cost of \$161,216.35. Said contract being attached hereto as Exhibit A and incorporated herein for all purposes.

SECTION TWO. That the sum of \$16,122.00 for project related costs is hereby

approved.

SECTION THREE. That the sum of \$177,338.35 is hereby appropriated from the FY23 Sports Complex Operating Budget and transferred to a project established by the City of Midland Finance Department.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Sports Field Solutions in accordance with the provisions of the above-referenced contract from funds available in project established by the City of Midland Finance Department upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2023, 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. 23005076

THIS CONTRACT, effective the 23rd day of August, 2023, by and between the City of Midland, hereinafter referred to as "CITY", and Sports Field Solutions, hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 161,216.35 DOLLARS
2. **Scope of Work:** Company shall perform all work described for the renovation of the infield at 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 Cristina Burns or the designee under whose supervision these contract documents, including the plans and specifications, were prepared, or who may inspect work performed under this Contract; or such other representative, supervisor, or inspector as may be authorized by CITY to act in any particular capacity under this Contract.

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

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

PACKET

9.7
Exhibit A

August 22, 2023

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 100 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

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

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

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

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

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

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

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

20. **Insurance:**

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

Commercial General Liability (including Contractual liability):

-Personal Injury: \$1,000,000.00 per person
\$3,000,000.00 per occurrence

-Property Damage: \$1,000,000.00 per occurrence

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

Workers' Compensation: Statutory limits

Employers' Liability: \$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 \$1,000,000.00 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.

COMPANY, where its work involves special hazards, shall purchase and maintain insurance covering such special hazards by endorsement(s) to the Commercial General Liability Insurance policies herein above required, or by separate policies of insurance in amounts as herein above specified for the said policies. The additional insurance shall cover the following special hazards: Blasting, explosion and collapse; damage to underground utilities; and any other special hazards involved in the work to be performed under the Contract, which in the opinion of the CITY, appears to be sufficiently dangerous to require Special Hazard Insurance. Deductible not to exceed \$1,000.00 per loss are acceptable for any Special Hazards Insurance, but losses within the deductible shall be the responsibility of the COMPANY.

Pollution Insurance:

COMPANY and/or COMPANY's Contractor and and/or COMPANY's Subcontractor shall have Pollution Insurance (Occurrence) applying to all Insureds with the following limits:

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August 22, 2023

\$1,000,000.00 Each Occurrence

\$1,000,000.00 Aggregate

Coverages Include: Loss as a result of Claims for Bodily Injury, Property Damage or Environmental Damage caused by Pollution Conditions resulting from Covered Operations: (5) year Completed Operations Coverage; CITY is First Named Insured with COMPANY, Contractors and Subcontractors at all tiers as Additional Named Insureds.

Exclusions include: Expected or Intended Injury, Known Conditions, Intentional Non-Compliance, Professional Services (except for the First Named Insured for project management), Hostile Acts, Terrorism and Product Liability.

The City of Midland and COMPANY are included as an additional insured, on a claims occurred basis, on all policies of insurance. The COMPANY, Contractor, Subcontractor and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance

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~~ ^{RACKET} ~~Assignment~~ ⁹⁻¹⁴ COMPANY shall not, either directly or indirectly, assign or any part of this ~~August 22, 2023~~

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

PACKET 9.15 August 22, 2023

not have the power to direct the order in which the work is done. CITY shall not have the right to control the means, methods or details of COMPANY's work. COMPANY shall assume exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

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

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

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

27. **Termination At Will:** CITY may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to COMPANY. The parties to this Contract understand and agree that it is in CITY's sole discretion to cancel the Contract during the term of the

Contract without penalty to CITY. COMPANY has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

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

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

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

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

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

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
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 Sports Field Solutions, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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



SPORTS FIELD

SOLUTIONS

PARTNER WITH THE EXPERTS

SERVICE PROPOSAL



Service Proposal

August 10, 2023

Mitch Riddle
(432)-559-6910
mriddle@midlandrockhounds.org

Sales Rep: Dalton Splawn

Mitch,

SFS is excited for the opportunity to partner with the Midland Rockhounds on this infield renovation project. This document contains our proposed turn-key solution for the work to be performed at (5514 Champions Dr, Midland, TX 79706). We are committed to ensuring project timelines, budgets, and expectations and look forward to working with you. This work is to be procured through BuyBoard contracts Indoor and Outdoor Sports Surfaces, Repair, and Renovation, and Gym Floor Refinishing #641-21.

Please see below



Scope of Work

Infield Renovation 5":

\$148,298.77

- ***Performance & Payment Bond:***

\$12,917.58

- Layout field and affected area; approx. 63,508 sq. ft.
- Coordinate with client to locate and preserve existing irrigation.
- Remove 5" of entire infield surface as see in image below.
- Spoils to be hauled off by the City of Midland, unless otherwise specified by customer.
- Laser grade surface to ensure positive drainage.
- Roll affected area to ensure proper compaction.
- Provide and install the following hardware:
 - 1 set of base anchors and plugs.
 - 1 home plate.
 - 1 pitching rubber.
 - 1 set of bases.
- Provide and install Latitude 36 Sports Hybrid Bermuda Turfgrass at affected area.
- Taper new infield sod to existing outfield sod to ensure smooth transition.
- Replace existing irrigation heads with new ones.
- Provide and place ADS perforated corrugated subsoil drainage flat pipe.
- Clean up per scope of work.
 - *If additional work is requested SFS to provide change order.*

Mound Rebuild

- Rebuild pitching mound
 - Provide and place necessary mound clay and clay bricks to ensure proper drainage and form

Home Plate Rebuild

- Rebuild home plate skinned area
 - Provide and place necessary clay and clay bricks to ensure proper drainage and form



Birds-eye View





Service Proposal

Exclusions

- Any item of work not specifically listed above.
- Any building permits or site inspection fees.
- Soils stabilization.
- Temporary irrigation.
- Irrigation repairs outside of this scope.
- Sod grow-in.
- Erosion control.
- Rock excavation.
- Sports lighting.
- Freight surcharge.
- Vendor price increases.
- Electrical work of any kind.
- Materials testing.
- Sales and/or use tax.
- Payment and performance bonds. Add 2.5% of contract value

If the owner elects to procure the above services and material, please communicate directly with SFS to determine scheduling compatibility.

Again, we are excited to provide you with this scope of work. Feel free to reach out if you have any clarifications or questions as you review the proposal. We look forward to partnering with you!

Best regards,

Dalton Splawn
(817) 271-0399
Sports Field Solutions



SportsFieldSolutions.com

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT

_____ of the City of

_____ of the County of _____ and State of Texas

as Principal, and _____, as Surety, are held and

firmly bound unto the City of Midland, Texas, as Oblige, in the amount of

_____ DOLLARS

(\$ _____) for the payment whereof the said Principal and Surety bind themselves, their heirs,

administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Oblige, dated the _____

day of _____, 20____, for the furnishing of materials, equipment to perform all labor and work

necessary for _____, hereof as fully and to the

same extent as if copied at length herein.

NOW, THEREFORE, the condition of the obligation is that if the said Principal shall pay all claimants

supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said

contract, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Surety, for value received, stipulates and agrees that no change, extension of time alteration or addition

to the terms of the contract, or to the work performed there under, or the plans, specifications of drawings

accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders,

shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

"General Decision Number: TX20220261 08/05/2022

Superseded General Decision Number: TX20210261

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)(2)-(60).

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 \$15.00 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 2022.
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 \$11.25 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 2022.

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

Modification Number
0
1

Publication Date
01/07/2022
02/25/2022

9.31

August 22, 2023

2

08/05/2022

BOIL0074-003 01/01/2021

	Rates	Fringes
BOILERMAKER.....	\$ 29.47	24.10

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 06/01/2022

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 26.76	7.88

PLUM0404-001 09/01/2020

	Rates	Fringes
PLUMBER.....	\$ 26.05	8.81

* SUTX2014-037 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 20.00	0.00
CARPENTER.....	\$ 13.82 **	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 13.76 **	0.00
ELECTRICIAN.....	\$ 23.18	6.31
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 19.77	7.13
IRONWORKER, REINFORCING.....	\$ 12.27 **	0.00
IRONWORKER, STRUCTURAL.....	\$ 22.16	5.26
LABORER: Common or General.....	\$ 11.80 **	0.00
LABORER: Mason Tender - Brick...	\$ 11.38 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.58 **	0.00
LABORER: Pipelayer.....	\$ 12.49 **	2.13
LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
PACKET		9.32
OPERATOR:		

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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.

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

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 **PACKET** by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours

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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) (ii)).

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

August 22, 2023

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

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9.35

August 22, 2023

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

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

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

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

=====

END OF GENERAL DECISIO"



THE CITY OF MIDLAND CONTRACT

Contract No. 23005076

THIS CONTRACT, effective the 23rd day of August, 2023, by and between the City of Midland, hereinafter referred to as "CITY", and Sports Field Solutions, hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 161,216.35 DOLLARS
2. **Scope of Work:** Company shall perform all work described for the renovation of the infield at 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 Cristina Burns or the designee under whose supervision these contract documents, including the plans and specifications, were prepared, or who may inspect work performed under this Contract; or such other representative, supervisor, or inspector as may be authorized by CITY to act in any particular capacity under this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

9. **Start of Work:** COMPANY shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 100 calendar days after release to proceed.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

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

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

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

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

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

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

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

20. **Insurance:**

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

Commercial General Liability (including Contractual liability):

-Personal Injury:	\$1,000,000.00 per person \$3,000,000.00 per occurrence
-Property Damage:	\$1,000,000.00 per occurrence
<u>Business Automobile Liability:</u>	\$1,000,000.00 combined single limit - Personal Injury and Property Damage
<u>Workers' Compensation:</u>	Statutory limits
<u>Employers' Liability:</u>	\$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on 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 \$1,000,000.00 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.

COMPANY, where its work involves special hazards, shall purchase and maintain insurance covering such special hazards by endorsement(s) to the Commercial General Liability Insurance policies herein above required, or by separate policies of insurance in amounts as herein above specified for the said policies. The additional insurance shall cover the following special hazards: Blasting, explosion and collapse; damage to underground utilities; and any other special hazards involved in the work to be performed under the Contract, which in the opinion of the CITY, appears to be sufficiently dangerous to require Special Hazard Insurance. Deductible not to exceed \$1,000.00 per loss are acceptable for any Special Hazards Insurance, but losses within the deductible shall be the responsibility of the COMPANY.

Pollution Insurance:

COMPANY and/or COMPANY's Contractor and and/or COMPANY's Subcontractor shall have Pollution Insurance (Occurrence) applying to all Insureds with the following limits:

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August 22, 2023

\$1,000,000.00 Each Occurrence

\$1,000,000.00 Aggregate

Coverages Include: Loss as a result of Claims for Bodily Injury, Property Damage or Environmental Damage caused by Pollution Conditions resulting from Covered Operations: (5) year Completed Operations Coverage; CITY is First Named Insured with COMPANY, Contractors and Subcontractors at all tiers as Additional Named Insureds.

Exclusions include: Expected or Intended Injury, Known Conditions, Intentional Non-Compliance, Professional Services (except for the First Named Insured for project management), Hostile Acts, Terrorism and Product Liability.

The City of Midland and COMPANY are included as an additional insured, on a claims occurred basis, on all policies of insurance. The COMPANY, Contractor, Subcontractor and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance

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 or any part of this

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August 22, 2023

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

PACKET 9.45 August 22, 2023

not have the power to direct the order in which the work is done. CITY shall not have the right to control the means, methods or details of COMPANY's work. COMPANY shall assume exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

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

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

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

27. **Termination At Will:** CITY may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to COMPANY. The parties to this Contract understand and agree that it is in CITY's sole discretion to cancel the Contract during the term of the

Contract without penalty to CITY. COMPANY has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

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

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

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

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

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

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
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 Sports Field Solutions, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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



SPORTS FIELD

SOLUTIONS

PARTNER WITH THE EXPERTS

SERVICE PROPOSAL



Service Proposal

August 10, 2023

Mitch Riddle
(432)-559-6910
mriddle@midlandrockhounds.org

Sales Rep: Dalton Splawn

Mitch,

SFS is excited for the opportunity to partner with the Midland Rockhounds on this infield renovation project. This document contains our proposed turn-key solution for the work to be performed at (5514 Champions Dr, Midland, TX 79706). We are committed to ensuring project timelines, budgets, and expectations and look forward to working with you. This work is to be procured through BuyBoard contracts Indoor and Outdoor Sports Surfaces, Repair, and Renovation, and Gym Floor Refinishing #641-21.

Please see below



Scope of Work

Infield Renovation 5":

\$148,298.77

- ***Performance & Payment Bond:***

\$12,917.58

- Layout field and affected area; approx. 63,508 sq. ft.
- Coordinate with client to locate and preserve existing irrigation.
- Remove 5" of entire infield surface as see in image below.
- Spoils to be hauled off by the City of Midland, unless otherwise specified by customer.
- Laser grade surface to ensure positive drainage.
- Roll affected area to ensure proper compaction.
- Provide and install the following hardware:
 - 1 set of base anchors and plugs.
 - 1 home plate.
 - 1 pitching rubber.
 - 1 set of bases.
- Provide and install Latitude 36 Sports Hybrid Bermuda Turfgrass at affected area.
- Taper new infield sod to existing outfield sod to ensure smooth transition.
- Replace existing irrigation heads with new ones.
- Provide and place ADS perforated corrugated subsoil drainage flat pipe.
- Clean up per scope of work.
 - *If additional work is requested SFS to provide change order.*

Mound Rebuild

- Rebuild pitching mound
 - Provide and place necessary mound clay and clay bricks to ensure proper drainage and form

Home Plate Rebuild

- Rebuild home plate skinned area
 - Provide and place necessary clay and clay bricks to ensure proper drainage and form



Birds-eye View





Service Proposal

Exclusions

- Any item of work not specifically listed above.
- Any building permits or site inspection fees.
- Soils stabilization.
- Temporary irrigation.
- Irrigation repairs outside of this scope.
- Sod grow-in.
- Erosion control.
- Rock excavation.
- Sports lighting.
- Freight surcharge.
- Vendor price increases.
- Electrical work of any kind.
- Materials testing.
- Sales and/or use tax.
- Payment and performance bonds. Add 2.5% of contract value

If the owner elects to procure the above services and material, please communicate directly with SFS to determine scheduling compatibility.

Again, we are excited to provide you with this scope of work. Feel free to reach out if you have any clarifications or questions as you review the proposal. We look forward to partnering with you!

Best regards,

Dalton Splawn
(817) 271-0399
Sports Field Solutions



SportsFieldSolutions.com

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT

_____ of the City of

_____ of the County of _____ and State of Texas

as Principal, and _____, as Surety, are held and

firmly bound unto the City of Midland, Texas, as Oblige, in the amount of

_____ DOLLARS

(\$ _____) for the payment whereof the said Principal and Surety bind themselves, their heirs,

administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Oblige, dated the _____

day of _____, 20____, for the furnishing of materials, equipment to perform all labor and work

necessary for _____, hereof as fully and to the

same extent as if copied at length herein.

NOW, THEREFORE, the condition of the obligation is that if the said Principal shall pay all claimants

supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said

contract, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Surety, for value received, stipulates and agrees that no change, extension of time alteration or addition

to the terms of the contract, or to the work performed there under, or the plans, specifications of drawings

accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders,

shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

"General Decision Number: TX20220261 08/05/2022

Superseded General Decision Number: TX20210261

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)(2)-(60).

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 \$15.00 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 2022.
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 \$11.25 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 2022.

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

Modification Number
0
1

Publication Date
01/07/2022
02/25/2022

9.61

August 22, 2023

2

08/05/2022

BOIL0074-003 01/01/2021

	Rates	Fringes
BOILERMAKER.....	\$ 29.47	24.10

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 06/01/2022

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 26.76	7.88

PLUM0404-001 09/01/2020

	Rates	Fringes
PLUMBER.....	\$ 26.05	8.81

* SUTX2014-037 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 20.00	0.00
CARPENTER.....	\$ 13.82 **	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 13.76 **	0.00
ELECTRICIAN.....	\$ 23.18	6.31
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 19.77	7.13
IRONWORKER, REINFORCING.....	\$ 12.27 **	0.00
IRONWORKER, STRUCTURAL.....	\$ 22.16	5.26
LABORER: Common or General.....	\$ 11.80 **	0.00
LABORER: Mason Tender - Brick...	\$ 11.38 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.58 **	0.00
LABORER: Pipelayer.....	\$ 12.49 **	2.13
LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
PACKET		9.62
OPERATOR:		

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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.

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

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 **PACKET** by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours

August 22, 2023

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) (ii)).

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

August 22, 2023

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

PACKET

9.65

August 22, 2023

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 DECISIO"



City Council Meeting

Item Number: 10
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC., D/B/A PARKHILL FOR ON-CALL SUPERVISORY CONTROL AND DATA ACQUISITION SUPPORT SERVICES AND AUTOMATED INTEGRATION SERVICES FOR A COST NOT TO EXCEED \$125,000.00 (**DISTRICT: NONE**) (**GENERAL SERVICES**)

Purpose:

Resolution authorizing the execution of professional services agreement for engineering services, including Automated System Integration services and Supervisory Control and Data Acquisition (SCADA) System Support for the existing T-Bar with Parkhill, Cooper & Smith dba Parkhill as directed by City Staff for a total cost of \$125,000.00; and authorizing payment.

Recommended City Council Action:

Approve

Fiscal Impact:

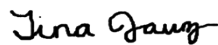
\$125,000.00 is available in the Utilities operating budget.

Discussion:

Resolution 2020-091 approved the selection of Parkhill, Smith & Cooper, Inc. dba Parkhill, for performance of on-call engineering support services for the Utilities Department. Please see the attached memo from Carl Craig, Utilities Director, for additional information.

Therefore, please consider a resolution authorizing the execution of professional services agreement for engineering services, including Automated System Integration services and Supervisory Control and Data Acquisition (SCADA) System Support for the existing T-Bar with

Parkhill, Cooper & Smith dba Parkhill as directed by City Staff for a total cost of \$125,000.00; and authorizing payment.



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
PROFESSIONAL SERVICES AGREEMENT WITH
PARKHILL, SMITH & COOPER, INC., D/B/A
PARKHILL FOR ON-CALL SUPERVISORY CONTROL
AND DATA ACQUISITION SUPPORT SERVICES AND
AUTOMATED INTEGRATION SERVICES FOR A COST
NOT TO EXCEED \$125,000.00**

WHEREAS, the Utilities Department has selected Parkhill, Smith & Cooper, Inc., d/b/a Parkhill (“Parkhill”), to provide on-call Supervisory Control and Data Acquisition (“SCADA”) support services and automated integration services; and

WHEREAS, Parkhill has agreed to perform said professional services for a cost not to exceed \$125,000.00; and

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

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

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

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

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

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

SECTION TWO. That \$125,000.00 shall be available in the Utilities operating budget.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Parkhill pursuant to the terms of said professional services agreement 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., 2023, 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 ONLY AS TO FORM:

John Ohnemiller, City Attorney

AGREEMENT

THIS AGREEMENT is made and effective the 23 day of August 2023, by and between the CITY OF MIDLAND, TEXAS (“*CITY*”), a home-rule municipal corporation, and Parkhill Smith & Cooper Services dba Parkhill. (“*COMPANY*”). CITY and COMPANY are at times individually referred to as a “*Party*” and collectively referred to as the “*Parties.*”

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform engineering services, including Automated System Integration services and Supervisory Control and Data Acquisition (SCADA) System Support for the existing T-Bar (the “*Services*”) for CITY. The Services are more specifically set forth in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY an amount not to exceed \$125,000.00 for the performance of the Services. CITY agrees to pay COMPANY according to the schedule set forth in **Exhibit A** upon presentation of a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in **Exhibit A** that COMPANY incurs during the previous month for which COMPANY receives advanced written approval from the City Manager. All additional and/or reimbursable expenses must be approved by the City Manager prior to incurring such expenses.

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

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

ARTICLE IV. TERM

The term of this Agreement shall be from August 23, 2023 until the Services are completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform the Services as an independent contractor and not as an officer, agent, servant or employee of CITY. COMPANY shall have exclusive control of and the exclusive

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Workers’ Compensation: Statutory limits

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

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

The Business Automobile Liability policy shall cover any vehicle for bodily injury and

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

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

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

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

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

ARTICLE XI. GOVERNMENTAL IMMUNITY

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

ARTICLE XII. NO THIRD-PARTY BENEFICIARY

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

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

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

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

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

If to COMPANY: Parkhill Smith & Cooper Inc.
 1700 W. Wall St.
 Midland TX. 79701

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

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

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

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

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

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

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

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

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

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

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

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

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

this Agreement;

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

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

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

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

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

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

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

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

ARTICLE XV. INDEMNITY

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

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

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

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

[Signature Page(s) Follows]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

Tommy Gonzalez, City Manager

ATTEST:

Marcia Bentley-German, City Governance Officer/City Secretary

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF _____ §

§

COUNTY OF _____ §

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

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

Notary Public, State of Texas

August 2, 2023

Mr. Carl Craigo, PE
Utilities Director
City of Midland
300 North Loraine, 5th Floor
Midland, Texas 79701

RE: Proposal for Professional Services
City of Midland T-Bar Wellfield Integration and SCADA Support
2215 CR 101, Kermit, Texas 79745

Dear Mr. Craigo:

Parkhill is pleased to have the opportunity to provide this Proposal for Engineering Services, including Automated System Integration services and Supervisory Control and Data Acquisition (SCADA) System Support to the City of Midland for the referenced Project.

SCOPE OF SERVICES

The Project generally includes the existing City of Midland T-Bar Water Production Well Fields and Water Storage and/or Transmission Facilities' SCADA. Parkhill will be providing SCADA System Support to include:

- Troubleshooting and remedy of failing SCADA components.
- Solutions to found or identified problematic SCADA areas and/or items.
- Facilitate procurement of SCADA related equipment.
- SCADA programming and industrial communication configuration.
- Recommendation of future SCADA upgrades and/or replacements.
- Coordinate efforts with City of Midland.
- Coordinate efforts with operations entity.

Facilities generally identified within the City of Midland T-Bar Water Supply SCADA System are as follows:

- T-Bar Well Field.
- T-Bar High Service Pump Station and Ground Storage Tank (HSPS).
- Intermediate Ground Storage Tank and Disinfection Facility (Intermediate).
- Terminus Elevated storage tank and flow control sleeve valve (Terminus).
- ClearWater Well Field.
- ClearWater Pump Station and Ground Storage Tank (ClearWater).
- Limited treatment/transmission/storage facilities associated with Midland T-Bar within the overall Midland Water Treatment/Storage/Transmission System.

Special Services specifically excluded from our Scope include, but are not limited to, the following:

- Geotechnical Reports
- Third-Party Independent Construction Inspection Services
- Construction Material Testing
- Construction Observation Services (RPR)
- Electrical equipment installation
- Civil Construction
- Preparation of Construction Documents
- Phased Construction
- Fast-track Construction
- Entitlement Services
- Archeological Investigation/Survey
- Bond Counsel/Financial Advisor
- Static and Residual Flow Testing
- Easement Negotiation and Acquisition

Any required Special Services shall be authorized, in writing, by Owner. Basis of payment is to be determined at the time of authorization. The above-listed are examples and are not intended to be all-inclusive of types of Special Services which may be required.

DELIVERABLES

The following items have been identified as necessary components for delivery of a complete and effective Project. Parkhill will provide ongoing support and troubleshooting efforts as needed and identified within the Scope of Services throughout the life cycle of the accepted Proposal.

- Task 1 – Engineering Design and Basic Services:
 - Analysis and investigation.
 - Scope development and Contract execution.
 - Site investigation and review previously prepared plan sets.
 - As-Built evaluation.
 - Identify future projects.
 - Prepare opinion of probable costs per project.
 - Coordination with operations entity and City of Midland.
 - Effort and/or results report on progress per engagement.
- Task 2 – Midland T-Bar HSPS and Wellfield:
 - Provide ongoing automation and integration support of existing SCADA System:
 - Communication Network.
 - Radios.
 - Antennas.
 - Industrial Networking.
 - Operator Workstations/HMI/OIT.
 - Investigate and resolve found and experienced anomalies:
 - Automated Controllers (PLC, Remote I/O, etc.).
 - Instrumentation
 - Operators/Actuators
 - Motor drives (to the extent possible without replacement or Electrical Services)
 - Provide expertise in process control and process operation

- Task 3 – Midland T-Bar Intermediate:
 - Provide ongoing automation and integration support of existing SCADA System:
 - Communication Network.
 - Radios.
 - Antennas.
 - Industrial Networking.
 - Operator Workstations/HMI/OIT.
 - Investigate and resolve found and experienced anomalies:
 - Automated Controllers (PLC, Remote I/O, etc.).
 - Instrumentation.
 - Operators/Actuators.
 - Motor drives (to the extent possible without replacement or Electrical Services).
 - Provide expertise in process control and process operation.
- Task 4 – Midland T-Bar Terminus:
 - Provide ongoing automation and integration support of existing SCADA System.
 - Communication Network.
 - Radios.
 - Antennas.
 - Industrial Networking.
 - Operator Workstations/HMI/OIT.
 - Investigate and resolve found and experienced anomalies:
 - Automated Controllers (PLC, Remote I/O, etc.).
 - Instrumentation.
 - Operators/Actuators.
 - Motor drives (to the extent possible without replacement or Electrical Services).
 - Provide expertise in process control and process operation.
- Task 5 – Midland T-Bar ClearWater PS and Wellfield:
 - Provide ongoing automation and integration support of existing SCADA System.
 - Communication network.
 - Radios.
 - Antennas.
 - Industrial Networking.
 - Operator Workstations/HMI/OIT.
 - Investigate and resolve found and experienced anomalies:
 - Automated Controllers (PLC, Remote I/O, etc.).
 - Instrumentation.
 - Operators/Actuators.
 - Motor drives (to the extent possible without replacement or Electrical Services).
 - Provide expertise in process control and process operation.

OWNER'S SERVICES

- Provide intended direction as it pertains to overall direction of City Midland Utilities.
- Review and approve material purchases through listed vendors.
- Review and approve Pay Applications.
- Provide direction, review, and approval of proposed Projects prior to implementation throughout proposed Agreement life-cycle.

SCHEDULE

The Scope of Services and associated fee is based on an annual agreement. It is anticipated that the Scope and Fee of the annual Agreement shall be reassessed with consensus between Owner and Engineer prior to execution of any subsequent Agreement. Each Task effort will vary throughout the Agreement time frame. Timelines of identified Projects within each Task will be set and updated per Progress Meetings as needed.

COMPENSATION

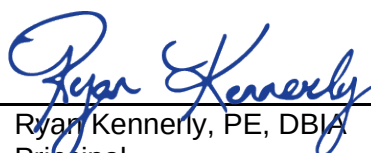
Our fee for the Scope of Services described above will be based on an Hourly Rate basis. We estimate this to be approximately **\$125,000.00** and the current Hourly Rate Schedule is attached for reference. Invoices shall be submitted monthly by Engineer; Owner shall deliver compensation in accordance with the fee summary below. Invoices shall be submitted monthly by Engineer, in a format acceptable to Owner, based upon the percentage of Work completed to date. Engineer shall not exceed the stated fee by more than 10% without prior written consent from Owner. Task estimates are a percentage of total fee. Re-allocation of fee percentages between Tasks may be requested by the Engineer with consent from Owner.

- Task 1 – Engineering Design and Basic Services..... 20%
- Task 2 – Midland T-Bar HSPS and Wellfield..... 30%
- Task 3 – Midland T-Bar Intermediate..... 10%
- Task 4 – Midland T-Bar Terminus..... 10%
- Task 5 – Midland T-Bar Clearwater and Wellfield 30%

We appreciate the opportunity to provide Professional Services to you and look forward to the successful completion of your Project. If you have any questions, please do not hesitate to contact me at 817.633.0434, or by email at rkennerry@parkhill.com.

Sincerely,

PARKHILL

By 
Ryan Kennerly, PE, DBIA
Principal

WDL/RK/kg

Enclosures: Standard Hourly Rate Schedule

Parkhill
Hourly Rate Schedule
 January 1, 2023 through December 31, 2023

Client: City of Midland Project: City of Midland T-Bar Wellfield Integration and SCADA Support

Agreement Date: TBD Location: Kermit, Texas

CLASSIFICATION	HOURLY RATE	CLASSIFICATION	HOURLY RATE	CLASSIFICATION	HOURLY RATE
SUPPORT STAFF I	\$71.00	PROFESSIONAL LEVEL III		PROFESSIONAL LEVEL VI	
SUPPORT STAFF II	\$84.00	Architect	\$177.00	Architect	\$292.00
SUPPORT STAFF III	\$116.00	Civil Engineer	\$218.00	Civil Engineer	\$329.00
SUPPORT STAFF IV	\$123.00	Electrical Engineer	\$212.00	Electrical Engineer	\$343.00
SUPPORT STAFF V	\$136.00	Interior Designer	\$159.00	Interior Designer	\$253.00
SUPPORT STAFF VI	\$147.00	Landscape Architect	\$171.00	Landscape Architect	\$272.00
PROFESSIONAL LEVEL I		Mechanical Engineer	\$203.00	Mechanical Engineer	\$328.00
Architect	\$145.00	Structural Engineer	\$210.00	Structural Engineer	\$315.00
Civil Engineer	\$157.00	Survey Tech	\$163.00	Professional Land Surveyor	\$255.00
Electrical Engineer	\$161.00	Other Professional	\$156.00	Other Professional	\$248.00
Interior Designer	\$138.00	PROFESSIONAL LEVEL IV		PROFESSIONAL LEVEL VII	
Landscape Architect	\$138.00	Architect	\$217.00	Architect	\$376.00
Mechanical Engineer	\$150.00	Civil Engineer	\$254.00	Civil Engineer	\$393.00
Structural Engineer	\$150.00	Electrical Engineer	\$249.00	Electrical Engineer	\$393.00
Survey Tech	\$128.00	Interior Designer	\$174.00	Interior Designer	\$283.00
Other Professional	\$135.00	Landscape Architect	\$185.00	Landscape Architect	\$376.00
PROFESSIONAL LEVEL II		Mechanical Engineer	\$238.00	Mechanical Engineer	\$376.00
Architect	\$156.00	Structural Engineer	\$242.00	Structural Engineer	\$393.00
Civil Engineer	\$176.00	Survey Tech	\$198.00	Professional Land Surveyor	\$306.00
Electrical Engineer	\$182.00	Other Professional	\$184.00	Other Professional	\$376.00
Interior Designer	\$145.00	PROFESSIONAL LEVEL V			
Landscape Architect	\$145.00	Architect	\$263.00		
Mechanical Engineer	\$174.00	Civil Engineer	\$306.00		
Structural Engineer	\$171.00	Electrical Engineer	\$304.00		
Survey Tech	\$140.00	Interior Designer	\$208.00		
Other Professional	\$142.00	Landscape Architect	\$226.00		
		Mechanical Engineer	\$290.00		
		Structural Engineer	\$292.00		
		Professional Land Surveyor	\$231.00		
		Other Professional	\$205.00		

Expenses: Reimbursement for expenses as listed, but not limited to, incurred in connection with services, will be at cost plus 15 percent for items such as:

1. Maps, photographs, postage, phone, reproductions, printing, equipment rental, and special supplies related to the services.
2. Consultants, soils engineers, surveyors, contractors, and other outside services.
3. Rented vehicles, local public transportation and taxis, road toll fees, travel, and subsistence.
4. Special or job-specific fees, insurance, permits, and licenses applicable to work services.
5. Mileage at IRS-approved rate.

Rate for professional staff for legal proceedings or as expert witnesses will be a rate one-and-a-half times these Hourly Rates. Excise and gross receipt taxes, if any, will be added as an expense.

Foregoing Schedule of Charges is incorporated into the Agreement for Services provided, effective January 1, 2023 through December 31, 2023. After December 31, 2023, invoices will reflect the Schedule of Charges currently in effect.



INTEROFFICE MEMORANDUM

TO: Erika Martinez, Purchasing Manager

FROM: Carl Craig, PE, Utilities Director

SUBJECT: Consider a resolution awarding the on-call SCADA consulting and support services for T-Bar Wellfield Systems

DATE: August 25, 2023

The City of Midland solicited 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.

Please consider approval of a resolution awarding a contract for the on-call SCADA consulting and support services to Parkhill for a not to exceed \$125,000. This will be paid for with funds from the Water and Sewer working capital.



City Council Meeting

Item Number: 11
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Erika Martinez, Manager, Purchasing
Subject: MOTION AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL LANDSCAPE, ARCHITECTURAL, AND ENGINEERING SERVICES ASSOCIATED WITH THE RENOVATION AND CONSTRUCTION OF CERTAIN SPORTS FIELDS, PARKING IMPROVEMENTS, AMPHITHEATER, AND RELATED IMPROVEMENTS AT BEAL PARK, 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 **(DISTRICT 4) (GENERAL SERVICES)**

Purpose:

Motion approving specifications for the Design, Development, and Project Management for the Renovation and New Construction of Sports Fields, Parking, Amphitheater and Amenities at Beal Park, said specifications being on file in the City Secretary's Office referenced by the number and date of this motion, and authorizing the City Manager or the City Manager's Designee to advertise for competitive qualifications for said project pursuant to the statutes of the State of Texas for accomplishing the work set forth in said specifications.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is not required at this time.

Discussion:

Please consider approving a motion authorizing the City Manager or the City Manager's

designee to advertise a request for qualifications for the Design, Development, and Project Management for the Renovation and New Construction of Sports Fields, Parking, Amphitheater and Amenities at Beal Park Project. Please see the attached memo from Cristina Burns, Community Services Director, for more information.

Jina Gang

City Manager's Office



**Parks and Recreation Divisions
Interoffice Memorandum**

Date: August 10, 2023
To: Morris Williams, Deputy City Manager
From: Cristina Burns, Community Services Director
Subject: Request for Qualifications – Landscape Architectural/Engineering Services for the Design, Development and Project Management for the Renovation and New Construction of Sports Fields, Parking Amphitheater and Amenities at Beal Park

This Request for Qualifications is to engage a Landscape Architectural/Engineering firm to provide complete development of Plans, Specifications, and Estimates and Phase I Project Management services for the development of the existing Beal Park Master Plan for Beal Park, located at 5200 West Wall.

The firm must be qualified to provide the following in the scope of their work. These tasks will include, but not be limited to:

- 1) Evaluate the Beal Park Master Plan and identified phases.
- 2) Analyze/Adjust Cost Estimates for the identified phases
- 3) Work with City of Midland to determine Phase I scope
- 4) Prepare Phase I construction documents
- 5) Work with City to prepare bid documents for Phase I
- 6) Provide construction oversight for Phase I
- 7) Finalize scope for remaining phases
- 8) Prepare Phase II, III, and IV construction documents.

A Professional Service Agreement for the Beal Park Development and Project Management would be executed in October 2023. Completion of the construction documents would be by February 2024. The construction of Phase I of the project would commence in May 2024 with completion in time for the Spring 2025 soccer season. Funding for the project will be from the Parks Special Purpose account.

REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL LANDSCAPE ARCHITECTURAL/ENGINEERING SERVICES FOR THE CITY OF MIDLAND, TEXAS

RFQ 23005085

Design, Development, and Project Management for the Renovation and New Construction of Sports Fields, Parking, Amphitheater and Amenities at Beal Park

INTRODUCTION

The City of Midland is seeking to engage a Landscape Architecture / Engineering Firm to provide complete development of Plans, Specifications, and Estimates as well as Phase I Project Management for the development of the existing Beal Park Master Plan, to include the development and renovation of sports fields, parking lots, an amphitheater and other amenities as defined in the existing plans. Beal Park is located at 5200 West Wall Street.

GENERAL SCOPE OF SERVICES AND TASKS

The city has developed a master plan for Beal Park. Future development will likely be phased depending on available funding. The selected consultant will be responsible for providing complete Landscape Architectural/Engineering services, to include plan development of the four identified phases and project management of each Phase I.

All text and exhibit products shall be computer-based and provided in both hard copy and electronic format compatible with Microsoft Office 2010.

RFQ DUE DATE: 2:00 p.m. Friday, September 8, 2023.

Five (5) copies of the qualifications and one (1) electronic copy in pdf format on a flash drive shall be submitted in accordance with this RFQ. Please mark the package "Request for Qualifications 23005085 for the City of Midland, Beal Park Renovation and Development Project."

Submit Package to:

City of Midland
Purchasing Office
Attn: Erika Martinez, Purchasing Manager
300 N. Loraine St. Suite 220
Midland, TX 79701

Final consultant approval will be by the City Council and is subject to budget approval. Consultants may contact Erika Martinez, Purchasing Manager, by emailing for additional information at purchasing@midlandtexas.gov. All qualifications are considered public records. The Community Services Department reserves the right to request additional information from consultants submitting qualifications. If selected, staff will make a recommendation to City Council for approval; additional copies of the qualifications may be required.

INTRODUCTION AND SUMMARY

The City of Midland, Texas is seeking a Landscape Architectural/Engineering firm to perform complete Plan, Specifications, and Estimate development, as well as Project Management services for Phase I of the development of the existing Beal Park Master Plan. Beal Park is located at 5200 West Wall.

Professional services for this project will include, but not be limited to cost estimating and phasing refinement, detailed design development, construction documents, geotechnical support, environmental issues, permitting, land survey, utility adjustments, and construction oversight, as well as any other services necessary to develop and successfully complete the project.

The City of Midland has worked with consultants to develop a conceptual master plan for the park. An existing proposal of possible phases in the project include:

Phase I – Develop the northern area of the park, to include renovating the existing soccer and cricket fields with new irrigation and grass. Installation of artificial turf lighted fields will be completed by others during this phase. A roadway extension and parking lots will be included in plan development. Clearing existing undeveloped areas in Beal Park will also occur in this phase. Irrigation and seeding will be proposed in those areas.

Phase II – Develop additional soccer fields south of the new roadway, to include fencing and additional parking. A playground, restroom/concession building (by others), a splash pad, and a playground will be included in the plans for this phase

Phase III – Develop the proposed amphitheater and food truck court. A detention pond will be developed during Phase III.

Phase IV – Develop the eastern portion of the park to complete the soccer facilities, to include fields, restroom/concession building (by others), and parking.

Project Timeline

The selected firm shall work with the city to establish a project timeline for the phased development, and associated costs for each phase.

Expected completion of Phase I construction documents will be in February 2024. Plans for the subsequent phases will be developed under the agreed Professional Services Agreement, for use in the future as funding becomes available. These dates are subject to change.

GENERAL SCOPE OF SERVICES & TASKS

These tasks will include, but will not be limited to:

- 1) Evaluate the Beal Park Master Plan and identified phases.
- 2) Analyze/Adjust Cost Estimates for the identified phases
- 3) Work with City of Midland to determine Phase I scope
- 4) Prepare Phase I construction documents
- 5) Work with City to prepare bid documents for Phase I
- 6) Provide construction oversight for Phase I
- 7) Finalize scope for remaining phases
- 8) Prepare Phase II, III, and IV construction documents.

The above list is intended to enhance the statement of work and is not intended to limit the respondent's description of the project's process or services provided.

INFORMATION FOR CONSULTANTS

Form of Qualifications

The consultant qualifications shall include the following information:

1. Description of the firm's interest in participating in the project.
2. Names and titles of professionals and support staff that will work on the project, a brief description of previous team experience on this type of project, and copies of their resumes. If the project is to be a joint venture between consulting firms, the qualifications should state so.
3. Work history of the company.
4. A proposed work program and timeline to respond to the scope of work in this RFQ.
5. Unique challenges in completing similar projects and outcomes.
6. Description of up to five projects indicating relevant experience and including a brief description of the project, client and phone number, budget, and role. Please include sample pages, websites, etc. for committee review.

7. Your current project schedule in relation to the time and attention, which you anticipate devoting to this project.
8. Names, addresses, and telephone numbers of references or clients for whom the consultant has recently performed services.
9. List all legal challenges and outcomes for this type of project within the last five (5) years.

Questions Prior to Submission of RFQ

Questions should be addressed to the Purchasing Office by email at purchasing@midlandtexas.gov, no later September 4, 2023 at 2:00 p.m.

Evaluation of Qualifications

The following criteria will be considered in evaluating the qualifications and selecting a consultant:

- Firm experience and capability; credentials and experience of staff assigned to the project;
- References and quality of comparable work performed for other municipalities;
- Quality and organization of the proposal; tailoring of the proposal to the City of Midland needs;
- Likelihood of ability to produce a quality product in the given time frame; and
- Methodology;

In addition, the City reserves the right to request additional information from consultants submitting qualifications. All qualifications are considered public records. The City reserves the right to reject any or all qualifications and the right, in its sole discretion, to accept the qualifications it considers most favorable to the City's interest. The City further reserves the right to reject all qualifications and seek new qualifications when such procedure is deemed reasonable and in its best interest.

Weighting Factors

The final overall score will be computed by scoring each factor separately, and multiplying that score by the appropriate weighted percentage, and then adding all of the scores together.

FACTOR	WEIGHT
Firm experience and capability; credentials and experience of staff assigned to the project	25%
References and quality of comparable work performed for other public agencies	25%

Quality and organization of the proposal; tailoring of the proposal to the City of Midland needs	20%
Likelihood of ability to produce a quality product within the given time frame	15%
Methodology	15%

Selection of Consultant

The City shall review and may request an interview with firms that meet the criteria explained within this RFQ. Community Services may prepare a short list of consultants and interview those consultants. A firm will be selected for recommendation to the City Council for the purpose of negotiating contracts terms, including a fair and reasonable price. The firm will submit additional hardcopies and digital copies of their qualifications to be forwarded to the City Council.

If a satisfactory contract cannot be negotiated with that firm, the City shall formally end negotiations with that firm and select the next most favored provider, and attempt to negotiate with that firm. The City reserves the right to discontinue the process and reopen the process for proposals if an agreement cannot be reached.

Method of Compensation

Upon selection, the consultant will provide the necessary information for a contract to the City. The contract with the consultant is for a not-to-exceed amount, with reimbursement upon completion of agreed upon components of work, with a fee schedule for the remainder of the requested services. The Assistant Director of Community Services and/or her designee will review and approve for payment all invoices submitted by the consultant under the contract.

Liabilities

No costs associated with the presentation of the qualifications, or incurred in any manner by the proposer, may be charged to the City. All responses shall become property of the City and subject to disclosure under the Texas Open Records Law.

INSTRUCTIONS FOR QUALIFICATIONS

1. Qualifications must be submitted to: City of Midland
Purchasing Office
RFQ 23005085
Attn: Erika Martinez, Purchasing Manager
300 N Loraine St. Suite 220
Midland, Texas 79701

2. Five (5) copies of the qualifications and one (1) electronic copy in pdf format on a flash drive must be received at the above address by 2:00 p.m. on **September 8, 2023**. The qualifications package should be labeled "Request for Qualifications 23005085 for the City of Midland, Beal Park Renovation and Development Project.
3. Any questions concerning qualifications should be directed to the Purchasing Office at purchasing@midlandtexas.gov , no later than September 4, 2023 at 2:00 p.m..

WAIVER

A. WAIVER OF CLAIMS ARISING FROM THE COMPETITIVE REQUEST FOR QUALIFICATION PROCESS OF AWARD OF CONTRACT

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

- 1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY STATEMENT OF QUALIFICATIONS.**
- 2. WAVIER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE STATEMENT OF QUALIFICATIONS OR THE CONTRACT DOCUMENTS.**
- 3. ACCEPTANCE OR REJECTION OF ANY STATEMENT OF QUALIFICATION.**
- 4. AWARD OF CONTRACT.**

By submitting a Statement of Qualifications, the submitter acknowledges that he or she understands all terms of the proposal documents and consents to the competitive selection process and the possibility of a negative assessment. By submitting a Statement of Qualifications, the submitter acknowledges and agrees that there was and is no disparity of bargaining power between the submitter and the City.

The submitter agrees that this is the intentional relinquishment of the above listed presently existing known rights.

B. WAIVER OF ATTORNEY FEES

BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM THE SUBMITTER HAS OR MAY HAVE AGAINST THE CITY AND/OR ITS RESPECTIVE EMPLOYEES AND REPRESENTATIVES, FOR THE AWARD OF ATTORNEY FEES, ARISING OUT OF OR IN CONNECTION WITH THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY STATEMENT OF QUALIFICATIONS, WAIVER OF ANY REQUIREMENTS UNDER THIS RFP, ACCEPTANCE OR REJECTION OF ANY STATEMENT OF QUALIFICATIONS, AND AWARD OF THE CONTRACT. BY SUBMITTING A STATEMENT OF QUALIFICATIONS, THE SUBMITTER SPECIFICALLY WAIVES ANY RIGHT TO RECOVER OR BE PAID ATTORNEY'S FEES FROM THE CITY OR ANY OF THE CITY'S EMPLOYEES AND REPRESENTATIVES UNDER ANY OF THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, SECTION 37.001, ET. SEQ., AS AMENDED).

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

By execution and submission of a Statement of Qualifications under this RFQ, the submitter hereby represents and warrants to the City that the submitter has read and understands the RFQ and the Statement of Qualifications is submitted in accordance with this RFQ. The submitter acknowledges that it understands all terms within the proposal documents, which include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

This section shall not be construed as a Waiver of Sovereign Immunity.

SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

QUESTIONS REGARDING THIS REQUEST

Questions should be directed to the Purchasing Department by email at purchasing@midlandtexas.gov.



City Council Meeting

Item Number: 12
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Justine Ruff, Director
Subject: MOTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH COMMEMORATIVE AIR FORCE, INC., TO PROVIDE FOR THE 2023 AIRSHO AT MIDLAND INTERNATIONAL AIR & SPACE PORT (**DISTRICT 4**) (**AIRPORTS**)

Purpose:

Motion authorizing the execution of an agreement with Commemorative Air Force, Inc. (CAF) to provide for the 2023 Airsho' at Midland International Air & Space Port.

Recommended City Council Action:

Approve

Fiscal Impact:

N/A

Discussion:

The Commemorative Air Force (CAF) High Sky Wing will use portions of the Airport for staging and conducting the airshow and its ancillary activities. The Airsho' will commence Friday, September 8, 2023, and will conclude at approximately 5:30 pm Sunday, September 10, 2023. The Federal Aviation Administration (FAA) has approved all necessary waivers and the Transportation Security Administration (TSA) has approved all security measures.

This agreement allows the CAF to host an airshow on Midland International Air & Space Port property, sets required insurance levels, as well as requiring emergency response personnel.

Jina Gang

City Manager's Office

CAF AIRSHO

2023

Contract

C O

**AIRSHO AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS
AND THE COMMEMORATIVE AIR FORCE, INC.**

THIS AGREEMENT, effective the 22nd day of August 2023, by and between the City of Midland, Texas, a home rule municipal corporation of the State of Texas, hereinafter called the "City", and the Commemorative Air Force, Inc., a Texas non-profit corporation, hereafter referred to as "CAF",

WITNESSETH:

WHEREAS, the City and CAF entered into that certain Lease Agreement dated July 4, 1990, and effective July 1, 1990, hereafter referred to as "the Lease", for the lease of certain land and improvements located at Midland International Airport, hereafter referred to as "the Airport"; and

WHEREAS, Section 8.10 of the Lease requires that CAF conduct at least two air shows at the Airport during each calendar year pursuant to provisions of a written agreement between the City and CAF; and

WHEREAS, CAF and City desire to enter an agreement for the conduct of an Airsho at the Airport to commence Friday, September 8, 2023, at approximately 7:30 A.M. until approximately 5:30 P.M. Sunday, September 10, 2023, hereafter referred to as "the Airsho". The Airsho shall be governed by The CAF Airsho Ground Operations Plan, submitted by the guidelines of 14 CFR Part 139 Program Policy and Guidance, attached hereto as "Exhibit B".

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and conditions contained herein, the City and CAF hereby agree as follows:

1. USE OF AIRPORT: CAF shall have the right to use the Leased Premises as described in Section 1.0l(a) of the Lease, as well as the areas and facilities at the Airport designated by the City's Director of Airports ("Director") for the purpose of conducting the Airsho.

If conditions are: A defined ceiling of 500 feet above ground level (AGL) or below, and/or one statute mile in visibility or below, Runway 10/28 and any associated safety areas and protection zones shall be turned back over to the City of Midland to support commercial arrivals and departures and any emergency aircraft. If the observed conditions are at/below the above criteria prior to 11:00 A.M. Local the Airsho may be put on hold to see if conditions improve. If conditions are not above these minimums at 11:00 A.M. Local Runway 10/28 will be turned back over to the city no later than 12:00 P.M. Local. This is to include all pyrotechnic detonation, cleanup activities, and sufficient time for DOA operations and maintenance personnel to return the runway back to a CFR 139 compliant surface. A request for an extension may be made but must be approved by the Director of Airports or his/her representative.

2. PRESHOW SET-UP: CAF shall be permitted to commence its set-up activities on Airport property not located within the area of the Leased Premises on Tuesday, September 5, 2023, at such times as agreed by the Director. A representative of CAF shall be at the Airport at all times during set-up activities.

3. DESCRIPTION OF AIRSHO: CAF represents that the Airport will be used solely for the purpose of staging and conducting the Airsho and its ancillary activities. Such flight shall be

conducted only northwest of Runway 16 Right/34 Left. Any parachute events shall be northwest of Taxiway "E" and in no case closer than 50' feet from the crowd line. CAF shall not move or operate or permit the movement or operation of any aircraft involved in the performance of the Airsho without qualified safety personnel being present. Such safety personnel shall be provided solely at the cost of CAF.

4. CAF RESPONSIBILITIES: Except as otherwise set forth in this Agreement or as agreed in writing by the City, CAF shall be responsible for making all arrangements for the Airsho, but not limited to, the following:

- a. CAF shall be responsible for parking or arranging for the parking of all aircraft which are part of the Airsho and its ancillary activities. CAF shall also be solely responsible for the movement of or arranging for the management of movement and parking of such aircraft while in the parking areas and on aprons at the Airport. All such aircraft parking and movement shall be coordinated in advance with the Director and the Manager of the Air Traffic Control Tower.
- b. CAF shall at its sole expense obtain all licenses, permits, clearances, or other like authorizations required by any and all Federal, State, or local governmental agencies, including but not limited to the Federal Aviation Administration (FAA), that are necessary for the conduct of an Airsho. The CAF shall obtain the appropriate Certification of Waiver or Authorization from the FAA prior to the Airsho and shall at all times be solely responsible for compliance with all provisions of the Waiver. A

copy of said Waiver shall be attached to this Agreement as Exhibit "A" and shall be incorporated herein by reference and made a part hereof for all legal purposes.

- c. CAF shall provide for suitable automobile parking areas in such locations as approved by the Director and shall be responsible for all roadway signage and directions of spectators and vehicles to the public parking areas. CAF shall have the option to collect or permit the collection of a fee for such parking at the time the vehicles are being parked. Procedures for direction and control of vehicles on Airport property shall be coordinated with, approved by, and under the direction of the Midland Police Department's Airport Division ("Airport Police"); however, CAF shall be solely responsible for arranging and providing adequate personnel to conduct such parking operations under the direction of the Airport Police.
- d. CAF shall remove or cause the removal of all litter and trash deposited on Airport property as a result of the Airsho during and immediately after the conclusion of the Airsho or by such time as agreed by the Director.
- e. CAF shall supply portable sanitation facilities, including but not limited to, toilets and trash containers, in sufficient numbers to accommodate those anticipated to attend the Airsho, and will provide the personnel to clean up and remove all facilities installed for the event immediately upon conclusion of the Airsho.
- f. Subject to Section 5, below, CAF shall be solely responsible for arranging for the hiring of sufficient numbers of commissioned peace officers to provide security, crowd control, and traffic control during the set-up, during the Airsho, and for a

reasonable time before and after the Airsho. All security, crowd control, and traffic control activities occurring on Airport property shall be coordinated through and approved by the Director and the Airport Police. At no time during the conduct of the Airsho shall the CAF permit the number of police forces required by the Director and/or FAA to secure the crowd line within the AOA or other secured areas of the Airport be permitted to go below the required levels.

- g. CAF shall be solely responsible for obtaining authorization from the appropriate authority to close and/or barricade any public right of way, including any public streets or highways, for purposes of crowd or traffic control. The City does not by entering the Agreement waive any of CAF's obligations with respect to obtaining the City's consent to close City rights of way or to otherwise divert the flow and direction of vehicular and pedestrian traffic on City-owned rights of way from the manner designated by City ordinance or other applicable law.
- h. Subject to Section 5, below, CAF shall be solely responsible for arranging with the City's Fire Chief for the hiring of sufficient numbers of firefighters, health and medical personnel, and emergency medical technicians (EMTs) or paramedics to be on-site during the Airsho to handle possible fire and/or medical emergencies. CAF shall be solely responsible for providing facilities to serve as first aid stations.
- i. CAF shall be solely responsible for arranging for and supervising all concessions. At no time shall concession vendors be permitted to set up within the AOA or on other City property not within the Leased Premises except as authorized in writing by the

Director. CAF shall not permit any vendor to place any anchoring or grounding stakes into any pavement. Removal of all concession facilities set up for the Airsho on Airport property not within the Leased Premises shall commence immediately after the conclusion of the Airsho and be completed no later than four (4) hours after the conclusion of the Airsho unless otherwise agreed by the Director. All concession vendors shall have all required state and/or local health and/or food vending permits visibly displayed within their concession areas. CAF shall not permit any concession vendor to operate on any City-owned property, regardless of location, unless that concession vendor has in its possession all required permits.

- j. CAF shall not permit any vendor to possess, sell or offer in any manner "dummy" grenades or any other such device that might reasonably cause unnecessary alarm or disrupt public safety, or result in a response from federal, state, or local authorities or emergency personnel. CAF shall indemnify, defend, and hold City harmless from any and all suits or claims for damages, of whatsoever nature, resulting from a vendor's possession, sale, or offering of a device described in this provision and/or any incident, of whatsoever nature, resulting therefrom.
- k. CAF shall be solely responsible for providing or arranging for the provision of adequate amounts of drinking water and ice to accommodate those attending the Airsho.
- l. CAF shall be solely responsible for arranging for all parties who are to perform in the Airsho.

- m. CAF shall be solely responsible for arranging cleanup of any fluid spills in the AOA on, but not limited to, runways, taxiways, and public ramps on or before Monday, September 11, 2023.
- n. CAF shall be solely responsible for the payment of all costs associated with the carrying out of the obligations and responsibilities described in subparagraphs a. through m. above.

5. MINIMUM EMERGENCY PERSONNEL STAFFING: CAF acknowledges and understands the Airport will be open and operational for commercial traffic during the hours of the Airsho. A Notice to Air Missions (NOTAM) will be issued closing the Airport to all general aviation traffic. The Airport will remain open and operational only for commercial traffic. CAF further acknowledges and agrees that in order to adequately protect the secured areas of the Airport and to provide for adequate public safety for those attending and participating in the Airsho, a minimum number of qualified off-duty fire/paramedic personnel and qualified off-duty police personnel need to be hired to be within the AOA and other secured areas of the Airport, during the operating hours of the Airsho and for at least two (2) hours before and two (2) hours after the operating hours of the Airsho. In light of the foregoing acknowledgments, CAF shall at all times during the Airsho in which spectators are permitted to access the AOA have on-site no fewer than the following public safety personnel:

- a. Two (2) ARFF personnel with One (1) ARFF vehicle
- b. Five (5) EMS personnel with One (1) Ambulance
- c. Two (2) Fire Marshal's Office representatives

- d. One (1) ARFF Chief/Supervisor
- e. Fifteen (15) Midland Police Officers

CAF shall be solely responsible for contracting with and paying the above-described personnel; provided, however, that in the event CAF fails to hire sufficient numbers of people to provide the above minimum staffing requirements during the hours of operation of the Airsho, City may, at its sole discretion, assign fire and/or police personnel sufficient to maintain the above-required levels. CAF shall, within ten (10) days after receipt of an invoice, reimburse the City for all costs incurred by the City in assigning additional off-duty fire and/or police personnel to work at the Airsho in accordance with this section, such as costs to include, but not limited to wages, benefits, F.I.C.A., workers compensation insurance, unemployment insurance, and retirement fund contributions. Furthermore, CAF shall indemnify, defend, and hold City harmless from and against any and all claims made by any person hired by CAF to provide medical, fire and/or police protection during the Airsho relating to failure to comply with any Federal or State law or regulation governing wage and hour rates, including, but not limited to, the Federal Fair Labor Standards Act. The CAF acknowledges and understands that the staffing level set forth in this section is a minimum requirement needed to secure the AOA and other secured areas of the Airport used for the Airsho and shall not be construed as a prohibition against the CAF hiring additional public safety personnel at the CAF's own discretion; provided, however, that the CAF shall hire only additional personnel who have been certified in accordance with the applicable law to perform the duties required by the CAF.

6. CITY EQUIPMENT AND PERSONNEL PROVIDED AT CITY'S EXPENSE: City agrees to provide to CAF for use at the Airsho the following equipment and services at no charge to CAF:

- a. One (1) Midland Fire Department ambulance;
- b. One (1) Midland Fire Department fire engine in addition to those stationed at the Airport;
- c. Additional sweeping of runways, taxiways, and public ramps within the AOA prior to the Airsho to comply with FAA requirements;
- d. Mowing of City-owned areas off the Leased Premises designated by the Director for parking if deemed necessary by the City in City's sole discretion; however, parking areas not on City property shall be solely the responsibility of CAF.

Notwithstanding the above, City shall not be liable to CAF if in the opinion of the City's Fire Chief and/or Director of Airports the equipment and/or personnel described in a., b., and c., above, are required in the public interest to be reassigned to perform other duties as the result of a fire or other unforeseen event away from the Airsho site; provided, further that except as agreed by the City manager, CAF agrees to reimburse the City within ten (10) days after invoice for any services or supplies provided by City which are not specifically listed in this Section.

7. INSURANCE:

- a. Liability Coverage: The CAF shall purchase additional Airsho liability insurance with a combined single limit coverage in an amount not less than \$10,000,000 per occurrence which shall remain in full force and effect during the Airsho and shall name the City as an additional insured. Such policy shall be endorsed to either (a)

waive any alcohol liability exclusion or (b) include alcohol liability coverage. (see paragraph d below). Such insurance shall not exclude losses and claims related to the operation of non-commercial, privately owned, or experimental aircraft. In addition, CAF shall obtain an endorsement on its insurance policies which shall insure the CAF and City against claims made against any Airsho performer or concession vendor resulting from an injury to person or property of any third party caused by the negligent act or omission of said performer or vendor and their respective employees, agents and representatives. CAF further agrees that all non-City owned motor vehicles which CAF or any performer or vendor will utilize within the airport's Aircraft Operating Area shall be covered by automobile liability insurance in the amounts required by the Texas Motor Vehicle Safety Responsibility Act, Chapter 601 of the Texas Transportation Code. All liability insurance shall name the City as an additional insured.

- b. Fire Insurance: Unless otherwise provided within the coverage of the Airsho liability insurance described in Paragraph 7, above, CAF shall purchase fire and casualty insurance with coverage limits at not less than \$100,000, which shall provide coverage for loss or damage to property owned by the City or the United States of America, including, but not limited to any buildings, improvements, runways, taxiways, ramps, or gates not located within the Leased Premises, which damage is caused by the CAF or any Airsho performer or participant. City shall be named as a loss payee on such policy and the policy shall contain an endorsement waiving the

insurance carrier's right of subrogation against the City with respect to such damages.

All liability insurance shall name the City as an additional insured.

- c. Certificates of Insurance: A Certificate of Insurance evidencing such additional coverage and all required waivers and endorsements shall be provided to the Director no later than ten (10) days prior to the Airsho. If any or all of such Certificates of Insurance are not provided to the Director prior to the Airsho, the Director may disallow the staging and conducting of the Airsho and its ancillary activities or that portion of the Airsho which does not meet the above-described insurance requirements. All certificates of insurance required herein shall name the City of Midland as an additional insured.
- d. Alcohol Liability Coverage: The requirement of an endorsement on CAF's policy regarding alcohol liability may be satisfied by the contractor hired by CAF to provide the alcohol service delivering to the City a certificate of insurance naming the City as an additional insured for the Airsho and indicating alcohol liability coverage in an amount not less than \$1,000,000 combined single limit; provided, however, said contractor has the exclusive rights to serve alcoholic beverages at the Airsho.

8. INDEMNIFY AND HOLD HARMLESS: CAF WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING 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 CAF, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM CAF'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND CAF WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

9. DAMAGE TO CITY PROPERTY: CAF shall be solely responsible for the cost of repair and/or replacement of City property owned by the City, the United States of America, or any other Airport tenant, including but not limited to any buildings, grounds, improvements, runways, taxiways, ramps, or gates, which are damaged or destroyed by the CAF and/or Airsho performers or participants. All such repairs shall be conducted by the City and billed, at the City's cost, to CAF. For damages of less than \$10,000, CAF shall reimburse the City for the costs of repairing such damages within thirty (30) days after presentation of an invoice by the City to CAF. Costs in excess of \$10,000, shall be repaid in accordance with a schedule agreed by City, but in any case, not later than one year after the date of ordinance. CAF shall not be responsible for damage to runways, taxiways, or ramps which results through normal wear and tear of such improvements caused by regular Airport operations or damage caused by oversized aircraft directed to the damaged area of the airfield by someone other than the CAF or its representatives.

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

11. ACCESS TO AIRCRAFT OPERATIONS AREAS (AOA) AND OTHER SECURED AREAS: The Director, in consultation with CAF's representative, shall determine which security gate(s) will be used by Airsho participants and spectators for the purpose of entering and leaving

the AOA and other secured areas of the Airport. CAF shall be solely responsible for securing the designated gates and for permitting only persons related to Airsho activities to enter the security gates. Furthermore, CAF shall have a representative on-site at the Airport at all times while Airsho participants and concession vendors are needing access to the Airport's secured areas and shall at no time permit such persons to be unescorted. All Airsho participants requiring access to surfaces within the movement area will be under escort by approved and qualified Airport personnel or have received previous approval from the Director. Not later than ten (10) days prior to the Airsho, CAF shall provide to the Director a list of all organizations or companies providing concessions or other services who will need access to the Airport's secured areas.

12. BROADCAST AND ADVERTISING RIGHTS: CAF shall have exclusive control and supervision of the sales and content of all advertising and all radio, television, broadcasting, or recording and transcription rights, and other media contracts, and shall have the sole right to proceeds derived therefrom.

13. CITY NOT A CO-SPONSOR: CAF understands and agrees that execution of this Agreement by City in no way creates any partnership or joint venture between the City and CAF, nor shall City be deemed to be a co-sponsor by virtue of having signed this Agreement. CAF and its members and representatives shall at no time make any express or implied representation to any person that the City is acting as a co-sponsor or is in any way financially or otherwise responsible for the conduct of the Airsho.

14. FEES FOR ADMISSION AND CONCESSION RECEIPTS: CAF shall have the exclusive right to handle, control, and keep custody of receipts and funds derived from sales for admission

to the Airsho, or from any other source in any way connected therewith, and shall have the sole right to all proceeds derived therefrom; provided, however, the CAF remain liable to collect and pay all lawfully imposed sales taxes.

15. USE OF PYROTECHNICS: CAF shall be permitted to locate and detonate fireworks, dynamite, flashpots, or other incendiary devices (hereafter collectively called "Fireworks") during the period of the Airsho, on airport property, after obtaining written approval from the Director of Airports and the City's Fire Marshal, which permission shall not be granted until (1) the CAF has notified the Director of Airports and the City's Fire Marshal in writing of the location of all Fireworks to be installed for detonation during the Airsho and the time at which the events involving the detonation of Fireworks will occur, (2) the CAF has delivered to the City the certificates of insurance indicating the required insurance coverage set forth in Section 7 of this Agreement, and (3) the CAF has delivered to the Director a letter indicating the name of the operator who will be supervising the operation of the Fireworks to be installed and detonated as part of the Airsho performance, which letter shall be accompanied by copies of any licenses or permits required by Texas or federal law. At no time shall CAF locate or detonate, or permit the location or detonation of, any Fireworks in such place or manner as to risk injury to or cause interference with aircraft, runways, taxiways, or aprons or with Airport patrons or personnel. In addition, at no time shall the CAF locate or store, or permit the location or storage of, Fireworks within the safety areas of any active runway or taxiway at the Airport. The installation and detonation of all Fireworks to be detonated during the Airsho shall be conducted and/or supervised by a properly licensed pyrotechnic operator if required by Article 5.43-4, Texas Insurance Code, as

they relate to the storage, transportation, sale, installation, and display of Fireworks. The pyrotechnic portion of the Airsho shall be immediately suspended upon notification to the CAF by proper fire safety authorities of non-compliance with the provisions of the public display permit or any State or Federal law or regulation regarding the use of Fireworks on the Airport. CAF shall coordinate the detonation of Fireworks with the Director to ensure scheduled airline operations will continue unimpeded. The Fireworks portion of the Airsho shall be immediately suspended upon notification to the CAF by the Director that pyrotechnic activity may impede air carrier operations at the Airport. CAF shall be solely responsible for the location of all above or below-ground structures, including but not limited to, water, sewer, gas, or oil pipeline, electric or telephone cable, or other utility cables, which might be detrimentally affected by the detonation of Fireworks in their vicinity. CAF shall be solely responsible for damage to all structures, whether above or below ground, including buildings, fences, pipelines, utilities, roads, etc., whether publicly or privately owned, caused by the activities related to the Airsho, and shall indemnify, defend, and hold City harmless from claims made by anyone for damage to person or property resulting from the detonation of any fireworks during the Airsho. "Fireworks", as used in this Section, shall also include all items defined as "Fireworks" as that term is defined in Texas Occupations Code §2154.001.

16. NOTICES TO AIR MISSIONS (NOTAMS): The CAF shall cooperate with and timely provide all requested information to the Director necessary for the Director to issue proper Notices to Air Missions (NOTAMs) regarding the closure of the Airport during the flying portion of the Airsho. The City, through its Department of Airports, will be the only agency to issue the

NOTAMs. CAF will coordinate the Airsho to ensure that all scheduled air carriers serving the airport and airline operations will continue unimpeded during the Airsho. The CAF “Air Boss” will coordinate with qualified Airport personnel to inspect all surfaces at the conclusion of each day's Airsho activity before the Airport will be reopened to general aviation aircraft. CAF also agrees that any aircraft which may experience an emergency situation during the time of the Airsho will be allowed to use the Airport without hindrance.

17. **FAA OR TSA VIOLATIONS:** CAF shall neither conduct nor permit the conduct of activities related to the Airsho which would compromise the Airport's compliance with FAA or TSA regulations, or any other applicable laws or regulations. CAF agree to indemnify City against civil fines assessed by the FAA or TSA against City for violation of FAA or TSA regulations which are the result of the acts or omissions of the CAF, any of its members, or other participants of the Airsho who are not employees of City acting within the scope of their employment.

18. **ADA REQUIREMENTS:** The CAF shall be solely responsible for adhering to all requirements stated in the American's Disability Act (ADA) as well as all applicable Federal, State, and local laws and ordinances.

19. **SALES AND AMUSEMENT TAXES:** CAF shall be solely responsible for the collection of any sales and/or amusement taxes required by any Federal, State, or local law, regulation, or ordinance in connection with the sale of admissions and concessions at the Airsho. CAF agrees to indemnify, defend, and hold City harmless against any suits or claims brought by any governmental entity as the result of non-payment of any such sales or amusement taxes.

20. RELATIONSHIP TO LEASE: The use of the Airport and the Leased Premises by CAF for the Airsho shall at all times remain subject to the provisions of the Lease, which Lease remains in effect and is in no way amended by virtue of the execution of this Agreement.

21. DEFAULT: Failure of the CAF to comply with any provision of this Agreement shall constitute an event of default which shall entitle the City to cancel this Agreement, and consequently the Airsho, and to seek such other remedies as may be available to the City at law or in equity. Furthermore, an event of default under this Agreement shall constitute an event of default in the Lease and shall entitle City to invoke such remedies as City may have available to it pursuant to Article 15 of the Lease.

22. FUELING OF AIRCRAFT: CAF, its members, invitees, and guests shall not be relieved from the payment of any part of the cost of fuels which constitutes a fuel flowage fee for fuel purchased by and/or distributed by CAF, its members, invitees, or guests; however, City agrees that CAF and its members shall be relieved of payment to City of any part of the cost of fuel constituting a fuel flowage fee for fuel used in operating historical military aircraft and ground vehicles participating in the Airsho for a period commencing September 3, 2023, until September 13, 2023. Fuel provided to CAF members for aircraft not performing in the Airsho are not exempt from the fuel flowage fee. CAF shall not self-fuel nor permit the self-fueling of any aircraft except aircraft owned by the CAF. CAF shall not permit any party who does not have a current Airport fueling agreement to enter the Leased Premises or the Airport to perform fueling operations for any aircraft. The CAF shall contract with a third-party fixed base operator operating at the Airport who has a current Airport Fueling Agreement with the City to provide fueling services for CAF's

members, employees, and invitees, which contract will at all times be subject to said Airport Fueling Agreement. At no time shall the CAF permit the fueling of any aircraft to be operated at the Airport by any person who has not been properly certified and tested by the Department of Airports or the FAA to perform fueling services at the Airport.

23. SEVERABILITY: If any of the provisions of this Agreement shall be held illegal, invalid, or otherwise unenforceable, the remainder of the Agreement shall not be affected thereby and shall be read as if the invalid portion were not part of this Agreement.

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

25. ENTIRE AGREEMENT; WRITTEN AMENDMENTS: This Agreement contains the entire understanding between the parties hereto and supersedes all other oral and written agreements or understandings between them. No modification or addition hereto or waiver of cancellation of any provisions hereof shall be valid except by a written instrument signed by both parties.

26. RELEASE: NOTWITHSTANDING ANY OTHER PROVISIONS, CAF 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 CAF 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.

27. SPECIAL PERFORMANCE FOR SEPTEMBER 8, 2023: City understands and agrees that the CAF may conduct a brief aeronautical performance on Friday, September 8, 2023, from 9:30 A.M. until 12:30 P.M., for special guests of the CAF. Except for the actual flying activities, no activities will be permitted outside the CAF's leased premises. CAF agrees that all provisions of this agreement shall be applicable and in effect for the performance on Friday, September 8, 2023, except for Sections 4(±), 4(g), 4(h), and 5. The CAF shall be responsible for coordinating with the Manager of the Midland Air Traffic Control Tower regarding the time the performance will occur and the permitted area of operations.

28. REMOVAL OF AIRSHO EQUIPMENT AND FACILITIES: All CAF Airsho equipment and facilities shall be removed from non-leased areas by 1700L on Monday, September 11, 2023.

29. ATTORNEY'S FEES: BY EXECUTING THIS AGREEMENT, CAF AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY CLAIM IT HAS, OR MAY HAVE IN THE FUTURE

AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE CAF SPECIFICALLY AGREES THAT IF THE CAF 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 CAF AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CAF MIGHT OTHERWISE BE ENTITLED.

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

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

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

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

32. AS IS LANGUAGE: BY EXECUTING THIS AGREEMENT THE CAF AGREES AND ACKNOWLEDGES THE CAF IS LEASING THE LEASED PREMISES "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE CITY, THAT THE LEASED PREMISES ARE FIT FOR A PARTICULAR PURPOSE. THE CAF ACKNOWLEDGES, BY EXECUTING THIS AGREEMENT, THAT CAF IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE CITY WITH RESPECT TO THE CONDITION OF THE LEASED PREMISES, BUT IS RELYING UPON CAF'S EXAMINATION OF THE LEASED PREMISES. CAF ALSO RECOGNIZES BY EXECUTING THIS AGREEMENT, THAT THE CAF IS AGREEING TO ACCEPT THE LEASED PREMISES "AS IS", THAT CAF AGREES TO MAKE CAF'S OWN APPRAISAL OF THE LEASED PREMISES AND TO ACCEPT THE RISK THAT CAF MAY BE WRONG. THE CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE LEASED PREMISES. IN NO EVENT SHALL CAF HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE CAF WILL TAKE THE LEASED PREMISES UNDER THE EXPRESS UNDERSTANDING THE LEASED PREMISES ARE ACCEPTED "AS IS" AND WITH ALL FAULTS, EXCLUDING EXPRESS OR IMPLIED WARRANTIES.

33. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES: As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, CAF or its legal representative, shall give the City Manager notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred and twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where, and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the CAF will settle, the physical and mailing addresses of CAF at the time and date the claim was presented and the physical and mailing addresses of CAF for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the CAF relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to CAF that CAF'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, CAF's failure to comply with the requirements herein shall perpetually bar CAF'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. CAF agrees that the requirements of this entire agreement are reasonable.

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

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by persons duly authorized, on the day and year first written above.

CITY OF MIDLAND, TEXAS

THE COMMEMORATIVE AIR FORCE, INC.

Lori Blong, Mayor

Printed Name: _____

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Justine Ruff, Director of Airports

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

THE STATE OF TEXAS
COUNTY OF MIDLAND

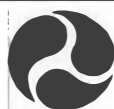
BEFORE ME, the undersigned authority, on this day personally appeared
_____ known to me to be the person whose name is
subscribed to the foregoing instrument, and acknowledged that he/she executed and delivered the
foregoing instrument for the purposes and consideration therein expressed on behalf of
COMMEMORATIVE AIR FORCE (HIGH SKY WING).

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

Notary Public, State of Texas

CAF AIRSHO 2023

FAA Waiver "EXHIBIT A"



US Department of Transportation
Federal Aviation Administration

APPLICATION FOR CERTIFICATE OF WAIVER OR AUTHORIZATION

From Approved: O.M.B. No.2120-0027 01/31/2021

APPLICANTS - DO NOT USE THESE SPACES

Region

Date

Action

☐ Approved

☐ Disapproved – "Explain under "Remarks"

Signature of authorized FAA representative

INSTRUCTIONS

Submit this application in triplicate (3) to any FAA Flight Standards district office.

Applicants requesting a Certificate of Waiver or Authorization for an aviation event must complete all the applicable items on this form and attach a properly marked 7.5 series Topographic Quadrangle Map(s), published by the U.S. Geological Survey (scale 1:24,000), of the proposed operating area. The map(s) must include scale depictions of the flightlines, showlines, race courses, and the location of the air event control point, Police dispatch, ambulance, and fire

fighting equipment. The applicant may also wish to submit photographs and scale diagrams as supplemental material to assist in the FAA's evaluation of a particular site.

Application for a Certificate of Waiver or Authorization must be submitted 45 days prior to the requested date of the event.

Applicants requesting a Certificate of Waiver or Authorization for activities other than an aviation event will complete items 1 through 10 only and the certification, item 17, on the reverse.

1. Name of organization

COMMEMORATIVE AIR FORCE HIGH SKY WING

2. Name of responsible person

GENA LINEBARGER

3. Permanent mailing address

House number and street or route number
P.O. BOX 61064

City
MIDLAND

State and ZIP code
TX 79711

Telephone No.
432-528-0997

4. State whether the applicant or any of its principal officers/owners has an application for waiver pending at any other office of the FAA.

NONE

5. State whether the applicant or any of its principal officers/owners has ever had its application for waiver denied, or whether the FAA has ever withdrawn a waiver from the applicant or any of its principal officers/owners.

NONE

6. FAR section and number to be waived

Title 14 CFR part 91, sections 91.117(a)(b), 91.119(b)(c), 91.127(b)(c), 91.130(b)(c)(d), 91.155, 91-303(c)(d)(e)

7. Detailed description of proposed operation (Attach supplement if needed)

AIRSHO 2023 will consist of precision formation flying, aerobatic demonstrations, flybys, dog fights, and simulated bombing and strafing runs with pyrotechnics for military, Vietnam and WWII aircraft. Home Wrecker Jet Truck will perform.

8. Area of operation (Location, altitudes, etc.)

Airspace within five nautical mile radius of Midland Int'l Airport from surface to 17,500 feet MSL. Located N31 56 54, W102 12 34

9a. Beginning (Date and hour)

09/08/2023 0930 09/9 & 09/10 1100

b. Ending (Date and hour)

09/08/2023 1230 09/9 & 09/10 1630

10. Aircraft make and model (a)

Pilot's Name (b)

Certificate number and rating (c)

Home address (Street, City, State) (d)

MiG-17F x 3

Randy Ball, Bill Culberson, Mike Terfehr

Tyler, TX

Extra 300 SL

Mike Gallaway

6776 Livorno Ln, Frisco, TX 75034

Boeing SuperStearman

Aaron Taylor

C-45/Beech 18

Matt Younkin

C-45/Beech 18

TBD

Midland, TX

P-40 Warhawk

TBD

Various WWII aircraft

B-25, T-28, SNJ, PT-19,

BT-13, PT-26, L-17, T-34

August 22, 2023

ITEMS 11 THROUGH 16 TO BE FILLED OUT FOR AIR SHOW/AIR RACE WAIVER REQUESTS ONLY.

11. The air event will be sponsored by:

COMMEMORATIVE AIR FORCE HIGH SKY WING

12. Permanent mailing address	House number and street or route number	City	State and ZIP code	Telephone No.
	P. O. BOX 61064	MIDLAND	TX 79711	432-528-0997

13. Policing (Describe provisions to be made for policing the event.)

KMAF Airport Police, Midland Police Department, Midland County Sheriff Department, Texas State Guard

14. Emergency facilities (Mark all that will be available at time and place of air event.)

☐ Physician
 ☒ Fire truck
 ☐ Other - Specify _____
☒ Ambulance
 ☒ Crash wagon

15. Air Traffic control (Describe method of controlling traffic, including provision for arrival and departure of scheduled aircraft.)

Fort Worth Center, KMAF Approach Control Tower and Kellie Hudson AIRBOSS

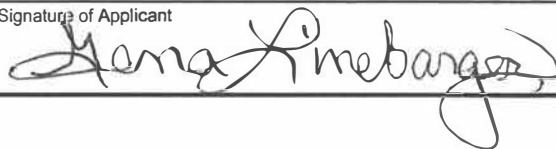
16. Schedule of Events (include arrival and departure of scheduled aircraft and other periods the airport maybe open.)

Hour (a)	Date (b)	Event (c)
All Day	9-7 thr 9-8	Aircraft arrivals
1000-noon Noon-1900	9-8 9-8	Special Show for Special People and Education in Aviation Day / Rehearsal Day Aircraft arrivals
0900-1045 1100- 1500 1600	9-9 & 9-10 9-9 & 9-10 9-9 & 9-10	Gates open - static displays viewed Flying performances Airshow ends

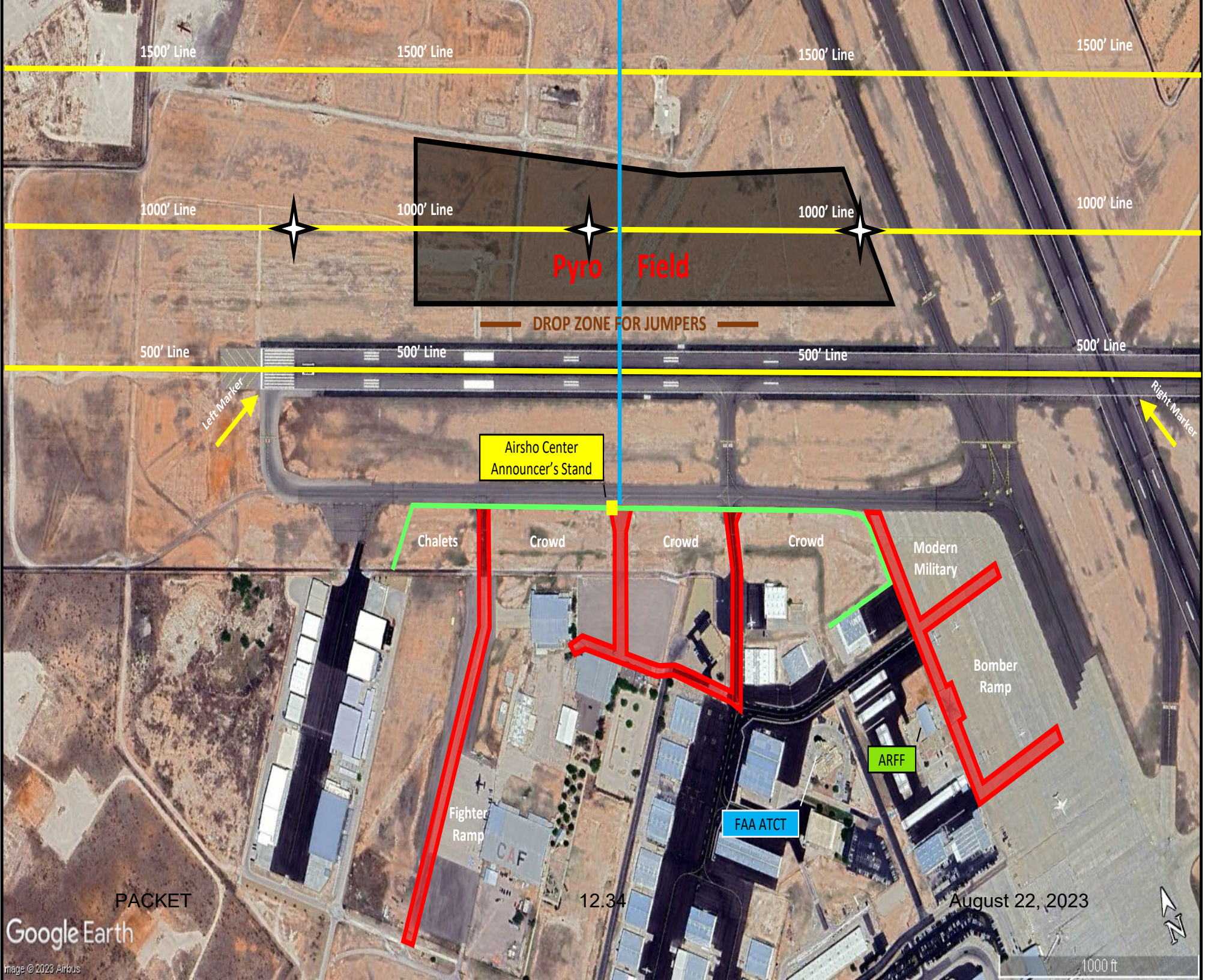
If sufficient space is not available, the entire schedule of events may be submitted on separate sheets, in the order and manner indicated above.

Please Read  The undersigned applicant accepts full responsibility for the strict observance of the terms of the Certificate of Waiver or Authorization, and understands that the authorization contained in such certificate will be strictly limited to the above described operation.

17. Certification - I CERTIFY that the foregoing statements are true.

Date	Signature of Applicant
7-8-2023	

Remarks



1500' Line

1500' Line

1500' Line

1500' Line

1000' Line

1000' Line

1000' Line

1000' Line

500' Line

500' Line

500' Line

500' Line

Left Marker

Right Marker

Airsho Center
Announcer's Stand

Chalets

Crowd

Crowd

Crowd

Modern
Military

Bomber
Ramp

ARFF

FAA ATCT

Fighter
Ramp

CAF

12.34

August 22, 2023

1000 ft

PACKET

Google Earth

Image © 2023 Airbus

AIRSHO 2023 Aircraft

Updated 7-4-2023

PERFORMERS

Boeing Super Stearman	Aaron Taylor
Extra 300/SX	Mike Gallaway "Spanky"
Home Wreckeder Jet Truck	Jerry McCart
MiG-17F x 3	Randy Ball, Bill Culberson, Mike Terfehr
One Design	Greg Shetterly
P-40 Warhawk	CAF P-40 Sponsor Group
T-6 Radial Rumble	Jeff Shetterly
T-6 Texan's Flight	
Younkin Airshow Beech 18	Matt Younkin

WORLD WAR II BOMBERS

B-25 Mitchell	CAF Devil Dog Squadron	Rides available
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WORLD WAR II FIGHTERS

P-40 Warhawk	CAF P-40 Sponsor Group
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WORLD WAR II OBSERVATION/LIAISON

L-5 Sentinel	CAF High Sky Wing	static
L-16 Aeronca	Texas Air Museum	
L-17 Navion	CAF High Sky Wing	
L-17 Navion	Don Haeffner	
LC-126	Robin Donnelly	

WORLD WAR II TRAINERS

AT-6F Texan	Daniel Rathbun	
AT-19 Stinson	Texas Air Museum	
BT-13 Valiant	WASP Museum	
C-45 Beech	CAF High Sky Wing	
JRB/C-45 Navy	CAF Gulf Coast Wing	Rides available
PT-13 Stearman	CAF Desert Squadron	
PT-19 Cornell	CAF High Sky Wing	
PT-26 Cornell	CAF Desert Squadron	
SNJ	CAF Gulf Coast Wing	Rides available
SNJ-5	CAF High Sky Wing	
SNJ-3	Bill Coombes/Chris Aycock/Joe Gamertsfelder	
SNJ-4	Sam Strahan	
T-6 Texan	Texas Air useum	
T-34A Mentor	Texas Air Museum	

Korea & Vietnam

O-1A Bird Dog	John Echols
T-28 Trojan	CAF High Sky Wing

FOREIGN, REPLICAS & POSTWAR

Ki-51 Sonia	Texas Air Museum
NA-64	Texas Air Museum
P-3 Pilatus	John Williams
Stinson 108	Travis Browne
P-149D FockWulf	John Williams

STATIC AIRCRAFT

AH-1 Cobra	CAF Museum
F-14 Tomcat	CAF Museum "Fast Eagle 102"
F-100A Super Sabre	CAF Museum
F-105D Thunderchief	CAF Museum
F-111E Aardvark	CAF Museum
F-4E Phantom	CAF Museum
Fairey Swordfish	CAF Museum
Harpoon	CAF Museum
Mig 17	John Williams
UH-1 Huey	CAF Museum

* Additional aircraft added as they become available



HIGH SKY WING

COMMEMORATIVE AIR FORCE

AIRSHO

EMERGENCY RESPONSE PLAN

2023



CAF HIGH SKY WING AIRSHO EMERGENCY RESPONSE PLAN

Overview and Pre-Show Actions

1. This plan recognizes The Airport Authority, Aircraft Rescue and Fire Fighting (ARFF) and Law Enforcement (includes Airport Security) will respond to all aircraft accidents IAW their procedures and plans. These agencies are referred to as Local Authorities in total, or individually.
2. The CAF will work to keep the spectators, vendors, staff, and other personnel associated with the show behind established spectator control boundaries. If an aircraft accident occurs within the spectator area, the CAF will move all personnel away from the accident site until Local Authorities establish the safety perimeter/ boundaries.
3. The CAF will assist Local Authorities as much as possible when requested; requests should be directed to the CAF Emergency Response Team (ERT) thru the CAF liaison to the local authorities' command center. If unable to contact the liaison, the request can go to any member of the ERT (phone numbers below).
4. AIRSHO Director, Executive and Operations Officers will:
 - a. Coordinate with the Airport Authority to:
 - authorize one CAF member to attend/be a part of the Local Authorities' Command Center (or equivalent) when an aircraft accident occurs, or severe weather is imminent
 - establish procedures to allow and transport one CAF member and the FAA Inspector in Charge (IIC) to the aircraft accident site (on airport) when access to the site is authorized by the 1 st responders
 - identify the primary and two alternates to perform the duties above (have the list and cell phone numbers available to the ERT)
 - identify hangar space for aircraft in case of severe weather and establish procedures for access when needed
 - b. Establish procedures to move aircraft into hangars for severe weather to include:
 - identify maintenance team leaders and insure they are briefed on procedures and they brief their team (who has the tugs)
 - establish a protocol for which aircraft will be hangered if all of them can't be (brief the crews)
 - identify available hangars at other airports in case time is available for evacuation
 - c. Coordinate with the Pyro Team as to the next course of action with the PACKED Explosives on the field.

Calls to Meet:

The ERT can be called to a meeting by the following personnel only: AIRSHO Director, CAF HSW Maintenance Officer or CAF HSW Operations Officer.

The ERT is established to manage emergency situations only. Examples of these situations are: crashes or incidents that result in injuries and/or property damage, severe weather conditions that may require a halt to the CAF HSW AIRSHO flying, or other emergency situations that require an announcement to the public via public address system or press release.

Immediate response:

AIRSHO Announcer:	Has primary responsibility for notifying AIRSHO spectators of an AIRSHO emergency. This will be done via the Public Address (PA) System. If the PA System fails, the PA System on the police vehicles will be used to notify and direct the AIRSHO patrons. The AIRSHO announcer is responsible for directing AIRSHO spectators to a safe, pre-designated area.
AIR Boss:	The AIR Boss will coordinate efforts with the Tower.
Maintenance Officer:	Report to the Midland Police Command Post and assist the Incident Commander with the coordination of emergency efforts.
Operations Officer:	1. Obtain the pilot/aircraft packet for the mishap pilot. 2. Obtain the passenger manifest for the flight if it is a crew aircraft. 3. Notify CAF Headquarters Director of Operations of the situation.

Note: During the pre-show Emergency Plan Review Meeting, the Operations Officer will coordinate with the pilot registration OPR to establish the procedure for his getting the packages when a Mishap occurs. Similarly, he must coordinate a plan for having all passenger manifests delivered. This procedure will be briefed at pilot briefing each day.

Concessions:

Concessions staff will remain with the concessions, if possible, to secure it. Non-essential staff will then proceed to the safe spectator's area.

AIRPORT AIRCRAFT CONTROL

The Air Boss and Tower will coordinate airspace issues and control all aircraft as coordinated in the tower.

EMERGENCY PUBLIC INFORMATION

The **only** officials to serve as the Public Information Officer (PIO) will be the AIRSHO Director, the CAF HSW AIRSHO Public Information Officer or the CAF HSW Leader. These individuals will be given access to all information necessary to carry out their responsibilities.

The CAF HSW AIRSHO Public Information Officer is responsible for disseminating information and instructions to the public on a timely basis, and for coordinating all releases during emergency and post-emergency conditions. In addition, the PIO is responsible for reviewing and obtaining approval from the AIRSHO Director or HSW Leader for all information releases before they are disseminated to the public. Information released to the public will be gathered in cooperation with the Department of Airports fire/rescue, police, sheriff, ambulance, hospital, and governmental organizations.

EMERGENCY HANGARING OF AIRCRAFT

If a weather situation arises that require aircraft to be hangared, priority will be given to fabric covered aircraft and then single engine aircraft. The CAF HSW Midland Army Air Field Museum hangar or other designated hangars are the locations to hangar aircraft first. If additional hangar space becomes available, it will be used to house as many aircraft as possible.

The Office of Primary Responsibility for this document is the AIRSHO Director, Gena Linebarger cell 432-528-0997.

Last update 8 July 2023

Commemorative Air Force High Sky Wing AIRSO 2023

- CAF HSW AIRSHO adopts the National Incident Management System (NIMS) and all responding agencies will follow the NIMS standards.
- All emergency personnel have been trained in accordance to local, state and national policies and procedures.
- Prior to airshow, a Pre-Event meeting, tabletop, exercise will be conducted with all emergency responders, Airport management and CAF staff to be briefed on the Incident Action Plan and the emergency procedures.
- A Post-Event meeting will be scheduled after the airshow to discuss post-incident reviews and develop an after-action report.
- The beginning of each show day, ARFF/Crash, Fire and Rescue and EMS personnel will be provided with aircraft-specific familiarization training and detailed rescue instructions by the performers.
- The event organizer, air boss, and emergency response personnel will conduct an emergency response exercise drill on Friday of the event's weekend to identify any weaknesses or deficiencies in plans and capabilities.
- The IC or a member of the Unified Command will be positioned with the air boss while the CoW/A is in effect.
- During the time when the CoW/A is in effect, dedicated ARFF/Crash, Fire and Rescue and EMS resources, fully operational, will be positioned to be capable of arriving at any incident/accident location within the aerobatic box within 1 minute of deployment.
- All emergency apparatuses will be positioned on site when first spectators arrive and until last spectators depart. They will be postured to be capable of arriving at any incident/accident location within the aerobatic box within 1 minute of deployment.
- A dedicated Public Information Officer will be named for the event.

CAF AIRSHO 2023

Ground OPS Plan

"EXHIBIT B"



Midland International
Air & Space Port

City of Midland Department of Airports CAF Airsho Ground Operations Plan

Introduction

This Ground Operations Plan demonstrates complete compliance with CFR 14 Part 139.343, Noncomplying conditions:

Unless otherwise authorized by the Administrator, whenever the requirements of subpart D of this part cannot be met to the extent that uncorrected unsafe conditions exist on the airport, the certificate holder must limit air carrier operations to those portions of the airport not rendered unsafe by those conditions.

The provisions contained herein address items specific to the CAF 2023 Airsho. This plan will not supersede any guidelines contained within the Midland International Air & Space Port's (MAF) approved Airport Certification Manual (ACM). Airport personnel will comply with the provisions of the ACM in the conduct of their duties during this event.

Event

The Commemorative Air Force High Sky Wing wishes to conduct an airshow and ancillary activities on Friday, September 8th, 2023, Saturday, September 9th, 2023, and Sunday, September 10th, 2023. Pre-show setup will begin on Tuesday, September 5th, 2023.

Airport Certification Safety Inspector (ACSI) consideration

Midland International Air & Space Port is certificated under 14 CFR Part 139.

Airline Operations

There will be commercial operations during portions of the airshow, between acts, and before and after setup. Commercial operations will be conducted on Runway 16R/34L. Airline access to the terminal shall not be obstructed at any time. The airshow crowd will be separated from the Air Carrier Ramp by a Midland Police Checkpoint. Runway and taxiway usage shall be per NOTAMs issued for the airshow.

Aircraft Rescue and Firefighting (ARFF) Capability and Special Emergency Response

The Midland Fire Department will ensure the availability of suitable equipment and personnel during the airshow. ARFF will maintain the required personnel and index per Part 139 throughout the event. Additional emergency response personnel exclusive to the CAF 2023 Airshow is at the discretion of the Midland Fire Department Chief and the MAF ARFF Chief.

**Positions may be filled by members of the Volunteer Fire Station.*

A Hazardous Material (HAZMAT) Plan is in place to address potentially dangerous chemicals utilized during the airshow. These materials include the CAF's diesel fuel and blasting caps used during pyrotechnic displays. Diesel fuel will be stored in a tanker truck and all blasting caps are stored in an ATF-approved magazine located at the MAF Bunkers.

Airport Emergency Plan (AEP) Contingencies

In the event of an accident or disaster, the MAF Airport Emergency Plan (AEP) will be activated. Response to an aircraft incident during the airshow is expected to be identical to any other incident.

Temporary Arresting Gear Installed in a Runway Safety Area

No Temporary Arresting System will be utilized during the CAF 2023 Airshow.

Integrity of Runway Safety Areas, Taxiways, and Object Free Areas

In the event that a Military Flight Demonstration Team is performing at the airshow, a centroid placement will be utilized. The centroid placement will include three (3) anchored tarps placed 1,000 feet north of the Runway 10/28 centerline and outside of the Runway Safety Area (See Diagram #1). Tarps will be placed at the following locations two (2) days prior to the commencement of airshow activity:

- A. North of Runway 10/28, directly north of the Runway 10 number designation
- B. North of Runway 10/28, approximately 1,500 feet from the approach end of Runway 10
- C. North of Runway 10/28, approximately 5,000 feet from the approach end of Runway 10 and west of Taxiway 'Z'

Airport Maintenance personnel and equipment will be available to restore any Safety Areas damaged during airshow activities.

Pyrotechnic Devices

Pyrotechnic devices will be stored in an ATF-approved magazine located at the MAF Bunkers. At no time shall the CAF be allowed to locate, store, or permit the location or storage of fireworks, dynamite, flashpots, or any other incendiary devices within their leasehold. All pyrotechnic devices will be detonated during the show in a predetermined detonation area north of Runway 10/28 at show center (See Diagram #1).

The pyrotechnic devices will be placed prior to the commencement of the airshow and shall be fully detonated prior to its conclusion. Only licensed pyrotechnic experts and fire department personnel will be allowed access to the detonation area. The aforementioned personnel will gain access to the detonation area utilizing the Perimeter Road, and only after passing through a Midland Police Department checkpoint (See Diagram #1).

Runway and Taxiway Safety Areas will be inspected by Airport Operations at the conclusion of pyrotechnic activities. Any discrepancies located during this inspection will be corrected before the associated surface is available for use.

Temporary Closures of Runways and Taxiways

The following surfaces will be closed via NOTAM during the CAF 2023 Airshow:

- Runway 10/28 (except airshow traffic during waiver times)
- Taxiway 'E' and Taxiway 'A'
- West 100' of TWY 'P' between Runway 10/28 and TWY 'H'

A NOTAM will be issued to close Midland International Air & Space Port to all General Aviation traffic during the airshow. Only airshow and air carrier aircraft will be allowed to utilize the airport each day during the applicable waiver times (See Diagram #3).

Movement Area Maintenance

No aircraft or vehicle will be permitted to park on open Movement Area surfaces. Aircraft and vehicles will be allowed to park adjacent to Taxiway 'P' north of Taxiway 'H'. A physical barrier will be placed at this location and adequately policed to ensure no unauthorized access.

Fueling Operations

The CAF shall contract with a third party to provide all fueling services. Fueling operations will occur in designated areas on the North Ramp and the CAF Ramp. All fueling will take place after a minimum 100-foot perimeter crowd line has been established or when the ramp is sterile.

Public Protection

Spectators will be confined to designated areas by physical barriers which will remain continuously monitored by authorized personnel; all spectator areas will have well-defined lateral boundaries. An increased number of public safety personnel will be placed along these boundaries to prevent individuals from entering the Movement Area (See Diagrams #1 and #2).

Aircraft will utilize all Taxiways during the event. The primary crowd line runs parallel to Taxiway 'A' and will not be subject to jet blast hazards. Any areas that may potentially be affected by jet blast will be monitored by aircraft marshals and addressed on a case-to-case basis.

Special Self Inspections

Airport Operations personnel will conduct any and all necessary inspections of the airfield before, during, and immediately following the airshow. The Commemorative Air Force Air Boss will allow reasonable and timely access to airfield surfaces to facilitate these inspections. If Airport Operations personnel are unable to ensure the safety of airfield surfaces, they will be closed to all traffic until such a time as they are inspected and declared safe.

Airshow Ground Vehicle Operations

Qualified Airport Operations and Airport Maintenance personnel will conduct all escorts for personnel requiring access to the Movement Area before, during, and after the airshow. The only additional vehicles authorized to enter the Movement Area are those operated by the Midland Fire Department and Midland Police Department. All other vehicle operators, including those operating on behalf of the Commemorative Air Force, must be under the escort of an authorized vehicle operator.

Portions of Taxiway 'A' along with the entirety of Runway 10/28 and Taxiway 'E' will be closed for airshow set up in order to prevent any vehicle or pedestrian incursions. These surfaces will remain closed until all takedown, clean-up, and repair operations are complete following the airshow.

Impact to Navigational Aids (NAVAIDS)

MAF does not anticipate any changes to airport marking, lighting, or NAVAIDS to accommodate the airshow.

Notice to Air Missions (NOTAMS)

The Commemorative Air Force will provide the Director of Airports any and all information necessary for the issuance of proper Notices to Air Missions (NOTAMS). NOTAMS will be issued regarding the closure of MAF during flying portions of the airshow. The City of Midland Department of Airports is the only agency authorized to issue and/or cancel these NOTAMS. The Commemorative Air Force must coordinate airshow activities to ensure all scheduled or unscheduled air carrier operations are allowed to continue unimpeded throughout the duration of the event. The Department of Airports, in coordination with the Commemorative Air Force, agrees that any aircraft experiencing an emergency situation during the timeframe of the airshow will be allowed to use the airport facilities without hindrance.

Mitigation of Wildlife Hazards

Wildlife activity on the airfield is seasonal and difficult to predict. Pilots will be notified of any potential wildlife-related complications during a pre-show briefing. In order to further reduce wildlife attractants, the CAF shall remove or cause the removal of all litter and trash deposited on airport property as a result of the airshow immediately following the conclusion of the event.

Sample NOTAMS

(Times are taken from Waivers and are subject to change)

(Airshow NOTAMS will be issued 7 days prior to starting date)

Tuesday (9/5/23 @ 0800L through 9/11/23 @ 1730L)

- !MAF XX/XXX MAF TWY E, TWY A BTN TWY A RUNUP PAD AND TWY P CLSD 2309051300-2309112230

Thursday (9/7/23 @ 0800L through 9/11/23 @ 1730L)

- !MAF XX/XXX MAF TWY P BTN TWY H AND RWY 10/28 CLSD EXC TAX EAST 100 FT 2309071300-2309112230

Friday (9/8/23 @ 0930L – 1230L)

- !MAF XX/XXX MAF AD AIRPORT CLSD EXC ACR/AIRSHOW ACFT 2309081430-2309081730
- !MAF XX/XXX MAF TWY A BTN APCH END RWY 10 AND TWY A RUNUP PAD CLSD EXC AIRSHOW ACFT 2309081430-2309081730
- !MAF XX/XXX MAF RWY 10/28 CLSD EXC TAX 2309081430-2309112230
- !MAF XX/XXX MAF AIRSPACE PJE WITHIN AREA DEFINED AS 3NM RADIUS OF MAF SFC-XXXXFT 2309081430-2309081730*

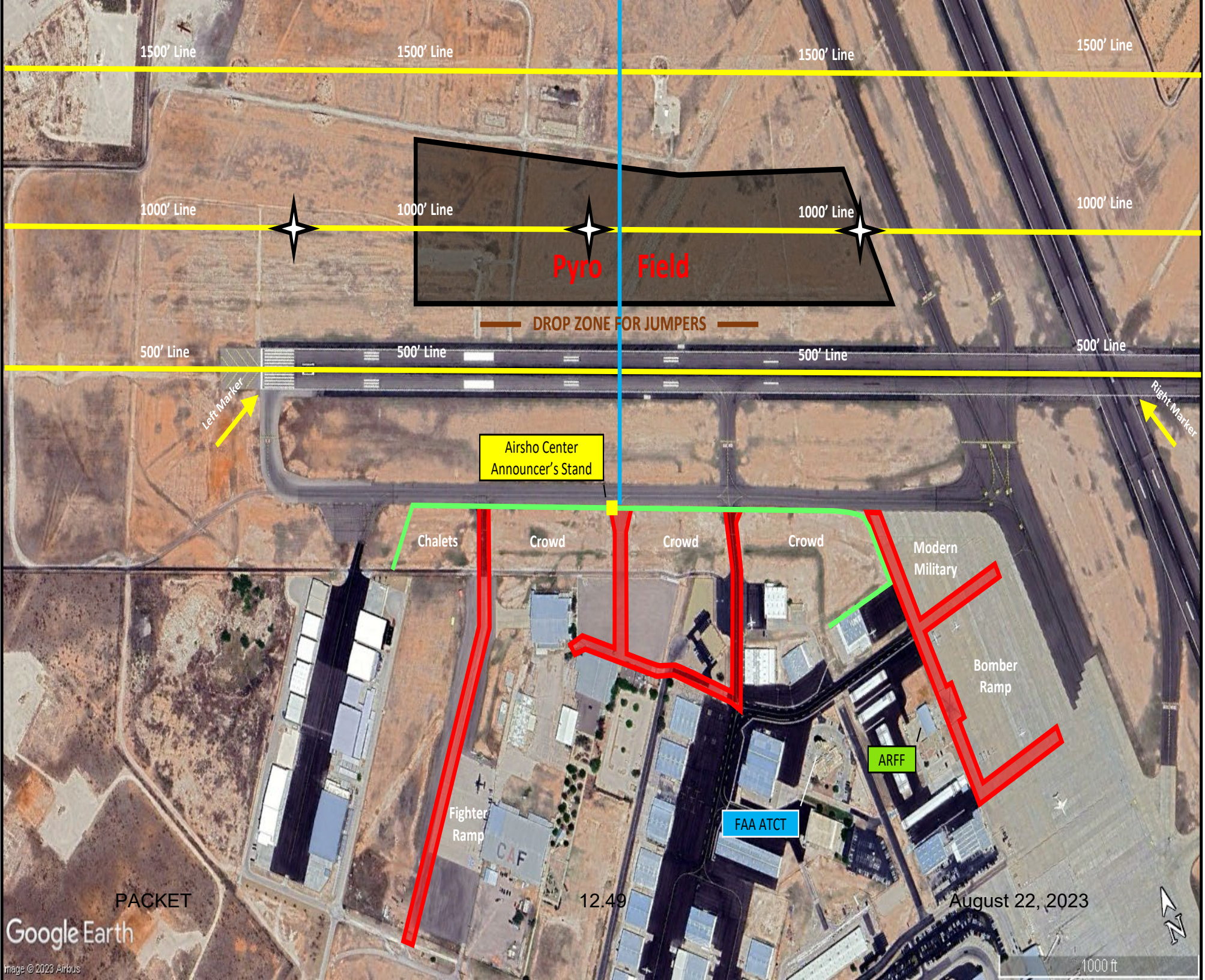
Saturday (9/9/23 @ 1130L – 1730L)

- !MAF XX/XXX MAF AD AIRPORT CLSD EXC ACR/AIRSHOW ACFT 2309091630-2309092230
- !MAF XX/XXX MAF TWY A BTN TWY A RUNUP PAD AND APCH END RWY 10 CLSD DLY 1630-2230 2309091630-2309102230
- !MAF XX/XXX MAF AIRSPACE PJE WI AN AREA DEFINED AS 3NM RADIUS OF MAF SFC-1500FT AGL 2309091630-2309092230*

Sunday (9/10/23 @ 1130L – 1730L)

- !MAF XX/XXX MAF AD AIRPORT CLSD EXC ACR/AIRSHOW ACFT 2309101630-2309102230
- !MAF XX/XXX MAF AIRSPACE PJE WITHIN AREA DEFINED AS 3NM RADIUS OF MAF SFC-XXXXFT 2309101630-2309102230*

**Only issued if para jumpers will be participating*



1500' Line

1500' Line

1500' Line

1500' Line

1000' Line

1000' Line

1000' Line

1000' Line

500' Line

500' Line

500' Line

500' Line

Left Marker

Right Marker

Airsho Center
Announcer's Stand

Chalets

Crowd

Crowd

Crowd

Modern
Military

Bomber
Ramp

ARFF

FAA ATCT

Fighter
Ramp

CAF

PACKET

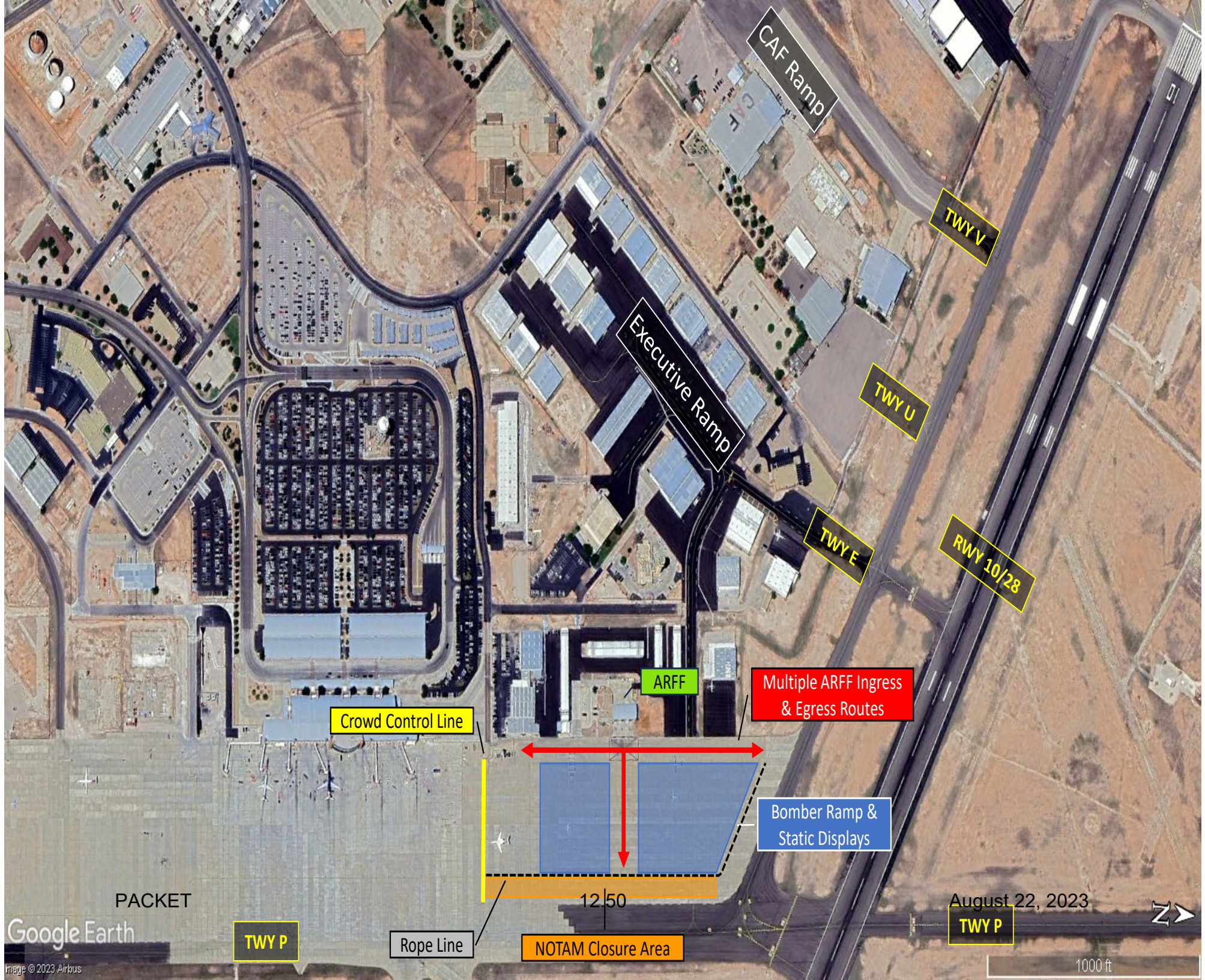
Google Earth

Image © 2023 Airbus

12.49

August 22, 2023

1000 ft



CAF Ramp

TWY V

Executive Ramp

TWY U

TWY E

RWY 10/28

ARFF

Multiple ARFF Ingress
& Egress Routes

Crowd Control Line

Bomber Ramp &
Static Displays

12/50

Rope Line

NOTAM Closure Area

TWY P

August 22, 2023

TWY P

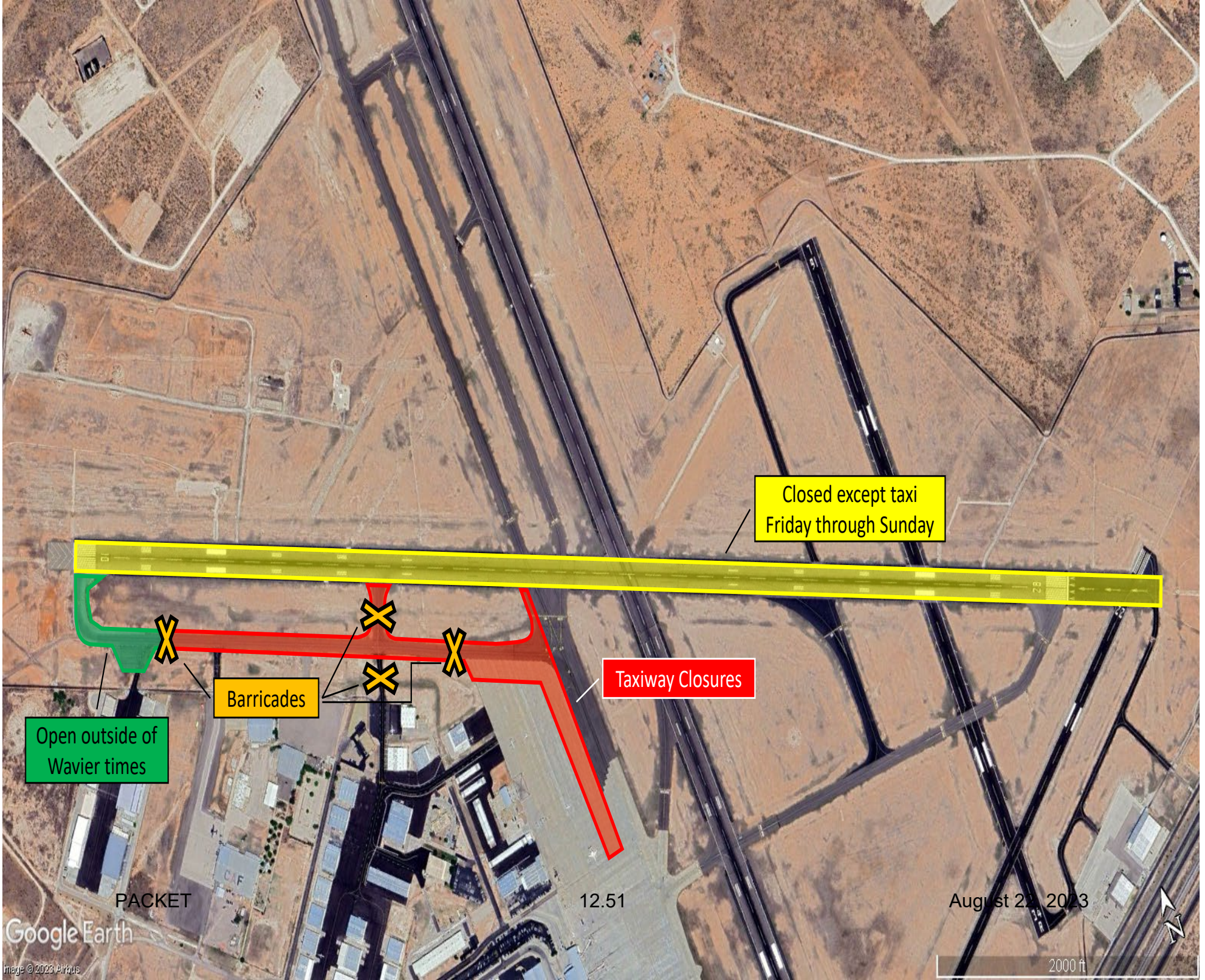
1000 ft



Google Earth

Image © 2023 Airbus

PACKET



Closed except taxi
Friday through Sunday

Open outside of
Wavier times

Barricades

Taxiway Closures

PACKET

12.51

August 21, 2023

2000 ft

Google Earth

Image © 2023 Airbus

CAF AIRSHO 2023

CAF Insurance

AssuredPartners Aerospace, LLC
9860 E. 21st Street N.
Wichita, KS 67206



AssuredPartners
AEROSPACE

ADDENDUM TO COMMEMORATIVE AIRFORCE CERTIFICATE OF INSURANCE

Policy AC3014765-05

Date of Certificate: September 7th – 11th 2023

AIRCRAFT	CAF WING
SNJ-5, N101X	High Sky Wing
L-17, N4321K	High Sky Wing
PT-19, N49797	High Sky Wing
C-45, N79AG	High Sky Wing
T-28, N70743	High Sky Wing

**ADDITIONAL INSURED/CERTIFICATE HOLDER AS RESPECTS OPERATIONS OF THE NAMED
INSURED:**

Re: CAF High Sky Wing Airsho 2023

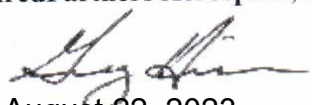
City of Midland, its officers, employees, agents & representatives
PO Box 60305
Midland, TX. 79711

Notice is hereby given that AssuredPartners Aerospace, LLC
is not the Insurer hereunder and shall not be held liable for
any loss or damage nor for failure to provide Notice of
Coverage Cancellation.

PACKET

12.53

AssuredPartners Aerospace, LLC


August 22, 2023
Greg Hiser, SR. Vice President

AssuredPartners Aerospace, LLC
9860 E. 21st Street N.
Wichita, KS 67206



AssuredPartners
AEROSPACE

Certificate of Liability Insurance

Certificate Effective Date : September 7th – 11th 2023
Policy Effective Date : November 1, 2022
Policy Expiration Date : November 1, 2023
Policy or Certificate No. : AC3014765-05
Insurance Company : US Specialty Insurance Company

This is to certify to: **that the above policies / certificates have been issued to:**

See Attached Addendum Commemorative Air Force, Inc.; the American Air Power Heritage
Flying Museum, Inc. : The American Air Power Heritage Museum, Inc.:
The American Air Power Heritage Foundation, Inc.
P.O. Box 764769
Dallas, TX 75376

This Certificate does not amend, extend or otherwise alter the terms and conditions of the policies referred to herein.

AVIATION LEGAL LIABILITY PROTECTION	LIMIT OF LIABILITY
SINGLE LIMIT BODILY INJURY AND PROPERTY DAMAGE:	\$10,000,000
PASSENGER LIABILITY LIMITED TO:	\$250,000
STATIC DISPLAY BODILY INJURY AND PROPERTY DAMAGE:	\$1,000,000
PASSENGER LIABILITY:	EXCLUDED

AIRCRAFT IDENTIFICATION

All Commemorative Air Force, Inc. Aircraft and Leased Aircraft (See Addendum)

USES: Static Display, Formation Fly-bys and/or Rides for Hire

ADDITIONAL AGREEMENTS

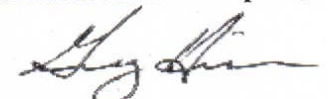
ADDITIONAL NAMED INSURED: Officers, Directors and Members of the Commemorative Air Force, Inc.; The American Air Power Heritage Flying Museum, Inc.; The American Air Power Heritage Museum, Inc.; The American Air Power Heritage Foundation, Inc.

Notice is hereby given that AssuredPartners Aerospace, LLC
is not the Insurer hereunder and shall not be held liable for
any loss or damage nor for failure to provide Notice of
Coverage.

PACKET

12.54

AssuredPartners Aerospace, LLC


August 22, 2023
Greg Fisher, Sr. Vice President

AssuredPartners Aerospace, LLC
9860 E. 21st Street N.
Wichita, KS 67206



Certificate of Insurance

Certificate Effective Date : September 7th – 11th 2023
Policy Effective Date : April 1st 2023
Policy Expiration Date : April 1st 2024
Policy or Certificate No. : UA00126594-22
Insurance Company : U.S. Specialty Insurance Company

This is to certify to:

City of Midland, its officers, employees, agents & representatives
PO Box 60305
Midland, TX. 79711

that the above policies / certificates have been issued to:

Commemorative Air Force, Inc (and the various wings, squadrons and divisions thereof).; the American Air Power Heritage Foundation, Inc.; The American Air Power Heritage Flying Museum, Inc.; The American Air Power Heritage Museum, Inc.
P.O. Box 764769
Dallas, TX 75376

This Certificate does not amend, extend or otherwise alter the terms and conditions of the policies referred to Herein

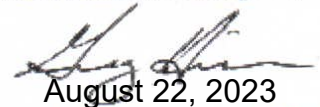
- **PREMISES LIABILITY** \$5,000,000 Combined Single Limit Bodily Injury/Property Damage each Occurrence; \$10,000,000 Aggregate (\$1,000,000 per person limit in Florida only)
- **MEDICAL EXPENSES** \$10,000 Each Person / \$50,000 Each Occurrence
- **HOST LIQUOR LIABILITY** \$1,000,000 Any one Occurrence and in the Aggregate

CERTIFICATE HOLDERS ARE INCLUDED AS ADDITIONAL INSURED AS RESPECTS OPERATIONS OF THE NAMED INSURED:

Event: CAF High Sky Wing Airshow 2023
CAF Wing: High Sky Wing

Notice is hereby given that AssuredPartners Aerospace, LLC is not the Insurer hereunder and shall not be held liable for any loss or damage, nor for failure to provide Notice of Coverage Cancellation.

AssuredPartners Aerospace, LLC


August 22, 2023
Greg Hiser, SR. Vice President



Certificate of Insurance

Certificate Effective Date : July 31st – August 7th 2023
Policy Effective Date : April 1, 2023
Policy Expiration Date : April 1, 2024
Policy or Certificate No. : UA00126594-22
Insurance Company : U.S. Specialty Insurance Company

This is to certify to:

City of Midland, its officers, employees, agents & representatives-----AIRPORT
PO Box 60305
Midland, TX. 79711

that the above policies / certificates have been issued to:

Commemorative Air Force, Inc (and the various wings, squadrons and divisions thereof).; the American Air Power Heritage Foundation, Inc.; The American Air Power Heritage Flying Museum, Inc.; The American Air Power Heritage Museum, Inc.
P.O. Box 764769
Dallas, TX 75376

This Certificate does not amend, extend or otherwise alter the terms and conditions of the policies referred to Herein

- **PREMISES LIABILITY** \$5,000,000 Combined Single Limit Bodily Injury/Property
Damage each Occurrence; \$10,000,000 Aggregate
(\$1,000,000 per person limit in Florida only)
- **PRODUCTS/COMPLETED OPERATIONS** \$1,000,000 Products Completed Operations Hazard Bodily Injury/Property
each Occurrence; \$1,000,000 Aggregate; \$100,000 Each Person

This coverage is provided as respects the Commemorative Air Force PX only.

CERTIFICATE HOLDERS ARE INCLUDED AS ADDITIONAL INSURED AS RESPECTS OPERATIONS OF THE NAMED INSURED:

Re: CAF High Sky Wing Airsho 2023
CAF Wing: High Sky Wing

Notice is hereby given that AssuredPartners Aerospace, LLC
is not the Insurer hereunder and shall not be held liable for
any loss or damage nor for failure to provide Notice of
Coverage Cancellation.

AssuredPartners Aerospace, LLC

August 22, 2023

Greg Hiser, SR. Vice President

AssuredPartners Aerospace, LLC
9860 E. 21st Street N.
Wichita, KS 67206



AssuredPartners
AEROSPACE

Certificate of Insurance

Certificate Effective Date : September 7th – 11th 2023
Policy Effective Date : April 1, 2023
Policy Expiration Date : April 1, 2024
Policy or Certificate No. : NAF6053622
Insurance Company : Endurance American Insurance Company

This is to certify to:

City of Midland, its officers, employees, agents, and representatives
PO Box 60305
Midland, TX. 79711

that the above policies / certificates have been issued to:

Commemorative Air Force, Inc (and the various wings, squadrons and divisions thereof); the American Air Power Heritage Foundation, Inc.; The American Air Power Heritage Flying Museum, Inc.; The American Air Power Heritage Museum, Inc.
P.O. Box 764769
Dallas, TX 75376

- **AIRMEET LIABILITY** \$10,000,000 Combined Single Limit Bodily Injury/Property Damage each Occurrence excluding participants; There is no sub-limit per person
- **MEDICAL EXPENSE** \$5,000 Each Person / \$30,000 Each Occurrence
- **EXPLOSIVES** \$10,000,000 Any one Occurrence and Aggregate

The Insured shall not use or permit use of explosives of any kind at or in connection with the air meet which is the subject of this insurance unless:

- Such use of explosives is specifically approved in advance by the FAA and;
- All handling and igniting of explosives is conducted by a person or persons duly licensed or otherwise authorized by the state and/or political subdivision in which the air meet takes place.

CERTIFICATE HOLDERS ARE INCLUDED AS ADDITIONAL INSURED AS RESPECTS OPERATIONS OF THE NAMED INSURED:

UNIT: Blastards
Airshow: High Sky Wing AIRSHO 2023

Notice is hereby given that AssuredPartners Aerospace, LLC is not the Insurer hereunder and shall not be held liable for any loss or damage nor for failure to provide Notice of Coverage Cancellation.

AssuredPartners Aerospace, LLC


August 22, 2023

Greg Hiser, SR. Vice President

CAF AIRSHO 2023

Pyrotechnics Permit

EOD
Blastards
Detachments of the Commemorative Air Force

June 28, 2023

Midland Airport Operations
Midland International Airport
Midland, Texas 79711

Gentlemen:

The Explosive Ordnance and Blastards Detachments of the Commemorative Air Force will be simulating bomb blast for over flying aircraft during the annual air show this year on September 9-10, 2023. This display will be north of Runway 10-28 between Taxiway Papa and the approach of Runway 10 with the Taxiway Echo being the approximately show center. The time for this year's display will be Saturday 9/9/2023 starting at 12:00 pm and ending at 5:00 pm. Sunday 9/10/2023 starting at 12:00 pm and ending at 5:00 pm. Please note these times are approximate depending on weather, airline schedules and air show schedule. Setup will start at 8:00 am each day of the show.

All material used this year will be the same as the past years and the amount will be less than the past years. All personnel that will be in contact with the explosives have filled out ATF paperwork and/or have an ATF licenses for the purchasing and storing of the explosives. The Shooter-in Charge this year will be Rodney Robinson EOD Lead and David Linebarger Blastards Lead. Your contact person for this year's show will be:

David Linebarger CAF PYRO Lead
2507 Maxwell
Midland, Texas 79705
432 236 7777

We have a permit for the use of High Explosives for public display. The explosives will be stored in an ATF approved magazine that is located by the existing WWII bunkers north of Runway 10-28. The material and a work party will cross the field Thursday September 7, 2023 at approximately 12:00 pm for material preparation.

If there are any questions concerning this, please give me a call at the above number.

Thank You

David Linebarger
Blastards Unit Leader

**Texas Department of Insurance
State Fire Marshal's Office**

**Application for Class B Fireworks (Fireworks 1.3G) Singular or Multiple Display Permit
Site Inspection Certification**

1. Name of applicant David Linebarger / CAF PYRO
 Address 2507 Maxwell Telephone 432-236-7777
 City Midland State TX Zip Code 79705
2. Date of display Sept 9-10, 2023 Time 12pm-5pm
 Alternate date of display _____ Time _____
3. Location and/or alternate location for the display 500ft north of taxiway Alpha at MAF, Midland, TX. This permit is in conjunction with the annual CAF AIRSO
4. As the fire prevention officer, I approve of the display site and have reviewed the site diagram. ☒ Yes ☐ No
5. I approve of the location and manner for storage of display fireworks before and during the display. ☒ Yes ☐ No
6. I approve of the potential landing area for fireworks debris. ☒ Yes ☐ No
7. The display is to be conducted in compliance with TX Occupations Code, Regulation of Fireworks & Fireworks Displays and the Fireworks Rules. ☒ Yes ☐ No
8. My approval is subject to the following conditions.
 List conditions, if applicable, or indicate "None" None
9. As the appropriate fire prevention officer, I have inspected the display site(s) to determine whether this proposed display is of a nature or in a location that may be hazardous to property or dangerous to any person. This form is my notice to the state fire marshal of the results of the inspection as required in Sec. 2154.206, Chapter 2154, Texas Occupations Code.
 Signature of fire prevention officer James N. Howard Date 8/7/23
 Printed name of fire prevention officer James N. Howard Title Fire Marshal
 Department Midland Fire Dept Telephone No. 432-685-7335
 Email address: jhoward@midlandtexas.gov Mobile Phone No. _____

Telephone No. (512) 676-6808
 Fax No. (512) 490-1056
 Web Site Address www.tdi.texas.gov/fire

AssuredPartners Aerospace, LLC
9860 E. 21st Street N.
Wichita, KS 67206



AssuredPartners
AEROSPACE

Certificate of Insurance

Certificate Effective Date : September 7th – 11th 2023
Policy Effective Date : April 1, 2023
Policy Expiration Date : April 1, 2024
Policy or Certificate No. : NAF6053622
Insurance Company : Endurance American Insurance Company

This is to certify to:

City of Midland, its officers, employees, agents, and representatives
PO Box 60305
Midland, TX. 79711

that the above policies / certificates have been issued to:

Commemorative Air Force, Inc (and the various wings, squadrons and divisions thereof); the American Air Power Heritage Foundation, Inc.; The American Air Power Heritage Flying Museum, Inc.; The American Air Power Heritage Museum, Inc.
P.O. Box 764769
Dallas, TX 75376

- AIRMEET LIABILITY \$10,000,000 Combined Single Limit Bodily Injury/Property Damage each Occurrence excluding participants; There is no sub-limit per person
- MEDICAL EXPENSE \$5,000 Each Person / \$30,000 Each Occurrence
- EXPLOSIVES \$10,000,000 Any one Occurrence and Aggregate

The Insured shall not use or permit use of explosives of any kind at or in connection with the air meet which is the subject of this insurance unless:

- Such use of explosives is specifically approved in advance by the FAA and;
- All handling and igniting of explosives is conducted by a person or persons duly licensed or otherwise authorized by the state and/or political subdivision in which the air meet takes place.

CERTIFICATE HOLDERS ARE INCLUDED AS ADDITIONAL INSURED AS RESPECTS OPERATIONS OF THE NAMED INSURED:

UNIT: Blastards
Airshow: High Sky Wing AIRSHO 2023

Notice is hereby given that AssuredPartners Aerospace, LLC is not the Insurer hereunder and shall not be held liable for any loss or damage nor for failure to provide Notice of Coverage Cancellation.

PACKET

12.61

AssuredPartners Aerospace, LLC

August 22, 2023
Greg Hiser, SR. Vice President



City Council Meeting

Item Number: 13
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Tina Jauz, Assistant City Manager
Subject: RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND MIDLAND COLLEGE FOR THE SUPPORT AND EXPANSION OF THE MIDLAND COLLEGE TRANSPORTATION TRAINING PROGRAM, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE (DISTRICT: ALL) (CITY MANAGER)

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on August 7, 2023, a resolution authorizing the execution of an economic development agreement between the Midland Development Corporation and Midland College; and authorizing payment therefor.

Recommended City Council Action:

Approve

Fiscal Impact:

\$301,000.00

Discussion:

MDC is working with Midland College to expand Midland College's transportation training program once again. MDC supported the expansion of the program in 2018, and it continues to surpass levels required by that agreement, but demand for CDL drivers has accelerated beyond current capacity. Working with the Permian Basin Workforce Development Board, the State of Texas has approved \$150,000 in funding from the High Demand Jobs Training Program. The grant requires a match from the MDC, which totals 151,000. The combined

\$301,000 will be used to purchase a new Peterbilt tractor-trailer for Midland College's program and provide 50% scholarships to train 39 students. Current program capacity is 120 students per year. Additional investment in the fleet will allow growth to 195 students per year, an increase of 75 students per year.



City Manager's Office

RESOLUTION NO. _____

**RESOLUTION APPROVING AN ECONOMIC
DEVELOPMENT AGREEMENT BETWEEN THE
MIDLAND DEVELOPMENT CORPORATION AND
MIDLAND COLLEGE FOR THE SUPPORT AND
EXPANSION OF THE MIDLAND COLLEGE
TRANSPORTATION TRAINING PROGRAM, AS
AUTHORIZED BY CHAPTER 501 OF THE TEXAS
LOCAL GOVERNMENT CODE**

WHEREAS, the Midland Development Corporation authorized the execution of an economic development agreement with Midland College for the support and expansion of the Midland College Transportation Training Program; and

WHEREAS, the City Council must consider and approve all economic development agreements approved by the Midland Development Corporation before the agreements can become effective; and

WHEREAS, the City Council finds it to be in the public interest to approve the economic development agreement between the Midland Development Corporation and Midland College;

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

THAT the economic development agreement between the Midland Development Corporation and Midland College, which is attached hereto as Exhibit A and incorporated herein for all purposes, is hereby approved.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2023, 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 FORM ONLY:

John Ohnemiller, City Attorney

ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between the MIDLAND DEVELOPMENT CORPORATION (“MDC”), a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended, and the MIDLAND COMMUNITY COLLEGE DISTRICT (“College”).

I. Recitals

- A. MDC and College desire to set forth the terms and conditions upon which incentive funds will be provided to College as consideration for College expanding the Program, as defined herein, for the purpose of preparing students to obtain a Class-A Commercial Driver’s License, so as to prepare said students to fill high-demand, skilled positions in local businesses and industry.
- B. MDC finds that the expansion of the Program will promote or develop new or expanded business enterprises in the City of Midland.
- C. MDC finds that the purpose of this Agreement qualifies as a “project,” as defined in Section 501.101 of the Texas Local Government Code, and is therefore eligible for MDC funding.
- D. MDC finds that its contribution of funds to the College for said project is an administrative expense or other such expense necessary or incident to placing a project in operation in accordance with Section 501.152 of the Texas Local Government Code.
- E. MDC finds that the Program is for the creation or retention of “primary jobs,” as defined in Section 501.002 of the Texas Local Government Code, and that the Program is required or suitable for the development, retention, or expansion of a primary job training facility for use by an institution of higher education.
- F. MDC finds that the College is an institution of higher education as defined under Section 61.003 of the Texas Education Code.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MDC and College hereby agree as follows:

II. Definitions

When used in this Agreement, capitalized terms not otherwise defined shall have the meanings set forth below:

Exhibit A

- A. “*Academic Year*” means the period during which College provides classes and training associated with the Program, spanning from August 1, 2024, through July 31, 2025.
- B. “*CDL*” means a Class-A Commercial Driver’s License.
- C. “*DPS*” means the Texas Department of Public Safety.
- D. “*Effective Date*” means July 25, 2023.
- E. “*Program*” means the Midland College Transportation Training Continuing Education.

III. Obligations of MDC

During the term of this Agreement, MDC shall provide to College incentive funds in accordance with the following schedule and subject to the following requirements:

- A. **Equipment Purchase Incentive.** MDC agrees to provide College an amount not to exceed \$216,000.00 within thirty (30) days after College certifies that it has met the Equipment Purchase Obligation set forth in Section IV.A.
- B. **Student Training Incentive.** MDC agrees to provide College an amount not to exceed \$85,000.00 within thirty (30) days after College certifies that it has met the Student Training Obligation set forth in Section IV.B.

The incentives described herein shall be provided on a cost-reimbursement basis subject to College’s obligations as set forth in Section IV.

IV. Obligations of College

- A. **Equipment Purchase Obligation.** College shall expend a maximum of \$216,000.00 for the purchase of one (1) new 2024 Peterbilt standard transmission truck trailer, and modified seat installments for the truck trailer, as described in Exhibit A, which is attached hereto and incorporated herein for all purposes. College shall certify to MDC the expenditures made in accordance with the standards set forth in Section IX.B.1.
- B. **Student Training Obligation.** College shall expend a maximum of \$85,000.00 in providing at least thirty-nine (39) students with scholarships covering at least fifty percent (50%) of said students’ tuition costs to complete College’s Transportation Training Program during the 2024-2025 Academic Year, as described in Exhibit A. College shall certify to MDC the expenditures made in accordance with the standards set forth in Section IX.B.2.

- C. **Graduation and Passage Rate Obligation.** By September 30, 2025, College shall certify to MDC the following: (i) that College has successfully graduated at least one hundred twenty (120) students from the Program during the 2024-2025 Academic Year; and (ii) that at least ninety percent (90%) of said students have gone on to successfully obtain a CDL. College shall provide MDC with reasonable supporting documentation, as may be agreed to by College and MDC.

V.

Repayment Provisions

The following payment and recapture provisions shall apply to this Agreement:

- A. **Recapture; Equipment Purchase Incentive.** If College sells, transfers, conveys, or assigns any portions of the 2024 Peterbilt standard transmission truck trailer and modified seat installments described in Exhibit A without previously notifying MDC in writing and obtaining MDC's written consent, then College shall repay to MDC the funds used to purchase said truck trailer up to \$216,000.00.
- B. **Recapture; Student Training Incentive.** If a certification regarding the Student Training Obligation shows that less than thirty-nine (39) students were provided with scholarships covering at least fifty percent (50%) of the students' costs to complete College's Transportation Training Program during the 2024-2025 Academic Year, College shall repay to MDC an amount equal to the proportion of students that if failed to provide with scholarships. For example, if the amount of Incentive #2 is equal to \$85,000.00 and if a certification shows that only thirty-five students were provided with scholarships during the 2024-2025 Academic Year, then College shall repay \$8,717.95 to MDC.
- C. **Repayment Terms.** Any amount(s) repayable to the MDC hereunder shall be repaid, without interest, within thirty (30) days after the MDC gives written notice to College that College is in default. Notwithstanding anything to the contrary contained anywhere in this Agreement, under no circumstances shall College be obligated to repay MDC an amount in excess of the total dollar amount of the incentive funds actually received by College from MDC under this Agreement.

VI.

Cure Period

In lieu of demanding repayment within thirty (30) days after MDC gives College written notice of its default as set forth in this Agreement, MDC may, in its sole and absolute discretion, elect to allow College a period not to exceed six (6) months to cure any such default. Any such election by MDC to allow College to cure such a default shall in no way be construed as, or shall operate as, a waiver of any of MDC's rights contained herein, including but not limited to MDC's rights to repayment under this Agreement.

VII. Term

Upon execution by all of the parties, this Agreement becomes effective on the Effective Date and shall terminate on December 31, 2024, or when terminated by mutual agreement of the parties, or when terminated as set forth in Section X.E.

VIII. Law

The parties acknowledge that the funds herein granted shall be utilized solely for purposes authorized under the terms of this Agreement and the Development Corporation Act, Chapter 501 of the Texas Local Government Code.

IX. Special Conditions

- A. **Total Financial Commitment.** Notwithstanding any provision hereof which might be interpreted otherwise, MDC's total financial commitment during the term of this Agreement shall not exceed \$301,000.00 in the aggregate.
- B. **Certifications.** College agrees to the following certification requirements:
1. As to the certifications required in Section IV.A, College shall provide sufficient supporting documentation of the Equipment Purchase Obligation by December 31, 2024.
 2. As to the certifications required in Section IV.B, College shall provide MDC with a written statement or report, together with sufficient supporting documentation in a form reasonably acceptable to MDC, certifying the total costs associated with thirty-nine (39) students' completion of College's Transportation Training Program.
 3. When requested in writing by MDC to do so, College will provide an annual statement in a form acceptable to MDC that, to College's knowledge, College is in compliance with each applicable material term of this Agreement.
 4. College shall allow MDC reasonable access to the facilities associated with the Program for the purposes of determining College's compliance with this Agreement, provided that such access shall be with representatives of College and during normal business hours.
 5. All certifications required under this Agreement shall be signed by College's president, or other appropriate officer, before a notary. E-mail shall not be an acceptable form of certification under this Agreement.

- C. **Payments.** Payments to be made to College shall be made upon a written request from College and completion and submission of all necessary supporting documentation as required pursuant to this Agreement. The payment request and documentation should be directed in accordance with Section X.N.
- D. **Covenants.** College covenants that this Agreement has been duly authorized by College's board of trustees or other governing body, or by an officer of College empowered to execute such agreements and bind College, and is not in contravention of the provisions of College's bylaws, or of any agreement or instrument to which College is a party or by which it may be bound, the breach of which would have a material, adverse effect on College and its operations.
- E. **Interpretation of Terms & Obligations.** The parties agree that any determination with respect to the key terms that govern the obligations of College under this Agreement shall be made in the sole and absolute discretion of MDC. Such determinations shall be final and binding on College.

X. General Terms

- A. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.
- B. **Legal Relationships.** The parties are not, and shall not be considered as, joint ventures, partners, or agents of each other and neither shall have the power to bind or obligate the other, except as set forth in this Agreement. The parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between MDC and College. 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.
- C. **No Third-Party Beneficiary.** The parties' approval of the Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity that is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.
- D. **Independent Contractor.** It is expressly understood and agreed that College shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of MDC; that College shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of

respondeat superior shall not apply as between MDC and College, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between MDC and College. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of MDC. College shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. MDC does not have the power to direct the order in which the work is done. MDC shall not have the right to control the means, methods or details of College's work. College shall assume exclusive responsibility for the work. College is entirely free to do the work in its own way.

- E. **Terminations.** This Agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein if the default is not cured within thirty (30) days after written notice from the other party, or such longer period as may be reasonably necessary so long as such party has commenced the cure within such thirty (30) day period, and thereafter is diligently pursuing such cure.
- F. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- G. **Governing Law & Venue.** This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. The sole, exclusive, and mandatory venue for any claims, suits, disputes or any other action arising from, relating to or concerning in any way 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. All payments under this Agreement are deemed to have taken place in Midland County, Texas.
- H. **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- I. **Law.** This Agreement is subject to all applicable state and federal laws, and College agrees that it will comply in all material respects with all such applicable laws, regulations, orders and rules of the State of Texas and other such governmental agencies.

- J. **Assignment.** This Agreement shall be binding upon the parties hereto and their successors and assigns. This Agreement may not be assigned by College without the prior written consent of MDC.
- K. **Notices.** All notices to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

Midland Development Corp.
Attn: Executive Director
200 N. Loraine St., Suite 610
Midland, Texas 79701

If to College:

Midland College
Attn: President
3600 N. Garfield
Midland, Texas 79705

- L. **Waiver of Attorney Fees.** BY EXECUTING THIS AGREEMENT, THE PARTIES AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE IN THE FUTURE AGAINST EACH OTHER REGARDING THE AWARD OF ATTORNEY FEES THAT ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. THE PARTIES 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, AS AMENDED, THAT SAID PARTY AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED.

THE PARTIES AGREE THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE PARTIES ACKNOWLEDGE THAT THEY UNDERSTAND ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE PARTIES. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

THE PARTIES ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY AGREES IT HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

M. **Amendment.** This Agreement may be amended by written instrument executed by both parties expressly stating the intention to amend this Agreement.

N. **Payments.** All payments to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All payments shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

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Attn: Executive Director
200 N. Loraine St., Suite 610
Midland, Texas 79701

If to College:

Midland College
Attn: President
3600 N. Garfield
Midland, Texas 79705

O. **Release.** NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COLLEGE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC, MDC'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COLLEGE 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 MDC'S NEGLIGENCE.

P. **Consideration.** MDC and College hereby agree and acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.

Q. **Governmental Immunity.** By executing this Agreement, MDC is not waiving its right of governmental immunity. MDC is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

R. **Governmental Function.** MDC and College hereby acknowledge and agree that the entirety of MDC's performance and obligations under this Agreement are governmental functions. By entering into this Agreement, College releases MDC from any present or future claims asserting MDC's performance and obligations under this Agreement are not governmental functions.

S. **No Disparity of Bargaining Position.** MDC and College agree that there was no disparity of bargaining power between the parties in the negotiation and execution of this

Agreement. MDC and College acknowledge and agree that they were both represented by legal counsel. MDC and College acknowledge and agree that they read and understood the entire Agreement prior to its execution. MDC and College acknowledge and agree that there were numerous compromises and concessions made by the parties resulting in the agreed-upon terms of this Agreement.

- T. **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, College or its legal representative, shall give the MDC Chairman, or any other reasonable official of MDC, notice in writing (consisting of one original and two copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which College will settle, the physical and mailing addresses of College at the time and date the claim was presented and the physical and mailing addresses of College for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom College relies to establish its claim. Failure to so notify the MDC Chairman within the time and manner provided herein shall exonerate, excuse and except MDC from any liability whatsoever. MDC is under no obligation to provide notice to College that College's notice is insufficient. MDC 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, College's failure to comply with the requirements herein shall perpetually bar College's claim for damages under Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code, regardless if MDC has actual or constructive notice or knowledge of said claim or alleged damages. College agrees that the requirements of this section are reasonable.

- U. **Approval Required.** This Agreement shall not become effective until approved by a resolution of the Midland City Council.

[Signature Pages Follow]

IN WITNESS WHEREOF, MDC and College have executed this Agreement as of the Effective Date.

**MIDLAND DEVELOPMENT
CORPORATION**

Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

[Signature Page Follows]

**MIDLAND COMMUNITY COLLEGE
DISTRICT**

Name:
Title:

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, _____, a notary public, on this day personally appeared _____, of the MIDLAND COMMUNITY COLLEGE DISTRICT, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said College for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2023.

Notary Public, in and for
the State of Texas

ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between the MIDLAND DEVELOPMENT CORPORATION (“MDC”), a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended, and the MIDLAND COMMUNITY COLLEGE DISTRICT (“College”).

I. Recitals

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- B. **Legal Relationships.** The parties are not, and shall not be considered as, joint ventures, partners, or agents of each other and neither shall have the power to bind or obligate the other, except as set forth in this Agreement. The parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between MDC and College. 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.
- C. **No Third-Party Beneficiary.** The parties' approval of the Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity that is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.
- D. **Independent Contractor.** It is expressly understood and agreed that College shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of MDC; that College shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of

respondeat superior shall not apply as between MDC and College, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between MDC and College. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of MDC. College shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. MDC does not have the power to direct the order in which the work is done. MDC shall not have the right to control the means, methods or details of College's work. College shall assume exclusive responsibility for the work. College is entirely free to do the work in its own way.

- E. **Terminations.** This Agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein if the default is not cured within thirty (30) days after written notice from the other party, or such longer period as may be reasonably necessary so long as such party has commenced the cure within such thirty (30) day period, and thereafter is diligently pursuing such cure.
- F. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- G. **Governing Law & Venue.** This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. The sole, exclusive, and mandatory venue for any claims, suits, disputes or any other action arising from, relating to or concerning in any way 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. All payments under this Agreement are deemed to have taken place in Midland County, Texas.
- H. **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- I. **Law.** This Agreement is subject to all applicable state and federal laws, and College agrees that it will comply in all material respects with all such applicable laws, regulations, orders and rules of the State of Texas and other such governmental agencies.

- J. **Assignment.** This Agreement shall be binding upon the parties hereto and their successors and assigns. This Agreement may not be assigned by College without the prior written consent of MDC.
- K. **Notices.** All notices to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

Midland Development Corp.
Attn: Executive Director
200 N. Loraine St., Suite 610
Midland, Texas 79701

If to College:

Midland College
Attn: President
3600 N. Garfield
Midland, Texas 79705

- L. **Waiver of Attorney Fees.** BY EXECUTING THIS AGREEMENT, THE PARTIES AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE IN THE FUTURE AGAINST EACH OTHER REGARDING THE AWARD OF ATTORNEY FEES THAT ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. THE PARTIES 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, AS AMENDED, THAT SAID PARTY AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED.

THE PARTIES AGREE THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE PARTIES ACKNOWLEDGE THAT THEY UNDERSTAND ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE PARTIES. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

THE PARTIES ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY AGREES IT HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

M. **Amendment.** This Agreement may be amended by written instrument executed by both parties expressly stating the intention to amend this Agreement.

N. **Payments.** All payments to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All payments shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

Midland Development Corp.
Attn: Executive Director
200 N. Loraine St., Suite 610
Midland, Texas 79701

If to College:

Midland College
Attn: President
3600 N. Garfield
Midland, Texas 79705

O. **Release.** NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COLLEGE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC, MDC'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COLLEGE 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 MDC'S NEGLIGENCE.

P. **Consideration.** MDC and College hereby agree and acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.

Q. **Governmental Immunity.** By executing this Agreement, MDC is not waiving its right of governmental immunity. MDC is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

R. **Governmental Function.** MDC and College hereby acknowledge and agree that the entirety of MDC's performance and obligations under this Agreement are governmental functions. By entering into this Agreement, College releases MDC from any present or future claims asserting MDC's performance and obligations under this Agreement are not governmental functions.

S. **No Disparity of Bargaining Position.** MDC and College agree that there was no disparity of bargaining power between the parties in the negotiation and execution of this

Agreement. MDC and College acknowledge and agree that they were both represented by legal counsel. MDC and College acknowledge and agree that they read and understood the entire Agreement prior to its execution. MDC and College acknowledge and agree that there were numerous compromises and concessions made by the parties resulting in the agreed-upon terms of this Agreement.

- T. **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, College or its legal representative, shall give the MDC Chairman, or any other reasonable official of MDC, notice in writing (consisting of one original and two copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which College will settle, the physical and mailing addresses of College at the time and date the claim was presented and the physical and mailing addresses of College for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom College relies to establish its claim. Failure to so notify the MDC Chairman within the time and manner provided herein shall exonerate, excuse and except MDC from any liability whatsoever. MDC is under no obligation to provide notice to College that College's notice is insufficient. MDC 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, College's failure to comply with the requirements herein shall perpetually bar College's claim for damages under Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code, regardless if MDC has actual or constructive notice or knowledge of said claim or alleged damages. College agrees that the requirements of this section are reasonable.

- U. **Approval Required.** This Agreement shall not become effective until approved by a resolution of the Midland City Council.

[Signature Pages Follow]

IN WITNESS WHEREOF, MDC and College have executed this Agreement as of the Effective Date.

**MIDLAND DEVELOPMENT
CORPORATION**

Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

[Signature Page Follows]

**MIDLAND COMMUNITY COLLEGE
DISTRICT**

Name:
Title:

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, _____, a notary public, on this day personally appeared _____, of the MIDLAND COMMUNITY COLLEGE DISTRICT, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said College for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2023.

Notary Public, in and for
the State of Texas



City Council Meeting

Item Number: 14
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Tina Jauz, Assistant City Manager
Subject: 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)

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on August 7, 2023 a resolution authorizing the execution of an interlocal agreement with the University of Texas Permian Basin to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.

Recommended City Council Action:

Approve

Fiscal Impact:

\$574,600.00

Discussion:

Provides for the funding of the Midland Entrepreneurial Challenge. UTPB operates and administers the challenge. \$500,000 is designated as awards for winning businesses (up to seven winning businesses to receive varying amounts of up to \$150,000 each), and the remaining amount is for marketing and administrative costs. The MDC has partnered with UTPB for five previous years of the Midland Entrepreneurial Challenge (2017, 2018, 2019, 2021, 2022).

Morris Williams Jr.

City Manager's Office

INTERLOCAL AGREEMENT

BETWEEN

THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN AND MIDLAND DEVELOPMENT CORPORATION

This Interlocal Agreement (the “**Agreement**”), is made and entered into this 22nd day of August, 2023, between the University of Texas of the Permian Basin (“**UTPB**”), and the Midland Development Corporation (“**MDC**”), an economic development corporation existing under the authority of Chapter 504 of the Texas Local Government Code, pursuant to Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, regarding the Midland Entrepreneurial Challenge. UTPB and MDC are sometimes collectively referred to herein as the “**Parties.**”

WITNESSETH:

WHEREAS, MDC is a governmental entity of the state of Texas and is authorized by its governing body to enter into this Agreement; and

WHEREAS, MDC is authorized to expend promotional funds in order to advertise or publicize the City of Midland for the purpose of developing new and expanded business enterprises pursuant to Section 504.105 of the Texas Local Government Code; and

WHEREAS, UTPB is a governmental entity of the state of Texas and is authorized by its governing body to enter into this Agreement; and

WHEREAS, UTPB actively promotes business development and economic growth within the City of Midland and the surrounding region for the purposes of creating jobs and developing new and expanded business enterprises in the same; and

WHEREAS, MDC’s expenditure of promotional funds for the advertising and promotional services described herein will advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises, and will thereby enhance and promote economic development within the City of Midland; and

WHEREAS, it is the desire of the Parties hereto to combine their efforts for the purpose of developing new and expanded business enterprises within the City of Midland;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to the Parties, as well as the general citizenry of the City of Midland, the Parties have agreed and do hereby agree as follows:

Exhibit A

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which UTPB shall perform advertising and promotional services for MDC for the purpose of developing new and expanded business enterprises in the City of Midland and thereby enhance and promote economic development within the City of Midland.

II. OBLIGATIONS OF THE PARTIES

A. MDC Payment. MDC agrees to provide to UTPB funds in an amount not to exceed FIVE HUNDRED THOUSAND and No/00 DOLLARS (\$500,000.00), in consideration for UTPB's services described herein (the "**Service Funds**"). In addition to the Service Funds, MDC agrees to pay UTPB an amount not to exceed SEVENTY-FOUR THOUSAND, FOUR HUNDRED AND FIFTY and No/00 DOLLARS (\$74,450.00) for any marketing and administrative costs associated with the operation and management of the Midland Entrepreneurial Challenge (the "**Administration Funds**"). MDC's payment of the Administration Funds shall not exceed a cumulative amount of SEVENTY-FOUR THOUSAND, FOUR HUNDRED AND FIFTY and No/00 DOLLARS (\$74,450.00) over the term of this Agreement. MDC agrees to provide the Service Funds and Administration Funds (cumulatively referred to as the "**Funds**") subject to all conditions and restrictions contained in this Agreement. The payment of the Funds shall be on a cost-reimbursement basis, and shall be provided by MDC to UTPB upon MDC's receipt of a written request by UTPB. In conjunction with its written request for the Funds, UTPB shall submit invoices or statements demonstrating UTPB's payment of funds in support of UTPB's performance of the services described herein (the "**Supporting Documentation**"). The approval of the Supporting Documentation is subject to the sole and absolute discretion of MDC's Chairman. Notwithstanding any provision of this Agreement to the contrary, the Parties agree that it shall be in the sole and absolute discretion of MDC to reimburse UTPB for the services to be performed described herein depending on the rendered quality of said services and the quality of the Supporting Documentation, as determined by MDC. The Parties agree that this provision, in all of its aspects, is consistent with Texas Government Code § 791.011(e).

B. UTPB Services. UTPB shall use commercially reasonable efforts to provide those promotional services described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes. UTPB shall coordinate with MDC's Executive Director regarding the design, nature, content, and implementation of said services to enable the advertising and promotional activities performed hereunder to be effective and efficient in achieving the purpose of this Agreement. UTPB shall require its vendors to provide detailed outlines for any marketing strategies to include dates, times, media platforms, and proofs. Additionally, UTPB agrees to oversee the operation and management of the Midland Entrepreneurial Challenge. Regarding the Midland Entrepreneurial Challenge, UTPB shall provide those services and duties described in **Exhibit B**, which is attached hereto and incorporated herein for all purposes.

C. UTPB Report. On or before August 31, 2024, UTPB shall provide MDC with a written report containing a detailed summary of 1) UTPB's efforts to promote new and expanded business enterprises within the City of Midland; and 2) the participants, qualifications, evaluation material, and results of the Midland Entrepreneurial Challenge.

III. INDEPENDENT CONTRACTOR

UTPB shall operate hereunder as an independent contractor and not as an officer, agent, servant, or employee of MDC. UTPB shall have exclusive control of, and the exclusive right to control, the details of the work to be performed hereunder and all personnel performing the same, and shall be solely responsible for the acts and omissions of its officers, members, agents, employees or contractors. In no event shall any person participating in or performing any of UTPB's duties or responsibilities hereunder be considered an officer, agent, or employee of MDC. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. UTPB shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. MDC does not have the power to direct the order in which the work is done. MDC shall not have the right to control the means, methods or details of UTPB's work. UTPB shall assume exclusive responsibility for its work.

IV. TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective August 22, 2023, and shall terminate on September 30, 2024, or when terminated by mutual agreement of the Parties, or when terminated as hereinafter provided.

V. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

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 MDC as an additional insured and waive subrogation in favor of MDC.

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

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

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

The Parties agree that, prior to the execution of the Agreement, UTPB shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of MDC. The parties also agree that this Agreement shall not become effective until the City Attorney's Office of the City of Midland, Texas, reviews and approves of all certificates of insurance required under this Agreement. MDC shall not be required to provide any insurance whatsoever pursuant to this Agreement.

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

VI. GENERAL TERMS

A. Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary agreements between the Parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.

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

C. Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original.

D. Payments from Current Revenues. The payment of funds made by MDC for the performance of UTPB's services shall be paid from current revenues available to MDC.

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

F. Defenses. This Agreement is made pursuant to Chapter 791, Texas Government Code. It is agreed that, in the execution of this Agreement, neither Party waives any immunity or defense that would otherwise be available to it against third parties, or against claims arising from the exercise of governmental powers and function. This Agreement shall not be construed as a waiver regarding the issues of governmental immunity, sovereign immunity or qualified immunity.

G. Third-Party Beneficiary. MDC'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.

H. Assignment. The Parties hereto shall not assign this Agreement, in whole or in part, any such assignment being void.

I. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive, sole and mandatory 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 shall be deemed to have occurred in Midland County, Texas.

J. Release. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, UTPB HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC, MDC'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH UTPB 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 MDC'S NEGLIGENCE.

K. Notices. All notices to either Party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such Party at its respective address shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either Party hereto may change the address below by sending written notice of such change to the other Party.

If to UTPB:

University of Texas of the
Permian Basin

Attn: Dr. Brian Shedd
4901 E. University Blvd
Odessa, Texas 79762

If to MDC:

Midland Development Corporation
Attn: Executive Director
200 N. Loraine Street, Suite 610
Midland Texas, 79701

[Signature Pages Follow]

The Parties have caused this Agreement to be executed by their duly authorized representatives on this ____ day of _____, 2023.

MIDLAND DEVELOPMENT
CORPORATION

Chase Gardaphe, Chairman

ATTEST:

Jill Pennington, Secretary

UNIVERSITY OF TEXAS OF THE
PERMIAN BASIN

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS

§

§

COUNTY OF _____

§

BEFORE ME, the undersigned authority, on this ____ day of _____, 2023, personally appeared _____ for the University of Texas of the Permian Basin, 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 _____ day of _____, 2023.

Notary Public, State of Texas

Promotional Services to be Provided by
The University of Texas Permian Basin

1. Branding the City of Midland for the purpose of developing new and expanded business enterprises in the new Midland Entrepreneurial Challenge website, brochure and media materials.
2. Promoting the Midland Entrepreneurial Challenge on the UTPB website.
3. Adding a link from the Midland Entrepreneurial Challenge website to the Midland Development Corporation's website.
4. Including a description and logo for the Midland Development Corporation in the Midland Entrepreneurial Challenge promotional materials, when feasible.
5. Including a reference to the Midland Entrepreneurial Challenge and the City of Midland's support of this new program in press releases and live or prerecorded media soundbites, when feasible.

Exhibit A



MIDLAND
ENTREPRENEURIAL
CHALLENGE

BUILDING A DIVERSE MIDLAND



A Proposal for the Midland Development Corporation



From the UTPB College of Business

and the

UTPB Office of Innovation & Commercialization



THE UNIVERSITY OF TEXAS
PERMIAN BASIN™

COLLEGE OF BUSINESS



UT PERMIAN BASIN™

THE OFFICE OF INNOVATION
& COMMERCIALIZATION

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Introduction to the University of Texas Permian Basin

UT Permian Basin takes great pride in being part of The University of Texas System, known for its exceptional academic success, breakthrough research, and an international reputation for excellence and innovation. It includes 14 educational institutions throughout the state, including nine universities and five health institutions. Home to over 7,000 enrolled students, UT Permian Basin benefits from the vast resources and support of the world-renowned University of Texas System yet is lean enough to foster a connected, tight-knit community while remaining financially accessible to any student. With an unwavering commitment to students, a strategic approach to designing higher education, and the resources to ensure academic success, UTPB is set to nurture the leaders who will go on to shape the future of West Texas and the nation. Each year over 250 teaching faculty deliver a highly educated and savvy workforce back into the communities of the Permian Basin and across the nation. UTPB offers 36 baccalaureate degree programs and 20 master's degree programs in the arts and sciences, business, engineering, education, and health and human performance—and the University continues to grow. Recently added chemical and electrical engineering programs offer unique internship opportunities that are attracting new students. As a regional, comprehensive institution, The University of Texas Permian Basin serves a diverse community of students from the region, the state, and beyond. Through excellence in student-centered teaching, learning, research, and public service, the University cultivates engaged citizens and impacts lives while advancing technology and the public interests of West Texas.

Overview of the UTPB College of Business

The UT Permian Basin College of Business Entrepreneurship programs have fully invested in the future of Entrepreneurship in our community. Over the past three years, the Blackstone Launchpad, a student driven entrepreneurship network funded by the Blackstone Charitable foundation, has provided tools, mentorship, and entrepreneurship opportunities for our students, regardless of their chosen major or college of study. The state-of-the-art Launchpad and Innovation Center to open in the fall of 2023 will include co-working facilities, sound, and audio recording spaces, as well as a fabrication and innovation lab where prototypes can be created. With revamped and reintroduced Entrepreneurship Minor and Certificate options, we are meeting the needs of today's aspiring entrepreneurs, with applicable knowledge-based materials.

Mission

The College of Business at The University of Texas Permian Basin provides responsive and innovative programs enhancing the quality of life for its students, graduates, and the community. We advance business and energy industry research, economic competitiveness and diversification, while connecting students to transformative opportunities. Through excellence in teaching, the college empowers student success and facilitates outstanding

career, personal, and community outcomes, developing next-generation leaders and entrepreneurs.

Overview of the UTPB Office of Innovation & Commercialization

The UTPB Office of Innovation & Commercialization (OIC) was developed in 2021 to unify all of the innovation and commercialization activities at the university to comprehensively support the campus and community. Through the office and its partners, a variety of resources are available to support innovation development at every point along the path to commercialization and broader societal benefit. OIC is housed at the 30,000 square foot Center for Energy and Economic Diversification (CEED) building on the Midland Campus of UTPB, which just recently completed substantial renovations to develop spaces to support innovation and entrepreneurship. Once completed, CEED will contain office space, coworking space, wet lab space, a makerspace, conference/event space, and a café. OIC is also co-located at the CEED with the UTPB Small Business Development Center (SBDC) and two University research labs, the Texas Water and Energy Institute (TWEI) and the Advanced Manufacturing Center (AMC).

Mission

To unify and enrich all of the innovation and commercialization activities at UTPB through its education, research, and entrepreneurship programs and to serve as a focal point for more dynamic engagement with the community and industry.

Principles

Inclusion, Transparency, Accessibility, Value

Activity Sets

Technology Transfer, Industry Collaboration, Startup Support, Product Development

Meet the Midland Entrepreneurial Challenge Team



Dr. Brian Shedd, Executive Director for the Office of Innovation & Commercialization

Prior to coming to UTPB, Brian has worked in university technology transfer roles at the University of Houston (UH), Louisiana State University (LSU) and the University of California, Los Angeles (UCLA). At UH, he was the Director for the Office of Technology Transfer & Innovation housed at the Technology Bridge, a 75-acre research park focused on commercialization of new technologies. At LSU he was the Assistant Director of the Office of Innovation & Technology Commercialization (ITC) and responsible for intellectual property protection and commercialization of all the research that takes place on the LSU campus. At LSU, he served as the lead administrator of LSU's NSF I-Corps Site Program that prepares scientists and engineers to move beyond the lab and into the market. Brian also worked at UCLA in their technology transfer office, the Office of Intellectual Property, which is now known as the Technology Development Group. During his time at UCLA, he served as a Board Member to PortTech Los Angeles, a business incubator focused on developing technologies for the Port of Los Angeles, a Leadership Council Member for the Los Angeles Cleantech Incubator, and as a lecturer in the UCLA Anderson School of Management. He is also responsible for the creation and management of BRUINcubate, the UCLA Entrepreneur Support Network, involving more than 20 different entrepreneurial support organizations located on campus.



CC Serrato, Program Coordinator for the Office of Innovation & Commercialization

CC has served in various roles at UT Permian Basin for the past 10 years and has proven to be a vital part of the mission for the university. Her current role as the Program Coordinator in the new

Office of Innovation & Commercialization will be to assist the department in coordinating entrepreneurship programs with education and research, and to help serve as a point of contact for dynamic engagement with the community and industry.

The newly renovated CEED Building on the Midland campus is where you can find CC working hard to accomplish this vision!



Danna Church, Blackstone LaunchPad Campus Director

Since November 2021, Danna has served as UTPB's Blackstone LaunchPad Campus Director. She is available to assist all students regardless of their major to explore entrepreneurship and to cultivate an entrepreneurial mindset that will prepare them for the modern workforce. To accomplish this, she encourages students to participate in the many entrepreneurship opportunities provided by Blackstone LaunchPad such as workshops, mentoring, and competitions. The Blackstone LaunchPad office is currently located in the Roden Entrepreneurial Center which is now located on the

newly renovated 1st floor of the Dunagan Library.

The Midland Entrepreneurial Challenge

1.0 Introduction

The Midland Entrepreneurial Challenge continues to empower innovative ideas and strategies proven to be both community inspiring and financially lucrative. The value provided by the competition includes a detailed critique from the expertise of our judges, encapsulating the importance of developing the necessary objectives to achieve market strength. Throughout the competition entrepreneurs are forced to think critically about virtually every aspect of their business. Contestants are obligated to assess their level of detail that is often overlooked, while becoming open to new and valuable suggestions that defines both short/long-term outcomes.

1.1 Midland Economic Challenge funding

The Midland Entrepreneurial Challenge (MEC), which will be funded by the Midland Development Corporation (MDC) and partnered with the University of Texas Permian Basin (UTPB), is designed to assist entrepreneurs with expanding an existing business or starting a new one.

1.2 The Purpose

Each participant will gain a better understanding of how to develop and follow a realistic business plan and model to ensure a growing business. This undoubtedly will have a positive economic impact for Midland.

1.3 Orientations

Through several orientation seminars presented by UTPB, entrepreneurs and business owners who are interested in participating, will better understand the requirements of the competition.

1.4 The Benefits

Once qualified, all entrants will have access to business coaching, expertise, and other pertinent resources offered via UTPB. These one-on-one meetings will discuss strategy, assist with building financials, and finalize business plans before they are submitted.

1.5 Award Monies

This fiscal year, the plan includes Five Hundred Thousand Dollars (\$500,000) of total available award money to be distributed with up to One Hundred Fifty Thousand Dollars (\$150,000) to each of the selected winner(s) identified through the deliberation and decision of our judges.

2.0 About the Challenge

2.1 The Objective

The objective of this program is to provide another source of capital funding to business owners and entrepreneurs in Midland who might not be able to obtain the funding otherwise. The value participating in business plan process allows participants to gain a better understanding of how to develop, build and grow strong businesses that will even further strengthen Midland's economic condition and development.

2.2 Partnership

The funding will be provided by the Midland Development Corporation and the program administration, seminars, and business plan consultation will be provided by UTPB College of Business and the Office of Innovation & Commercialization.

2.3 Anticipated Local Economic Benefit

The competition is designed to foster community involvement and innovation by bringing local entrepreneurs and professionals together to continue the economic diversification of the City of Midland. The outcomes contribute to a community's identity that preserves the unique character created by a vibrant small business community. Other benefits are the increased employment while keeping tax dollars close to home and improving the city as a result.

3.0 Eligibility Requirements

These requirements must be met in order for any applicant to participate in the program and receive award money:

- ✓ The business must be headquartered in the City of Midland (within in the city limits).
- ✓ Winning businesses that receive money cannot sell or relocate the business outside of the city limits of Midland for a period of five years after receiving award money without prior approval from Midland Development Corporation or must return award money received through this program.
- ✓ Participants cannot be an immediate relative of administrative officials or judges or engaged in any other business partnerships with an administrative official or judge. All special circumstances will go under the review of the UTPB Lead Coordinator, who will make the final decision.
- ✓ Participants must become a client of the UTPB SBDC by completing the 641 SBA form.
- ✓ Winning businesses must provide UTPB with economic impact data according to the Accountability section and within the deliverable deadlines outlined in the guidelines.

- ✓ Participants must have a credit score of at least 640 to participate. All special circumstances will be reviewed by the UTPB Lead Coordinator, who will make the final decision.
- ✓ Attendance is mandatory for all seminars throughout the competition unless excused by a member of the MEC Entrepreneurial Challenge Team.
- ✓ Previous winners of the challenge cannot reenter the challenge for the same business for five years; however, if the previous winner is in good standing with UTPB according to the Accountability section for a full three years, the winner may enter for a different business with approval from the UTPB Lead Coordinator.
- ✓ Previous participants who were not awarded any monies may reenter the following year.
- ✓ A participant is not allowed to participate in the challenge if he or she was convicted of a felony. UTPB will conduct background checks on all participants, and the cost of the background check will be incorporated into the entry fee.

4.0 Application Process

4.1 Orientation

Businesses interested in applying for the MEC program will be required to attend one of the orientation events as listed in section 6.0 Schedule of Events. Three separate orientation events will be held to ensure the maximum opportunity for participation.

4.2 Registration

After attending at least one orientation, businesses that wish to join the challenge must pay the non-refundable entry fee and return a signed confidentiality agreement through the online registration portal by the date listed in section 6.0 Schedule of Events.

4.3 Participant Limit & Priority Categories

The MEC is limited to the first 50 businesses to register who meet all the eligibility requirements as described in section 3.0. Priority registration will be given to businesses that are in any of the following industry sectors:

- Energy
- Water
- Space/Aerospace

5.0 Seminars

UTPB will provide a series of seminars to all of the admitted participants on a variety of topics essential to entrepreneurs, and designed to increase performance and longevity. Attending these seminars will assist business owners to achieve success by providing new skills and methods of practice. The seminars selected for the MEC will include:

- Developing the Pitch
- Lending
- Business Plan Preparation
- Marketing
- Business Resources in the City of Midland
- Business Structure
- Intellectual Property
- Taxation
- Preparing a Presentation

These seminars are led by other successful business owners, skilled UTPB faculty and staff, and other professionals such as accountants and tax specialists. These educational offerings help small business owners tackle many of the issues associated with early stage startups and prepare them for the rigors of the MEC competition.

6.0 Schedule of Events

Date	Time	Topic
9/12/2023	6 – 7:30 PM	Orientation
9/13/2023	Noon – 1 PM	Orientation
9/14/2023	6 – 7:30 PM	Orientation
9/15/2023		Registration Opens
9/22/2023	9:00 PM	Registration Deadline
9/26/2023	6 – 7:30 PM	SEMINAR: Developing the Pitch (SBDC)
10/1/2023		Target Deadline for Judge Recruitment
10/10/2023	6 – 7:30 PM	SEMINAR: Lender Seminar (Southwest Bank)
10/24/2023	6 – 7:30 PM	SEMINAR: Preparing a Business Plan (SBDC)
10/25/2023	9:00 PM	Deadline for Pitch Sheets
11/7/2023	6 – 7:30 PM	SEMINAR: Marketing (Armic Systems)
11/14/2023	6 – 7:30 PM	SEMINAR: City of Midland Resources (MDC)
11/15/2023		Pitch Score Cards received from Judges
11/17/2023		Advancing Businesses Notified
12/5/2023	6 – 7:30 PM	SEMINAR: Business Structure & Intellectual Property (SBDC & OIC)

12/15/2023	9:00 PM	Business Plans Due
1/9/2024	6 – 7:30 PM	SEMINAR: Taxation (UTPB College of Business)
1/17/2024		Business Plan Score Cards received from Judges
1/19/2024		Final Round Businesses Notified
1/23/2024	6 – 7:30 PM	SEMINAR: Preparing for the Final Presentation
1/30/2024	10 AM – 4 PM	Final Presentation to Judges
1/31/2024		WINNERS NOTIFIED!
TBD	7 – 9 PM	Award Ceremony (Location: Rea Greathouse – WNPAC)

7.0 Judging of the MEC

7.1 Selection of Judges

In an effort to select the best judges for the competition, UTPB seeks individuals that have developed and owned a major business within the Midland community. Judges should be industry-related experts, someone with a specific market niche, a previous winner, someone with a prestigious reputation, or individuals with a high-level of experience.

At a minimum, a judge should possess a background of 10 or more years of experience in business and/or qualifications consisting of the following:

- Business Owner
- Local Bank Lender
- Community Leader

No person shall serve as a judge that has any interrelationships relevant to board members of the Midland Development Corporation and all staff involved in the production of the MEC program.

7.2 Judging Criteria

The process of judging incorporates a distinctive competence to recognize a disruptive or unique business concept. Participants will be required to demonstrate a clear market need and a viable method to supply the demand. Characteristically, participants are evaluated on their ability to develop the company and manage risks. Other assessments include the ability to have a realistic potential to succeed and fully understanding the financial requirements. In addition, employment growth is considered by determining the number of full-time employees (FTEs) within three years to five years. In the business plan, judges



will validate funding, cash requirements, determine cost structures and revenue streams. In the final stage, participants are evaluated on how persuasive and logical their plan is.

Initial Pitch

Category	Points
Viability	15
Team and Partners	15
Financial	15
Growth	15
Strategy	15
Competition	15
Dynamism	10
Total	100

Business Plan

Category	Points
Business	15
Product/Service	15
Marketing	15
Management	15
New Job Creation	15
New Revenue for the City	15
Compelling Narrative	10
Total	100

Final Presentation to Judges

Category	Points
Effective communication of the business plan, validation of funding request, and support for job creation	20
Judges questions answered thoroughly and effectively	20
Knowledge, expertise, and ability of entrepreneur	20
Commercial viability of the venture	20
Overall effectiveness and quality of presentation	20
Total	100

7.3 Participant Pitfalls

These are common mistakes that participants should avoid at all costs!

- ⊗ Marketing activities with no strategic focus (i.e. website – launch and take orders.)
- ⊗ No competitive analysis
- ⊗ Unrealistic sales expectations
- ⊗ Financials that appear to be “pulled out of the air”
- ⊗ Lack of job creation details



7.4 *Structure of the Business Plan*

<u>The Business</u> • Legal structure and ownership • Industry, niche, or specialization • Key goals • Why does the business exist? • Prior entrepreneurship and management experience	<u>Product/Service</u> • Description of each product/service • What problem will it solve? • How does it benefit customers?
<u>Marketing</u> • Target market • Competitive environment • Distribution strategy • Pricing strategy • Promotion strategy • Positioning strategy	<u>Management</u> • Operation systems and process • Current employees • Job creation • Financials • Utilization of MDC funds

7.5 *Structure of the Final Presentations*

- ✓ Each finalist will receive a 30-minute slot in which to present. Each slot will consist of set up, presentation, question and answer with the judges, and clean up.
- ✓ The presentation order will be determined at random. All the finalists' names will be placed in a random name picker and assigned a time slot.
- ✓ Only the business presenting, the judges, and the UTPB MEC Team are allowed in the room during the pitch.
- ✓ A one-hour break will be given to the judges halfway through the pitch presentations.
- ✓ After all the pitches have been presented, the judges will score each business. The scores will be averaged and ranked by the UTPB MEC Team and provided to the judges.
- ✓ The judges will determine how many of the top average scores will be declared winners and how much of the \$500,000 each winner will receive.
- ✓ Judges will not award more money than is requested by a business, however, less money can be awarded.
- ✓ The winners and losers will be informed of the results the next business day and the winners will be invited to the award ceremony.

8.0 Basics of Receiving the Award Money

8.1 Payment method

In the event you are a recipient of the award money, the total awarded amount will be given in installments that will be distributed shortly after the completion of the challenge by UTPB and be funded by Midland Development Corporation. The winning businesses must submit a W-9 form and UTPB New Vendor form to the program coordinator for funds to be dispersed. Checks will be mailed to the address listed. In addition, winners must:

- ✓ Be able to provide proof that the business headquarters is in the city of Midland to receive money.
- ✓ Show proof of a “business account” to deposit the monies. You must keep all personal purchases in a separate bank account.

8.2 Award Monies

Winners will receive their awarded monies from the challenge in installments. For a winner to receive an installment, they must provide invoices that are consistent with the strategy stated in the business plan. Those invoices will be approved or rejected by the UTPB MEC Program Coordinator. If approved, a check for the total amount of the approved invoices will be distributed by UTPB and mailed to the winner’s address that was submitted on the UTPB New Vendor Form. If the winner changes his or her mailing address after submission of the UTPB New Vendor Form, it is the responsibility of the winner to notify the UTPB MEC Program Coordinator of the change.

After an installment has been issued to a winner, they will not be able to request additional funds until that winner provides receipts for the past approved invoices to be audited by the UTPB MEC Program Coordinator. This process will be repeated until the total award money has been distributed.

8.3 Installments

If a winner receives an installment and does not spend the money in a specific amount of time determined by the UTPB MEC Program Coordinator, they will be required to give the money back to UTPB for holding. If a winner spends the approved installment on anything other than the approved invoices without consent from the UTPB MEC Program Coordinator, that winner will be in violation of the terms and conditions of the challenge and all monies must be paid back to the Midland Development Corporation through UTPB, and the winner will be banned from any future business challenges in which UTPB is involved.

8.4 Financing

A challenge participant is allowed to acquire bank financing or other investor financing before the completion of the competition with the plan to pay off or make payments on those loans with the anticipated award monies from the challenge. These plans need to be addressed in the business plan and/or approved by the UTPB MEC Program Coordinator before the funds are obtained and UTPB must receive a copy of the loan documents to keep on record. University of Texas Permian Basin, Midland Development Corporation, the judges, or any other entity involved with the Midland Entrepreneurial Challenge are not responsible for repaying the loans in the event the business does not receive funds from the challenge.

8.5 Seek Accounting Advice

Award money “IS” counted as taxable income. Please consult a CPA for accounting advice regarding the funds.

9.0 Accountability for the Winners

9.1 Award Monies Expenditures

The award money received from the challenge must only be spent on the items articulated in the business plan. The Midland Development Corporation also wants to track the benefit to the community. In order for this to happen, there are requirements you must follow. For the first 90 days after receiving the first installment of the award monies:

- ✓ Contestants must email income statement and balance statements (and loan payments receipts if applicable) monthly to the MEC Program Coordinator at UTPB. If the business is following the business plan, we will ask for no additional information.
- ✓ If you use the award money for equity in a loan, you must provide a copy of the loan agreement to the MEC Program Coordinator at UTPB along with payment receipts.

9.2 Meeting the Requirements

If you meet all the requirements during the first 90 days, for the remainder of the first year and the entirety of the second year, you are required to:

- ✓ Email P&L and balance statements (and loan payments receipts if applicable) quarterly to the MEC Program Coordinator at UTPB. If the business is following the business plan, we will ask for no additional information.
- ✓ If the business is not meeting goals, UTPB will work to reassess financial projections and adjust. New goals and strategies will be set to get the business back on track. Contestants will require to report in the same manner within the first 90 days.

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9.3 Business Audit

If you met all the requirements through the first and second year, for the third year you are required to:

- ✓ Email P&L and balance statements (and loan payments receipts if applicable) biannually to the MEC Program Coordinator at UTPB.

9.4 Business Audit Continuation

If you meet all the requirements through the first three years, for the fourth and fifth year, you are required to:

- ✓ Email P&L and balance statements (and loan payment receipts if applicable) to the MEC Program Coordinator at UTPB at the end of the year.

9.5 Midland Presentation

At any time during the five-year period after receiving award monies from the Midland Entrepreneurial Challenge, the Midland Development Corporation Board of Directors may request a “State of your Business” presentation to the Midland Development Corporation Board of Directors monthly meeting. If a presentation is requested, the business owner(s) is highly encouraged to attend.

9.6 Violation of Terms

If the business fails to adhere to the requirements listed in Guidelines and Accountability, the business will be in violation of the terms of the Midland Entrepreneurial Challenge and all monies received from the competition will have to be paid back to the Midland Development Corporation. UTPB will act as a liaison to recover the funds. If the business does not have the total amount available to reimburse at one time, a payment plan with interest will be arranged for the balance owed. The interest rate will be set at the SBA current loan rate plus prime. The length of the repayment plan will be determined by the Midland City Attorney’s office. In addition to paying back the awarded monies, all past winners that violate the terms and conditions of the competition will not be allowed to participate in any future competitions involving UTPB.

10.0 Marketing for the MEC

Marketing is a key piece of a successful program, which allows UTPB to promote the program broadly and recruit the best business opportunities from the City of Midland. UTPB’s marketing efforts are focused on brand awareness and promotion of our community. The success of the marketing campaigns are influenced by a strong strategy outlining both short & long-term objectives, timelines, and specific channels to jumpstart awareness to increase participation.



10.1 Marketing Mediums

A variety of marketing mediums and platforms will be used including:

- Web via <https://midlandentrepreneurialchallenge.com/>
- Brochures
- Television
- Radio
- Newspaper
- News Releases
- Social Media
- Digital Ad Campaigns

10.2 Past Marketing Effort Engagement

Last year's program had record participation with 186 businesses signing up for an orientation session, resulting in 54 registered participants.

Below are some statistics on the marketing campaign from the previous year to demonstrate the reach that our efforts have yielded:

Social Advertising:

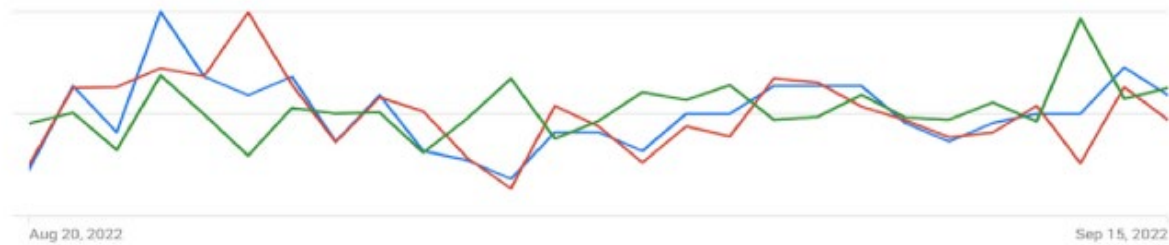
The social campaign targeted Midlanders interested in business planning, startups, small business ownership, and/or entrepreneurship.

- Link Clicks: 6,065
- Impressions: 984,421
- People Reached: 97,679
- Reactions: 256
- Comments: 20
- Shares: 39

Google Ads Search

Targeted people searching for the MEC, tips for starting a business, business funding, small business grants, and entrepreneurship.

- Clicks: 299
- Impressions Delivered: 3,513
- Click-Through Rate: 8.51% (*over 2X the average click through rate of 3.17%*)



A survey was conducted of the businesses that attended the orientation sessions to identify which marketing channels were successful in reaching potential participants, and overwhelmingly the majority of attendees found out about the MEC through internet-based marketing efforts and not TV/radio.

Midland Entrepreneurial Challenge Proposal for 2023-2024

UTPB is very excited for the opportunity to once again partner with the Midland Development Corporation to support our local entrepreneurs and help grow and diversify the economy here in Midland. The community has come to know this event, and it is a time filled with anticipation and excitement. We have had an excellent set of winners each year, and take great pride in watching those business grow and become standouts in the local community. Following this year's proposal below is a summary of the past winners and some pictures from this last year's award ceremony. We are grateful for MDC's support of this very important program and look forward to another successful year.

Budget Overview

Award Money:	\$500,000
Personnel:	\$40,000
Program Operations:	\$14,500
Marketing:	\$19,950
TOTAL:	\$574,450

Note this amount is roughly \$4,000 LESS than last year's budget due to some savings in the marketing campaign, which is explained below. Not shown in this Budget Overview are the registration fees from the participants, which will vary based on the number of participants, but this money goes directly into Program Operations.

Budget Justification

Award Money

The most important category in the budget is the award money which is provided to the winning participants after completing the program and being selected by the judges. The prize purse ensures we have robust interest in the program and maintains competitiveness among the applicants to ensure a high quality of business entrants.

Award Money	\$500,000
TOTAL:	\$500,000

Personnel

The UTPB MEC Team will organize and execute the entire 6-month program and ensure that every aspect of this competition meets the expectations of the Midland Development Corporation. This compensation also covers the additional months of preparation and follow up with the participants for payments. This year's MEC Team: Dr. Brian Shedd, CC Serrato, and Danna Church will provide frequent updates to the board through the Executive Director of the MDC and be available for any questions during the challenge. In addition, the MEC team will be in constant communication with the Small Business Development Center to confirm the contestants are meeting with their staff on a regular basis.

Dr. Brian Shedd	\$15,000
CC Serrato	\$15,000
Danna Church	\$10,000
TOTAL:	\$40,000

Program Operations

The second category of program operations relates to actual program costs associated with delivery of the program. This includes any food/drink, giveaways, and costs associated with the orientation sessions and seminars. This also includes all of the costs associated with the awards ceremony. The awards ceremony is the culmination of the program and is a celebration of all of the hard work put into the program by the award winners, judges, and UTPB MEC Team. The ceremony provides a chance for celebration and reflection of the commitment among our contestants, recognition of the devotion of our community judges and appreciation of the opportunity provided by Midland Development Corporation. This platform allows us to discuss the importance of their business in the community, and the achievement of the person being awarded. Gathering and sharing experiences is a very powerful means of encouragement. This past year, we had 108 attendees, including family and friends of our contestants, MDC board members, city officials, UTPB faculty and staff.

The requested funds for the program operations will cover a wide variety of items, including but not limited to, the cost of the venue, invitations, food, drinks, alcohol, award checks, plaques for the judges, decorations, music, and all other items deemed necessary for a successful program as determined by the UTPB MEC Team.

A rough breakdown of this category is shown below, but please note that funds may be shifted as needed at the discretion of the UTPB MEC Team.



Miscellaneous Program Expenses	\$1,900
Awards Ceremony Event Coordinator	\$4,500
Awards Ceremony Decorations	\$3,000
Awards Ceremony Event Venue	\$2,600
Awards Ceremony Food	\$2,500
TOTAL:	\$14,500

Marketing

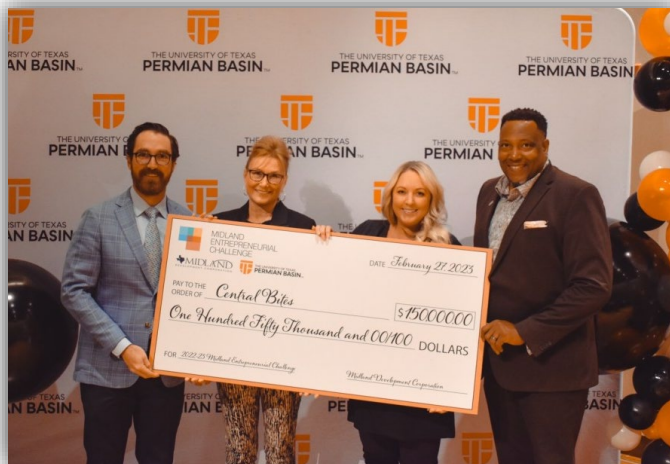
We plan to utilize Armic Systems for the marketing campaign for the 2023-2024 MEC. Armic Systems has been our marketing partner for the MEC for the last 3 years. Based on the past work we have done with Armic Systems to conduct the marketing campaigns, we are realizing significant savings in the website management over last year. We have also reallocated the categories that we are spending our marketing dollars to spend significantly less on TV/radio and more on internet-based advertising. Overall, this has allowed us to reduce our marketing budget for this year and resulted in budget savings for the entire program. The estimate we received for the marketing campaign for this year is as follows:

Website Management	\$1,250
Social Advertising (FB & IG)	\$8,500
Google Ads	\$3,600
Targeted Display Ads	\$1,600
TV Air Time (via Media Works)	\$5,000
TOTAL:	\$19,950



Previous Midland Entrepreneurial Challenge Winners

2022-2023



Central Bites

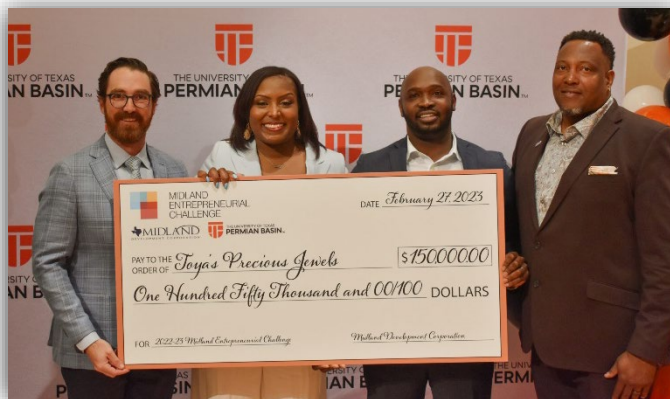


**Midland Athletic
Company**





The Tailgate



Toya's Precious Jewels



2021-2022

- The Birth Center
- Magrym Consulting
- Midland AF
- TyPickle Pickles

2020-2021

No competition held this year

2019-2020

- Thermal Cam USA
- Topline Care Pharmacy
- Nothing Bundt Cakes
- Caprock Products DBA Kid Proof
- Four Hands Dental Academy

2018-2019

- Most Wanted Waste Disposal
- The Oilfield Photographer
- Piano Works Gallery & Clocks
- Tall City Brewing Co.
- Texland Collision

2017-2018

- Norman Elite
- Eccentric Brewery



City Council Meeting

Item Number: 15
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Morris Williams Jr., Deputy City Manager
Subject: RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE EXECUTIVE COMMITTEE OF CITIES SERVED BY ATMOS WEST TEXAS ("CITIES") AND ATMOS ENERGY CORP., WEST TEXAS DIVISION (THE "COMPANY") REGARDING THE COMPANY'S 2023 RATE REVIEW MECHANISM FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; APPROVING AN ATTACHMENT ESTABLISHING A BENCHMARK FOR PENSIONS AND RETIREE MEDICAL BENEFITS; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS RESOLUTION WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO DELIVER THIS RESOLUTION TO THE COMPANY AND CITIES' LEGAL COUNSEL **(DISTRICT: ALL) (CITY MANAGER)**

Purpose:

Resolution of the City Council of the City of Midland, Texas, approving a negotiated settlement between the executive committee of cities served by Atmos West Energy Corp., West Texas Division (The "Company") regarding the Company's 2023 rate review mechanism filing; declaring existing rates to be unreasonable; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement; finding the rates to be set by the settlement tariffs to be just and reasonable and in the public interest; approving an attachment establishing a benchmark for pensions and retiree medical benefits; requiring the company to reimburse cities' reasonable ratemaking expenses; determining that this resolution was passed in accordance with the requirements of the Texas Open Meetings Act; adopting a savings clause;

declaring an effective date, and authorizing and directing the City Secretary to deliver the resolution to the Company and cities' legal counsel.

Recommended City Council Action:

Approve

Fiscal Impact:

None - The settlement requires ATMOS to reimburse the Cities for their expenses.

Discussion:

BACKGROUND AND SUMMARY

The City, along with 70 other West Texas cities served by Atmos Energy Corporation, West Texas Division ("Atmos West Texas" or "Company"), is a member of Cities Served by Atmos West Texas ("Cities"). In 2007, the Cities and Atmos West Texas settled a rate application filed by the Company pursuant to Section 104.301 of the Texas Utilities Code for an interim rate adjustment commonly referred to as a GRIP filing (arising out of the Gas Reliability Infrastructure Program legislation). That settlement created a substitute rate review process, referred to as Rate Review Mechanism ("RRM"), as a substitute for future filings under the GRIP statute.

Since 2007, there have been several modifications to the original RRM Tariff. The most recent iteration of an RRM Tariff was reflected in an ordinance adopted by Cities in 2018. On or about March 31, 2023, the Company filed a rate request pursuant to the RRM Tariff adopted by Cities. The Company claimed that its cost of service in a test year ending December 31, 2022, entitled it to a \$12.1 million increase to the WTX Cities. This was reduced to \$11.4 million due to limitations in the RRM tariff.

After a review of Cities' consultants' report and negotiations with Cities' representatives, Atmos agreed to a rate increase of \$8.4 million plus revenue related taxes within the Cities, with an Effective Date of October 1, 2023. The settlement also includes an additional \$2.7 million for the securitization regulatory asset expenses related to Winter Storm Uri. This was previously approved by the Texas Legislature and Railroad Commission.

RATE TARIFFS

Atmos generated rate tariffs associated with the Resolution/Ordinance. These tariffs are Attachment 1 to this Staff Report. Atmos also provided a proof of revenues associated with the new rates. The Cities' consultants have confirmed the accuracy of the proof.

BILL IMPACT

The impact of this increase in revenues to an average residential customer's bill is an increase of approximately \$5.04 per month. Atmos provided a bill impact estimate for each customer

class reflecting the new rates. Comparison of the new rates to rates in effect for areas not under the RRM process reveals that settling Cities will maintain an economic monthly advantage over rates in effect in Lubbock, and environs.

CITIES' OBJECTION TO THE SECTION 104.301 GRIP PROCESS

Cities strongly opposed the GRIP process because it constitutes piecemeal ratemaking by ignoring declining expenses and increasing revenues and rewarding the Company for increasing capital investment. The GRIP process does not allow any review of the reasonableness of capital investment and does not allow cities to participate in the Railroad Commission's review of annual GRIP filings or allow Cities to recover their rate case expenses. The Railroad Commission undertakes a mere administrative review of GRIP filings (instead of a full hearing), and rate increases go into effect without any material adjustments. In the Executive Committee's view, the GRIP process unfairly raises customers' rates without any regulatory oversight. In contrast, the RRM process has allowed for a more comprehensive rate review and annual evaluation of expenses and revenues, as well as capital investment.

EXPLANATION OF "BE IT RESOLVED" PARAGRAPHS

1. This section approves all findings in the Resolution.
2. This section adopts the attached RRM rate tariffs and finds the adoption of the new rates to be just, reasonable, and in the public interest.
3. This section finds that existing rates are unreasonable. Such finding is a necessary predicate to establishment of new rates. The new tariffs will permit Atmos West Texas to recover an additional \$8.4 million over a 12-month period.
4. This section approves an exhibit that establishes a benchmark for pensions and retiree medical benefits to be used in future rate settings.
5. This section requires the Company to reimburse the City for expenses associated with adoption of the Resolution.
6. This section repeals any resolution or ordinance that is inconsistent with this Resolution.
7. This section finds that the meeting was conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.
8. This section is a savings clause, which provides that if any section is later found to be unconstitutional or invalid, that finding shall not affect, impair, or invalidate the remaining provisions of this Resolution. This section further directs that the remaining provisions of the Resolution are to be interpreted as if the offending section or clause never existed.
9. This section provides for an effective date upon passage.
10. This section directs that a copy of the signed Resolution be sent to a representative of the

Company and legal counsel for the Executive Committee.

Morris William Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE EXECUTIVE COMMITTEE OF CITIES SERVED BY ATMOS WEST TEXAS (“CITIES”) AND ATMOS ENERGY CORP., WEST TEXAS DIVISION (THE “COMPANY”) REGARDING THE COMPANY’S 2023 RATE REVIEW MECHANISM FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; APPROVING AN ATTACHMENT ESTABLISHING A BENCHMARK FOR PENSIONS AND RETIREE MEDICAL BENEFITS; REQUIRING THE COMPANY TO REIMBURSE CITIES’ REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS RESOLUTION WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO DELIVER THIS RESOLUTION TO THE COMPANY AND CITIES’ LEGAL COUNSEL

WHEREAS, the City of Midland, Texas (the “City”) is a gas utility customer of Atmos Energy Corp., West Texas Division (the “Company”), and a regulatory authority with an interest in the rates and charges of the Company; and

WHEREAS, the City is a member of Cities Served by Atmos West Texas (“Cities”), a coalition of similarly-situated cities served by the Company that have joined together to facilitate the review of, and response to, natural gas issues affecting rates charged in the Company’s service area; and

WHEREAS, Cities and the Company worked collaboratively to develop a new Rate Review Mechanism (“RRM”) tariff that allows for an expedited rate review process by Cities as a substitute to the Gas Reliability Infrastructure Program (“GRIP”) process instituted by the Legislature, and that will establish rates for Cities based on the system-wide cost of serving the Atmos West Texas service area; and

WHEREAS, the RRM tariff was adopted by the City in a rate ordinance in 2018; and

WHEREAS, on about March 31, 2023, the Company filed its 2023 RRM rate request with Cities based on a test year ending December 31, 2022; and

WHEREAS, Cities coordinated its review of the Company's 2022 RRM filing through its Executive Committee, assisted by Cities' attorneys and consultants, to resolve issues identified in the Company's RRM filing; and

WHEREAS, the Executive Committee, as well as Cities' counsel and consultants, recommends that Cities approve an increase in base rates for the Company of \$8.4 million with an effective date of October 1, 2023; and

WHEREAS, the tariffs attached hereto as Attachment 1, which implement new rates, are consistent with the recommendation of Cities' Executive Committee, are agreed to by the Company, and are just, reasonable, and in the public interest; and

WHEREAS, the settlement agreement sets a new benchmark for pensions and retiree medical benefits as shown in Attachment 2, which is attached hereto; and

WHEREAS, the RRM Tariff contemplates reimbursement of Cities' reasonable expenses associated with RRM applications;

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

SECTION ONE. That the findings set forth in this Resolution are hereby in all things approved.

SECTION TWO. That, without prejudice to future litigation of any issue identified by Cities, the City Council finds that the settled amount of an increase in revenues of \$8.4 million for Cities represents a comprehensive settlement of gas utility rate issues affecting the rates, operations, and services offered by the Company within the municipal limits arising from the Company's 2023 RRM filing, is in the public interest, and is consistent with the City's authority under Section 103.001 of the Texas Utilities Code.

SECTION THREE. That the existing rates for natural gas service provided by the

Company are unreasonable. The new tariffs attached hereto and incorporated herein as Attachment 1 are just and reasonable and are designed to allow the Company to recover annually an additional \$8.4 million in revenue from customers in Cities, over the amount allowed under currently approved rates. Such tariffs are hereby adopted.

SECTION FOUR. That the ratemaking treatment for pensions and retiree medical benefits in the Company's next RRM filing shall be as set forth on Attachment 2, which is attached hereto and incorporated herein.

SECTION FIVE. That the Company shall reimburse the reasonable ratemaking expenses of Cities in processing the Company's 2023 RRM filing.

SECTION SIX. That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Resolution, it is hereby repealed.

SECTION SEVEN. That the meeting at which this Resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

SECTION EIGHT. That if any one or more sections or clauses of this Resolution is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Resolution, and the remaining provisions of the Resolution shall be interpreted as if the offending section or clause never existed.

SECTION NINE. That consistent with the City ordinance that established the RRM process, this Resolution shall become effective from and after its passage with rates authorized by attached tariffs to be effective for bills rendered on or after October 1, 2023.

SECTION TEN. That the City Secretary is hereby authorized and directed to send copies of this Resolution to Atmos West Texas, care of Philip Littlejohn, Vice President of Rates and Regulatory Affairs, West Texas Division, 6606 66th Street, Lubbock, Texas 79424, and Thomas Brocato, General Counsel to Cities, at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701.

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., 2023, 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:

Morris Williams, Jr., Deputy City Manager

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

S:\Resolutions\Administration\2023\Atmos\Approve Settlement.wpd

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	RESIDENTIAL GAS SERVICE	
APPLICABLE TO:	WEST TEXAS CITIES SERVICE AREA – Inside City Limits (ICL)	
EFFECTIVE DATE:	Bills Rendered on and after 10/01/2023	

Availability

This schedule is applicable to general use by Residential customers for heating, cooking, refrigeration, water heating and other similar type uses. This schedule is not available for service to premises with an alternative supply of natural gas.

Monthly Rate

Charge	Amount
Customer Charge	\$ 18.97
Consumption Charge	\$ 0.42269 per Ccf ¹

The West Texas Division Gas Cost Adjustment Rider applies to this schedule.

The West Texas Division Weather Normalization Adjustment Rider applies to this schedule.

The West Texas Division Rider TAX applies to this schedule.

The West Texas Division Rider FF applies to this schedule.

The West Texas Division Rider RRM applies to this schedule.

Miscellaneous Charges: Plus an amount for miscellaneous charges calculated in accordance with the applicable rider(s).

¹ The Consumption Charge includes the base rate amount of \$0.40426 per Ccf and Securitization Regulatory Assurances related to financing costs in the amount of \$0.01843 per Ccf until recovered.

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	COMMERCIAL GAS SERVICE	
APPLICABLE TO:	WEST TEXAS CITIES SERVICE AREA – Inside City Limits (ICL)	
EFFECTIVE DATE:	Bills Rendered on and after 10/01/2023	

Availability

This schedule is applicable to Commercial customers, including hospitals and churches, for heating, cooking, refrigeration, water heating and other similar type uses. This schedule is not available for service to premises with an alternative supply of natural gas.

Monthly Rate

Charge	Amount
Customer Charge	\$ 63.83
Consumption Charge	\$ 0.22465 per Ccf ¹

The West Texas Division Gas Cost Adjustment Rider applies to this schedule.

The West Texas Division Weather Normalization Adjustment Rider applies to this schedule.

The West Texas Division Rider TAX applies to this schedule.

The West Texas Division Rider FF applies to this schedule.

The West Texas Division Rider RRM applies to this schedule.

Miscellaneous Charges: Plus an amount for miscellaneous charges calculated in accordance with the applicable rider(s).

Presumption of Plant Protection Level

For service under this Rate Schedule, plant protection volumes are presumed to be 10% of normal, regular, historical usage as reasonably calculated by the Company in its sole discretion. If a customer believes it needs to be modeled at an alternative plant protection volume, it should contact the company at wtx.plantprotection@atmosenergy.com.

¹ The Consumption Charge includes the base rate amount of \$0.20621 per Ccf and Securitization Regulatory Assurances related to financing costs in the amount of \$0.01843 per Ccf until recovered.

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	INDUSTRIAL GAS SERVICE	
APPLICABLE TO:	WEST TEXAS CITIES SERVICE AREA – Inside City Limits (ICL)	
EFFECTIVE DATE:	Bills Rendered on and after 10/01/2023	

Availability

This schedule is applicable to the sales to any industrial or commercial customer whose predominant use of natural gas is other than space heating, cooking, water heating or other similar type uses. Service under this schedule is available to eligible customers following execution of a contract specifying the maximum hourly load. This schedule is not available for service to premises with an alternative supply of natural gas.

Monthly Rate

Charge	Amount
Customer Charge	\$ 720.80
Consumption Charge	\$ 0.13550 per Ccf ¹

The West Texas Division Gas Cost Adjustment Rider applies to this schedule.

The West Texas Division Rider TAX applies to this schedule.

The West Texas Division Rider FF applies to this schedule.

The West Texas Division Rider RRM applies to this schedule.

Miscellaneous Charges: Plus an amount for miscellaneous charges calculated in accordance with the applicable rider(s).

Presumption of Plant Protection Level

For service under this Rate Schedule, plant protection volumes are presumed to be 10% of normal, regular, historical usage as reasonably calculated by the Company in its sole discretion. If a customer believes it needs to be modeled at an alternative plant protection volume, it should contact the company at wtx.plantprotection@atmosenergy.com.

¹ The consumption charge includes the base rate amount of \$0.11707 per Ccf and Securitization Regulator Asset amounts related to financing costs in the amount of \$0.01843 per Ccf until recovered.

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	PUBLIC AUTHORITY GAS SERVICE	
APPLICABLE TO:	WEST TEXAS CITIES SERVICE AREA – Inside City Limits (ICL)	
EFFECTIVE DATE:	Bills Rendered on and after 10/01/2023	

Availability

This schedule is applicable to general use by Public Authority type customers, including public schools, for heating, cooking, refrigeration, water heating and other similar type uses. This schedule is not available for service to premises with an alternative supply of natural gas.

Monthly Rate

Charge	Amount
Customer Charge	\$ 177.26
Consumption Charge	\$ 0.19805 per Ccf ¹

The West Texas Division Gas Cost Adjustment Rider applies to this schedule.

The West Texas Division Weather Normalization Adjustment Rider applies to this schedule.

The West Texas Division Rider TAX applies to this schedule.

The West Texas Division Rider FF applies to this schedule.

The West Texas Division Rider RRM applies to this schedule.

Miscellaneous Charges: Plus an amount for miscellaneous charges calculated in accordance with the applicable rider(s).

¹ The consumption charge includes the base rate amount of \$0.17962 per Ccf and Securitization Regulator Asset amounts related to financing costs in the amount of \$0.01843 per Ccf until recovered.

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	TRANSPORTATION SERVICE	
APPLICABLE TO:	WEST TEXAS CITIES SERVICE AREA – Inside City Limits (ICL)	
EFFECTIVE DATE:	Bills Rendered on and after 10/01/2022	Page 78

Application

Applicable, in the event that Company has entered into a Transportation Agreement, to a customer directly connected to the Atmos Energy Corp., West Texas Division Distribution System for the transportation of all natural gas supplied by Customer or Customer's agent at one Point of Delivery for use in Customer's facility with an estimated annual usage greater than 100,000 Ccf per meter.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's bill will be calculated by adding the following Customer and Ccf charges to the amounts and quantities due under the riders listed below:

Charge	Amount
Customer Charge per Meter	\$ 720.80 per month
Consumption Charge	\$ 0.11707 per Ccf

Upstream Transportation Cost Recovery: The customer is responsible for all upstream transportation costs.

Retention Adjustment: Plus a quantity of gas equal to the Company's most recently calculated financial L&U percentage for the twelve months ended September multiplied by the gas received into Atmos Energy Corporation's West Texas Division for transportation to the customer.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Miscellaneous Charges: Plus an amount for miscellaneous charges calculated in accordance with the applicable rider(s).

The West Texas Division Rider RRM applies to this schedule.

Conversions: Units may be converted from Ccf to Mcf or Mmbtu as necessary to comply with the underlying transportation agreement.

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	TRANSPORTATION SERVICE	
APPLICABLE TO:	WEST TEXAS CITIES SERVICE AREA – Inside City Limits (ICL)	
EFFECTIVE DATE:	Bills Rendered on and after 10/01/2022	Page 79

Imbalance Fees

All fees charged to Customer under this Rate Schedule will be charged based on the quantities determined under the applicable Transportation Agreement and quantities will not be aggregated for any Customer with multiple Transportation Agreements for the purposes of such fees.

Monthly Imbalance Fees

Customer shall pay Company a monthly imbalance fee at the end of each month as defined in the applicable Transportation Agreement,

Curtailment Overpull Fee

Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the "Index" price reported for the month of delivery in Inside FERC's Gas Market Report under the heading "West Texas Waha".

Replacement Index

In the event the "Index" price reported for the month of delivery in Inside FERC's Gas Market Report under the heading "West Texas Waha" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

Agreement

A transportation agreement is required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Special Conditions

In order to receive transportation service under this tariff, customer must have the type of meter, instrumentation, and communication required by Company. Customer must pay Company all costs associated with the acquisition and installation of the required equipment.

ATMOS ENERGY CORPORATION
WEST TEXAS CITIES ("WTX CITIES") RATE REVIEW MECHANISM
PENSIONS AND RETIREE MEDICAL BENEFITS FOR APPROVAL
TEST YEAR ENDING DECEMBER 31, 2022

Line No.	Description	Shared Services		WTX			Total
		Pension Account Plan	Post-Employment Benefit Plan	Pension Account Plan	Post-Employment Benefit Plan	Supplemental Executive Benefit Plan	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
1	Proposed Benefits Benchmark -						
	Fiscal Year 2023 Willis Towers Watson Report	\$ 1,434,339	\$ (518,336)	\$ 458,605	\$ (1,044,309)	\$ 39,846	
2	Allocation Factor	8.40%	8.40%	96.32%	96.32%	96.32%	
3	Proposed Benefits Benchmark Costs (Excluding Removed Cost Centers)						
	Allocated to West Texas (Ln 1 x Ln 2)	\$ 120,490	\$ (43,542)	\$ 441,726	\$ (1,005,872)	\$ 38,379	
4	O&M and Capital Factor	100.00%	100.00%	100.00%	100.00%	100.00%	
5	Proposed Benefits Benchmark Costs To Approve						
	(Excluding Removed Cost Centers) (Ln 3 x Ln 4)	\$ 120,490	\$ (43,542)	\$ 441,726	\$ (1,005,872)	\$ 38,379	\$ (448,819)
6							
7							
8	Summary of Expense Costs to Approve:						
9							
10	O&M Expense Factor (WP_F-2.3, Ln 2)	78.00%	78.00%	52.86%	52.86%	100.00%	
11							
12	Total Pension Account Plan	\$ 93,985		\$ 233,517			\$ 327,502
13	Total Post-Employment Benefit Plan		\$ (33,964)		\$ (531,751)		(565,715)
14	Total Supplemental Executive Benefit Plan					\$ 38,379	38,379
15	Total (Sum Ln 12 through Ln 14)	\$ 93,985	\$ (33,964)	\$ 233,517	\$ (531,751)	\$ 38,379	\$ (199,834)



City Council Meeting

Item Number: 16
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Alexandra Walling, Senior Planner
Subject: MOTION APPROVING WITH STAFF'S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF EL ALAMO, SECTION 4, BEING A 201.12-ACRE TRACT OF LAND OUT OF THE NORTHWEST QUARTER OF SECTION 9, BLOCK 38, T-1-S, T&P RR CO. SURVEY, MARTIN COUNTY, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF CROWNDRIDGE DRIVE, APPROXIMATELY 3,210 FEET EAST OF ELKINS ROAD) (DISTRICT: NONE) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Schumann Engineering, is requesting to plat a 201.12-acre tract of land out of the northwest quarter of Section 9, Block 38, T-1-S, Martin County, for ownership purposes. On August 7, 2023, the Planning and Zoning Commission recommended to City Council approval of the preliminary plat. Per Section 11-2-3-(D)(11) of the Subdivision Ordinance, City Council approval is required for this plat which is more than 25 acres.

Current Zoning:

ETJ, Extraterritorial Jurisdiction.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Discussion:

This request has been routed to all respective departments for internal review. The comments are below.

BUILDING CODE: (Approved)

ETJ, no jurisdiction. All septic systems are permitted and regulated by the City of Midland Health Department.

SURVEYOR: (Approved)

Looks like along CR 140 on the other plats they are getting a total of 120' right-of-way.

ENGINEERING: (Approved with Conditions)

IMPACT FEES: Plat outside designated service areas. Note not required. [For Applicant's Information Only.]

ROW: Provide this project's share of a 30 ft right-of-way dedication. [For the Applicant's information only.]

PAVING: No Public ROW along frontage. [For the Applicant's information only.]

WATER: No Public ROW along frontage. [For the Applicant's information only.]

FIRE HYDRANTS: Required as needed to meet NFPA, IFC & City Fire Code; and/or comply with directives of City Fire Marshal. After January 14, 2020 - Fire hydrants shall be spaced no more than 500' apart, Pressure Indicator Rings are to be installed and will require the developers/contractors to pay for the flow test. [For the Applicant's information only.]

PRO RATA: None. [For the Applicant's information only.]

SEWER: No Public ROW along frontage. [For the Applicant's information only.]

DRAINAGE: Drainage report is required during preliminary stage of the platting process. FEMA Firm data to be on plat face. [Reference City Code Sect. 11-2-3(D)8]

EASEMENTS: Show existing and proposed. [For the Applicant's information only.]

SIDEWALKS: Required at building permit. However, no city building permits are issued within the county. No sidewalk improvements needed. [For Applicant's Information Only.]

DIMENSION: * * *

OTHER: * * *

TRANSPORTATION: (Approved)

Provide this project's share of a 30 ft right-of-way dedication.

FIRE: (Approved)

No comments.

OIL AND GAS: (Approved)

Not in the City limits- no oil or gas jurisdiction.

GIS: (Approved with Conditions)

Calls for street centerlines are needed. Please provide calls for cutback corners. Are there pipeline easements? Is there a 15' offset along C R 2300? (There was an offset on El Alamo Sec 3 and Sec 2) Markup provided for lot and block numbers.

PLANNING: (Approved)

Staff recommends approval of the Preliminary Plat of El Alamo, Section 4, subject to condition A.

Condition:

- A. Approval of this preliminary plat is subject to the Final plat including all plat comments, conditions, and requirements must be satisfied by all pertinent City departments before filing for recording with the County Clerk of Midland County, Texas.**

Attachments:

Proposed Preliminary Plat
Maps
Application



City Manager's Office



Preliminary Plat Application

Project Number: SUB-23-0639

Case Number: P-23-1695

Proposed Subdivision Plat Name: El Alamo Addition, section 4

Legal Description (attached sealed Metes and Bounds): BEING A 201.12 ACRE TRACT OF LAND IN THE NORTHWEST PART OF SECTION 10, BLOCK 38, T-1-S, T & P, RR CO. SURVEY, MARTIN COUNTY, TEXAS

Property Owner

Printed Name: CAMERON KULBETH

Phone ()
Email

Address

City

State

Zip

Developer (if different than Owner)

Printed Name:

Phone ()
Email

Address

City

State

Zip

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

Firm: SCHUMANN SURVEYING

Printed Name: ED ALEMAN

Phone (432) 254-0327
Email

Address

800 N. MARIENFELD, SUITE 100

City

MIDLAND

State

TEXAS

Zip

79701

Current Zoning: _____

Reason for Platting: OBTAIN SEPTIC PERMITS AND ADDRESSES.

Plat Information

Total Acreage:

201.12

Type

☐ Single-Family Residential

☐ Multi-Family Residential

☐ Commercial

☒ Extraterritorial Jurisdiction (ETJ)

Number of Lots: 148

Number of Multi-family Dwelling Units: _____

Submittal and Fees

Items to be submitted with this application form:

- 1 FOLDED Copy of Dimensioned Plat
- 1 Extra Copy (11x17)
- Digital Files (JPEG & PDF)
- Application Fee – Payable to the 'City of Midland'

Request for a Development Agreement

Do you expect to request a development agreement with the City? ☐ Yes ☐ No

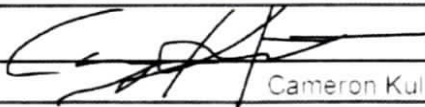
If yes, contact the City Engineer at (432) 685-7286

Provisions

A plat application will not be considered filed pursuant to Section 212.009 of the Texas Local Government Code until all required documents and fees have been submitted and **all of the terms and conditions of the Subdivision Ordinance, including all necessary studies, plans and supporting information are accepted and approved**, or the applicant has filed a waiver request for sections from which the plat deviates. Once a plat meets the requirements to be considered filed with the City, the application will be placed on the Planning and Zoning Commission agenda for consideration under the time requirements set out in Section 212.009.

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

Property Owner (signature)



Date 7/8/2023

Property Owner (printed)

Cameron Kulbeth

The Preliminary Plat shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Subdivision Code of Ordinances of the City of Midland and when such required items for the application are also received.

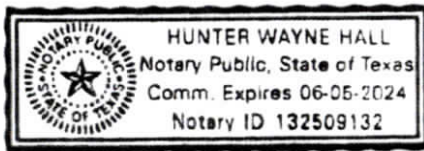
All materials, including exhibits, submitted in support of an application or displayed during a public hearing shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

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


Authorized Agent (signature)

Subscribed and sworn to before me, this 8th day of July, 2023, to certify which witness my hand and seal of office.




NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☒ 1 Copy of Dimensioned Plat

☒ Plat in Digital Format (PDF/JPEG)

☒ Application Fee

☒ 1 Copy of Plat (11x17)

Check # 2023

RECEIVED
JUL 11 2023

Received By: 

Date

BY:

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

Preliminary Plat Application

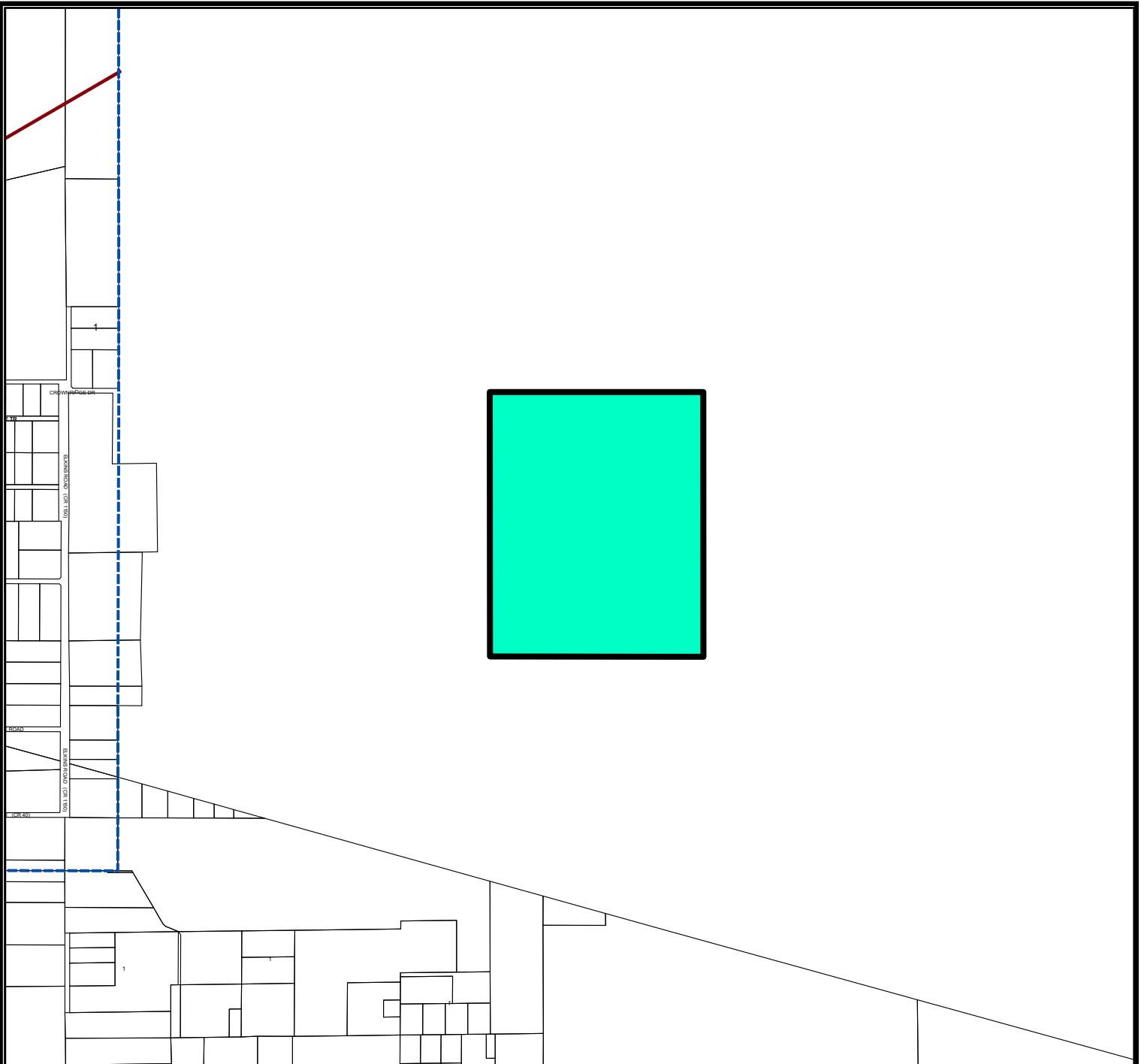
2

Revised 07/01/19

PACKET

16.6

August 22, 2023



LOCATION MAP

SUB-23-0639

Scale: 1" = 200'

Plat of El Alamo, Section 4, being a 201.12-acre tract of land out of the northwest quarter of Section 9, Block 38, T-1-S, Martin County, Texas.

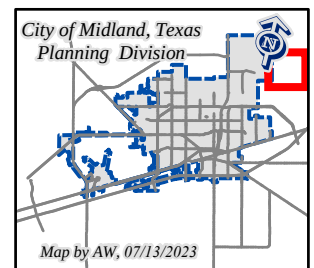
Generally located on the south side of Crownridge Drive, approximately, 3,210-feet east of Elkins Road. – (Extraterritorial Jurisdiction)

PACKET

16.7

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



August 22, 2023

THE
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FOR
TA.



City Council Meeting

Item Number: 17
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Daniel Humbert, Planner
Subject: MOTION APPROVING WITH STAFF'S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF HANNAH ADDITION, SECTION 5, BEING A 30.67-ACRE TRACT OF LAND OUT OF THE SOUTHEAST PART OF SECTION 13, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH COUNTY ROAD 1232 (ANTELOPE TRAIL), APPROXIMATELY 270 FEET SOUTH OF WEST COUNTY ROAD 126) (DISTRICT: NONE) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Schumann Surveying, Inc., is requesting to plat a 30.67-acre tract of land out of the southeast part of Section 13, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas into seven lots to obtain addressing and septic permits. On August 7, 2023, the Planning and Zoning Commission recommended to City Council approval of the preliminary plat. Per Section 11-2-3-(D)(11) of the Subdivision Ordinance, City Council approval is required for this plat which is more than 25 acres.

Current Zoning:

ETJ, Extraterritorial Jurisdiction

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Discussion:

This request has been routed to all respective departments for internal review. The comments are below.

BUILDING CODE: (Approved)

ETJ, no jurisdiction. All septic systems are permitted and regulated by the City of Midland Health Department.

SURVEYOR: (Approved)

No comments.

ENGINEERING: (Approved with Conditions)

IMPACT FEES: Property is outside of the designated service areas. Remove impact fee note. [For the Applicant's information only.]

ROW: Okay as shown. [For the Applicant's information only.]

PAVING: Deferral request for paving improvements were administratively approved on 07/26/2023. [For the Applicant's information only.]

Water: Deferral request for water improvements were administratively approved on 07/26/2023. [For the Applicant's information only.]

FIRE HYDRANTS: Required as needed to meet NFPA, IFC & City Fire Code; and/or comply with directives of City Fire Marshal. After January 14, 2020 - Fire hydrants shall be spaced no more than 500' apart, Pressure Indicator Rings are to be installed and will require the developers/contractors to pay for the flow test. [For the Applicant's information only.] PRO RATA: None. [For the Applicant's information only.]

SEWER: Deferral request for wastewater improvements were administratively approved on 07/26/2023. [For the Applicant's information only.]

DRAINAGE: Drainage report has been reviewed and returned with comments. Comments must be addressed prior to recording of the final plat. Delineate the 100-year floodplain on plat. [For the Applicant's information only.]

EASEMENTS: Show existing and proposed. [For the Applicant's information only.]

DIMENSION: * * *

OTHER: * * *

TRANSPORTATION: (Approved)

No additions or changes to site access are approved with plat or zoning review. Driveways or other access points are approved only with construction drawing review. [For the Applicant's information only.]

No objections to plat. [For the Applicant's information only.]

FIRE: (Approved)

No comments.

OIL AND GAS: (Approved)

Not in the City limits - no oil or gas jurisdiction.

GIS: (Approved with Conditions)

Block should be labeled on plat visual. Block number is 5. Lots can be 12-18. Legal description should say "being a plat of 28.84 acres..." Missing distances for 60' Private Access and utility easement. The distance to the center of the cul-de-sac should be given as well.

Midland County Public Works:

No comments.

Health Department:

Yes, the health department will review application to ensure the proposed plans on the application for the septic system will meet the setbacks from the water well on the property and the water wells on the adjacent properties.

CRMWD: (Approved)

No comments.

PLANNING: (Approved with Conditions)

Staff recommends approval of the Preliminary Plat of Hannah Addition, Section 5, subject to condition A.

Condition(s):

- A. Approval of this preliminary plat is subject to the Final plat including all plat comments, conditions, and requirements must be satisfied by all pertinent City departments before filing for recording with the County Clerk of Midland County, Texas.

Attachments:

Preliminary Plat
Application
Maps



City Manager's Office

PRELIMINARY HANNAH ADDITION SECTION 5

BEING A 30.67-ACRE TRACT OF LAND OUT OF THE
SOUTHEAST PART OF SECTION 13, BLOCK 40, T-2-S, T&P RR
CO. SURVEY, MIDLAND COUNTY, TEXAS.

STATE OF TEXAS §
COUNTY OF MIDLAND §

WHEREAS, WE ARE THE RECORD OWNER(S) OF A TRACT OF LAND SITUATED IN THE SOUTHEAST PART OF
SECTION 13, BLOCK 40, T-2-S, T & P, RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND MORE
PARTICULARLY DESCRIBED HEREON.

FIELD NOTE DESCRIPTION OF A 30.67 ACRE TRACT OF LAND, OUT OF THE SOUTHEAST PART OF SECTION 13,
BLOCK 40, T-2-S, T & P, RR CO. SURVEY, MIDLAND COUNTY, TEXAS, SAID 30.67 ACRE TRACT DESCRIBED
MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A REINF BAR SET (N:10669438.39, E:1738852.02) IN THE WEST RIGHT OF WAY OF SOUTH
COUNTY ROAD 1230 AND THE NORTH RIGHT OF WAY OF WEST COUNTY ROAD 130 FOR THE SOUTHEAST
CORNER OF THIS TRACT, FROM WHICH THE SOUTHEAST CORNER OF SECTION 13 BEARS SOUTH 14°17'50"
EAST 100 FEET;

THENCE SOUTH 75°12'37" WEST, ALONG SAID NORTH RIGHT OF WAY LINE, 800.02 FEET TO A REINF BAR SET
IN THE EAST RIGHT OF WAY OF SOUTH COUNTY ROAD 1232 (ANTELOPE TRAIL) FOR THE SOUTHWEST
CORNER OF THIS TRACT;

THENCE NORTH 14°17'52" WEST, ALONG SAID EAST RIGHT OF WAY, 1573.86 FEET TO A REINF BAR FOUND
MARKED "LCA" FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE NORTH 75°41'56" EAST 800.01 FEET TO A REINF BAR FOUND MARKED "LCA" IN SAID WEST RIGHT
OF WAY OF SOUTH COUNTY ROAD 1230 FOR THE NORTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 14°17'50" EAST, ALONG SAID EAST RIGHT OF WAY, 1567.04 FEET TO THE PLACE OF
BEGINNING.

BEARINGS AND DISTANCES SHOWN ARE BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS
COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT I DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS HANNAH ADDITION, SECTION 4, AN ADDITION OF
30.67 ACRES IN MIDLAND COUNTY, TEXAS, AND DO HEREBY DEDICATE TO THE PUBLIC USE FOREVER THE STREETS, ALLEY, AND EASEMENTS,
(AND PARKWAYS) SHOWN HEREON.

WITNESS MY HAND AT MIDLAND, TEXAS, THIS ____ DAY OF ____, 2023.

ADAMS DEVELOPMENT GROUP, LLC

STATE OF TEXAS §
COUNTY OF MIDLAND §

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS ____ DAY OF ____, 2023, BY ADAMS DEVELOPMENT GROUP,
LLC

CERTIFICATE OF APPROVAL

FOR APPROVAL BY THE DIRECTOR OF DEVELOPMENT SERVICES:

THIS IS TO CERTIFY THAT THE ABOVE AND FOREGOING PLAT OF SUBDIVISION NAME WAS
APPROVED BY PROPER ACTION OF THE CITY PLANNING AND ZONING COMMISSION OF THE
CITY OF MIDLAND, ON THIS ____ DAY OF ____, 2023.

SIGNED: _____
CHAIRMAN LUCY SINIEGA

ATTEST: _____
SECRETARY JEFF FISHER

NOTARY PUBLIC
MIDLAND COUNTY, TEXAS

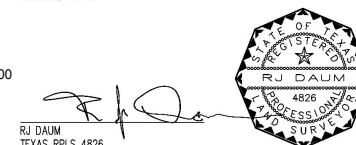
LEGEND:

- MONUMENT AS DESCRIBED
- PROPERTY LINE
- - - ADJOINING PROPERTIES
- SECTION LINE
- UTILITY EASEMENT

OWNER(S):

ADAMS DEVELOPMENT GROUP, LLC
3203 S COUNTY ROAD 1200
MIDLAND, TX
432-238-2101
brandonadams@jconstruction.net

THAT I, RJ DAUM, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT
I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND AND THAT
THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY PLACED UNDER MY PERSONAL
SUPERVISION. IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF
MIDLAND, TEXAS.



RJ DAUM
TEXAS RPLS 4826

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO. _____ CABINET _____
DATE _____ PAGE _____

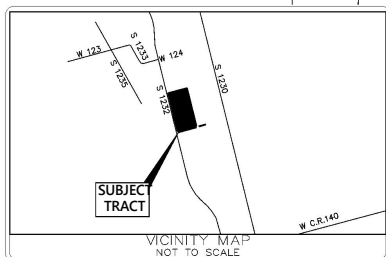
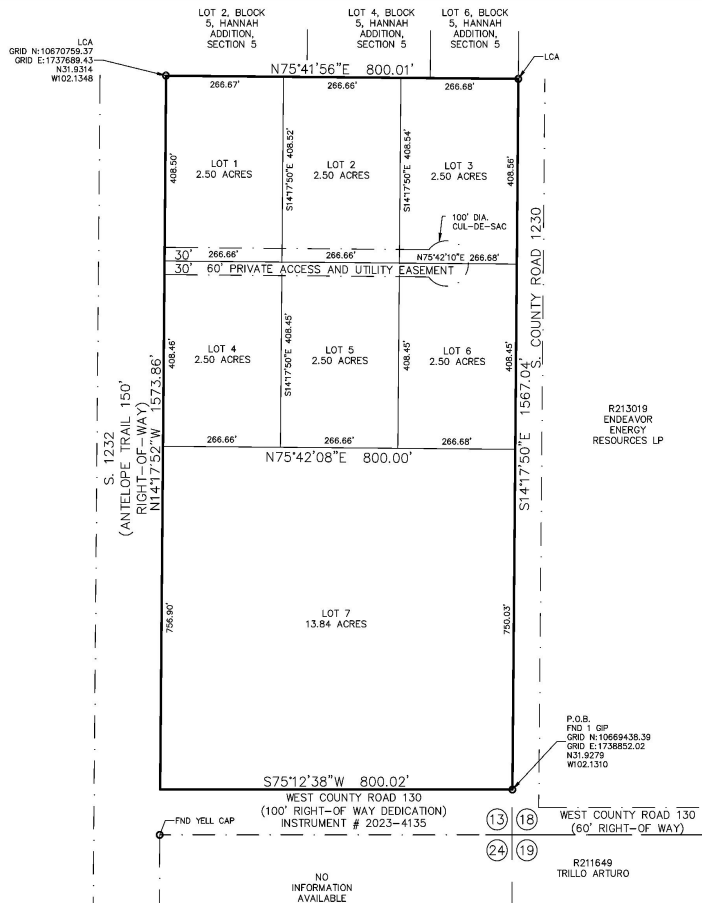
SCHUMANN
LAND SURVEYING
AND COMPANY
200 N. WATKINS STREET
SUITE 100
MIDLAND, TEXAS 79701
Office (432) 684-0548

August 22, 2023

GRAPHIC SCALE
0 200 400
(1 INCH = 200' FEET)

17.5

NO.	DATE	DESCRIPTION	BY	DRAWN BY:	DATE:
1	03/24/2023	SKETCH PLAN	JG	JG	03/24/2023
				CHECKED BY: ED/RJ	PROJECT NO.: 79266
				JOB NO.: 79,266	SHEET: 1 OF 1



NOTES:

- BEARINGS, DISTANCES AND ACREAGE SHOWN ARE BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.
- MONUMENTS ARE A 1/2 INCH REINFORCING BAR SET WITH YELLOW PLASTIC CAP STAMPED "SCHUMANN ENGINEERING" UNLESS OTHERWISE NOTED.
- SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
- APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
- THE INSTALLATION OF PUBLIC IMPROVEMENTS MAY BE REQUIRED BY THE CITY OF MIDLAND AS SUCH TIME AS: (1) ANY LOT IS RE-PLATTED FOR SUBDIVISION INTO MORE THAN ONE TRACT OR (2) THE PROPERTY IS REZONED FOR A MORE INTENSIVE USE.
- REPRESENTATION OF FLOODPLAIN BOUNDARIES ARE APPROXIMATE AND FOR ILLUSTRATIVE PURPOSES ONLY. ANY DEVELOPMENT WITHIN FLOODPLAIN AREAS WILL REQUIRE A FLOODPLAIN DEVELOPMENT PERMIT FROM THE CITY OF MIDLAND FLOODPLAIN ADMINISTRATOR.
- ANY PERSON WHO DESIRES TO ERECT A NEW STRUCTURE OR REBUILD, REPLACE OR ENLARGE AN EXISTING STRUCTURE, ESTABLISH A NEW USE OR SUBSTANTIALLY CHANGE AN EXISTING USE IN THE A02-4 MUST APPLY FOR AND RECEIVE A PERMIT. A PERMIT SHALL BE GRANTED UNLESS THE NEW STRUCTURE OR THE NEW USE WOULD BE A HEIGHT HAZARD OR A PROHIBITED LAND USE AS SET FORTH IN SECTIONS 11-11-8, 11-11-9, AND TABLE 1 OF THIS CHAPTER OR WOULD OTHERWISE VIOLATE THIS CHAPTER. APPLICATIONS FOR PERMITS SHALL BE SUBMITTED TO AND ISSUED BY THE CITY OF MIDLAND BUILDING OFFICIAL.

THIS PLAT HAS BEEN CHECKED FOR ACCESSIBILITY OF UTILITIES:

SIGNED: _____
ONCOR ELECTRIC DELIVER COMPANY

SIGNED: _____
AT&T TEXAS

SIGNED: _____
ATMOS ENERGY

SIGNED: _____
OPTIMUM COMMUNICATIONS

SIGNED: _____
ASTOUND COMMUNICATIONS

PACKET



Preliminary Plat Application

Project Number: SUB-23-0622
Case Number: P-23-1683

Proposed Subdivision Plat Name: Hannah Addition, Section 5

Legal Description (attached sealed Metes and Bounds): BEING A 30.67-ACRE TRACT OF LAND OUT OF THE SOUTHEAST PART OF SECTION 13, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS.

Property Owner Printed Name: <u>Brandon Adams</u>		Phone () Email	
Address	City	State	Zip

Developer (if different than Owner) Printed Name:		Phone () Email	
Address	City	State	Zip

Representative (if acting as Agent, see affidavit on page 2) Firm: <u>Schumann Surveying</u> Printed Name: <u>Ed Aleman</u>		Phone (432) <u>684-5548</u> Email <u>ealeman@schumannonline.net</u>	
Address <u>800 N. Marienfield, Suite 100</u>	City <u>Midland</u>	State <u>TX</u>	Zip <u>79701</u>

Current Zoning: _____

Reason for Platting: To obtain Address and Septic permits

Plat Information	Total Acreage:	<u>30.67</u>
Type: ☐ Single-Family Residential ☐ Multi-Family Residential ☐ Commercial ☒ Extraterritorial Jurisdiction (ETJ)		
Number of Lots: <u>7</u>	Number of Multi-family Dwelling Units:	

Submittal and Fees
Items to be submitted with this application form:

- 1 FOLDED Copy of Dimensioned Plat
- 1 Extra Copy (11x17)
- Digital Files (JPEG & PDF)
- Application Fee – Payable to the 'City of Midland'

Request for a Development Agreement
Do you expect to request a development agreement with the City? ☐ Yes ☐ No
If yes, contact the City Engineer at (432) 685-7286

Provisions

A plat application will not be considered filed pursuant to Section 212.009 of the Texas Local Government Code until all required documents and fees have been submitted and **all of the terms and conditions of the Subdivision Ordinance, including all necessary studies, plans and supporting information are accepted and approved**, or the applicant has filed a waiver request for sections from which the plat deviates. Once a plat meets the requirements to be considered filed with the City, the application will be placed on the Planning and Zoning Commission agenda for consideration under the time requirements set out in Section 212.009.

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

Property Owner (signature):

BA

Date: 7-8-23

Property Owner (printed):

Brandon Adams

The Preliminary Plat shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Subdivision Code of Ordinances of the City of Midland and when such required items for the application are also received.

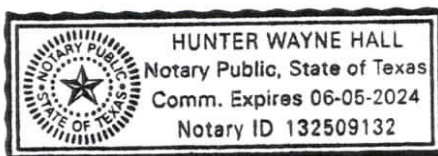
All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Ed Aleman who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or is authorized by Brandon 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.

Edoardo J. Aleman
Authorized Agent (signature)

Subscribed and sworn to before me, this 10th day of July, 20 23, to certify which witness my hand and seal of office.



H. H.
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization

☒ 1 Copy of Dimensioned Plat

☒ Plat in Digital Format (PDF/JPEG)

☒ Application Fee

☒ 1 Copy of Plat (11x17)

Check #

2034

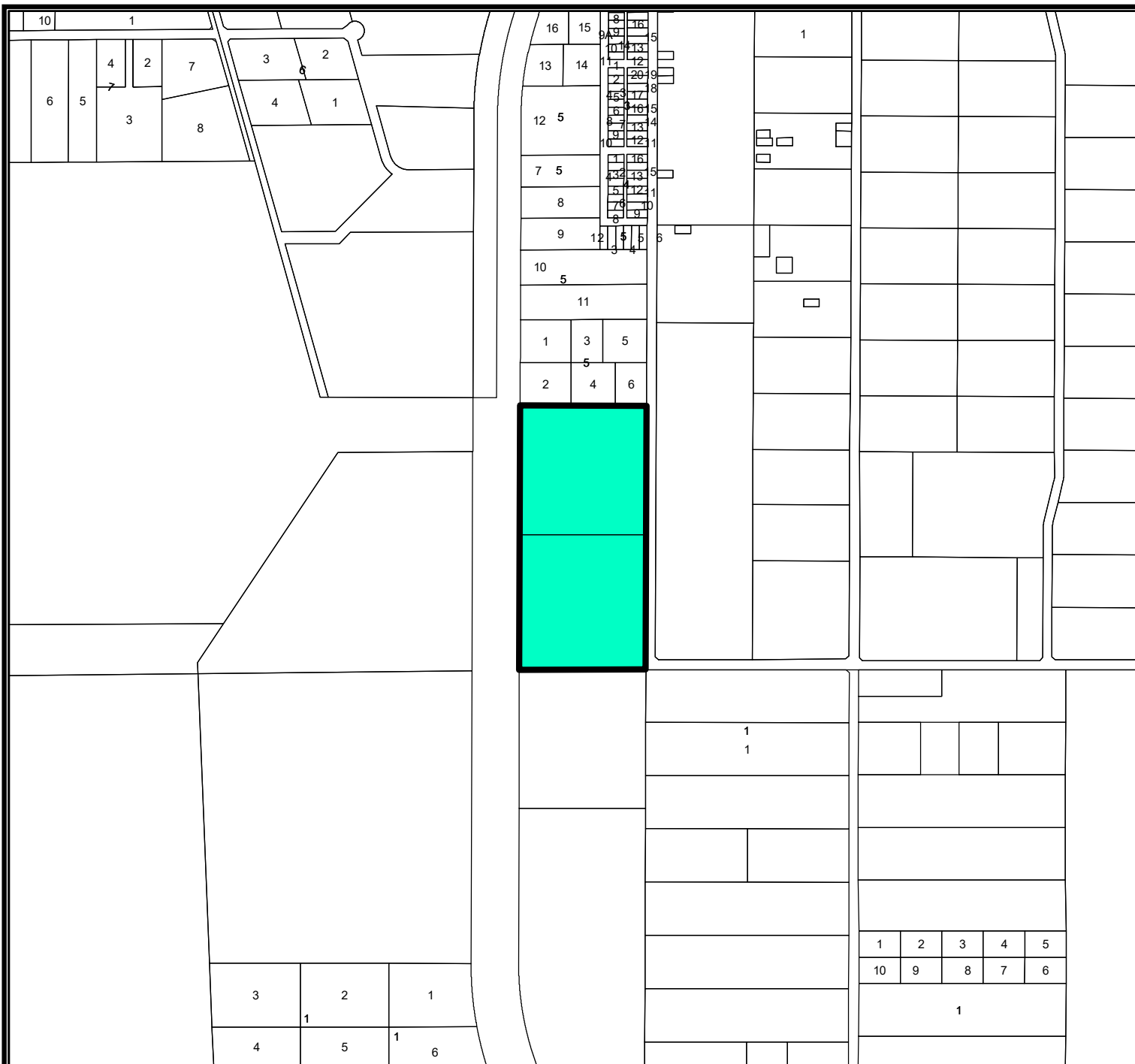
RECEIVED

JUL 10 2023

Received By: [Signature]

Date:

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



LOCATION MAP

P-23-1683

Scale: 1" = 200'

Proposed plat of Hannah Addition, Section 5, being a 30.67-acre tract of land out of the Southeast Part of Section 13, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas.

Generally located northeast of the intersection of West County Road 130 and Antelope Creek (Extraterritorial Jurisdiction) 17.8

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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August 22, 2023

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR IS IT DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



City Council Meeting

Item Number: 18
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Jeffrey Fisher, Planning Manager
Subject: MOTION APPROVING WITH STAFF'S RECOMMENDED CONDITIONS A PROPOSED PRELIMINARY PLAT OF WEST END ADDITION, SECTION 30, BEING A REPLAT OF LOTS 1-3, BLOCK 75, WEST END ADDITION, AND A 0.069-ACRE PORTION OF VACATED ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1-3 AND LOTS 6-8, BLOCK 75, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF ANDREWS HIGHWAY AND WEST TEXAS AVENUE) (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Aaron Burrell Land Surveyors, Inc., is requesting to replat Lots 1-3, Block 75, West Addition, and a 0.069-acre portion of vacated alley right-of-way located adjacent to Lots 1-3 and Lots 6-8, Block 75, West End Addition.

Pursuant to Section 11-2-3-(D)(11)(a)(11) of the Midland City Code, City Council approval is required for a preliminary plat that was approved by operation of law due to the commission's failure to approve, approve with conditions, or disapprove said plat within the applicable period of time prescribed by Chapter 212 of the Local Government Code, as amended, or due to the commission's failure to otherwise comply with a requirement of Chapter 212 of the Local Government Code, as amended.

Current Zoning:

RR, Regional Retail District.

Recommended City Council Action:

Approve

Fiscal Impact:

No city funds would be required for this project.

Discussion:

This request has been routed to all respective departments for internal review. The comments are below.

BUILDING CODE: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 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.

SURVEYOR: (Approved)

No comments.

ENGINEERING: (Approved with Conditions)

IMPACT FEES: Ok as shown [For Applicant's Information Only.]

ROW: Refer to Transportation's comments if any. [For Applicant's Information Only.]

PAVING: Texas Ave. is ok as is, No public paving improvements required for that road. North O Street sub-standard, however, the improvements will be brought up along with the building permit. [For Applicant's Information Only.]

Andrews Highway is TxDOT facility, built and maintained by TxDOT, no improvements required. [For Applicant's Information Only.]

WATER: 12" water exists in N. O Street, 4" water line exists in alley south of tract, a 6" water exists in Texas ave., and a 6" along Andrews HWY ROW, okay as is. No public water improvements required. [For Applicant's Information Only.]

FIRE HYDRANTS: Required as needed to meet NFPA, IFC & City Fire Code; and/or comply with directives of City Fire Marshal. After January 14, 2020 - Fire hydrants shall be spaced no more than 500' apart, Pressure Indicator Rings are to be installed and will require the developers/contractors to pay for the flow test. [For Applicant's Information Only.]

PRO RATA: None. [For Applicant's Information Only.]

SEWER: 8" sewer exists in alley south of tract, okay as is. No public wastewater improvements required. [For Applicant's Information Only.]

DRAINAGE: Drainage study received with building permit and in review. [For Applicant's Information Only.]

EASEMENTS: Show existing and proposed. Provide a Public Improvement Easement (PIE) along south end of property.[For Applicant's Information Only.]

SIDEWALKS: Required at building permit. [Reference City Code Section 11-2-3(G)1 & 11-2-4(A)2(a)]

DIMENSION: * * *

OTHER:

TRANSPORTATION: (Approved)

Provide 20 ft x 20 ft intersection corner clips at property corners adjacent to all public street intersections. [Reference City Code Section 11-2-5(C)3(k).]

No additions or changes to site access are approved with plat or zoning review. Driveways or other access points are approved only with construction drawing review. [For the Applicant's information only.]

FIRE: (Approved)

All future development shall meet the requirements of IFC 2015 ed. and local ordinances.

OIL AND GAS: (Approved)

No oil or gas issues.

GIS: (Approved with Conditions)

Block should be labeled on plat visual. Block number is 5. Lots can be 12-18. Legal description should say "being a plat of 28.84 acres..." Missing distances for 60' Private Access and utility easement. The distance to the center of the cul-de-sac should be given as well.

PLANNING: (Approved with Conditions)

Provide documentation that Kevin Mattson is authorized to sign as the property owner. Midland Central Appraisal District shows that RS Texas Avenue, LLC is the property owner. This is inconsistent with the owner's certificate which lists Kevin Mattson as the owner. Kevin Mattson can sign on behalf of RS Texas Avenue if authorized to do so but the owner information must be consistent throughout the face of the plat. [Midland City Code 11-2-3(A)1]

This plat should be drawn to a scale of 1" = 200 feet. [Midland City Code 11-2-3(C)1(b)]

The recently abandoned alley right of way must be shown and noted on the plat with the approved ordinance number 10417.

Staff recommends approval of the Preliminary Plat of West End Addition, Section 30, subject to condition A.

Condition(s):

- A. Approval of this preliminary plat is subject to the Final plat including all plat comments, conditions, and requirements must be satisfied by all pertinent City departments before filing for recording with the County Clerk of Midland County, Texas.**

Attachments:

Preliminary Plat
Application
Maps



City Manager's Office



Preliminary Plat Application

Project Number: SUB-23-0628

Case Num _____

Proposed Subdivision Plat Name: West End Addition, Section 30

Legal Description (attached sealed Metes and Bounds): Being a Replat of Lots 1 thru 3, Block 75, and the previously vacated 20 Foot alley in block 75, West End Addition, City & County of Midland, Texas

Property Owner

Printed Name: Red Sky Holdings, LLC

Phone (972) 369-4123
Email kmattson@redskyholdings.com

Address 15110 N Dallas Parkway Suite 440 City Dallas

State TX Zip 75258

Developer (if different than Owner)

Printed Name: _____

Phone ()
Email _____

Address _____ City _____

State _____ Zip _____

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

Firm: Aaron Burrell Land Surveyors

Phone 432-848-4439
Email aaron@asbsurveyors.com

Printed Name: Aaron Burrell

Address 415 W. Wall St #204 City Midland

State TX Zip 79701

Current Zoning: _____

Reason for Platting: _____

Plat Information

Total Acreage: .552 Acres

Type: ☐ Single-Family Residential ☐ Multi-Family Residential
☒ Commercial ☐ Extraterritorial Jurisdiction (ETJ)

Number of Lots: 1 Number of Multi-family Dwelling Units: 0

Submittal and Fees

Items to be submitted with this application form:

- 1 FOLDED Copy of Dimensioned Plat
- 1 Extra Copy (11x17)
- Digital Files (JPEG & PDF)
- Application Fee – Payable to the 'City of Midland' \$350.00

Request for a Development Agreement

Do you expect to request a development agreement with the City? ☐ Yes ☐ No

If yes, contact the City Engineer at (432) 685-7286

Provisions

A plat application will not be considered filed pursuant to Section 212.009 of the Texas Local Government Code until all required documents and fees have been submitted and ***all of the terms and conditions of the Subdivision Ordinance, including all necessary studies, plans and supporting information are accepted and approved***, or the applicant has filed a waiver request for sections from which the plat deviates. Once a plat meets the requirements to be considered filed with the City, the application will be placed on the Planning and Zoning Commission agenda for consideration under the time requirements set out in Section 212.009.

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

Property Owner (signature):



Date: 6-16-2023

Property Owner (printed): Kevin Mattson

The Preliminary Plat shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Subdivision Code of Ordinances of the City of Midland and when such required items for the application are also received.

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

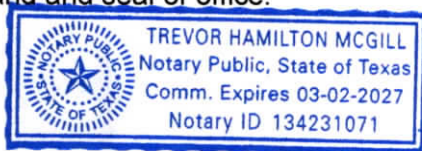
STATE OF TEXAS

COUNTY OF ~~MIDLAND~~ Dallas

Before me, the undersigned authority, on this day personally appeared Kevin Mattson who, being by me duly sworn, upon oath says: That (s)he is the owner of Red Sky Holdings or 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 16 day of June, 20 23, to certify which witness my hand and seal of office.



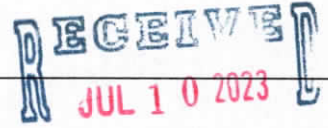

NOTARY PUBLIC, ~~MIDLAND~~ Dallas COUNTY, TEXAS

FOR OFFICE USE ONLY

- | | | |
|--|--|---|
| ☒ Property Owner Authorization | ☒ 1 Copy of Dimensioned Plat | ☒ Plat in Digital Format (PDF/JPEG) |
| ☒ Application Fee | ☒ 1 Copy of Plat (11x17) | |

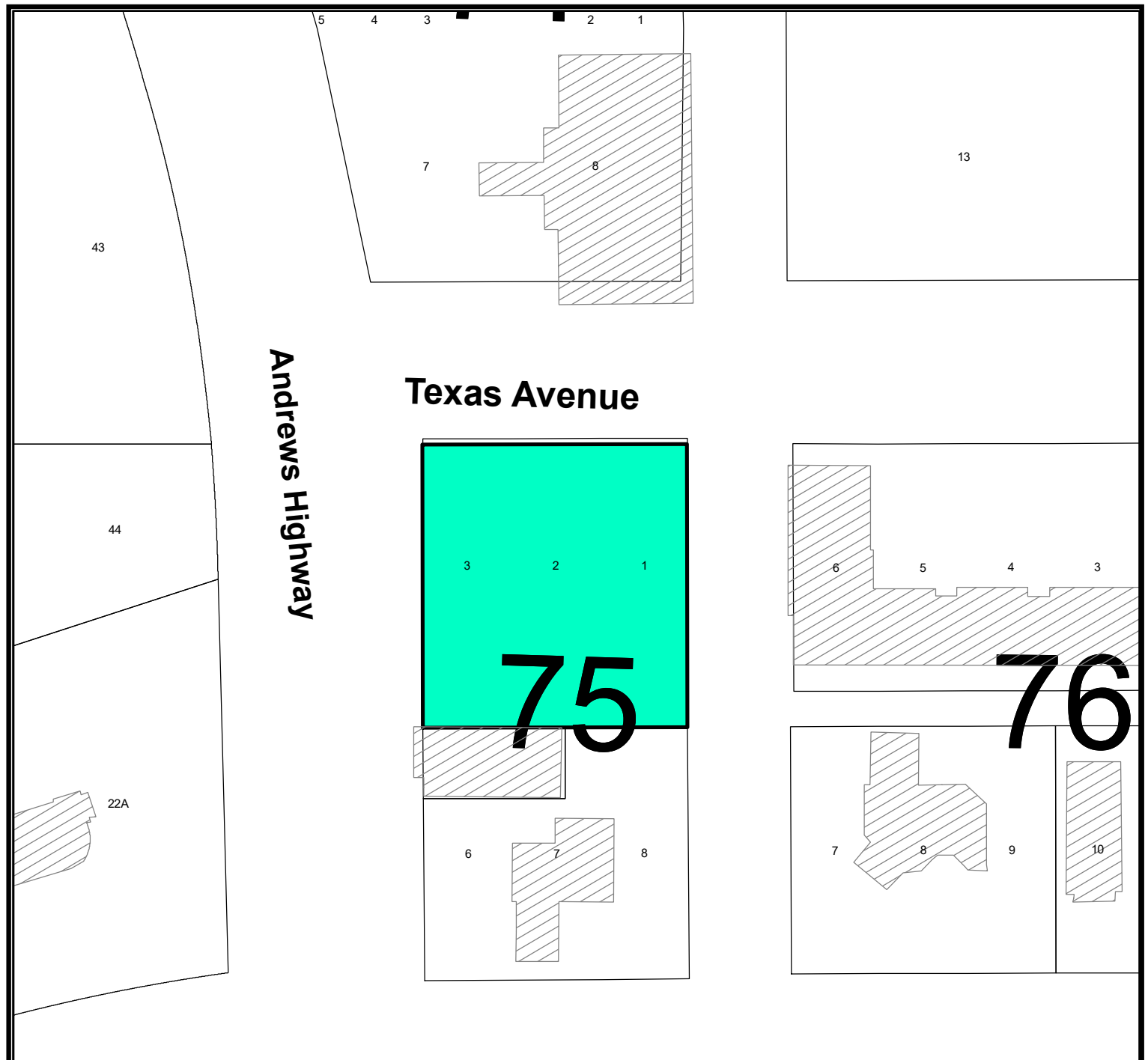
Check # 350

Received By: AW

Date: 

BY: AW

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



LOCATION MAP

SUB-23-0628

Scale: 1" = 200'

PROPOSED PRELIMINARY PLAT OF WEST END ADDITION, SECTION 30, BEING A REPLAT OF LOTS 1-3, BLOCK 75, WEST END ADDITION, AND A 0.069-ACRE PORTION OF VACATED ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1-3 AND LOTS 6-8, BLOCK 75, WEST END ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS

(GENERALLY LOCATED ON THE SOUTHEAST CORNER OF ANDREWS HIGHWAY AND WEST TEXAS AVENUE) (DISTRICT 3)

PACKET

18.8

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

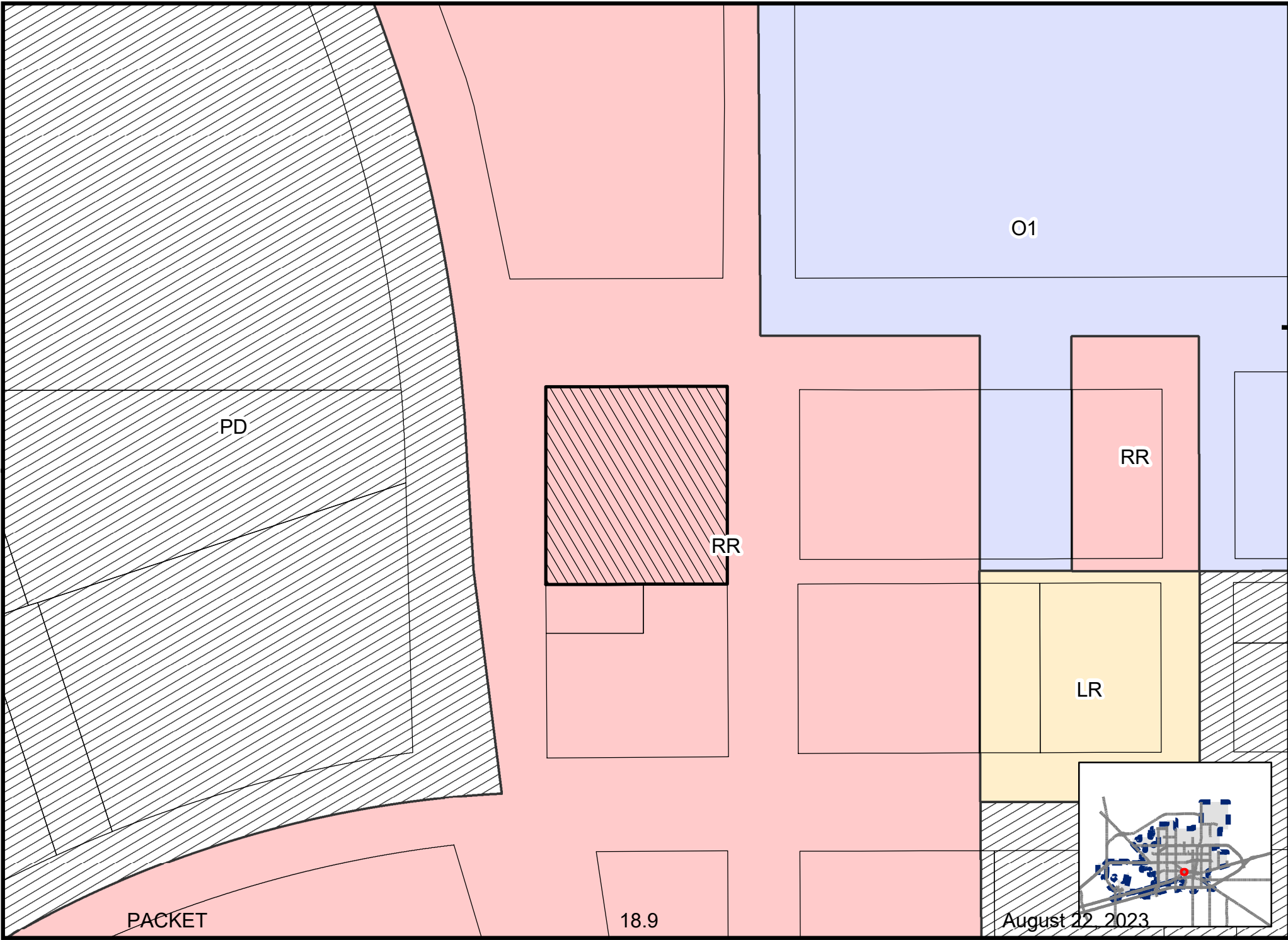


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

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

August 22, 2023





City Council Meeting

Item Number: 19
Meeting Date: August 22, 2023
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way
Subject: Motion authorizing the execution of a Right-of-Way License (23-329-042) with Midland - Petro D.C. Partners LLC, regarding City-owned property described as Sections 5 and 44, Block 38, T-1-S and Section 1, Block 39, T-2-S, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will provide the applicant a 30' wide right of way to place an Eighteen inch (18) private, HDPE, water pipeline on the City of Midland-owned real property in support of City-owned mineral production. The applicant will need an additional 20' to 50' wide temporary workspaces in certain areas for construction.

This Right-of-Way License is proposed for a single ten-year term. 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

Lease Rate,

18" Water pipeline (\$280.00 per rod x 481.68 rods) paid 10 years in advance (\$134,870.40)

Surface Damages: included in the new annual rate.

Total Collected: \$135,870.40

Discussion:

This is a private, HDPE construction water line and will be Eighteen Inches (18") in diameter and will be buried Forty-Eight inches (48) deep.

The pipeline will exclusively service the City of Midland mineral lease with Permian Deep Rock Oil Company and Surface Use Agreement dated April 21, 2022, with Midland-Petro D.C Partners, LLC on the City of Midland owned land located East of the Executive Airpark. The applicant will be required to locate, mark, and bore under any existing City of Midland pipelines.

Certificates of Insurance are on file.

City Secretary is to record all documents.



City Manager's Office

RIGHT OF WAY LICENSE

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

Date: August 23, 2023

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: Midland-Petro D.C. Partners LLC

Licensee's Representative: J. Wayne Bailey

Licensee's Mailing Address: 500 W. Wall St., Suite 30
Midland, Texas 79701

Property: As described in Article III below

License Number: 23-329-042

Licensee desires use of certain Property (as defined below) owned by Licensor in Midland 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 ONE HUNDRED THIRTY-FOUR THOUSAND EIGHT HUNDRED SEVENTY and 40/100 Dollars (\$134,870.40) ("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 fifty (50) to eighty (80) feet in width of the locations with boring operations limited to areas as shown on Exhibit A attached hereto and incorporated herein for the purpose of operating, repairing, maintaining, replacing and removing, thereon, along the herein described locations, a high density polyethylene pipeline, not to exceed eighteen (18) inches in diameter, for the transportation of water and to have the right of ingress and egress at convenient points for such purpose and said construction width shall revert to thirty (30) feet after the pipeline is completed (the "Property"). **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

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

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

D. Pipeline Depth. Licensee covenants and agrees that it will bury the pipeline to be constructed hereunder no less than forty-eight (48) inches in depth. All backfill used in burying such pipeline shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of any City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline intersects with a City of Midland utility line location, the pipeline shall be bored at a depth of at least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. 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 PIPELINE 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 pipeline 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 be promptly removed from the Property.

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

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

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace 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 pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor 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 Licensors as an additional insured and all insurance shall waive subrogation in favor of Licensors.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensors.

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

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

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

provide any insurance whatsoever pursuant to this License.

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

B. Indemnity. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LICENSEE, ITS SUCCESSORS AND ASSIGNS, AGREE TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS 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 PIPELINE 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 PIPELINE 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 Indemnities, (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 Licenser within the time and manner provided herein shall exonerate, excuse and except Licenser from any liability whatsoever. Licenser is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licenser 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 Licenser 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 Licenser as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licenser 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. Licenser 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 Licenser's governmental immunity and the parties hereto expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licenser'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 Licenser'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 Licenser'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 Licenser. Licensee is paying Licenser 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 Licenser'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 Licensors. 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 Licensors and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensors 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 Licensors to enforce any provision of this License shall not be deemed nor shall constitute a waiver of the right of Licensors 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 Licensors from asserting any right to specific performance, damages or any other rights or remedies to which Licensors 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 Licensors in form and substance satisfactory to Licensors.

S. Entire Agreement. This License constitutes the entire agreement between Licensors 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 Licensors 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 Craig, Director of Utilities

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:
MIDLAND-PETRO D.C. PARTNERS, LLC

By: 
Printed Name: J. Wayne Bailey
Title: Attorney-in-Fact

THE STATE OF Texas §
COUNTY OF Midland §
§

BEFORE ME, the undersigned authority, on this 3rd day of August, 2023 personally appeared J. Wayne Bailey an officer of Midland-Petro D.C. Partners, 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 3rd day of August, 2023.

Estella Peña
Notary Public, State of Texas

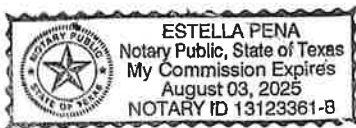


EXHIBIT "A"

MIDLAND PETRO D.C. PARTNERS LLC

SECTION 5, BLOCK 38, T-2-S,
T. & P. RR. CO. SURVEY, A-156
MIDLAND COUNTY, TEXAS
LICENSE AGREEMENT AREA PLAT
TOTAL LENGTH: 3972.34 FEET OR 240.75 RODS
LICENSE AGREEMENT AREA: 2.94 ACRES
TEMPORARY WORKSPACE: 3.33 ACRES
ADDITIONAL TEMPORARY WORKSPACE: 0.40 ACRES



SCALE: 1" = 1000'
0' 500' 1000'

SECTION 43
T. & P. RR. CO.
A-31

SECTION 44
T. & P. RR. CO.
A-1201

PARSLEY ENERGY, LP
CALLED 31.74 ACRES
INSTRUMENT NO. 2018-3687
O.P.R.M.C.T.

CENTURION PIPELINE L.P.
50' PIPELINE EASEMENT
DOCUMENT NO. 2019-16540
O.R.M.C.T.

3601 STATE HWY 158 MIDLAND, LLC
CALLED 56.62 ACRES
INSTRUMENT NO. 2018-3606
O.P.R.M.C.T.

SECTION 6
T. & P. RR. CO.
A-722

SEE SHEET 2-4 FOR DETAIL VIEWS

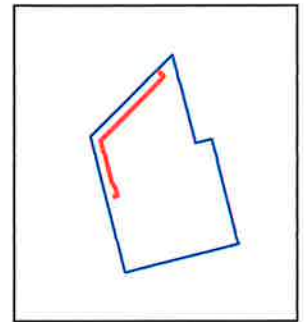
LINE TABLE

LINE	BEARING	DISTANCE
1	N 76°10'58" E	116.06'
2	N 14°06'01" W	174.91'
3	N 29°10'50" W	205.55'
4	N 14°10'50" W	1041.92'
5	N 44°57'06" E	1939.80'
6	N 42°31'02" E	260.86'
7	N 47°13'01" W	233.24'

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TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

LEGEND

---	TOWNSHIP LINE
---	SURVEY LINE
---	TRACT BORDER
---	SURVEYED BASELINE
---	CONTINUED BASELINE
---	LICENSE AGREEMENT AREA
---	TEMPORARY WORKSPACE
---	ADDITIONAL TEMPORARY WORKSPACE
---	ROAD WAY
---	FENCE LINE
---	EXISTING PIPELINE
---	OHE OVERHEAD ELECTRIC
---	SS SANITATION SEWER
○	POINT OF INTERSECTION
●	IRON ROD FOUND
⊙	BORE ENTRY/BORE EXIT



VICINITY VIEW
NOT TO SCALE

MPI 3211 MIDLAND, LLC
CALLED 8.09 ACRES
INSTRUMENT NO. 2017-10053
O.P.R.M.C.T.

1/2" IRON ROD FOUND

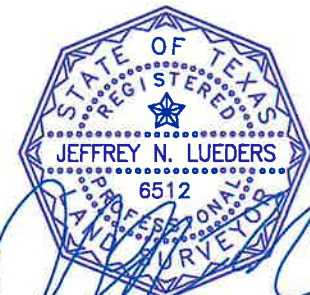
SEE
DETAIL A

MPI 3211 MIDLAND, LLC
CALLED 8.09 ACRES
INSTRUMENT NO. 2017-10053
O.P.R.M.C.T.

P.O.E.
(NAD 27)
X = 1476616.65
Y = 851270.92
LAT.: N 31°59'46.66"
LONG.: W 102°01'17.34"
(NAD 83)
X = 1773083.76
Y = 10693847.19
LAT.: N 31°59'47.11"
LONG.: W 102°01'18.83"

THE CITY OF MIDLAND
CALLED 257.37 ACRES
TRACT 3
VOLUME 2308 PAGE 3
O.P.R.M.C.T.

SECTION 5
T. & P. RR. CO.
A-156



07/27/2023

Jeffrey N. Lueders, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: June 6, 2023
Field note description of even date accompanies this plat.

WAFFLED OG 18 INCH
WATER LINE

REVISION:

INT	DATE
DRH	12/16/2019
DMG	04/25/2023
CSG	06/26/2023
MAL	06/28/2023
ME	07/24/2023

DATE:	11/04/19
FILE:	EP WAFFLED OG 18IN WATERLINE SECS MIDLAND REV6
DRAWN BY:	PACKET
SHEET:	1 OF 5

NOTES:

1. ORIGINAL DOCUMENT SIZE: 8 1/2" X 11"
2. ALL BEARINGS, DISTANCES, AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS COORDINATE SYSTEM OF 1927, CENTRAL ZONE, U.S. SURVEY FEET.
3. CERTIFICATION IS MADE ONLY TO THE LOCATION OF THIS LICENSE AGREEMENT AREA, IN RELATION TO THE EVIDENCE FOUND DURING A FIELD SURVEY, MADE ON THE GROUND, UNDER MY SUPERVISION, AND USING DOCUMENTATION PROVIDED BY MIDLAND PETRO D.C. PARTNERS LLC. ONLY UTILITIES/EASEMENTS THAT WERE VISIBLE ON THE DATE OF THIS SURVEY, WITHIN/ADJOINING THIS LICENSE AGREEMENT AREA, 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. O.P.R.M.C.T. = OFFICIAL PUBLIC RECORDS MIDLAND COUNTY TEXAS

19.18

August 22, 2023

EXHIBIT "A"

MIDLAND PETRO D.C. PARTNERS LLC

SECTION 5, BLOCK 38, T-2-S,
T. & P. RR. CO. SURVEY, A-156
MIDLAND COUNTY, TEXAS
LICENSE AGREEMENT AREA PLAT

LEGEND

- TOWNSHIP LINE
- SURVEY LINE
- TRACT BORDER
- SURVEYED BASELINE
- CONTINUED BASELINE
- LICENSE AGREEMENT AREA
- TEMPORARY WORKSPACE
- ADDITIONAL TEMPORARY WORKSPACE
- ROAD WAY
- FENCE LINE
- EXISTING PIPELINE
- OHE OVERHEAD ELECTRIC
- SS SANITATION SEWER
- POINT OF INTERSECTION
- IRON ROD FOUND
- BORE ENTRY/BORE EXIT

DETAIL VIEW A
SCALE: 1" = 60'

DETAIL VIEW C
SCALE: 1" = 60'

DETAIL VIEW B
SCALE: 1" = 50'

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07/27/2023

Jeffrey N. Lueders, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: June 6, 2023
Field note description of even date accompanies this plat.

WAFFLED OG 18 INCH
WATER LINE

REVISION:

INT	DATE
DRH	12/16/2019
DMG	04/25/2023
CSG	06/26/2023
MAL	06/28/2023
ME	07/24/2023

NOTES:

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8. O.P.R.M.C.T. = OFFICIAL PUBLIC RECORDS MIDLAND COUNTY TEXAS

DATE: 11/04/19

FILE: EP_WAFFLED OG_18IN_WATERLINE_SECS_MIDLAND_REV6

DRAWN BY: PACKET

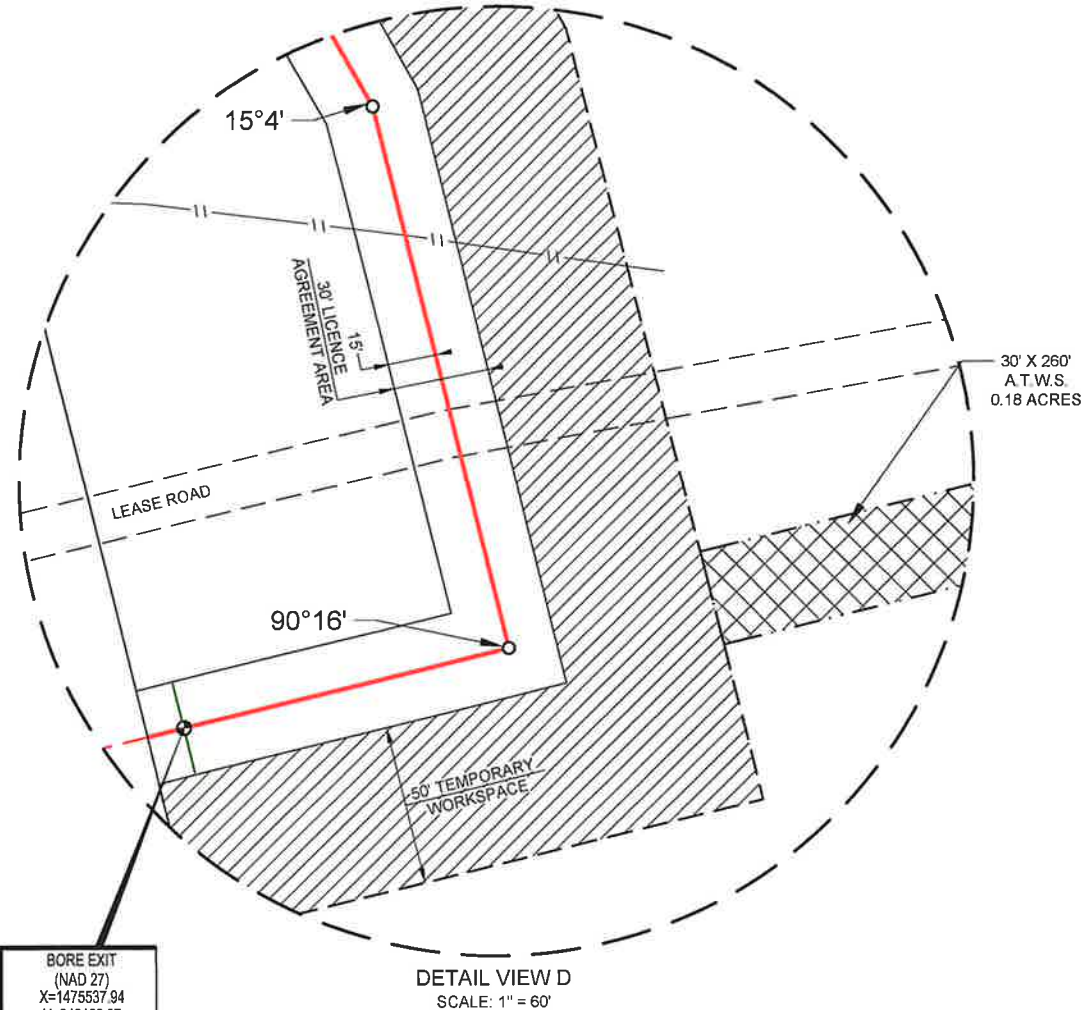
SHEET: 2 OF 5

August 22, 2023

EXHIBIT "A"

MIDLAND PETRO D.C. PARTNERS LLC

SECTION 5, BLOCK 38, T-2-S,
T. & P. RR. CO. SURVEY, A-156
MIDLAND COUNTY, TEXAS
LICENSE AGREEMENT AREA PLAT

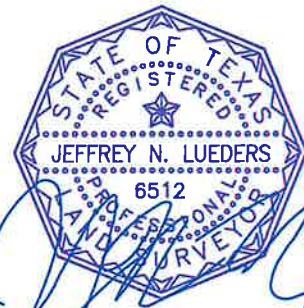


BORE EXIT
(NAD 27)
X=1475537.94
Y=848163.27
LAT.: N 31°59'15.75"
LONG.: W 102°01'29.32"
(NAD 83)
X=1772005.05
Y=10690739.51
LAT.: N 31°59'16.20"
LONG.: W 102°01'30.81"

LEGEND

- TOWNSHIP LINE
- - - SURVEY LINE
- R — TRACT BORDER
- SURVEYED BASELINE
- - - CONTINUED BASELINE
- ||||| LICENSE AGREEMENT AREA
- XXXXX TEMPORARY WORKSPACE
- XXXXX ADDITIONAL TEMPORARY WORKSPACE
- == ROAD WAY
- X FENCE LINE
- || EXISTING PIPELINE
- OHE OVERHEAD ELECTRIC
- SS SANITATION SEWER
- POINT OF INTERSECTION
- IRON ROD FOUND
- ⊙ BORE ENTRY/BORE EXIT

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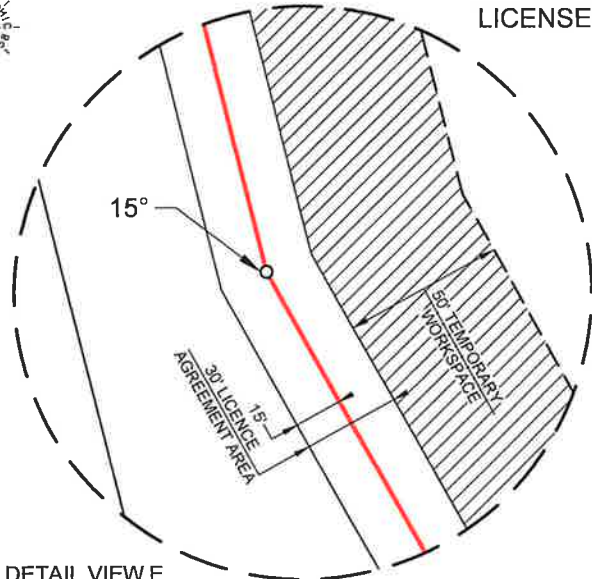
August 22, 2023

EXHIBIT "A"

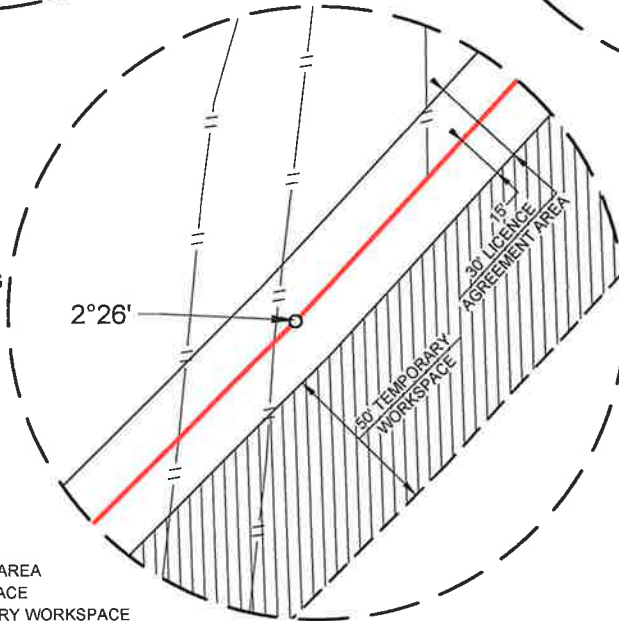
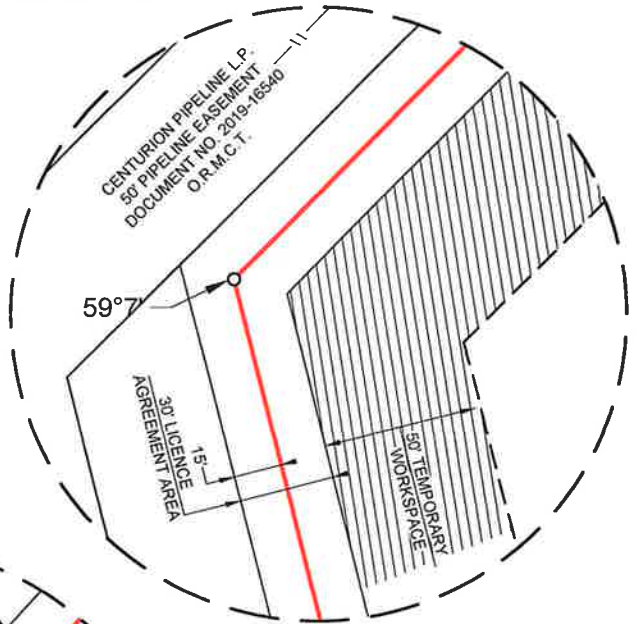
MIDLAND PETRO D.C. PARTNERS LLC

SECTION 5, BLOCK 38, T-2-S,
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MIDLAND COUNTY, TEXAS
LICENSE AGREEMENT AREA PLAT

DETAIL VIEW F
SCALE: 1" = 60'



DETAIL VIEW E
SCALE: 1" = 60'

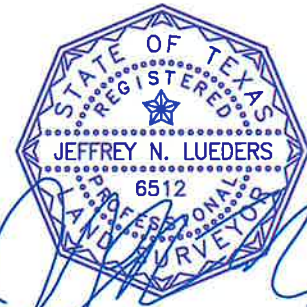


DETAIL VIEW G
SCALE: 1" = 60'

LEGEND

- TOWNSHIP LINE
- SURVEY LINE
- TRACT BORDER
- SURVEYED BASELINE
- CONTINUED BASELINE
- LICENSE AGREEMENT AREA
- TEMPORARY WORKSPACE
- ADDITIONAL TEMPORARY WORKSPACE
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- FENCE LINE
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ME	07/24/2023

DATE: 11/04/19

FILE: EP_WAFFLED OG_18IN_WATERLINE_SECS_MIDLAND_REV8

DRAWN BY: JN

SHEET: 4 OF 5

NOTES:

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August 22, 2023

30 FOOT WIDE LICENSE AGREEMENT AREA DESCRIPTION

A 30 foot wide license agreement area, 15 feet each side of a surveyed baseline as shown on sheet 1 of 5 of this Exhibit "A", being situated in Section 5, Block 38, Township 2 South, of the T. & P. RR. Co. Survey, Abstract No. 156, Midland County, Texas, out of a called 257.37 acre tract of land described in deed to The City of Midland, recorded in Volume 2308, Page 3, Official Public Records, Midland County, Texas, (O.P.R.M.C.T.), said 30 foot wide license agreement area being more particularly described along a surveyed baseline by centerline description as follows:

BEGINNING

(P.O.B., NAD27 - LAT.: N 31°59'15.72", LONG.: W 102°01'29.45",
NAD83 - LAT.: N 31°59'16.17", LONG.: W 102°01'30.94") on the West line of said 257.37 acre tract, from which an 5/8-inch iron rod found for the Northwest corner of said 257.37 acre tract, bears: North 20°00'44" West, a distance of 1,579.53 feet;

THENCE North 76°10'58" East, a distance of 116.06 feet;

THENCE North 14°06'01" West, a distance of 174.91 feet;

THENCE North 29°10'50" West, a distance of 205.55 feet;

THENCE North 14°10'50" West, a distance of 1,041.92 feet;

THENCE North 44°57'06" East, a distance of 1,939.80 feet;

THENCE North 42°31'02" East, a distance of 260.86 feet;

THENCE North 47°13'01" West, a distance of 233.24 feet to the POINT OF EXIT
(P.O.E., NAD27 - LAT.: N 31°59'46.66", LONG.: W 102°01'17.34",
NAD83 - LAT.: N 31°59'47.11", LONG.: W 102°01'18.83"), on the North line of said 257.37 acre tract, and END OF THIS DESCRIPTION, from which a 1/2-inch iron rod found for the Northeast corner of said 257.37 acre tract, bears: North 45°04'41" East, a distance of 534.17 feet.

The above surveyed baseline traverses the said 257.37 acre tract for a total distance of 3,972.34 feet or 240.75 rods.

All bearings and distances contained herein are grid, based upon the Texas Coordinate System of 1927, Central Zone, in U.S. Survey Feet.

Plat of even date accompanies this field note description.



07/27/2023

Topographic, Co.
481 Winscott Road, Suite 200
Benbrook, TX 76126

19.22

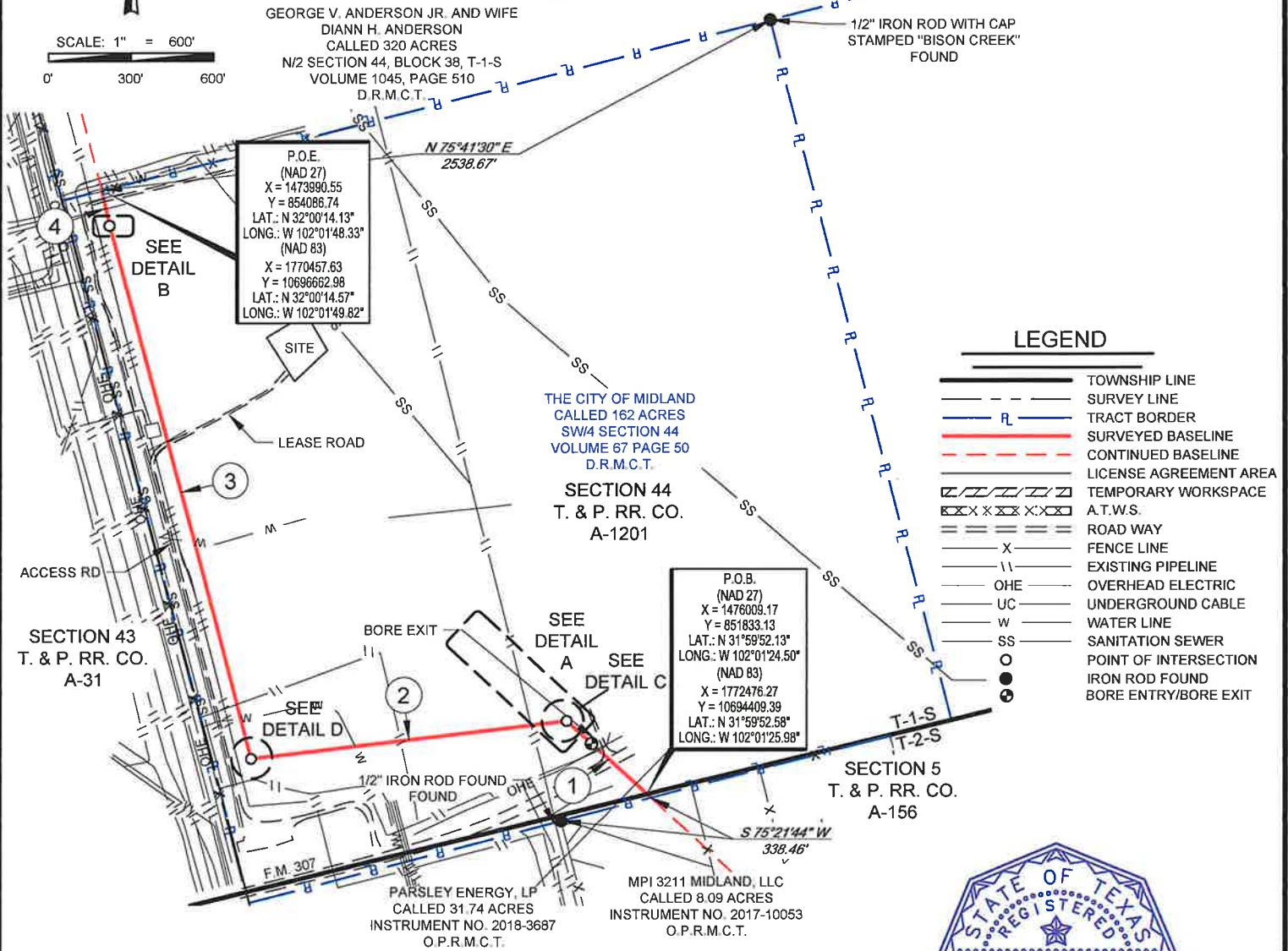
Jeffrey N. Lueders, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: June 6, 2023

EXHIBIT "A"

MIDLAND PETRO D.C. PARTNERS LLC

SECTION 44, BLOCK 38, T-1-S,
T. & P. RR. CO. SURVEY, A-1201
MIDLAND COUNTY, TEXAS
LICENSE AGREEMENT AREA PLAT
TOTAL LENGTH: 3770.73 FEET OR 228.53 RODS
LICENSE AGREEMENT AREA: 2.60 ACRES
TEMPORARY WORKSPACE: 3.99 ACRES
ADDITIONAL TEMPORARY WORKSPACE: 1.22 ACRES

SCALE: 1" = 600'
0' 300' 600'



LEGEND

- TOWNSHIP LINE
- SURVEY LINE
- TRACT BORDER
- SURVEYED BASELINE
- CONTINUED BASELINE
- LICENSE AGREEMENT AREA
- TEMPORARY WORKSPACE
- A.T.W.S.
- ROAD WAY
- FENCE LINE
- EXISTING PIPELINE
- OVERHEAD ELECTRIC
- UNDERGROUND CABLE
- WATER LINE
- SANITATION SEWER
- POINT OF INTERSECTION
- IRON ROD FOUND
- BORE ENTRY/BORE EXIT

SEE SHEET 2 FOR DETAILS A & B, SHEET 3 FOR DETAILS C & D

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LOYALTY INNOVATION LEGACY
481 WINSBROOK ROAD, Ste. 200 • BENBROOK, TEXAS 76126
TELEPHONE: (817) 744-7512 • FAX (817) 744-7554
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

LINE TABLE

LINE	BEARING	DISTANCE
1	N 47°13'01\" W	418.97'
2	S 83°09'47\" W	1173.35'
3	N 14°40'45\" W	2044.48'
4	N 12°04'47\" W	133.93'



Jeffrey N. Lueders, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: June 6, 2023
Field note description of even date accompanies this plat.

WAFFLED OG 18 INCH
WATER LINE

REVISION:

INT	DATE
DRH	12/16/2019
DMG	04/25/2023
MAL	05/10/2023
MAL	06/23/2023
MAL	06/28/2023

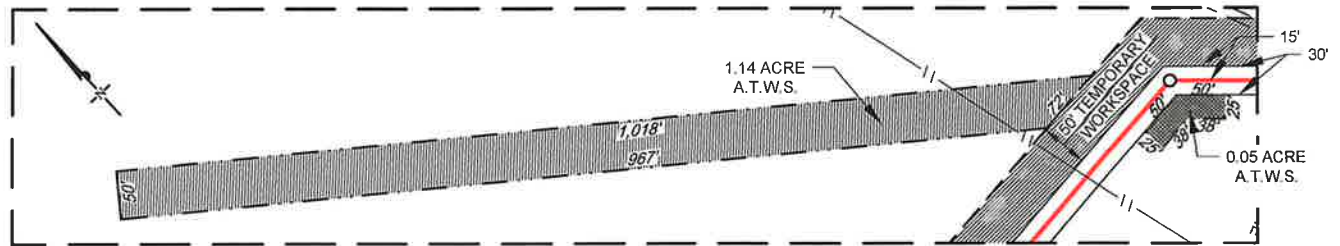
NOTES:

- ORIGINAL DOCUMENT SIZE: 8.5" X 11"
- ALL BEARINGS, DISTANCES, AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS COORDINATE SYSTEM OF 1927 & 1983, CENTRAL ZONE, U.S. SURVEY FEET.
- CERTIFICATION IS MADE ONLY TO THE LOCATION OF THIS LICENSE AGREEMENT AREA, IN RELATION TO THE EVIDENCE FOUND DURING A FIELD SURVEY, MADE ON THE GROUND, UNDER MY SUPERVISION, AND USING DOCUMENTATION PROVIDED BY MIDLAND PETRO D.C. PARTNERS LLC. ONLY UTILITIES/EASEMENTS THAT WERE VISIBLE ON THE DATE OF THIS SURVEY, WITHIN/ADJOINING THIS LICENSE AGREEMENT AREA, 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.
- ADJOINER INFORMATION SHOWN FOR INFORMATIONAL PURPOSES ONLY.
- B.O.L./P.O.B. = BEGINNING OF LINE/POINT OF BEGINNING
- E.O.L./P.O.E. = END OF LINE/POINT OF EXIT
- A.T.W.S. = ADDITIONAL TEMPORARY WORKSPACE
- D.R.M.C.T. = DEED RECORDS, MIDLAND COUNTY, TEXAS
- O.P.R.M.C.T. = OFFICIAL PUBLIC RECORDS, MIDLAND COUNTY, TEXAS

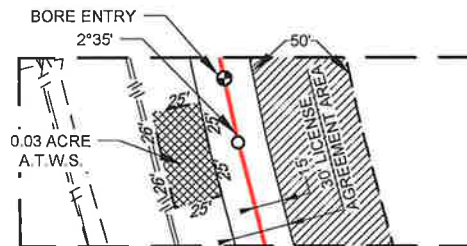
August 22, 2023

EXHIBIT "A" MIDLAND PETRO D.C. PARTNERS LLC

SECTION 44, BLOCK 38, T-1-S,
T. & P. RR. CO. SURVEY, A-1201
MIDLAND COUNTY, TEXAS
LICENSE AGREEMENT AREA PLAT



DETAIL VIEW A
SCALE: 1" = 200'



DETAIL VIEW B
SCALE: 1" = 100'

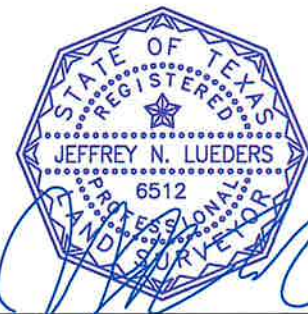
LEGEND

	TOWNSHIP LINE
	SURVEY LINE
	TRACT BORDER
	SURVEYED BASELINE
	CONTINUED BASELINE
	LICENSE AGREEMENT AREA
	TEMPORARY WORKSPACE
	A.T.W.S.
	ROAD WAY
	FENCE LINE
	EXISTING PIPELINE
	OVERHEAD ELECTRIC
	UNDERGROUND CABLE
	WATER LINE
	SANITATION SEWER
	POINT OF INTERSECTION
	IRON ROD FOUND
	BORE ENTRY/BORE EXIT



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TEXAS FIRM REGISTRATION NO. 10042504
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Jeffrey N. Lueders, R.P.L.S. No. 6512

SURVEYED ON THE GROUND: June 6, 2023

Field note description of even date accompanies this plat.

WAFFLED OG 18 INCH
WATER LINE

REVISION:

DATE:	11/04/2019	DMG	04/25/2023
FILE: EP_WAFFLED OG_18IN_WATERLINE_SEC44_MIDLAND_REV6	MAL	05/10/2023	
DRAWN BY: PACKET	MAL	06/23/2023	
SHEET: 2 OF 4	MAL	06/28/2023	

NOTES:

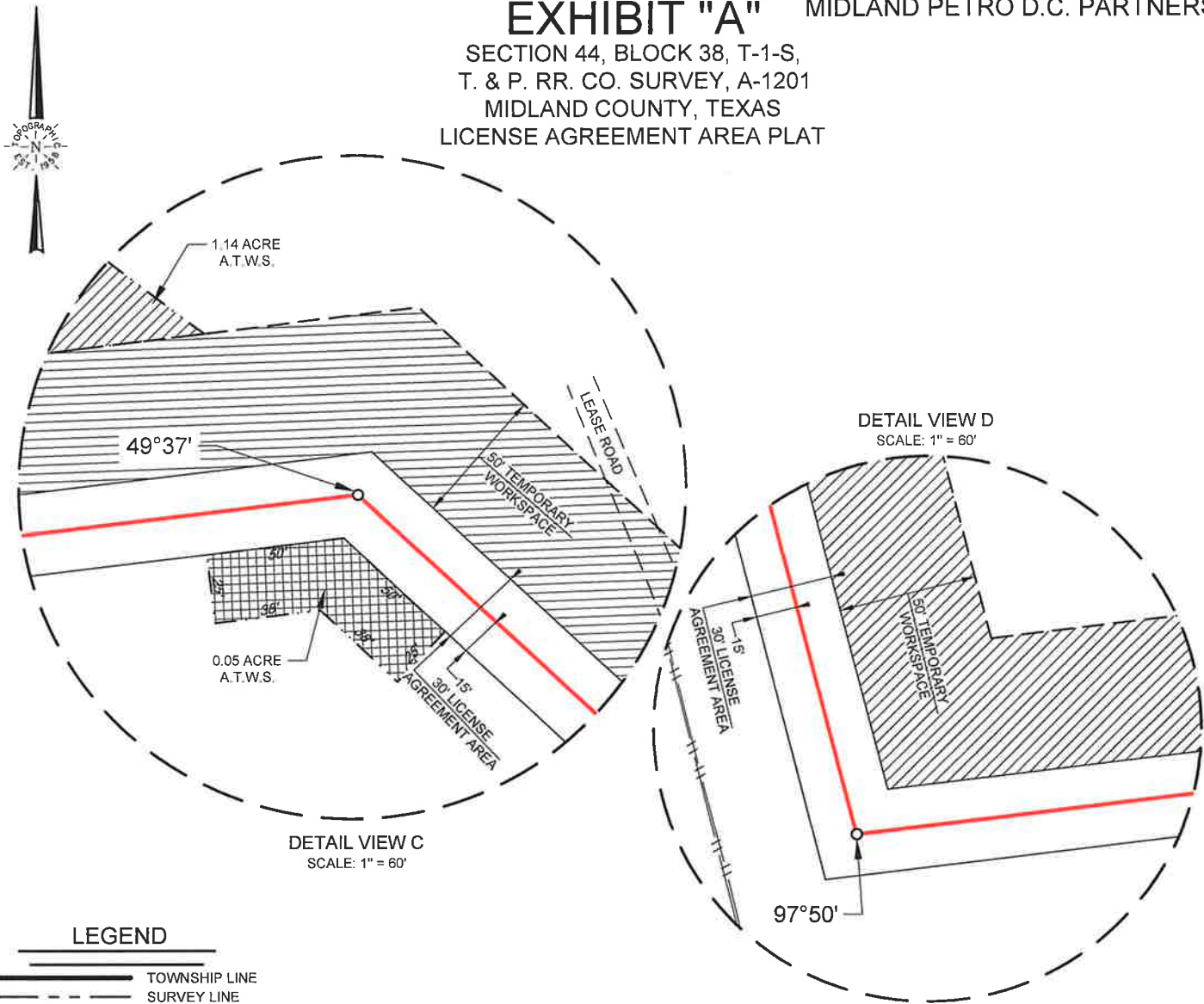
1. ORIGINAL DOCUMENT SIZE: 8.5" X 11"
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7. A.T.W.S. = ADDITIONAL TEMPORARY WORKSPACE
8. D.R.M.C.T. = DEED RECORDS, MIDLAND COUNTY, TEXAS
9. O.P.R.M.C.T. = OFFICIAL PUBLIC RECORDS, MIDLAND COUNTY, TEXAS

August 22, 2023

EXHIBIT "A"

MIDLAND PETRO D.C. PARTNERS LLC

SECTION 44, BLOCK 38, T-1-S,
T. & P. RR. CO. SURVEY, A-1201
MIDLAND COUNTY, TEXAS
LICENSE AGREEMENT AREA PLAT



LEGEND

	TOWNSHIP LINE
	SURVEY LINE
	TRACT BORDER
	SURVEYED BASELINE
	CONTINUED BASELINE
	LICENSE AGREEMENT AREA
	TEMPORARY WORKSPACE
	A.T.W.S.
	ROAD WAY
	FENCE LINE
	EXISTING PIPELINE
	OVERHEAD ELECTRIC
	UNDERGROUND CABLE
	WATER LINE
	SANITATION SEWER
	POINT OF INTERSECTION
	IRON ROD FOUND
	BORE ENTRY/BORE EXIT



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TELEPHONE: (817) 744-7512 • FAX (817) 744-7554
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM



Jeffrey N. Lueders, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: June 6, 2023
Field note description of even date accompanies this plat.

WAFFLED OG 18 INCH
WATER LINE

REVISION:

DATE:	INT	DATE
11/04/2019	DRH	12/16/2019
FILE: EP_WAFFLED OG 18IN WATERLINE_SEC44_MIDLAND_REV6	DMG	04/25/2023
DRAWN BY: PACKET	MAL	05/10/2023
SHEET: 3 OF 4	MAL	06/23/2023
	MAL	06/28/2023

NOTES:

1. ORIGINAL DOCUMENT SIZE: 8 5/8" X 11"
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8. D.R.M.C.T. = DEED RECORDS, MIDLAND COUNTY, TEXAS
9. O.P.R.M.C.T. = OFFICIAL PUBLIC RECORDS, MIDLAND COUNTY, TEXAS

August 22, 2023

MIDLAND COUNTY, TEXAS

30 FOOT WIDE LICENSE AGREEMENT AREA DESCRIPTION

A 30 foot wide license agreement area, 15 feet each side of a surveyed baseline as shown on sheet 1 of 4 of this Exhibit "A", being situated in Section 44, Block 38, Township 1 South, of the T. & P. RR. Co. Survey, Abstract No. 1201, Midland County, Texas, out of a called 162 acre tract of land described in deed to The City of Midland, recorded in Volume 67, Page 50, Deed Records, Midland County, Texas, (D.R.M.C.T.), said 30 foot wide license agreement area being more particularly described along a surveyed baseline by centerline description as follows:

BEGINNING

(P.O.B., NAD27 - X = 1476009.17, Y = 851833.13, NAD83 - X = 1772476.27, Y = 10694409.39) on the South line of said 162 acre tract, from which a 1/2-inch iron rod found for an angle corner on the South line of said 162 acre tract, being the Northeast corner of a called 31.74 acres tract of land, described in deed to Parsley Energy, LP., recorded in Instrument No. 2018-3687, Official Public Records, Midland County, Texas, (O.P.R.M.C.T.), along the South line of said 162 acre tract, bears: South 75°21'44" West, a distance of 338.46 feet;

THENCE North 47°13'01" West, a distance of 418.97 feet;
THENCE South 83°09'47" West, a distance of 1,173.35 feet;
THENCE North 14°40'45" West, a distance of 2,044.48 feet;

THENCE North 12°04'47" West, a distance of 133.93 feet to the POINT OF EXIT
(P.O.E., NAD27-X = 1473990.55, Y = 854086.74, NAD83-X = 1770457.63, Y = 10696662.98), on the North line of said 162 acre tract, and END OF THIS DESCRIPTION, from which a 1/2-inch iron rod with cap stamped "Bison Creek" found for the Northeast corner of said 162 acre tract, bears: North 75°41'30" East, a distance of 2,538.67 feet.

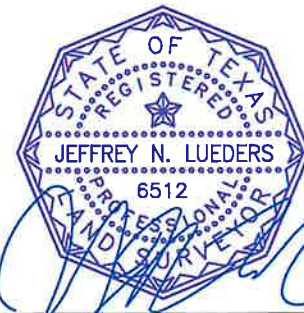
The above surveyed baseline traverses the said tract for a total distance of 3,770.73 feet or 228.53 rods.

All bearings and distances contained herein are grid, based upon the Texas Coordinate System of 1927 and 1983, Central Zone, in U.S. Survey Feet.

Plat of even date accompanies this field note description.

Topographic, Co.
481 Winscott Road, Suite 200
Benbrook, TX 76126

19.26



Jeffrey N. Lueders, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: June 8, 2023

EXHIBIT "A"

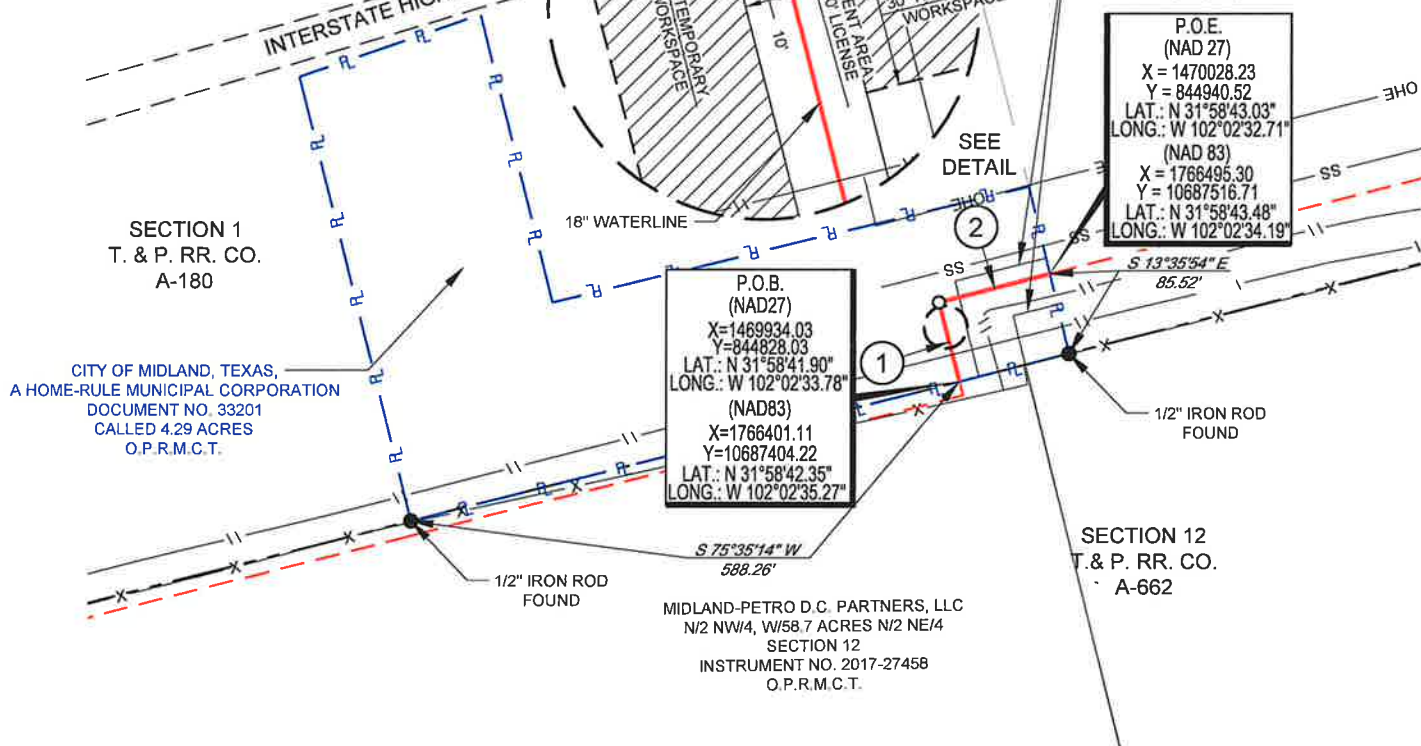
MIDLAND PETRO D.C. PARTNERS LLC

SECTION 1, BLOCK 39, T-2-S,
T. & P. RR. CO. SURVEY, A-180
MIDLAND COUNTY, TEXAS
LICENSE AGREEMENT AREA PLAT
TOTAL LENGTH: 204.62 FEET OR 12.40 RODS
LICENSE AGREEMENT AREA: 0.09 ACRES
TEMPORARY WORKSPACE: 0.14 ACRES



DETAIL VIEW
SCALE: 1" = 40'

14 TEXAS REAL ESTATE, LLC
CALLED 6.79 ACRES
INSTRUMENT NO. 2022-26073
O.P.R.M.C.T.
LOT1, BLOCK 1,
PENTA ADDITION
CABINET J, PAGE 44
M.R.M.C.T.
CENTURION PIPELINE L.P.
50' PIPELINE EASEMENT
DOCUMENT NO. 2019-28731
O.R.M.C.T.



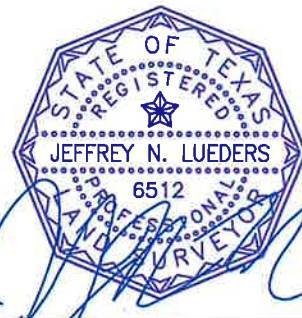
LINE TABLE

LINE	BEARING	DISTANCE
1	N 14°25'39" W	85.37'
2	N 75°31'17" E	119.25'

LEGEND

	SURVEY/SECTION LINE
	TRACT BORDER
	SURVEYED BASELINE
	CONTINUED BASELINE
	EDGE OF LICENSE AGREEMENT AREA
	TEMPORARY WORKSPACE
	FENCE LINE
	EXISTING PIPELINE
	SAN SEWER LINE
	OVERHEAD ELECTRIC
	POINT OF INTERSECTION
	IRON ROD FOUND

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481 WINSOTT ROAD, Ste. 200 • BENBROOK, TEXAS 76126
TELEPHONE: (817) 744-7512 • FAX: (817) 744-7554
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM



07/27/2023

Jeffrey N. Lueders, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: May 6, 2023
Field note description of even date accompanies this plat.

WAFFLED OG 18 INCH
WATERLINE

REVISION:

INT	DATE
CSG	12/04/2019
DRH	12/16/2019
MAL	05/03/2023
MAL	05/10/2023
MAL	07/27/2023

NOTES:

1. ORIGINAL DOCUMENT SIZE: 8.5" X 11"
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6. E.O.L./P.O.E. = END OF LINE/POINT OF EXIT

19.27

August 22, 2023

EXHIBIT "A"

MIDLAND COUNTY, TEXAS

20 FOOT WIDE LICENSE AGREEMENT AREA DESCRIPTION

A 20 foot wide license agreement area, 10 feet each side of a surveyed baseline as shown on sheet 1 of 2 of this Exhibit "A", being situated in Section 1, Block 39, Township 2 South, of the T. & P. RR. Co. Survey, Abstract No. 180, Midland County, Texas, out of a called 4.29 acre tract of land described in deed to City of Midland, Texas, A Home-rule Municipal Corporation., recorded in Document No. 33201, Official Public Records, Midland County, Texas (O.P.R.M.C.T.), said 20 foot wide license agreement area being more particularly described along a surveyed baseline by centerline description as follows:

BEGINNING (P.O.B., NAD27-X=1469934.03,Y=844828.03, NAD83-X=1766401.11,Y=10687404.22) at a point on the South line of said 4.29 acre tract, from which a 1/2-inch iron rod found for the Southwest corner of said 4.29 acre tract, bears: South 75°35'14" West, a distance of 588.26 feet;

THENCE North 14°25'39" West, a distance of 85.37 feet;

THENCE North 75°31'17" East, a distance of 119.25 feet to the POINT OF EXIT (P.O.E., NAD27-X = 1470028.23,Y = 844940.52, NAD83- X = 1766495.30,Y = 10687516.71), on the East line of said 4.29 acre tract, and END OF THIS DESCRIPTION, from which a 1/2-inch iron rod found for the Southeast corner of said 4.29 acre tract, bears: South 13°35'54" East, a distance of 85.52 feet.

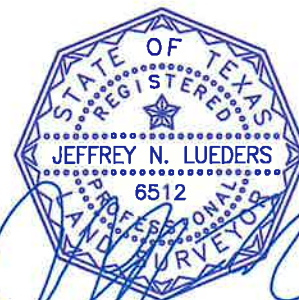
The above surveyed baseline traverses the said 4.29 acre tract for a total distance of 204.62 feet or 12.40 rods.

All bearings and distances contained herein are grid, based upon the Texas Coordinate System of 1927 and 1983, Central Zone, in U.S. Survey Feet.

Plat of even date accompanies this field note description.

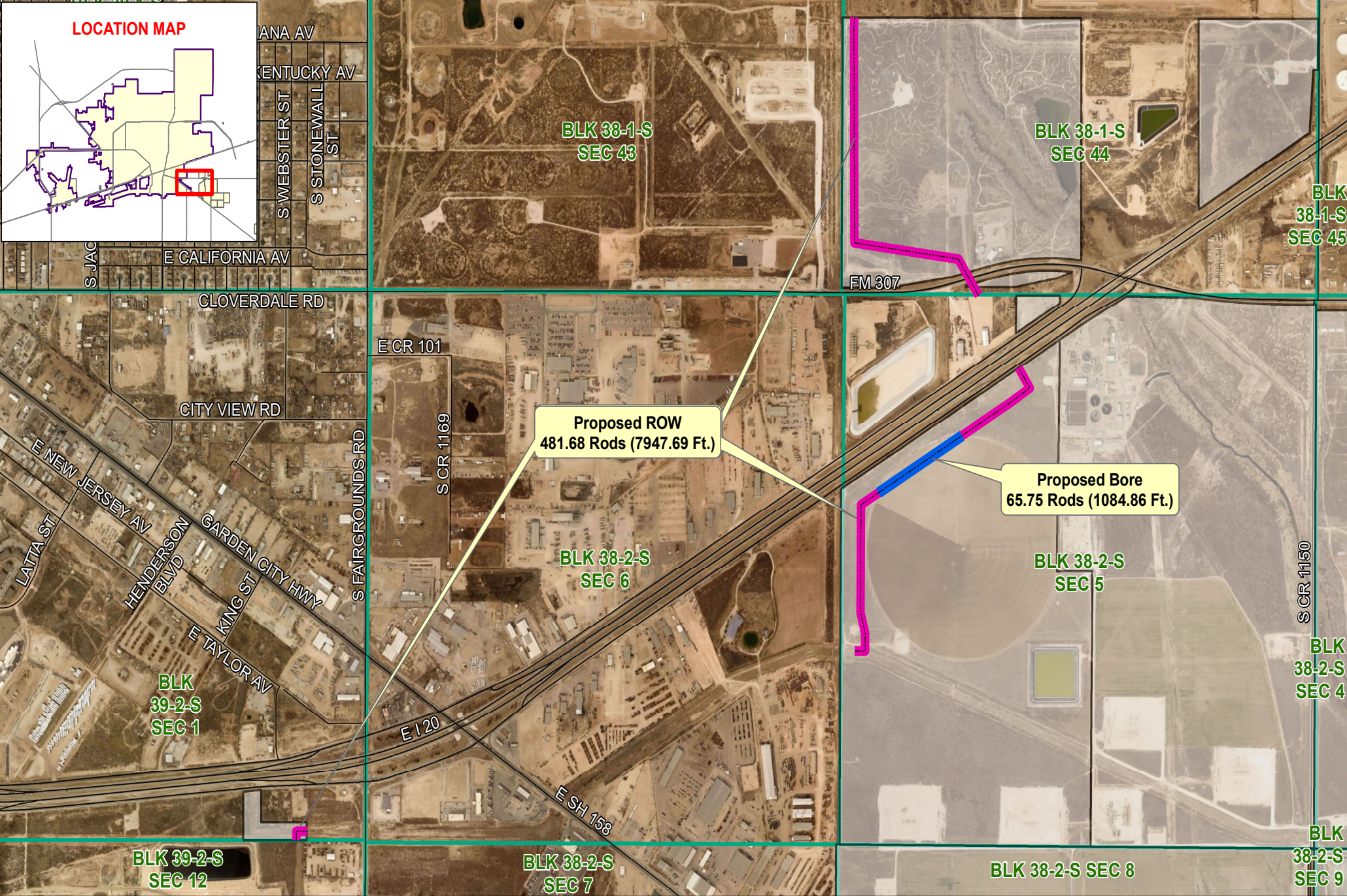
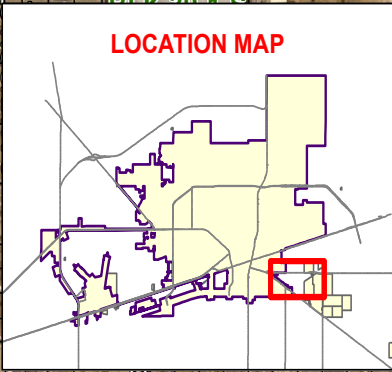
Topographic, Co.
481 Winscott Road Suite 200
Benbrook, TX 76126

19.28



07/27/2023

Jeffrey N. Lueders, R.P.S. No. 6512
SURVEYED ON THE GROUND: May 6, 2023



Date: 7/28/2023

- Street
- Proposed Bore
- Proposed ROW
- City Owned Property
- Survey Section

PACKET

Midland Petro D.C. Partners LLC Proposed Waterline ROW

19.29

August 22, 2023



0 500 1,000 Feet

©THE CITY OF MIDLAND - 2023
THIS DATA IS NOT A SUBSTITUTE FOR A SURVEY PROJECT. 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)

8/8/2023

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 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 McAnally Wilkins Inc. PO Box 60810 Midland TX 79711	CONTACT NAME: Leslie Wilson PHONE (A/C, No, Ext): 432-685-9300 E-MAIL ADDRESS: Leslie@mcanallywilkins.com FAX (A/C, No): 855-928-0909														
License#: 15714884 DAVIHAR-01	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A: Phoenix Insurance Company</td><td>25623</td></tr><tr><td>INSURER B: Texas Mutual Insurance Company</td><td>22945</td></tr><tr><td>INSURER C: Travelers Prop Cas Co of Amer</td><td>25674</td></tr><tr><td>INSURER D: StarStone Specialty Insurance Company</td><td>44776</td></tr><tr><td>INSURER E: Lloyds of London</td><td></td></tr><tr><td>INSURER F: Argonaut Insurance Company</td><td>19801</td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Phoenix Insurance Company	25623	INSURER B: Texas Mutual Insurance Company	22945	INSURER C: Travelers Prop Cas Co of Amer	25674	INSURER D: StarStone Specialty Insurance Company	44776	INSURER E: Lloyds of London		INSURER F: Argonaut Insurance Company	19801
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INSURER D: StarStone Specialty Insurance Company	44776														
INSURER E: Lloyds of London															
INSURER F: Argonaut Insurance Company	19801														
INSURED Midland-Petro D.C. Partners, LLC 500 W Wall, Ste 300 Midland TX 79701															

COVERAGES

CERTIFICATE NUMBER: 1636807520

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ S&A Pollution GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			H-660-8S479979-TIL-23	3/2/2023	3/2/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS			BA-5R534692-23-N4-G	3/2/2023	3/2/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			CUP-2T071775-23-N4	3/2/2023	3/2/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
B F	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y / N ☐ N / A			0001207657 WC 928828322174	1/1/2023 1/1/2023	1/1/2024 1/1/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D E	Excess Liability Control of Well			AA3872222MAR B0572MA222763	3/2/2023 1/1/2023	3/2/2024 1/1/2024	Each Occurrence: \$20,000,000 Control of Well: See Below

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

All policies except Workers' Compensation include a blanket automatic additional insured endorsement that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. All policies include a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. Policies certified contain 30-day notice of cancellation. The General Liability policy includes a special endorsement that contains "primary & non-contributory" wording.

Control of Well Limits:

Combined Single Limit for all Producing, Shut In, Temporary Abandoned and Plugged and Abandoned Wells: \$10,000,000

See Attached...

CERTIFICATE HOLDER**CANCELLATION**City of Midland - City Attorney Office
PO Box 1152
Midland TX 79702

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

PACKET

19.30

August 22, 2023

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ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY McAnally Wilkins Inc.		NAMED INSURED Midland-Petro D.C. Partners, LLC Permian Deep Rock Oil Company, LLC MPDC Parent Holdings, LLC 500 W Wall, Ste 300 Midland TX 79701	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

Combined Single Limit for all Vertical Drilling and Workover Wells: \$10,000,000
 Combined Single Limit for all Horizontal Drilling and Workover Wells: \$20,000,000
 Combined Single Limit for all Drilling and Workover Wells if CHC is over \$7,200,000: \$25,000,000
 Combined Single Limit for all Drilling and Workover Wells if CHC is over \$8,500,000: \$30,000,000
 Care, Custody & Control: \$5,000,000
 Control of Well Retentions:
 Any one accident or occurrence for 100% Interest: \$100,000
 Any one accident or occurrence for 100% Interest for Drilling Wells over \$5,500,000 CHC AFE: \$250,000
 Any one accident or occurrence in respect of Care, Custody and Control for 100% Interest: \$75,000

Re: Oil and/or gas wells permitted by the City of Midland and Right of Way License Holder Name Includes: City of Midland, the City's officials, employees, agents and officers All policies except workers' compensation include blanket additional insured endorsement that provides additional insured status to applicable parties as required by written contract. All policies include blanket waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. Policies certified contain 30 day notice of cancellation.

PACKET

19.31

August 22, 2023

INVOICE

GUS201

DATE

08/07/23

DESCRIPTION

NET

134,870.40

VENDOR 0080025 CHECK 3671 DATE 08/08/23 134,870.40

Permian Deep Rock Oil Co., LLC
Permian Deep Rock Operating
P.O. Box 11405
Midland, TX 79702

West Texas National Bank
Midland, TX
110-010

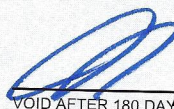
CHECK NO	CHECK DATE	CHECK AMOUNT
3671	08/08/23	\$*****134,870.40

PAY *** One Hundred Thirty Four Thousand Eight Hundred Seventy Dollars and Forty Cents

PAY TO THE ORDER OF CITY OF MIDLAND
PO BOX 1152
MIDLAND TX 79702-9981

PACKET

19.32


VOID AFTER 180 DAYS

August 22, 2023

0003671 112304678 5804671



City Council Meeting

Item Number: 20
Meeting Date: August 22, 2023
To: City Council / City Manager
From: John Simmons, Manager, Right-of-Way
Subject: Motion authorizing the execution of a Right-of-Way License Amendment (23-329-043) with Enterprise Navitas Pipeline Texas LLC, regarding City-owned property described as Section 30, Block 36, T-3-S, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will amend the approved Right of Way License 23-329-036 recorded as Document 2023-18125 recorded in the Midland County Recorder's office. This Amendment will provide the applicant an additional 30' wide, 1,520.24 -foot- (92.14 rods) long overhead power line right of way and another 1,500 square foot surface area for natural gas compression valve connections on City of Midland-owned Sprayberry Farm real property. Temporary workspaces for construction are the same as shown on ROW License 23-329-036 plats.

This Right-of-Way License Amendment is proposed for a single ten (10) year period, paid in advance. Terms are consistent with the City's standard license for facilities of this nature

Recommended City Council Action:

Approve

Fiscal Impact:

10-Years Paid In advance:

Paid with ROW License 23-329-036

8" Discharge pipeline (166.86 rods x \$260/rod): \$43,383.60

4" Fuel Gas pipeline (11.31 rods x \$170) \$1,922.70

20' wide access road (283.59 rods x \$140.00): \$39,702.60

Surface use area (2,250 sq. ft. x \$0.24 per sq. ft.): \$540.00

Additional ROW Paid per Amendment

Surface use area: (1,500 sq. ft. x \$0.24 per sq. ft.): \$360.00

Overhead Power: 22kv (92.14 rods x \$70.00): \$6,449.80

Total Collected for this amendment: \$7,809.80

Discussion:

This Amended Right of Way is in the South Half of Section 30 in the Sprayberry Farm area and is over 2 miles from COM infrastructure. The proposed overhead power and additional surface area are all part of the new gas system infrastructure being built to service existing mineral extraction efforts of existing mineral estate owners with Surface use Agreements with the City of Midland.

Certificates of Insurance are on file

City Secretary is to record all documents.



City Manager's Office

**AMENDMENT TO THE RIGHT OF WAY LICENSE
BETWEEN ENTERPRISE NAVITAS PIPELINE TEXAS LLC
AND
THE CITY OF MIDLAND, TEXAS**

THIS AMENDMENT is made effective this ___ day of _____, 2023, by and between Enterprise Navitas Pipeline Texas LLC (“Company”), and the City of Midland (“City”), a home-rule municipality.

WHEREAS, Company and City entered into that certain Right of Way License made effective July 26, 2023 (the “License”), for the right to enter upon certain City-owned property for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing a poly construction pipeline and a two thousand two hundred fifty (2,250) square foot surface site on and across City’s property which was approved by the Midland City Council by Motion No. 090-2023; and

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

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

W I T N E S S E T H:

For and in consideration of the execution of this Amendment and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

- a. The License is hereby amended so as to incorporate, in their entirety, **Exhibits C and D**, attached hereto, for all purposes.
- b. **Section II(A)** of the License is hereby amended to read in its entirety as follows:

A. License Fee. A license fee in the amount of NINETY-TWO THOUSAND THREE HUNDRED FIFTY-EIGHT and 70/100 Dollars (\$92,358.70) (“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).

- c. **Section III(A)** of the License is hereby amended to read in its entirety as follows:

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being fifty (50) feet in width of the locations as shown on **Exhibits A, B, C and D** attached hereto and incorporated herein for the purpose of operating, repairing, maintaining, replacing and removing, thereon, along the herein described locations, a poly construction pipeline, not to exceed eight (8) inches in diameter, for the transportation of natural gas, a poly construction pipeline, not to exceed four (4) inches in diameter, for the transportation of natural gas, an access road, a 22kv overhead power line measuring one thousand five hundred twenty and twenty-four one hundredths (1,520.24) feet in length, a two thousand two hundred fifty (2,250) square foot surface site and a one thousand five hundred (1,500) square foot surface site 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 construction is completed (the "Property"). **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

- d. A one-time application fee in the amount of One Thousand and 00/100 Dollars (\$1,000.00) shall be due and payable by Licensee to Licensor contemporaneously with the execution of this Amendment.
- e. The License, inclusive of this Amendment, is hereby ratified and affirmed by Company and City, and the License shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

EXECUTED by the duly authorized officials as of the day and year first above written.

CITY OF MIDLAND

Lori M. Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

Thomas Goolsby, Agent and Attorney-in-Fact

BEFORE ME, _____, a notary public, on this day personally appeared Thomas Goolsby an officer of Enterprise Navitas Pipeline Texas LLC, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said company for the purposes and consideration therein expressed and in the capacity therein stated.

Notary Public, in and for
The State of Texas

My Commission Expires: _____

EXHIBIT "A"

CENTERLINE DESCRIPTION

RIGHT OF WAY CENTERLINE

BEING THE CENTERLINE OF A PROPOSED PIPELINE RIGHT OF WAY SITUATED IN SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH, T. & P. RR. CO. SURVEY, ABSTRACT NO. 957, MIDLAND COUNTY, TEXAS. SAID CENTERLINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N: 10644331.88, E: 1844203.36) IN SAID SECTION 30, FROM WHICH THE CALCULATED SOUTHWEST CORNER OF SAID SECTION 30 BEARS S 14°09'54" E, A DISTANCE OF 2852.77 FEET (TIE), FROM WHICH A FOUND 5/8" IRON ROD BEARS N 75°11'12" W, A DISTANCE OF 55.22 FEET (TIE);

THENCE N 75°50'06" E, A DISTANCE OF 2753.21 FEET TO THE POINT OF TERMINATION (N: 10645005.63, E: 1846872.86) OF SAID CENTERLINE, FROM WHICH A 1" IRON PIPE FOUND FOR THE NORTHWEST CORNER OF SAID SECTION 30 BEARS N 62°17'45" W, A DISTANCE OF 3697.23 FEET (TIE).

SAID CENTERLINE CONTAINING A TOTAL OF 2753.21 FEET OR 166.86 RODS IN SAID SECTION 30.

TEMPORARY RIGHT OF WAY

BEING A TWENTY (20) FOOT WIDE STRIP OF LAND, PARALLEL WITH AND ADJOINING THE SOUTHERLY SIDE OF THE ABOVE DESCRIBED RIGHT-OF-WAY, EXTENDING OR SHORTENING THE SIDE LINES OF THE HEREIN DESCRIBED TEMPORARY WORKSPACE AT THE BEGINNING OF THE SAID RIGHT-OF-WAY LINES, TO INTERSECT WITH THE PROPERTY LINES AND OR ROAD LINE OF THE ABOVE REFERENCED TRACT OF LAND. HEREIN DESCRIBED TEMPORARY WORKSPACE CONTAINING 1.264 ACRES OF LAND.

ACCESS ROAD

BEING THE CENTERLINE OF A PROPOSED TWENTY (20) FOOT WIDE ACCESS ROAD SITUATED IN SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH, T. & P. RR. CO. SURVEY, ABSTRACT NO. 957, MIDLAND COUNTY, TEXAS. SAID CENTERLINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N: 10645023.99, E: 1846945.58) IN SAID SECTION 30, FROM WHICH A 1/2" IRON PIPE FOUND FOR THE NORTHEAST CORNER OF SAID SECTION 30 BEARS N 31°06'29" E, A DISTANCE OF 3602.24 FEET (TIE).

THENCE N 75°50'06" E, A DISTANCE OF 501.99 FEET TO A POINT;
THENCE S 14°53'59" E, A DISTANCE OF 876.91 FEET TO A POINT;
THENCE S 14°02'38" W, A DISTANCE OF 76.69 FEET TO A POINT;
THENCE S 74°39'52" W, A DISTANCE OF 1063.94 FEET TO A POINT;
THENCE S 65°59'50" W, A DISTANCE OF 93.53 FEET TO A POINT;
THENCE S 36°57'25" W, A DISTANCE OF 136.48 FEET TO A POINT;
THENCE S 56°40'47" W, A DISTANCE OF 106.55 FEET TO A POINT;
THENCE S 69°08'22" W, A DISTANCE OF 125.83 FEET TO A POINT;
THENCE S 00°36'47" W, A DISTANCE OF 158.11 FEET TO A POINT;
THENCE S 48°30'00" W, A DISTANCE OF 68.90 FEET TO A POINT;
THENCE S 78°14'17" W, A DISTANCE OF 810.13 FEET TO A POINT;
THENCE S 76°18'16" W, A DISTANCE OF 308.09 FEET TO A POINT;
THENCE S 78°18'01" W, A DISTANCE OF 309.41 FEET TO A POINT;

THENCE N 81°19'19" W, A DISTANCE OF 42.65 FEET TO THE POINT OF TERMINATION (N: 10643195.03, E: 1844748.12) OF SAID CENTERLINE, FROM WHICH THE CALCULATED SOUTHWEST CORNER OF SAID SECTION 30 BEARS S 05°22'38" E, A DISTANCE OF 1636.38 FEET (TIE), FROM WHICH A 5/8" IRON ROD FOUND BEARS N 75°11'12" E, A DISTANCE OF 55.22 FEET (TIE).

SAID CENTERLINE CONTAINING A TOTAL OF 4679.21 FEET OR 283.59 RODS IN SAID SECTION 30.

METES AND BOUNDS DESCRIPTION

SURFACE SITE

BEING A PROPOSED SURFACE SITE SITUATED IN SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH, T. & P. RR. CO. SURVEY, ABSTRACT NO. 957, MIDLAND COUNTY, TEXAS. SAID SURFACE SITE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N: 10645020.18, E: 1846869.19) IN SAID SECTION 30, FROM WHICH A 1" IRON PIPE FOUND FOR THE NORTHWEST CORNER OF SAID SECTION 30 BEARS N 62°28'10" W, A DISTANCE OF 3687.23 FEET (TIE);

THENCE N 75°50'06" E, A DISTANCE OF 75.00 FEET TO A POINT, FROM WHICH A 1/2" IRON PIPE FOUND FOR THE NORTHEAST CORNER OF SAID SECTION 30 BEARS N 31°16'41" E, A DISTANCE OF 3591.70 FEET (TIE);
THENCE S 14°09'54" E, A DISTANCE OF 30.00 FEET TO A POINT;
THENCE S 75°50'06" W, A DISTANCE OF 75.00 FEET TO A POINT;

THENCE N 14°09'54" W, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

SAID SURFACE SITE CONTAINING A TOTAL OF 2,250 SQUARE FEET OR 0.052 ACRES IN SAID SECTION 30.

NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

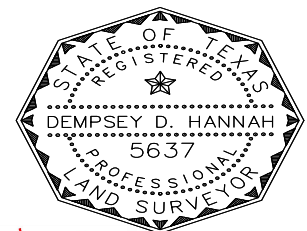
1	06/16/23	JMJ	ADDED REQUESTED CLIENT UPDATES	DDH
#	DATE	BY:	DESCRIPTION	CHK

PROJECT NO. 20357



TBPELS FIRM# 10194245
201 West Wall Street, Suite 325
Midland, TX 79701
(817) 529-1180 ~ Fax (817) 529-1181

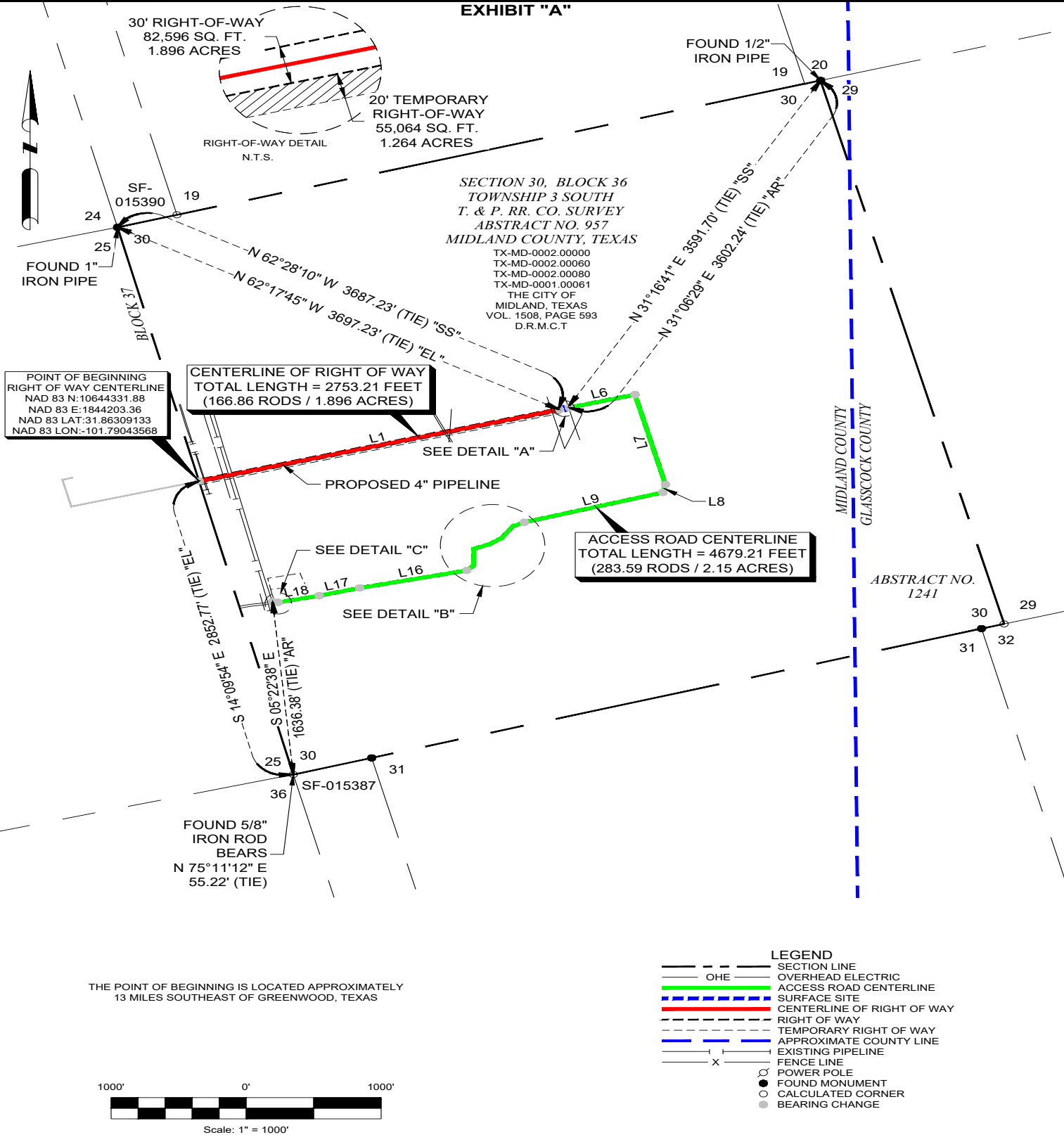
20.6



Dempsey D. Hannah 06/16/2023
DEMPSEY D. HANNAH TEXAS R.P.L.S. NO. 5637 DATE

		RHODES DISCHARGE THE CITY OF MIDLAND, TEXAS PROPOSED RIGHT OF WAY CENTERLINE, SURFACE SITE & ACCESS ROAD SITUATED IN SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH T. & P. RR. CO. SURVEY ABSTRACT NO. 957 MIDLAND COUNTY, TEXAS August 22, 2023	
		DRAWN BY: AVP CHECKED BY: DDH SCALE: 1"=1000'	DATE: 06/05/2023 DATE: 06/09/2023 PAGE 1 OF 3
		DWG. NO. 20357_TX-MD-0002.00000	
		REV. 1	

EXHIBIT "A"



NOTES:

- BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
- LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
- THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

#	DATE	BY:	DESCRIPTION	CHK
1	06/16/23	JMJ	ADDED REQUESTED CLIENT UPDATES	DDH

PROJECT NO. 20357



TBPELS FIRM# 10194245
201 West Wall Street, Suite 325
Midland, TX 79701
(817) 529-1180 ~ Fax (817) 529-1181

20.7



RHODES DISCHARGE

THE CITY OF MIDLAND, TEXAS

PROPOSED RIGHT OF WAY CENTERLINE, SURFACE SITE & ACCESS ROAD

SITUATED IN
SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 957
MIDLAND COUNTY, TEXAS

DRAWN BY: AVP
CHECKED BY: DDH
SCALE: 1"=1000'

DATE: 06/05/2023
DATE: 06/09/2023
PAGE 2 OF 3

DWG. NO.
20357_TX-MD-0002.00000

REV.
1

EXHIBIT "B"

POINT OF BEGINNING
SURFACE SITE
NAD 83 N:10645020.18
NAD 83 E:1846869.19
NAD 83 LAT:31.86507887
NAD 83 LON:-101.78187895

POINT OF BEGINNING
ACCESS ROAD
NAD 83 N:10645023.99
NAD 83 E:1846945.58
NAD 83 LAT:31.86509208
NAD 83 LON:-101.78163308

POINT OF TERMINATION
ACCESS ROAD
NAD 83 N:10643195.03
NAD 83 E:1844748.12
NAD 83 LAT:31.85998618
NAD 83 LON:-101.78863331

POINT OF TERMINATION
RIGHT OF WAY CENTERLINE
NAD 83 N:10645005.63
NAD 83 E:1846872.86
NAD 83 LAT:31.86503903
NAD 83 LON:-101.78186652

DETAIL "A"
N.T.S.

SURFACE SITE
AREA = 2,250 SQUARE FEET
(0.052 ACRES)

DETAIL "B"
N.T.S.

DETAIL "C"
N.T.S.

RIGHT OF WAY CENTERLINE BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L1	N 75°50'06" E	2753.21'

SURFACE SITE BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L2	N 75°50'06" E	75.00'
L3	S 14°09'54" E	30.00'
L4	S 75°50'06" W	75.00'
L5	N 14°09'54" W	30.00'

ACCESS ROAD BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L6	N 75°50'06" E	501.99'
L7	S 14°53'59" E	876.91'
L8	S 14°02'38" W	76.69'
L9	S 74°39'52" W	1063.94'
L10	S 65°59'50" W	93.53'
L11	S 36°57'25" W	136.48'
L12	S 56°40'47" W	106.55'
L13	S 69°08'22" W	125.83'
L14	S 00°36'47" W	158.11'
L15	S 48°30'00" W	68.90'
L16	S 78°14'17" W	810.13'
L17	S 76°18'16" W	308.09'
L18	S 78°18'01" W	309.41'
L19	N 81°19'19" W	42.65'

NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

1	06/16/23	JMJ	ADDED REQUESTED CLIENT UPDATES	DDH
#	DATE	BY:	DESCRIPTION	CHK

PROJECT NO. 20357



TBPELS FIRM# 10194245
201 West Wall Street, Suite 325
Midland, TX 79701
(817) 529-1180 ~ Fax (817) 529-1181

20.8



RHODES DISCHARGE
THE CITY OF MIDLAND, TEXAS
PROPOSED RIGHT OF WAY CENTERLINE,
SURFACE SITE & ACCESS ROAD

SITUATED IN
SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 957
MIDLAND COUNTY, TEXAS

DRAWN BY: AVP	DATE: 06/05/2023	DWG. NO. 20357_TX-MD-0002.00000	REV. 1
CHECKED BY: DDH	DATE: 06/09/2023		
SCALE: 1"=1000'	PAGE 3 OF 3		

August 22, 2023

EXHIBIT "B"

CENTERLINE DESCRIPTION

BEING THE CENTERLINE OF A PROPOSED 30 FOOT WIDE RIGHT OF WAY SITUATED IN SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH, T. & P. RR. CO. SURVEY, ABSTRACT NO. 957, MIDLAND COUNTY, TEXAS. SAID CENTERLINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N:10644406.63, E:1844376.93) IN SAID SECTION 30, FROM WHICH A 1" IRON PIPE FOUND FOR THE NORTHWEST CORNER OF SAID SECTION 30 BEARS N 18°32'32" W, A DISTANCE OF 2444.78 FEET (TIE);

THENCE S 75°50'06" W, A DISTANCE OF 186.59 FEET TO THE POINT OF TERMINATION (N:10644360.97, E:1844196.02) OF SAID CENTERLINE, AT A POINT IN THE WEST BOUNDARY LINE OF SAID SECTION 30, FROM WHICH THE CALCULATED SOUTHWEST CORNER OF SAID SECTION 30 BEARS S 14°09'54" E, A DISTANCE OF 2882.77 FEET (TIE), FROM WHICH A FOUND 1/2" IRON ROD BEARS N 70°00'48" E, A DISTANCE OF 52.51 FEET (TIE).

SAID CENTERLINE CONTAINING A TOTAL OF 186.59 FEET OR 11.31 RODS AND 0.128 ACRES IN SAID SECTION 30.



NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

Dempsey D. Hannah 06/16/2023
DEMPSEY D. HANNAH TEXAS R.P.L.S. NO. 5637 DATE

#	DATE	BY:	DESCRIPTION	CHK
1	06/16/23	JMJ	ADDED REQUESTED CLIENT UPDATES	DDH

PROJECT NO. 20358



TBPCLS FIRM# 10194245
201 West Wall Street, Suite 325
Midland, TX 79701
(817) 529-1180 ~ Fax (817) 529-1181

20.9



RHODES FUEL GAS
THE CITY OF MIDLAND, TEXAS
PROPOSED CENTERLINE OF RIGHT OF WAY
SITUATED IN
SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 957
MIDLAND COUNTY, TEXAS

DRAWN BY: MJM	DATE: 06/07/23	DWG. NO. 20358_TX-MD-0002.00000	REV. 1
CHECKED BY: DDH	DATE: 06/12/23		
SCALE: 1"=1000'	PAGE 1 OF 2		

EXHIBIT "B"

FOUND 1" IRON PIPE

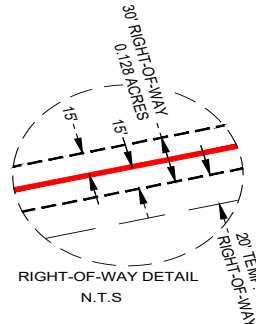
TX-MD-0002.00000
THE CITY OF MIDLAND, TEXAS
VOL. 1508, PG. 593
D.R.M.C.T.

SECTION 30, BLOCK 36
TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 957
MIDLAND COUNTY, TEXAS

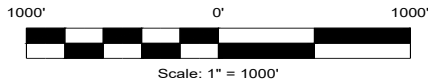
CENTERLINE OF RIGHT OF WAY BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L1	S 75°50'06" W	186.59'

LEGEND	
---	SECTION LINE
---	OVERHEAD ELECTRIC
---	CENTERLINE OF RIGHT OF WAY
---	RIGHT OF WAY
---	EXISTING PIPELINE
X	FENCE LINE
○	POWER POLE
●	FOUND MONUMENT
○	CALCULATED CORNER
●	BEARING CHANGE

CENTERLINE OF RIGHT OF WAY
TOTAL LENGTH = 186.59 FEET
(11.31 RODS/ 0.128 ACRES)



THE POINT OF BEGINNING IS LOCATED APPROXIMATELY 19.5
MILES SOUTHEAST OF MIDLAND, TEXAS



NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

#	DATE	BY:	DESCRIPTION	CHK
1	06/16/23	JMJ	ADDED REQUESTED CLIENT UPDATES	DDH

PROJECT NO. 20358



TBPELS FIRM# 10194245
201 West Wall Street, Suite 325
Midland, TX 79701
(817) 529-1180 ~ Fax (817) 529-1181

2010



RHODES FUEL GAS
THE CITY OF MIDLAND, TEXAS
PROPOSED CENTERLINE OF RIGHT OF WAY
SITUATED IN
SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 957
MIDLAND COUNTY, TEXAS

DRAWN BY: MJM	DATE: 06/07/23	DWG. NO. 20358_TX-MD-0002.00000	REV. 1
CHECKED BY: DDH	DATE: 06/12/23		
SCALE: 1"=1000'	PAGE 2 OF 2		

August 22, 2023

EXHIBIT "C"

AS-BUILT ELECTRIC LINE DESCRIPTION

BEING AN AS-BUILT ELECTRIC LINE SITUATED IN SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH T. & P. RR. CO. SURVEY, ABSTRACT NO. 957, MIDLAND COUNTY, TEXAS. SAID AS-BUILT ELECTRIC LINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N:10642116.81, E:1844762.42) IN THE WEST BOUNDARY LINE OF SAID SECTION 30, FROM WHICH THE CALCULATED SOUTHWEST CORNER OF SAID SECTION 30 BEARS S 14°09'54" E, A DISTANCE OF 568.23 FEET (TIE), FROM WHICH A 5/8" IRON ROD FOUND BEARS N 75°11'12" E, A DISTANCE OF 55.22 FEET (TIE);

THENCE N 75°55'14" E, A DISTANCE OF 2.13 FEET TO A POINT, HEREINAFTER CALLED POINT "A";

THENCE N 13°57'58" W, A DISTANCE OF 312.22 FEET TO A POINT;

THENCE N 14°09'37" W, A DISTANCE OF 321.69 FEET TO A POINT;

THENCE N 14°24'24" W, A DISTANCE OF 299.73 FEET TO A POINT;

THENCE N 14°08'13" W, A DISTANCE OF 300.00 FEET TO A POINT;

THENCE N 14°37'26" W, A DISTANCE OF 264.91 FEET TO THE POINT OF TERMINATION (N:10643569.78, E:1844395.70) OF SAID AS-BUILT ELECTRIC LINE, AT A POINT IN THE WEST BOUNDARY LINE OF SAID SECTION 30, FROM WHICH A 1" IRON PIPE FOUND FOR THE NORTHWEST CORNER OF SAID SECTION 30 BEARS N 14°09'54" W, A DISTANCE OF 3253.65 FEET (TIE).

RETURNING TO POINT "A" (GUY WIRE)

THENCE S 14°00'56" E, A DISTANCE OF 19.56 FEET TO THE POINT OF TERMINATION OF THIS EXISTING GUY WIRE.

SAID AS-BUILT ELECTRIC LINE CONTAINING A TOTAL OF 1520.24 FEET OR 92.14 RODS IN SAID SECTION 30.

NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

#	DATE	BY:	DESCRIPTION	CHK
1	08/07/23	AVP	ADDED POWER POLE SPACING & LINE CAPACITY	DDH

PROJECT NO. 20355



TBPELS FIRM# 10194245
201 West Wall Street, Suite 325
Midland, TX 79701
(817) 529-1180 ~ Fax (817) 529-1181

2011



Dempsey D. Hannah
DEMPSEY D. HANNAH TEXAS R.P.L.S. NO. 5637 08/08/2023
DATE

RHODES COMPRESSOR STATION THE CITY OF MIDLAND, TEXAS AS-BUILT ELECTRIC LINE

SITUATED IN
SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 957
MIDLAND COUNTY, TEXAS



DRAWN BY: MHC	DATE: 07/13/23	DWG. NO. 20355_TX-MD-0002.00090	REV. 1
CHECKED BY: DDH	DATE: 07/21/23	AS-BUILT_REV 1	
SCALE: 1"=1000'	PAGE 1 OF 2		

August 22, 2023

EXHIBIT "C"

FOUND 1" IRON PIPE

SF-015390

TX-MD-0002.00090
THE CITY OF MIDLAND, TEXAS
VOL. 1508, PG. 593
D.R.M.C.T

SECTION 30, BLOCK 36
TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 957
MIDLAND COUNTY, TEXAS

AS-BUILT ELECTRIC LINE
TOTAL LENGTH = 1520.24 FEET
(92.14 RODS)
240 FT POWER POLE SPACING
LINE CAPACITY: #1/0, 220A AT 25KV
9500 KVA

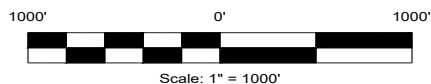
POINT OF BEGINNING
AS BUILT ELECTRIC LINE
NAD 83 N: 10642116.81
NAD 83 E: 1844762.42
NAD 83 LAT: 35.396692
NAD 83 LON: -113.098380

POINT OF TERMINATION
AS BUILT ELECTRIC LINE
NAD 83 N: 10643569.78
NAD 83 E: 1844395.70
NAD 83 LAT: 35.401115
NAD 83 LON: -113.099760

S 14°09'54" E
568.23' (TIE)

FOUND 5/8" IRON ROD
BEARS
N 75°11'12" E
55.22' (TIE)

THE POINT OF BEGINNING IS LOCATED APPROXIMATELY
5 MILES SOUTHEAST OF SPRAYBERRY, TEXAS



NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THE REVIEW OF THE ABSTRACT OF TITLE. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY NOT SHOWN HEREON. LOCATION OF ALL IMPROVEMENTS WAS BEYOND COMMISSIONED SCOPE OF THIS PROJECT AND HAS BEEN SPECIFICALLY OMITTED. VESTING DOCUMENTS NOT FURNISHED FOR THIS SURVEY.

AS-BUILT GUY WIRE BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
G1	S 14°00'56" E	19.56'

AS-BUILT ELECTRIC LINE BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L1	N 75°55'14" E	2.13'
L2	N 13°57'58" W	312.22'
L3	N 14°09'37" W	321.69'
L4	N 14°24'24" W	299.73'
L5	N 14°08'13" W	300.00'
L6	N 14°37'26" W	264.91'

MIDLAND COUNTY
GLASSCOCK COUNTY

ABSTRACT NO.
1241

LEGEND

- SECTION LINE
- OHE
- AS-BUILT ELECTRIC LINE
- APPROXIMATE COUNTY LINE
- AS-BUILT GUY WIRE
- EXISTING PIPELINE
- FENCE LINE
- POWER POLE
- FOUND MONUMENT
- CALCULATED CORNER
- BEARING CHANGE

#	DATE	BY:	DESCRIPTION	CHK
1	08/07/23	AVP	ADDED POWER POLE SPACING & LINE CAPACITY	DDH

PROJECT NO. 20355



TBPCLS FIRM# 10194245
201 West Wall Street, Suite 325
Midland, TX 79701
(817) 529-1180 ~ Fax (817) 529-1181

2012



RHODES COMPRESSOR STATION

THE CITY OF MIDLAND, TEXAS

AS-BUILT ELECTRIC LINE

SITUATED IN
SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 957
MIDLAND COUNTY, TEXAS

DRAWN BY: MHC
CHECKED BY: DDH
SCALE: 1"=1000'

DATE: 07/13/23
DATE: 07/21/23
PAGE 2 OF 2

DWG. NO.
20355_TX-MD-0002.00090
AS-BUILT_REV 1

REV.
1

August 22, 2023

EXHIBIT "D"

METES AND BOUNDS DESCRIPTION

SURFACE SITE

BEING A PROPOSED SURFACE SITE SITUATED IN SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH, T. & P. RR. CO. SURVEY, ABSTRACT NO. 957, MIDLAND COUNTY, TEXAS. SAID SURFACE SITE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT (N:10644393.31, E:1844385.45) IN SAID SECTION 30, FROM WHICH THE CALCULATED SOUTHEAST CORNER OF SAID SECTION 30 BEARS S 76°18'39" E, A DISTANCE OF 5949.28 FEET (TIE), FROM WHICH A 4" IRON PIPE FOUND BEARS N 75°08'32" E, A DISTANCE OF 172.99 FEET (TIE);

THENCE S 75°50'06" W, A DISTANCE OF 50.00 FEET TO A POINT, FROM WHICH THE CALCULATED SOUTHWEST CORNER OF SAID SECTION 30 BEARS S 11°20'19" E, A DISTANCE OF 2871.26 FEET (TIE), FROM WHICH A FOUND 1/2" IRON ROD BEARS N 70°00'48" E, A DISTANCE OF 52.51 FEET (TIE);

THENCE N 14°09'54" W, A DISTANCE OF 30.00 FEET TO A POINT;

THENCE N 75°50'06" E, A DISTANCE OF 50.00 FEET TO A POINT;

THENCE S 14°09'54" E, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

SAID SURFACE SITE CONTAINING A TOTAL OF 1,500 SQUARE FEET OR 0.034 ACRES IN SAID SECTION 30.

NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
2. LATITUDE & LONGITUDE ARE NAD 83 DECIMAL GEOGRAPHIC.
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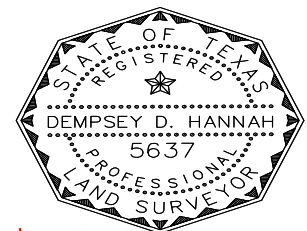
#	DATE	BY:	DESCRIPTION	CHK

PROJECT NO. 20358



TBPELS FIRM# 10194245
201 West Wall Street, Suite 325
Midland, TX 79701
(817) 529-1180 ~ Fax (817) 529-1181

2013



Dempsey D. Hannah 08/01/2023
DEMPSEY D. HANNAH TEXAS R.P.L.S. NO. 5637 DATE



RHODES FUEL GAS
THE CITY OF MIDLAND, TEXAS
PROPOSED SURFACE SITE
SITUATED IN
SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 957
MIDLAND COUNTY, TEXAS

DRAWN BY: MHC	DATE: 07/27/23	DWG. NO. 20358_TX-MD-0002.00080	REV. 0
CHECKED BY: DDH	DATE: 08/01/23		
SCALE: 1"=1000'	PAGE 1 OF 2		

August 22, 2023

EXHIBIT "D"

FOUND 1" IRON PIPE

SURFACE SITE
TOTAL AREA = 1,500 SQ. FT.
(0.034 ACRES)

TX-MD-0002.00080
THE CITY OF MIDLAND, TEXAS
VOL. 1508, PG. 593
D.R.M.C.T.

SECTION 30, BLOCK 36
TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 957
MIDLAND COUNTY, TEXAS

**POINT OF BEGINNING
SURFACE SITE**
NAD 83 N: 10644393.31
NAD 83 E: 1844385.45
NAD 83 LAT: 31.863267
NAD 83 LONG: -101.789852

S 76°18'39" E 5949.28' (TIE)

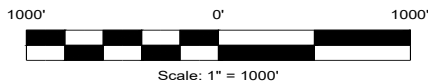
FOUND
4" IRON PIPE
BEARS
N 75°08'32" E
172.99' (TIE)

FOUND 1/2" IRON
ROD BEARS
N 70°00'48" E
52.51' (TIE)

SURFACE SITE BEARING & DISTANCE TABLE		
LINE #	BEARING	DISTANCE
L1	S 75°50'06" W	50.00'
L2	N 14°09'54" W	30.00'
L3	N 75°50'06" E	50.00'
L4	S 14°09'54" E	30.00'

LEGEND	
	SECTION LINE
	OHE OVERHEAD ELECTRIC
	SURFACE SITE
	EXISTING PIPELINE
	FENCE LINE
	POWER POLE
	FOUND MONUMENT
	CALCULATED CORNER
	BEARING CHANGE

THE POINT OF BEGINNING IS LOCATED APPROXIMATELY 19.5
MILES SOUTHEAST OF MIDLAND, TEXAS



NOTES:

1. BEARINGS, DISTANCES, AREA AND COORDINATES SHOWN HEREON ARE CORRELATED TO THE TEXAS COORDINATE SYSTEM OF 1983, TEXAS CENTRAL ZONE (4203). ALL BEARINGS AND DISTANCES SHOWN ARE GRID.
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#	DATE	BY:	DESCRIPTION	CHK

PROJECT NO. 20358



TBPELS FIRM# 10194245
201 West Wall Street, Suite 325
Midland, TX 79701
(817) 529-1180 ~ Fax (817) 529-1181

2014



RHODES FUEL GAS
THE CITY OF MIDLAND, TEXAS
PROPOSED SURFACE SITE
SITUATED IN
SECTION 30, BLOCK 36, TOWNSHIP 3 SOUTH
T. & P. RR. CO. SURVEY
ABSTRACT NO. 957
MIDLAND COUNTY, TEXAS

DRAWN BY: MHC
CHECKED BY: DDH
SCALE: 1"=1000'

DATE: 07/27/23
DATE: 08/01/23
PAGE 2 OF 2

DWG. NO.
20358_TX-MD-0002.00080

REV.
0



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
05/11/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Southwest, Inc. Houston TX Office 1300 Post Oak Blvd., Suite 1400 Houston TX 77056 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105 E-MAIL ADDRESS:														
INSURED Enterprise Navitas Pipeline Texas LLC 1100 Louisiana Street 10th Floor Houston TX 77002 USA	<table><tr><td>INSURER(S) AFFORDING COVERAGE</td><td>NAIC #</td></tr><tr><td>INSURER A: Old Republic Insurance Company</td><td>24147</td></tr><tr><td>INSURER B: Lexington Insurance Company</td><td>19437</td></tr><tr><td>INSURER C:</td><td></td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Old Republic Insurance Company	24147	INSURER B: Lexington Insurance Company	19437	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: Old Republic Insurance Company	24147														
INSURER B: Lexington Insurance Company	19437														
INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															

Holder Identifier :

COVERAGES **CERTIFICATE NUMBER:** 570099396569 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			MWZY31308823	04/18/2023	04/18/2024	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) Excluded PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$6,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY			MWTB 313086 23	04/18/2023	04/18/2024	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
A	☒ UMBRELLA LIAB ☐ EXCESS LIAB ☐ DED ☐ RETENTION			MWZU31362823	04/18/2023	04/18/2024	EACH OCCURRENCE \$9,000,000 AGGREGATE \$9,000,000
A	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	☐ Y ☒ N	N/A	MWC31308523	04/18/2023	04/18/2024	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000

570099396569

Certificate No :

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Process for a Right-of-Way License Agreement. Certificate Holder is included as Additional Insured in accordance with the policy provisions of the General Liability and Automobile Liability policies. A waiver of subrogation is granted in favor of Certificate Holder in accordance with the policy provisions of the General Liability, Automobile Liability, Umbrella Liability and Workers' Compensation policies.

CERTIFICATE HOLDER City of Midland 300 N. Lorraine Midland TX 79701 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Aon Risk Services Southwest, Inc.</i>
---	--

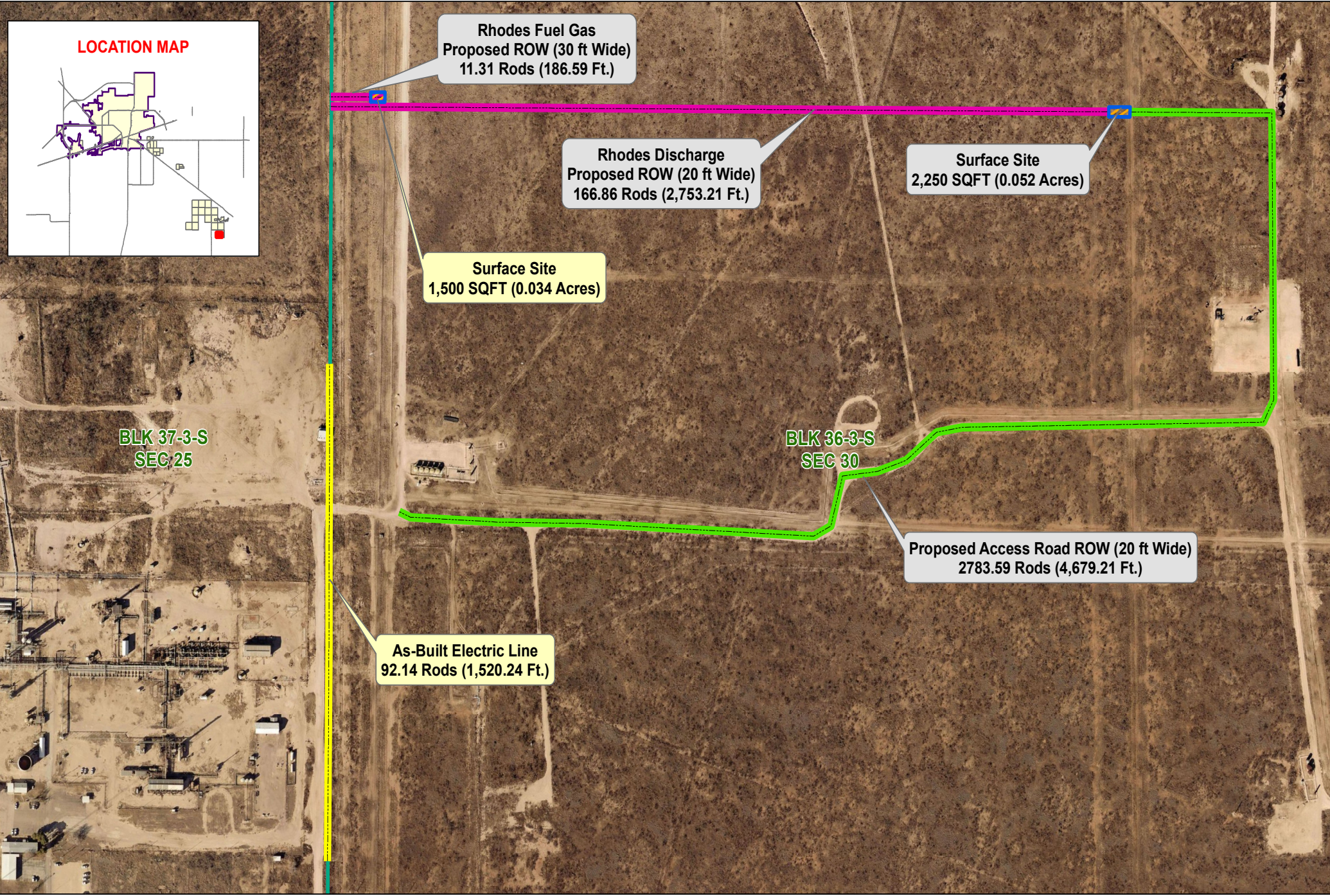
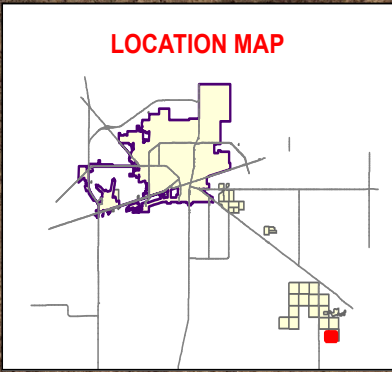
PACKET

20.15

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August 22, 2023





- Surface Site
 - As-Built Electric Line
 - Proposed ROW
 - Proposed Access Road
 - Survey Section
- PACKET

Enterprise - Rhodes Fuel Gas

Proposed ROW & Surface Sites

As-Built Electric Line

Date: 8/3/2023

August 22, 2023

0 150 300 Feet

©THE CITY OF MIDLAND - 2023

THIS DATA IS NOT A SUBSTITUTE FOR A SURVEY PROJECT. 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.



City Council Meeting

Item Number: 21
Meeting Date: August 8, 2023, August 22, 2023
To: City Council / City Manager
From: Alexandra Walling, Senior Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 45, FAIRMONT PARK ADDITION, SECTION 10, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 1,335 FEET SOUTH OF WEST LOOP 250 FRONTAGE 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 1) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Justin Becker, is requesting a Zone Change from PD, Planned Development District for a Shopping Center to an amended PD, Planned Development District for a Shopping Center to amend their site plan for an expansion to the east and northeast of the existing building, new signage, and a new drive-up service area and canopy in the parking lot.

Recommended City Council Action:

Approve.

Fiscal Impact:

This request has no significant impact on the City's Budget.

Current Zoning:

PD, Planned Development District for a Shopping Center with a base zoning RR, Regional Retail District (Ordinance 8538).

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned District for a Shopping Center, and the location of a bank (Ordinance 8538). The properties to the east are zoned SF-3, Single-Family Dwelling District, and the location of single-family houses. The property to the south is zoned SF-1, Single-Family Dwelling District, and the location of a church. The property to the west is zoned PD, Planned District for a Shopping Center, and the location of a retail store.

Analysis:

The property is located at 4001 North Midland Drive and is currently the location of a Target store with an overall total of 116,500 square feet. The applicant intends to add 19,151 square feet along the east and northeast sides of the store for additional sales and storage, and 480 square feet at the front entrance, for a total of 136,131 square feet. The applicant also intends to erect a covered drive-up pickup and canopy for customers along with updated signage. The current PD (Ordinance 8538) restricted the total square footage of the building to 134,579 square feet and the new PD would allow the increased square footage along with the other site improvements.

This proposed Zone Change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on the time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections to zone change. [For Applicant's Information Only.]

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For Applicant's Information Only.]

Code: (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.]

Planning:

The request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3-Land Use Vision. The land use map indicates that this area shall be used for Urban-Medium Neighborhood Center (U-M NC). This land use includes a mix of residential, businesses, and offices.

The Planning and Zoning Commission recommended approval for this request at the July 10, 2023, regular meeting.

Staff recommends approval of this Zone Change from PD, Planned Development District for a Shopping Center, to Amended PD, Planned Development District for a Shopping Center, subject to condition A.

Conditions:

- A. That the property shall significantly conform to the site plan and elevation drawings attached hereto as Exhibit "A".**

Letters of Objection:

As of July 28, 2023, staff has received no letters of objection for this request.

Attachments:

Exhibit A
Application
Maps



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 45, FAIRMONT PARK ADDITION, SECTION 10, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 1,335 FEET SOUTH OF WEST LOOP 250 FRONTAGE 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, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 1, Block 45, Fairmont Park Addition, Section 10, City and County of Midland, Texas (the "Property") to an amended PD, Planned Development District for a Shopping Center and adopting a site plan therefor, as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Shopping Center to an amended PD, Planned Development District for a Shopping Center.

SECTION TWO. That the base zoning district to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, is the RR, Regional Retail District.

SECTION THREE. That a site plan and elevation drawings, which are attached

hereto as Exhibit “A” and incorporated herein for all purposes, are hereby adopted, and the use and development of the Property shall be subject to the following conditions and restrictions:

That the Property shall significantly conform to the site plan and elevation drawings attached hereto as Exhibit “A”.

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Rolandrea Russell, Interim Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

EXHIBIT "A"

FIRE CODE COMPLIANCE

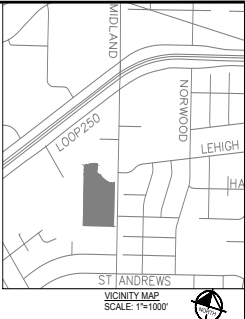
FIRE FLOW (PER 2021 IFC APPENDIX B)

REQUIRED FIRE FLOW (PER TABLE B105.1(2))
TYPE IB BUILDINGS
BUILDING SIZE = 129,601-138,300 SF
REQUIRED FIRE FLOW = 7,750 GPM
REQUIRED FLOW DURATION = 4 HOURS

REDUCTION FOR AUTOMATIC SPRINKLER SYSTEM (PER TABLE B105.2)
REQUIRED FLOW IS EQUAL TO 25% OF VALUE IN TABLE B105.1(2)
REQUIRED FIRE FLOW = 1,938 GPM
REQUIRED FLOW DURATION = 4 HOURS

FIRE HYDRANTS (PER 2021 IFC APPENDIX C)

REQUIRED QUANTITY, SPACING, AND MAXIMUM DISTANCE OF HYDRANTS (PER TABLE C102.1)
REQUIRED FIRE FLOW = 1,938 GPM
MINIMUM FIRE HYDRANTS = 2
AVERAGE SPACING BETWEEN HYDRANTS = 450'
MAXIMUM DISTANCE FROM ANY POINT ON STREET OR ROAD FRONTAGE TO A HYDRANT = 225'



LEGEND

- PROPERTY LINE
PROPOSED BUILDING EXPANSION
PROPOSED CONCRETE SIDEWALK
PROPOSED LANDSCAPING
PARKING COUNT

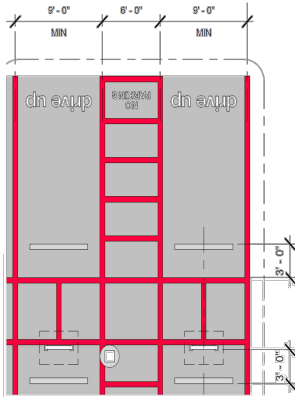
ZONING

- EXISTING PD-PLANNED DEVELOPMENT DISTRICT
PROPOSED PD-PLANNED DEVELOPMENT DISTRICT

SITE ANALYSIS

TARGET LOT AREA: 410,335 SF
EXISTING BUILDING AREA: 116,500 SF
EXISTING TARGET STORE: 116,500 SF

PROPOSED BUILDING AREA:
TARGET STORE: 116,500 SF
BUILDING ADDITION: 19,631 SF
TOTAL BUILDING AREA: 136,131 SF
PARKING RATIO REQUIRED: 1,300 SF
TOTAL PARKING REQUIRED: 454
PARKING PROVIDED: STANDARD = 483
ACCESSIBLE = 8
VAN ACCESSIBLE = 2
TOTAL PARKING PROVIDED: 493



PACKET

PRELIMINARY SITE PLAN
SCALE: 1"=60'

21.8



GRAPHIC SCALE IN FEET
0 25 50 100

August 22, 2023

DRIVE UP STRIPING DETAIL
SCALE: N.T.S.

Kimley»Horn

KHA PROJECT
DATE 2023/04/03
SCALE AS SHOWN
DESIGNED BY KFE
DRAWN BY KFE
CHECKED BY JB

PRELIMINARY
SITE PLAN

T0770 MIDLAND, TX
4001 N MIDLAND DR
MIDLAND, TX 79707

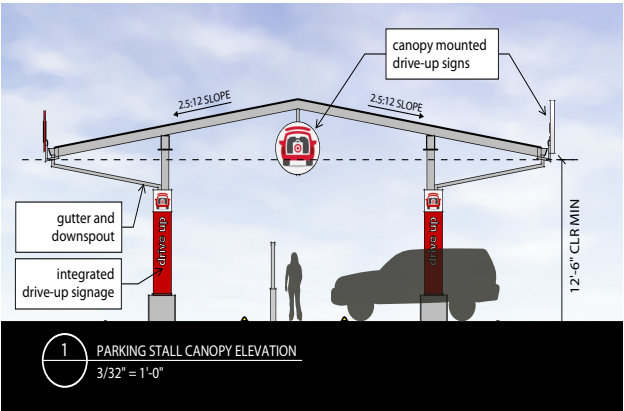
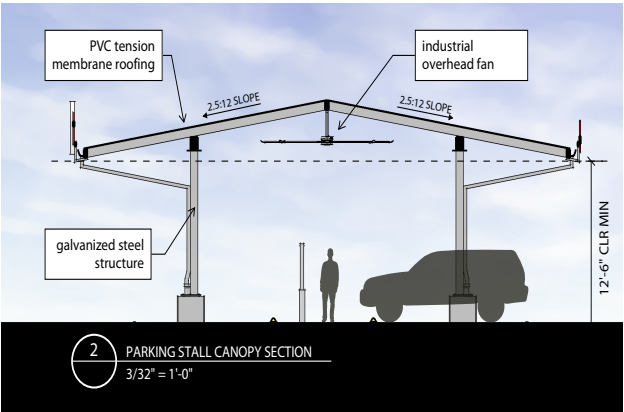
SHEET NUMBER

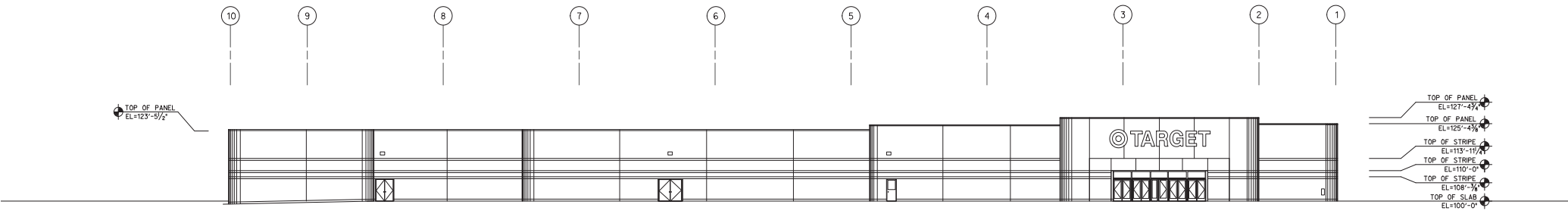
NO.	REVISIONS	DATE	BY

This document, together with the concepts and designs presented herein, is intended only for the specific purpose and client for which it was prepared. Review of and incorporation of this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

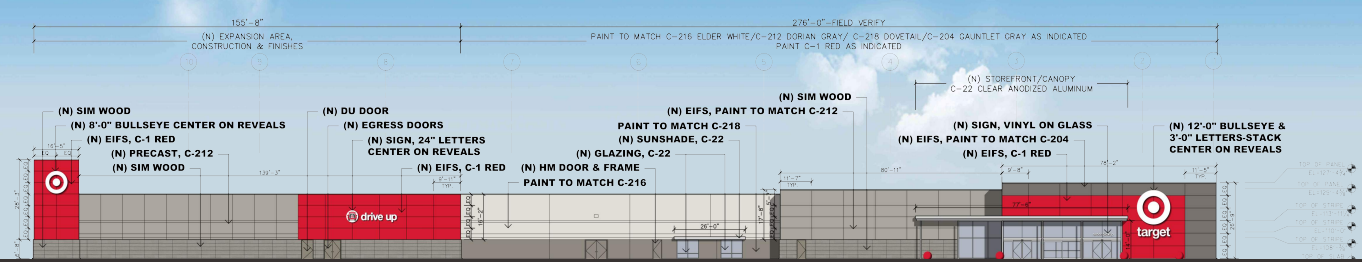


*3-dimensional perspectives are not site specific and are intended to convey proposed canopy design





Existing Condition



Front Elevation

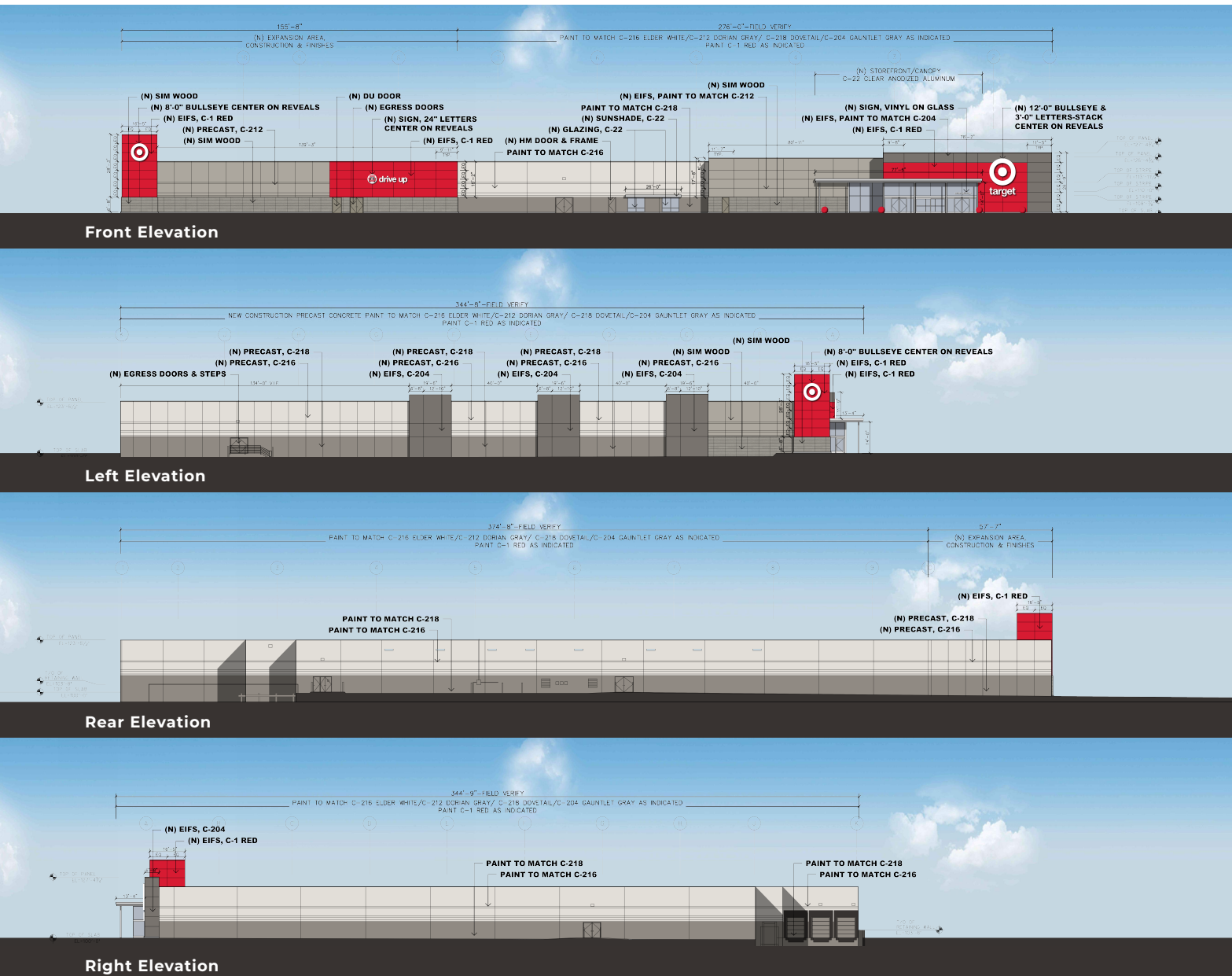


21.10

August 22, 2023

T-0770 Midland, TX: Expansion - Exterior Design

RSP Architects Ltd.
March 06, 2023



COLOR KEY:

	C-216 (SW#7014) EIDER WHITE
	C-212 (SW#7017) DORIAN GRAY
	C-218 (SW#7018) DOVETAIL GRAY
	C-204 (SW#7019) GAUNTLET GRAY
	C-1 RED
	C-22 CLEAR ANODIZED
	SIM WOOD: NICHIIHA (ROUGHSAWN) PANELS, "SMOKE" COLOR

NOTE:

- *NEW STOREFRONT & CANOPY C-22 FINISH AS SHOWN.
- *PAINT HM DOOR AND FRAME TO MATCH ADJ. WALL, TYP.
- *NEW CONSTRUCTION EIFS & PRECAST AS SHOWN.
- *STORE EXTERIOR WALLS ARE PRIMARILY CONCRETE TILT WALL
- *NEW SPHERICAL BOLLARDS C-1 RED U.N.O.
- *BEN-2: MODERN, COLOR.....SILVER

GENERAL NOTE

- * AREA TO BE PAINTED STARTS AT TOP OF CURB OR REVEAL AND CONTINUES TO TOP OF PARAPET/FLASHING OR REVEAL. PAINT COLOR AND FINISH TRANSITIONS OCCUR AT EXISTING VERTICAL CONTROL JOINTS OR AT INSIDE BUILDING CORNERS, U.N.O.
- * ALL EXISTING WALL-MOUNTED ITEMS TO BE PAINTED TO MATCH ADJ. WALL SURFACE, U.N.O.
- * PATCH ALL VISIBLE HOLES FROM MOUNTING OF REMOVED SIGNS WITH LIKE MATERIALS. RESTORE WALL SURFACE TO 'LIKE NEW' APPEARANCE.



T-0770 Midland, TX: Expansion - Exterior Design

21.11

August 22, 2023

RSP Architects Ltd.

March 06, 2023

EXHIBIT "A"

FIRE CODE COMPLIANCE

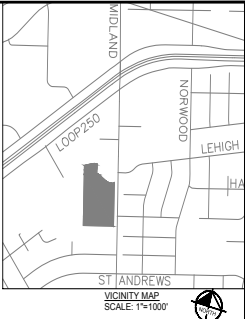
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REQUIRED QUANTITY, SPACING, AND MAXIMUM DISTANCE OF HYDRANTS (PER TABLE C102.1)
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LEGEND

- PROPERTY LINE
PROPOSED BUILDING EXPANSION
PROPOSED CONCRETE SIDEWALK
PROPOSED LANDSCAPING
PARKING COUNT

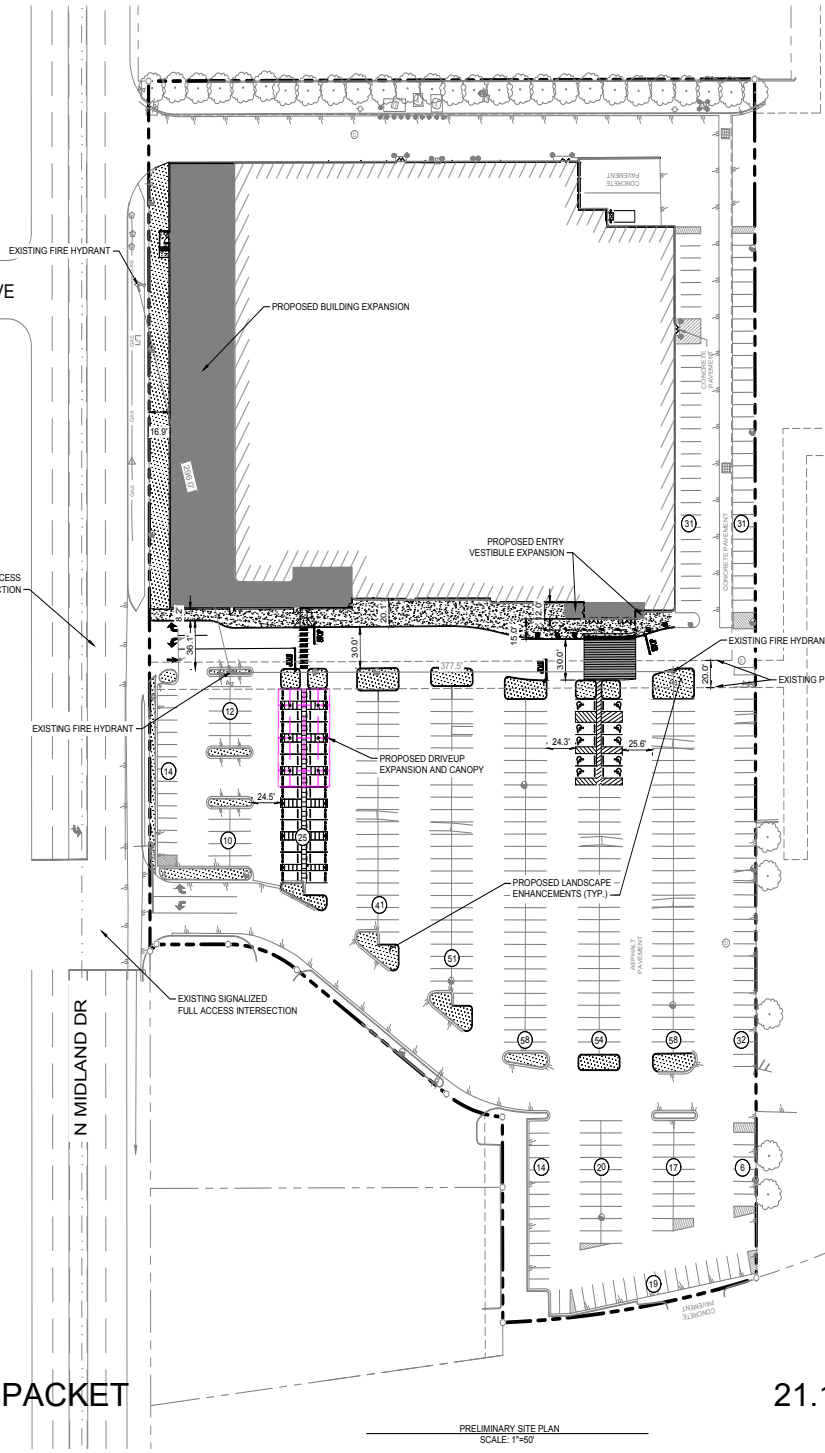
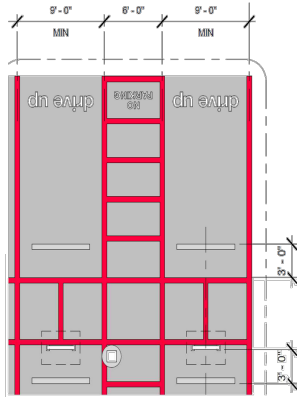
ZONING

- EXISTING PD-PLANNED DEVELOPMENT DISTRICT
PROPOSED PD-PLANNED DEVELOPMENT DISTRICT

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EXISTING BUILDING AREA: 116,500 SF
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PROPOSED BUILDING AREA:
TARGET STORE: 116,500 SF
BUILDING ADDITION: 19,631 SF
TOTAL BUILDING AREA: 136,131 SF
PARKING RATIO REQUIRED: 1:300 SF
TOTAL PARKING REQUIRED: 454
PARKING PROVIDED: STANDARD = 483
ACCESSIBLE = 8
VAN ACCESSIBLE = 2
TOTAL PARKING PROVIDED: 493



21.12



GRAPHIC SCALE IN FEET
0 25 50 100

August 22, 2023

DRIVE UP STRIPING DETAIL
SCALE: N.T.S.

Kimley»Horn
4001 N MIDLAND, SUITE 400
SAN DIEGO, CA 92108
(619) 234-9411
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KHA PROJECT	DATE	SCALE	AS SHOWN	KFE	KFE
2023/04/03	2023/04/03	AS SHOWN	AS SHOWN	AS SHOWN	AS SHOWN
DESIGNED BY	DRAWN BY	CHECKED BY	DATE	BY	DATE

PRELIMINARY
SITE PLAN

T0770 MIDLAND, TX
4001 N MIDLAND DR
MIDLAND, TX 79707
SHEET NUMBER

This document, together with the concepts and designs presented herein, is intended only for the specific purpose and client for which it was prepared. Review of and approval of this document without written authorization and signature of Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.



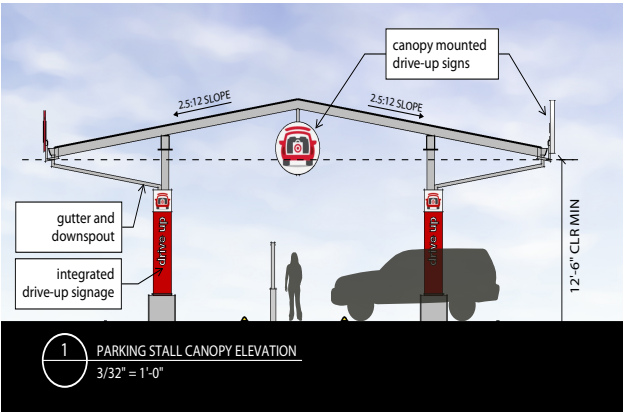
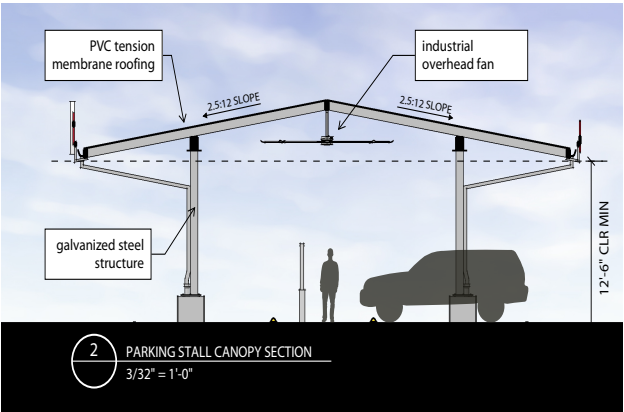
*3-dimensional perspectives are not site specific and are intended to convey proposed canopy design

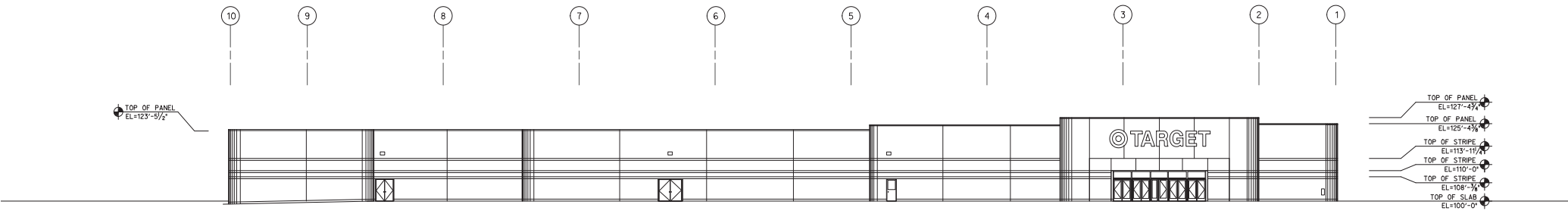
12 Stall Parking Canopy
No Drive Aisle Canopy
Drive-Up Canopy

PACKET

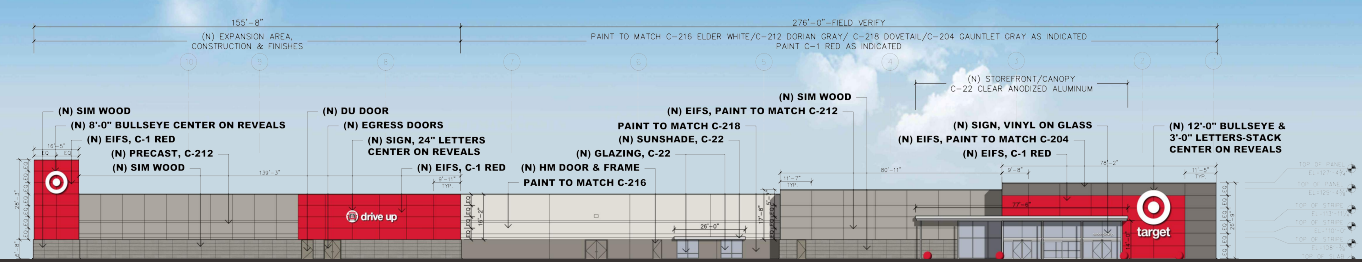
21.13

August 22, 2023



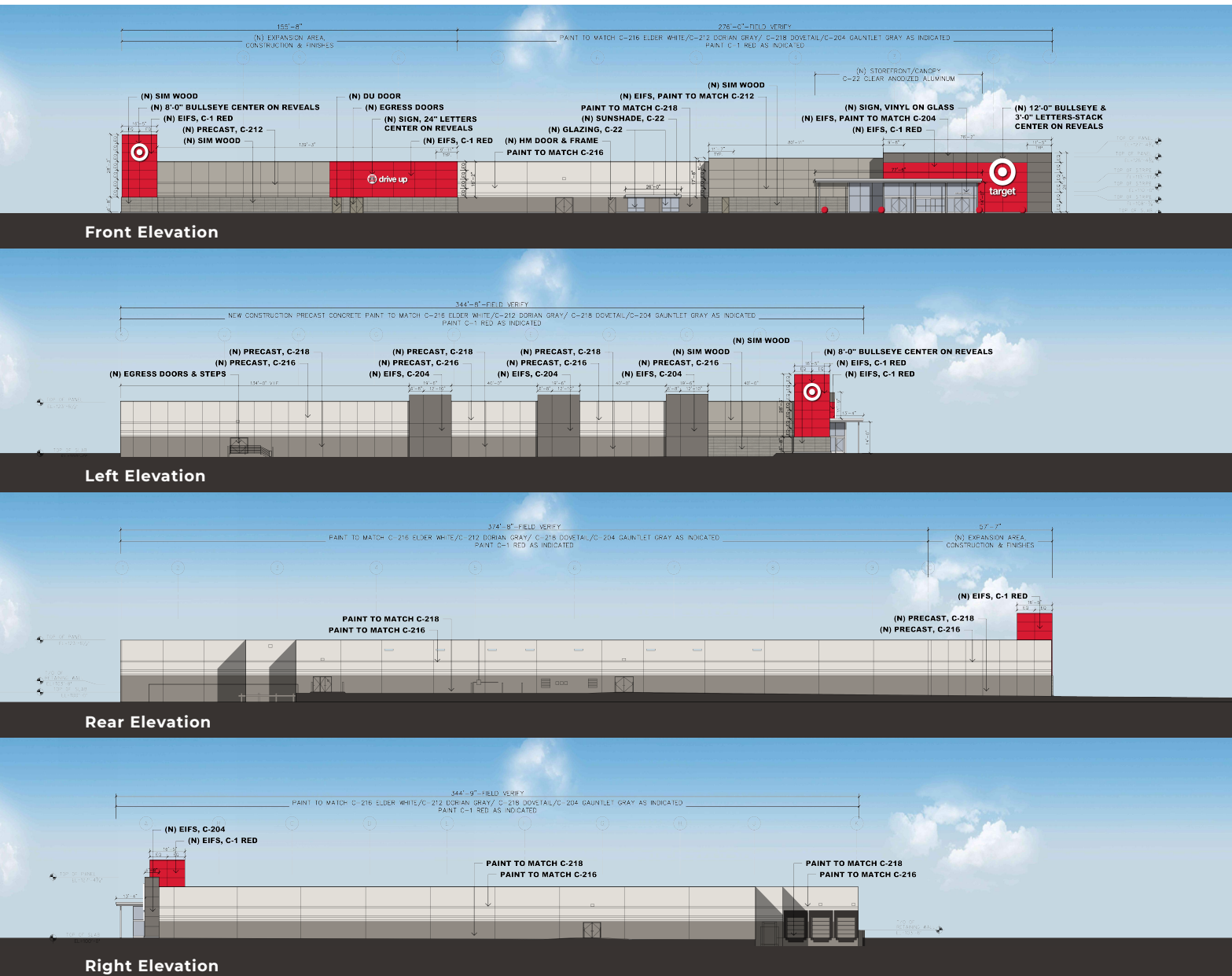


Existing Condition



Front Elevation





T-0770 Midland, TX: Expansion - Exterior Design

21.15

August 22, 2023

RSP Architects Ltd.

March 06, 2023



**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: 2-23-0333

Case Number: _____

Applicant (if acting as Agent, see affidavit on page 2)

Printed Name: Justin Becker

Phone (619) 744-0169

Email
justin.becker@kimley-horn.com

Address
401 B Street, Suite 600

City
San Diego

State
CA

Zip
92101

Property Owner

Printed Name: Target Corporation (contact: Allison Mathern)

Phone (612) 696-0270

Email
allison.mathern@target.com

Address
1000 Nicollet Mall

City
Minneapolis

State
MN

Zip
55403

Representative (if different from Applicant or Property Owner)

Firm: _____

Printed Name: _____

Phone ()

Email

Address

City

State

Zip

Street Address: 4001 N Midland Drive

Legal Description

Lot: _____ Block: _____ Subdivision: _____

Current Zoning:

Planned District Ordinance 8538

Proposed Zone: Planned District Ordinance 8538

(List by tracts if more than one district is requested)

Reason for Zone Change Request: (See attached supplement) Amending the prior planned expansion from Ordinance 8538 (never completed) to reflect the updated

expansion for Target sales floor and stockroom needs. Building signage will be updated to current Target brand standards. Additional site scope includes a proposed 24 stall drive up area, 12 stall shade canopy structure and drive aisle canopy structure, drive up wayfinding signage for each stall, and upgraded site lighting within the drive up area. The site will be updated to current landscape code requirements for shade tree coverage.

Present Use of Property: Retail

Proposed Use of Property: Retail

How would this zone change affect the public health, safety and welfare? _____

This PD Amendment will substantially conform with the prior approved Ordinance 8538 for the building expansion, and the increase in landscaping onsite will bring this property into current City code standards for providing shade tree coverage throughout the parking lot.

Describe how conditions affecting the property have changed since present zoning

designation: N/A. The project is not requesting a zone change and will be upgrading to meet current City landscape regulations.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

PACKET

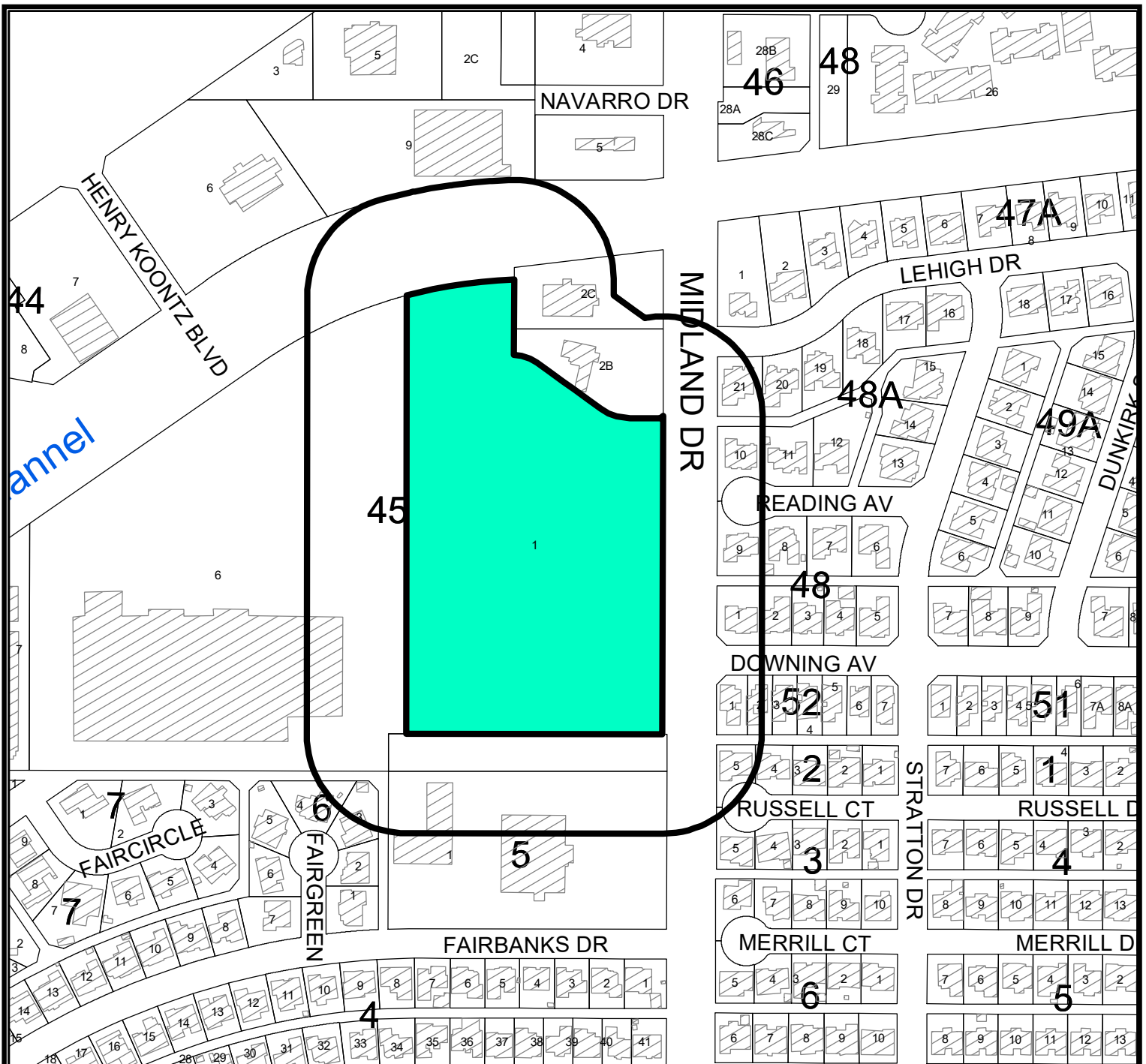
21.16

August 22, 2023

Signature (by property owner only – authorized agent must sign affidavit below)	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature): <i>Allison Mathern</i>	Date: 3/7/23
Property Owner (printed) : Target Corporation (Allison Mathern)	
<i>The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office <u>only</u> when it has been submitted in <u>full compliance</u> with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.</i> <i>All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.</i>	

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 ☒ Application Fee Check # _____	☒ Dimensioned Site Plan ☒ Plans in Digital Format (PDF/JPEG)
Received By: <i>JEFF Fisher</i>	
Date: <i>5/16/2023</i>	



LOCATION MAP

Z-23-0333

Scale: 1"= 200'

A zone change from PD, Planned Development District for a Shopping Center to an Amended PD, Planned Development District for a Shopping Center, on Lot 1, Block 45, Fairmont Park Addition, Section 10, City and County of Midland, Texas.

Generally located on the west side of North Midland Drive, approximately 1,335-feet south of W Loop 250 Frontage Road (Council District 1)

21.18

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

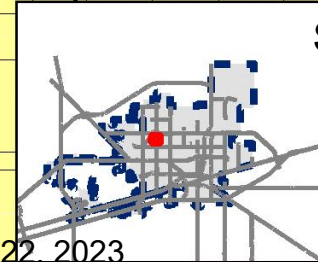
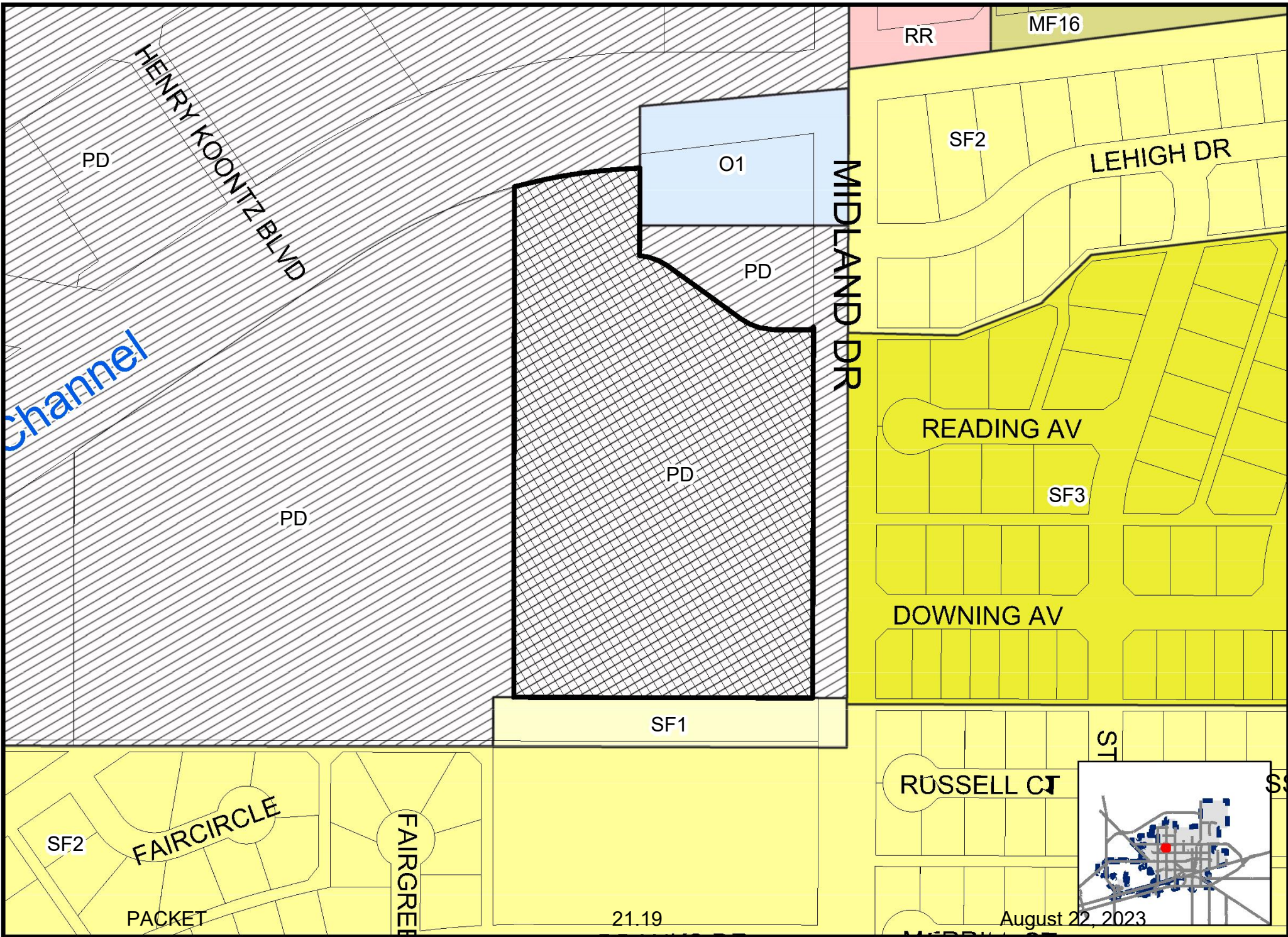


©THE CITY OF MIDLAND - 2021

August 22, 2023

THIS DATA IS NOT A SUBSTITUTION FOR A PROFESSIONAL SURVEY OR IS IT DESIGNED TO BE USED AS A TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.













City Council Meeting

Item Number: 22
Meeting Date: August 8, 2023, August 22, 2023
To: City Council / City Manager
From: Alexandra Walling, Senior Planner
Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, WEST 191 INDUSTRIAL PARK, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, APPROXIMATELY 685 FEET EAST OF FARM TO MARKET ROAD 1788); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Triangle Engineering, LLC, is requesting a Zone Change from RR, Regional Retail District to LI, Light Industrial District at 11120 Highway 191 to allow for the intended use of the property.

Recommended City Council Action:

Approve.

Fiscal Impact:

This request has no significant impact on the City's Budget.

Current Zoning:

RR, Regional Retail District.

Surrounding Zoning and Land Use:

The properties to the north and east are zoned RR, Regional Retail District, and the location of vacant land. The property to the south is zoned RR, Regional Retail District, and the location of a university. The property to the west is zoned RR, Regional Retail District, and the location of a business.

Analysis:

The property is located at 11120 Highway 191 and is currently vacant. The applicant intends to construct a 16,100-square-foot building for the future development of a Caliber Collision. The land use for this business is classified as Automobile Service Garage (Major Repair) by the Zoning Ordinance.

A large portion of the State Highway 191 corridor is within the Airport Overlay District (AOZ-4) and several of the uses permitted by RR, Regional Retail District are prohibited within the AOZ-4. Retail uses usually attract higher densities of people which increases the risk of injury. The AOZ-4 prohibits new retail uses and many residential uses, public uses, and outdoor recreational uses, restricting appropriate uses to certain industrial and heavy commercial uses only.

This request has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objection to zone change.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary. Code versions are subject to change depending on time of new code edition adoption in the City of Midland and date of permit application.

Engineering: (Approved)

No objections to zone change. [For 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: (Approved)

No Oil and Gas issues.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning:

The Tall City Tomorrow Future Land Use map does not currently include this property. However, the AOZ-4 regulations prohibit numerous retail uses as they are considered incompatible with the location of the Midland International Air and Space Port, due to the increased population and density of people generated by the uses, increasing the risk of injury.

The proposed Automobile Service Garage (Major Repair) land use is compatible with the allowances of the AOZ-4 due to the density of people generated by this use being lower than the average retail use. Therefore, the rezoning of this property to LI, Light Industrial for the proposed development appropriately aligns with the regulations of the AOZ-4 regulations.

The Planning and Zoning Commission recommended approval for this request at the July 10, 2023, regular meeting.

Staff recommends approval of this zone change from RR, Regional Retail District, to LI, Light Industrial District, subject to condition A.

Condition:

- A. That the use and development of the property shall conform to the regulations of the LI, Light Industrial District.**

Letters of Objection:

As of July 28, 2023, staff has received no letters of objection for this request.

Attachments:

Site Plan (Exhibit A)
Application
Maps

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, WEST 191 INDUSTRIAL PARK, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, APPROXIMATELY 685 FEET EAST OF FARM TO MARKET ROAD 1788); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 2, Block 2, West 191 Industrial Park, Section 3, City and County of Midland, Texas (the "Property") to LI, Light Industrial District, as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from RR, Regional Retail District to LI, Light Industrial District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, Mayor

ATTEST:

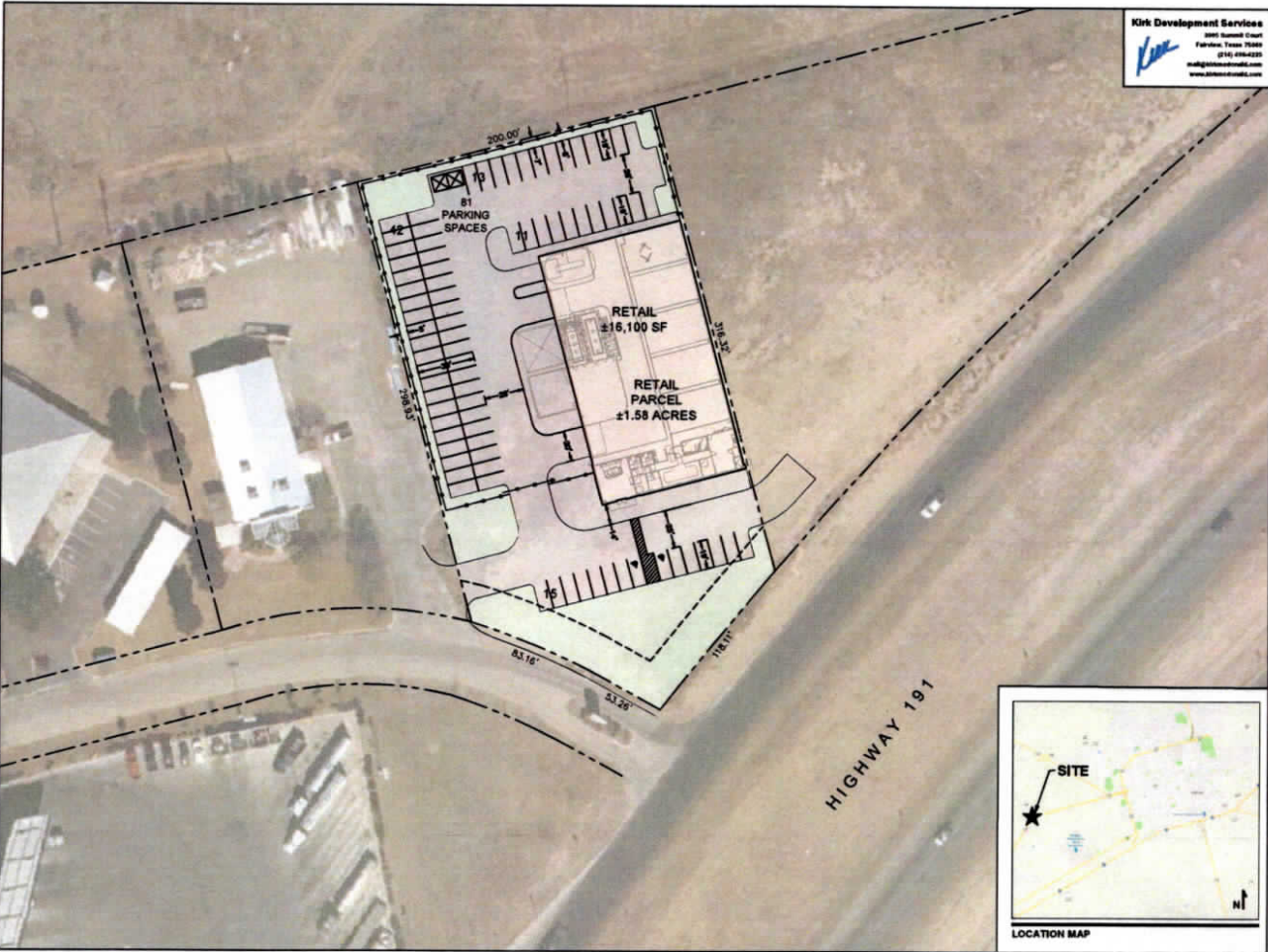
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Rolandrea Russell, Interim Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



Kirk Development Services
3000 Sunset Court
Ft. Worth, Texas 76108
(817) 409-4230
mk@kirkdev.com
www.kirkdev.com

CROSS
development
4324 Marsh Ridge
Carrollton, TX 75010
214-614-6252
www.crossdevelopment.net

PROJECT INFORMATION

SITE AREA
RETAIL PARCEL ±1.58 ACRES

BUILDING AREA
RETAIL 16,100 SF

PARKING SUMMARY

USER	RATIO	SPACES	SPACES
	REQUIRED	RECEIVED	PROVIDED
RETAIL	1/200 SF	81	81

BUILDING COVERAGE RATIO
TOTAL BUILDING AREA = 16,100 SF
TOTAL SITE AREA = 88,811.7 SF (±1.58 AC)
RATIO = 23.4%

ZONING CLASSIFICATION
JURISDICTION CITY OF MIDLAND
EXISTING ZONING TBY
REQUIRED ZONING TBY

PROJECT NOTES
1. THIS DEVELOPMENT SITE PLAN IS FOR PLANNING PURPOSES ONLY. THE EXISTING INFORMATION SHOWN AS EXISTING CONDITIONS, INCLUDING EXISTING UTILITIES, SHALL BE VERIFIED.
2. THIS SITE PLAN IS BASED ON AERIAL PHOTO DATA.
3. ALL CURVE DATA AND TRAFFIC SIGNALS SHOWN, EXISTING AND PROPOSED, MUST BE VERIFIED.
DRAWN BY: J. J. JENSEN
DATE: 1/25/23
SCALE: AS SHOWN

MIDLAND TX
SH 250 LOOP

SCALE: 1"=100'

SCHEME 1


**Zone Change/Planned District
Amendment/Site Plan Approval**

Project Number: _____

Case Number: Z-23-0336**Applicant** (if acting as Agent, see affidavit on page 2)

Printed Name: Jack Zanger Triangle Engineering LLC

Phone () 469-331-8566

Email jzanger@triangle-engr.com

Address 1782 W. McDermott Drive

City Allen

State OK

Zip 75013

Property Owner

Printed Name: Tommy R. Vascocu One Ninety-One Properties, LLC

Phone (432) 894-1186

Email tommy@vascocu.com

Address P.O. Box 5311

City Austin

State TX

Zip 78763

Representative (if different from Applicant or Property Owner)

Firm: Cross Development

Printed Name: Joe Dell

Phone () 214-614-8252

Email joe@crossdevelopment.net

Address 4336 Marsh Road

City Carrollton

State TX

Zip 75010

Street Address: 11120 HWY 191 Midland, TX**Legal Description**

Lot: 2 Block: 2 Subdivision: West 191 Industrial Park

Current Zoning: RR - Regional Retail District**Proposed Zone:** LI - Light Industrial District
(List by tracts if more than one district is requested)**Reason for Zone Change Request:** The use is not allowed by current zoning.**Present Use of Property:** Vacant**Proposed Use of Property:** Automobile Service Garage Major Repair**How would this zone change affect the public health, safety and welfare?** It will not affect the public health, safety and welfare.**Describe how conditions affecting the property have changed since present zoning****designation:** A large number of industrial businesses have been developed on the adjacent property to the north**Submittal and Fees****Items to be submitted with this application form:**

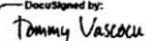
- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

RECEIVED
 JUN 06 2023
BY:

Signature (by property owner only – authorized agent must sign affidavit below)Applicant (signature): 

Date: 5-30-23

Applicant (printed): Jack Zanger

Property Owner (signature):  DocuSigned by: Tommy R. Vascocu

Date: 5/31/2023

Property Owner (printed): Tommy R. Vascocu

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.

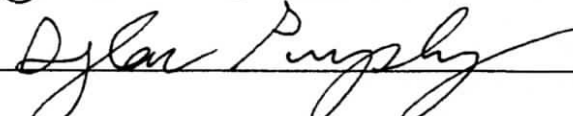
STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear Jack Zanger who, being by me duly sworn, upon oath says: That (s)he is the owner of 11120 HWY 191 or authorized by Tommy R. Vascocu, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.


Authorized Agent (signature)

Subscribed and sworn to before me, this 1st day of June, 2023, 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 # 48353

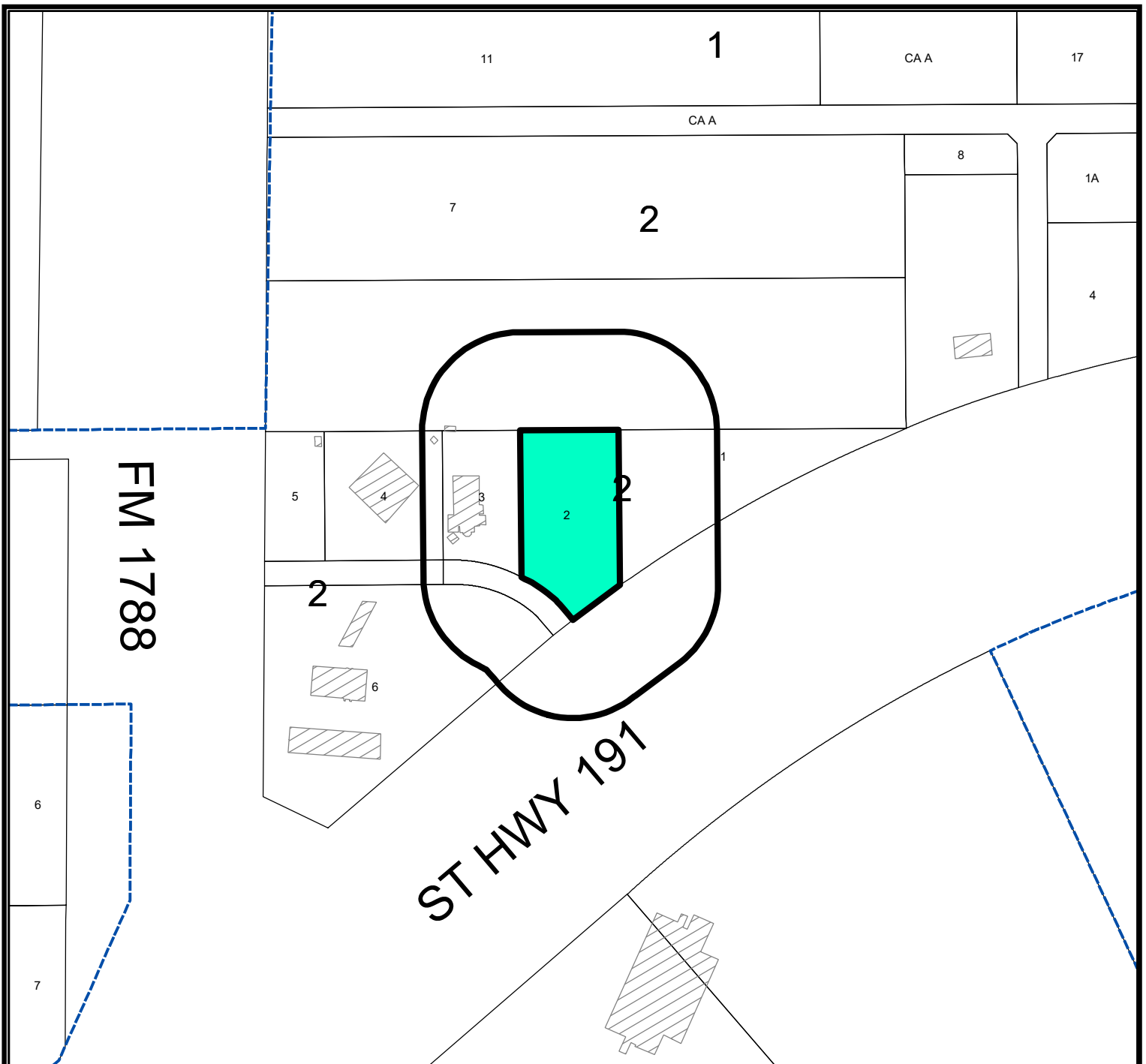
Received By: _____

Date: _____

RECEIVED
JUN 06 2023

BY:

*Application will not be considered for scheduling until reviewed by a planner, **August 22, 2023



LOCATION MAP

Z-23-0336

Scale: 1" = 200'

A Zone Change from RR, Regional Retail District to LI, Light Industrial District, on Lot 2, Block 2, West 191 Industrial Park, Section 3, City and County of Midland, Texas.

Generally located on the north side of Highway 191, approximately 685-feet east of Highway 349.

(Council District 4)
PACKET

22.11

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

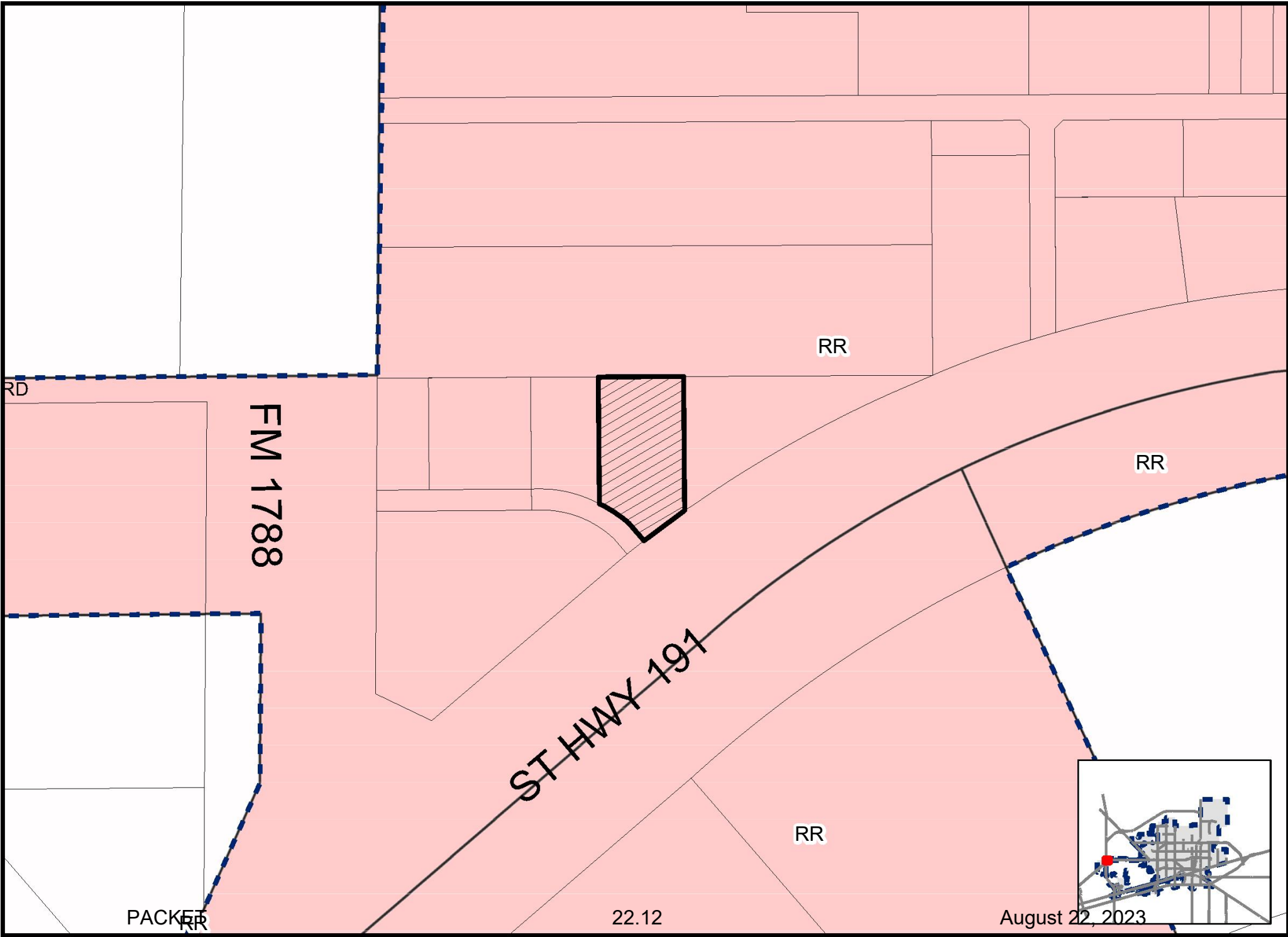


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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ENGINEERING PLAN. NOR IS IT DESIGNED TO BE USED AS A DESIGN OR CONSTRUCTION TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

August 22, 2023





PACKET

22.13

August 22, 2023









City Council Meeting

Item Number: 23
Meeting Date: August 8, 2023, August 22, 2023
To: City Council / City Manager
From: Marcia Bentley-German, City Governance Officer/City Secretary
Subject: AN ORDINANCE AMENDING TITLE I, "ADMINISTRATIVE", CHAPTER 12, "RECORDS MANAGEMENT POLICY", SECTION 4, "RECORDS MANAGEMENT OFFICER" OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO DESIGNATE THE CITY'S RECORDS MANAGER AS THE CITY'S RECORDS MANAGEMENT OFFICER; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (DISTRICT: NONE) (CITY SECRETARY'S OFFICE)

Purpose:

To adopt the State Records Retention Schedules

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

None



ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE I, “ADMINISTRATIVE”, CHAPTER 12, “RECORDS MANAGEMENT POLICY”, SECTION 4, “RECORDS MANAGEMENT OFFICER” OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO DESIGNATE THE CITY’S RECORDS MANAGER AS THE CITY’S RECORDS MANAGEMENT OFFICER; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, Title 6, Subtitle C, Local Government Code (the “Texas Local Government Records Act”), provides that each local government must designate a Records Management Officer; and

WHEREAS, the City Council finds it to be in the public interest to amend Title I, “Administrative”, Chapter 12, “Records Management Policy”, Section 4, “Records Management Officer” of the City Code of Midland, Texas, so as to designate the City’s Records Manager as the City’s Records Management Officer;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That Title I, “Administrative”, Chapter 12, “Records Management Policy”, Section 4, “Records Management Officer” of the City Code of Midland, Texas, is hereby amended to read in its entirety as follows:

1-12-4. Records Management Officer. The City of Midland’s Records Manager will serve as Records Management Officer for the City of Midland as provided by law and will develop policies and procedures to ensure that the maintenance, preservation, security, destruction, electronic storage, and other disposition of the records of the City of Midland are carried out in accordance with the requirements of the Local Government Records Act.

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., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 24
Meeting Date: August 8, 2023, August 22, 2023
To: City Council / City Manager
From: Rolandrea Russell, Assistant Director
Subject: AN ORDINANCE RELEASING THE CITY OF MIDLAND'S EXTRATERRITORIAL JURISDICTION THAT WAS ACQUIRED FROM AN ANNEXATION COMMENCED AFTER JANUARY 1, 2023; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE OF SEPTEMBER 1, 2023; AND ORDERING PUBLICATION (DISTRICT: NONE) (DEVELOPMENT SERVICES)

Purpose:

The ordinance carries out the requirement of Senate Bill No. 2038 that the City release from its Extraterritorial Jurisdiction (ETJ) land that was acquired from an annexation commenced after January 1, 2023.

This ordinance does not release any land that was in the ETJ as of January 1, 2023, nor does it affect annexations of land into the boundaries of the City.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds would be required for this project.

Discussion:

NONE

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

**AN ORDINANCE RELEASING THE CITY OF
MIDLAND'S EXTRATERRITORIAL JURISDICTION
THAT WAS ACQUIRED FROM AN ANNEXATION
COMMENCED AFTER JANUARY 1, 2023;
CONTAINING A SAVINGS AND SEVERABILITY
CLAUSE; PROVIDING AN EFFECTIVE DATE OF
SEPTEMBER 1, 2023; AND ORDERING PUBLICATION**

WHEREAS, Senate Bill No. 2038, which becomes effective September 1, 2023, adds Section 42.021(e) to the Local Government Code, which states, “An annexation commenced after January 1, 2023, does not expand the extraterritorial jurisdiction of a municipality unless contemporaneously with the annexation the owner or owners of the area that would be included in the municipality’s extraterritorial jurisdiction as a result of the annexation request that the area be included in the municipality's extraterritorial jurisdiction”; and

WHEREAS, Senate Bill No. 2038 further states, “A municipality shall release extraterritorial jurisdiction acquired from an annexation commenced after January 1, 2023, as necessary to comply with Section 42.021(e), Local Government Code, as added by this Act”; and

WHEREAS, the City Council finds that the City of Midland’s extraterritorial jurisdiction (the “ETJ”) acquired from an annexation commenced after January 1, 2023, should be released in accordance with Senate Bill No. 2038;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the ETJ that was acquired from an annexation commenced after January 1, 2023, is hereby released. For the avoidance of doubt, this Section does not apply to the ETJ that existed on January 1, 2023.

SECTION TWO. That this ordinance shall become effective September 1, 2023.

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 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., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Rolandrea Russell, Interim Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 25
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Christy Weakland, Director
Subject: GATHER PUBLIC INPUT ON THE PROPOSED 2023-2024 BUDGET; AND CONSIDER AN ORDINANCE OF THE CITY OF MIDLAND PROVIDING FUNDS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024, BY APPROVING THE BUDGET FOR SAID PERIOD AND APPROPRIATING AND SETTING ASIDE THE NECESSARY FUNDS OUT OF THE GENERAL AND OTHER REVENUES AND UNAPPROPRIATED FUND BALANCE OF THE CITY OF MIDLAND FOR SAID FISCAL YEAR FOR THE MAINTENANCE AND OPERATION OF THE VARIOUS DEPARTMENTS AND FOR VARIOUS ACTIVITIES AND IMPROVEMENTS TO THE CITY; AND ORDERING PUBLICATION (DISTRICT: NONE) (FINANCE)

Purpose:

Compliance with the Texas Local Government Code requires a public hearing on the proposed budget more than 15 days after the proposed budget is filed with the city Secretary. The budget was filed with the City Secretary on August 3, 2023.

Recommended City Council Action:

Approve

Fiscal Impact:

The proposed budget is submitted as the City of Midland's general operating plan for the fiscal year beginning October 1, 2023 and ending September 30, 2024.

Discussion:

The City Council established a Proposed Tax Rate of 0.353162 cents on August 2, 2023. At this tax rate the General Fund will have a budgeted appropriation of \$168,533,718 for FY24.

The other major funds will have total budgeted of \$256,467,858.

Monnie Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MIDLAND PROVIDING FUNDS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023, AND ENDING SEPTEMBER 30, 2024, BY APPROVING THE BUDGET FOR SAID PERIOD AND APPROPRIATING AND SETTING ASIDE THE NECESSARY FUNDS OUT OF THE GENERAL AND OTHER REVENUES AND UNAPPROPRIATED FUND BALANCE OF THE CITY OF MIDLAND FOR SAID FISCAL YEAR FOR THE MAINTENANCE AND OPERATION OF THE VARIOUS DEPARTMENTS AND FOR VARIOUS ACTIVITIES AND IMPROVEMENTS TO THE CITY; AND ORDERING PUBLICATION

WHEREAS, as required by Article IV, Section 14, of the City Charter, the City Manager has prepared and submitted to the City Council a Budget Estimate of expenditures and revenues of all City departments, activities, and offices for the year beginning October 1, 2023, and ending September 30, 2024; and

WHEREAS, said Budget has been filed with the City Secretary of the City of Midland, Texas, as required; and

WHEREAS, notices of a public hearing upon said Budget have been duly and legally made; and

WHEREAS, said public hearing has been held and full and final consideration given said Budget;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That for the purpose of providing the funds necessary and proposed to be expended in the Budget of the City of Midland for the fiscal year beginning October 1, 2023, and ending September 30, 2024, the Budget prepared by the City Manager and submitted to the City Council for its consideration and approval is hereby approved, and the available resources and revenues of the City of Midland as set forth in said Budget for said fiscal year, are hereby appropriated and set aside for the maintenance and operation of the various departments of the Government of the City of Midland, together with the various

activities and improvements as set forth in said Budget; and the appropriations shall be strictly applied for the uses and purposes in the respective departments as provided for in said Budget.

SECTION TWO. That the said Budget for the fiscal year beginning October 1, 2023, and ending September 30, 2024, approved herein shall be attached to and made a part of this ordinance the same as if copied in full herein, said Budget being on file in the City Secretary's office referenced by the number and date of this Ordinance.

SECTION THREE. That expenditures during the fiscal year beginning October 1, 2023, and ending September 30, 2024, shall be made in accordance with the summary Budget approved by this ordinance unless otherwise authorized by a duly enacted resolution or ordinance of the City of Midland and subject to the following provisions and conditions, to wit:

1. That no expenditure may be made without Council approval which shall increase the total appropriation for any one Fund.
2. That the City Manager may make transfers to and between departments and divisions unless such transfers would increase the total appropriation within a Fund.
3. That department managers are hereby authorized to approve transfers of amounts between line items within their departments if such transfers do not significantly change the work program contemplated in the approved Budget.

SECTION FOUR. During each year while there is any liability by reason of the City's Personnel Policies or Employment Agreements, the City Council shall compute and ascertain the rate and amount of ad valorem tax, based on the latest approved tax rolls with full allowance being made for tax collection, which will be sufficient to raise the money required to pay any sums which may be or become due during any such year, in no instance to be less than two percent (2%) of such obligation, together with all interest thereon, because of the obligations assumed by the City's Personnel Policies or Employment

Agreements. Said rate and amount of ad valorem tax will be ordered to be levied against all taxable property in the City for each year while any liability exists by reason of the obligations undertaken by the City's Personnel Policies or Employment Agreements, and said ad valorem tax shall be assessed and collected each year until all of the obligations incurred in the City's Personnel Policies or Employment Agreements shall have been discharged and all liability discharged.

SECTION FIVE. For the purpose of this ordinance, certain words as used herein are defined as follows:

1. The term "agency" wherever used in the said Budget shall mean the same and be synonymous with the term "department" as used in the Charter, ordinances, resolutions, and other official documents and policies of the City of Midland, Texas.
2. The term "organization" wherever used in the said Budget shall mean the same and be synonymous with the term "division" as used in the Charter, ordinances, resolutions and other official documents and policies of the City of Midland, Texas.

SECTION SIX. All departments of the City required to be established by the City Charter, state law, or federal law are deemed to be created.

SECTION SEVEN. That all transfers from the Water and Sewer Fund and Sanitation Fund are made in compliance with Sections 1502.057, 1502.058 and 1502.059 of the Texas Government Code.

SECTION EIGHT. That the City Manager shall give notice of water rate increases to appropriate individuals and entities as required by state law.

SECTION NINE. That the City Manager is hereby authorized and directed to execute contracts for grants of Hotel/Motel Tax funds to the extent that said grants are included in the Budget.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Christy Weakland, Director of Finance

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

Fund/Department	FY 2022 Actuals	FY 2023 Budget	FY 2024 Proposed	Budget Increase/(Decrease)
GENERAL FUND				
GENERAL FUND REVENUE TOTALS	\$145,577,628	\$148,550,541	\$168,533,718	\$19,983,177
GENERAL FUND EXPENDITURE TOTALS	\$135,327,730	\$148,693,628	\$168,533,718	\$19,840,090
<i>TOTAL SURPLUS/(DEFICIT)</i>				
<i>GENERAL FUND EXPENDITURE DETAILS:</i>				
CITY COUNCIL	\$37,291	\$45,411	\$49,654	\$4,243
CITY MANAGERS	\$1,316,627	\$1,540,723	\$1,894,742	\$354,019
CITY MANAGERS OFFICE	\$1,058,359	\$1,143,576	\$1,321,822	\$178,246
PUBLIC INFORMATION	\$258,269	\$397,147	\$572,920	\$175,773
MUNICIPAL COURT	\$2,029,237	\$2,407,684	\$2,624,072	\$216,388
LEGAL	\$1,166,037	\$1,356,459	\$1,494,500	\$138,041
CITY SECRETARY	\$660,166	\$795,676	\$812,420	\$16,744
ADMINISTRATIVE SERVICES	\$859,151	\$1,124,955	\$1,302,272	\$177,317
EMPLOYEE HEALTH & WELLNESS				
HUMAN RESOURCES	\$859,056	\$1,124,955	\$1,302,272	\$177,317
RISK MANAGEMENT	\$95			
ITSD	\$7,040,850	\$8,060,232	\$8,093,482	\$33,250
COMMUNICATION MAINT	\$757,011	\$935,659	\$778,341	(\$157,318)
GIS ADMINISTRATION		\$968,720	\$890,391	(\$78,329)
INFORMATION SYSTEM ADM	\$1,849,784	\$1,944,290	\$1,197,194	(\$747,096)
INFORMATION SYSTEMS	\$4,434,055	\$4,211,562	\$5,227,556	\$1,015,994
FINANCE	\$1,683,373	\$2,189,007	\$2,338,968	\$149,961
ACCOUNTING	\$793,281	\$1,152,586	\$1,290,320	\$137,734
FINANCE ADMINISTRATION	\$493,288	\$579,894	\$596,182	\$16,288
TREASURY	\$396,805	\$456,527	\$452,466	(\$4,061)
GENERAL SERVICES	\$3,908,642	\$5,510,362	\$6,597,402	\$1,087,040
FACILITIES SERVICES	\$3,195,236	\$4,735,418	\$5,740,632	\$1,005,214
PURCHASING	\$713,406	\$774,944	\$856,770	\$81,826
DEVELOPMENT SERVICES	\$3,712,037	\$4,787,448	\$5,470,192	\$682,744
CODE ADMINISTRATION	\$2,821,369	\$3,567,971	\$3,963,653	\$395,682
COMMUNITY DEVELOPMENT	\$166,823	\$249,432	\$266,408	\$16,976
PLANNING & DEVELOPMENT	\$723,844	\$970,045	\$1,240,131	\$270,086
ENGINEERING	\$18,883,856	\$21,422,597	\$23,617,083	\$2,194,486
GIS ADMINISTRATION	\$623,094			
ENGINEERING SERVICES	\$2,629,596	\$3,361,528	\$3,684,304	\$322,776
TRAFFIC OPERATIONS	\$2,283,125	\$2,662,777	\$3,064,318	\$401,541
TRANSPORTATION	\$13,348,042	\$15,398,293	\$16,868,461	\$1,470,168
COMMUNITY SERVICES	\$13,398,950	\$14,839,855	\$16,994,825	\$2,154,970
ANIMAL SERVICES	\$1,648,454	\$2,275,431	\$2,917,304	\$641,873
HEALTH SERVICES	\$2,677,859	\$2,819,264	\$3,095,542	\$276,278
PARKS	\$7,059,821	\$7,528,540	\$8,446,997	\$918,457
RECREATION	\$1,396,067	\$1,515,275	\$1,876,334	\$361,059

Fund/Department	FY 2022 Actuals	FY 2023 Budget	FY 2024 Proposed	Budget Increase/(Decrease)
SENIOR SERVICES	\$616,749	\$701,345	\$658,648	(\$42,697)
POLICE	\$33,841,514	\$38,974,564	\$45,435,754	\$6,461,190
AIRPORT POLICE	\$341,637	\$303,368	\$2,490,986	\$2,187,618
COMMERCIAL VEHICLE ENFORCE	\$405,854	\$500,941	\$327,625	(\$173,316)
COMMUNICATIONS	\$2,480,714	\$3,268,134	\$3,491,354	\$223,220
FIELD OPERATIONS BUREAU	\$19,085,597	\$20,858,791	\$22,474,867	\$1,616,076
INVESTIGATIVE SERVICE BUREAU	\$6,172,877	\$7,190,055	\$8,639,572	\$1,449,517
PD STEP	\$549			
POLICE ADMINISTRATION	\$1,919,764	\$2,348,215	\$3,165,938	\$817,723
SUPPORT SERVICES BUREAU	\$3,367,763	\$4,430,883	\$4,845,412	\$414,529
VCLG PROGRAM	\$66,760	\$74,178		(\$74,178)
FIRE	\$35,544,922	\$38,309,472	\$44,272,402	\$5,962,930
AIRPORT FIRE	\$2,985		\$2,453,900	\$2,453,900
EMERGENCY MANAGEMENT	\$264,431	\$285,109	\$272,846	(\$12,263)
EMERGENCY MEDICAL SERVICE	\$1,756,686	\$2,530,211	\$2,747,341	\$217,130
FIRE ADMINISTRATION	\$31,204,763	\$33,115,296	\$36,044,431	\$2,929,135
FIRE PREVENTION	\$920,900	\$938,344	\$1,161,007	\$222,663
FIRE TRAINING	\$1,395,157	\$1,440,511	\$1,592,877	\$152,366
NON-DEPARTMENTAL	\$5,947,755	\$7,329,184	\$7,535,950	\$206,766
INTERFUND TRANSFER	\$5,297,322			

WATER & SEWER FUND				
REVENUE	\$91,251,210	\$92,407,132	\$93,889,574	\$1,482,442
EXPENSE	\$90,350,514	\$92,779,559	\$93,889,574	\$1,110,015
<i>TOTAL SURPLUS/(DEFICIT)</i>	<i>\$900,696</i>	<i>(\$372,427)</i>		

DRAINAGE FUND				
REVENUE	\$1,950,397	\$2,683,585	\$2,487,450	(\$196,135)
EXPENSE	\$2,303,550	\$2,683,585	\$2,487,450	(\$196,135)
<i>TOTAL SURPLUS/(DEFICIT)</i>	<i>(\$353,153)</i>			

SANITATION FUND				
REVENUE	\$20,082,051	\$25,296,242	\$25,323,172	\$26,930
EXPENSE	\$22,618,745	\$25,309,446	\$25,323,172	\$13,726
<i>TOTAL SURPLUS/(DEFICIT)</i>	<i>(\$2,536,694)</i>	<i>(\$13,204)</i>		

AIRPORT FUND				
REVENUE	\$20,717,205	\$12,565,000	\$14,681,590	\$2,116,590
EXPENSE	\$11,572,526	\$12,590,429	\$14,681,590	\$2,091,161
<i>TOTAL SURPLUS/(DEFICIT)</i>	<i>\$9,144,679</i>	<i>(\$25,429)</i>		

GARAGE FUND				
REVENUE	\$21,138,752	\$26,490,699	\$30,576,637	\$4,085,938

Fund/Department	FY 2022 Actuals	FY 2023 Budget	FY 2024 Proposed	Budget Increase/(Decrease)
EXPENSE	\$17,306,174	\$26,490,699	\$30,576,637	\$4,085,938
<i>TOTAL SURPLUS/(DEFICIT)</i>	<i>\$3,832,578</i>	<i>\$0</i>		
TECHNOLOGY FUND				
REVENUE	\$1,102,685	\$5,459,780	\$6,701,729	\$1,241,949
EXPENSE	\$2,245,698	\$5,556,210	\$6,701,729	\$1,145,519
<i>TOTAL SURPLUS/(DEFICIT)</i>	<i>(\$1,143,013)</i>	<i>(\$96,430)</i>		
RISK FUNDS				
REVENUE	\$17,109,840	\$20,370,560	\$21,988,914	\$1,618,354
EXPENSE	\$13,969,355	\$20,370,560	\$21,988,914	\$1,618,354
<i>TOTAL SURPLUS/(DEFICIT)</i>	<i>\$3,140,484</i>			
HOTEL MOTEL FUNDS				
REVENUE	\$4,968,821	\$6,484,166	\$6,510,000	\$25,834
EXPENSE	\$5,270,003	\$6,484,166	\$6,510,000	\$25,834
<i>TOTAL SURPLUS/(DEFICIT)</i>	<i>(\$301,182)</i>			
SPECIAL REVENUE FUNDS				
REVENUE	\$25,780,053	\$17,423,703	\$21,045,221	\$3,621,518
EXPENSE	\$12,392,013	\$17,346,529	\$21,045,221	\$3,698,692
<i>TOTAL SURPLUS/(DEFICIT)</i>	<i>\$13,388,039</i>	<i>\$77,174</i>		
DEBT SERVICE				
REVENUE	\$19,204,317	\$19,398,184	\$33,296,571	\$13,898,387
EXPENSE	\$18,482,122	\$19,398,184	\$33,296,571	\$13,898,387
<i>TOTAL SURPLUS/(DEFICIT)</i>	<i>\$722,194</i>			
GRAND TOTALS				
REVENUE	\$368,882,957	\$377,129,591	\$425,034,576	\$47,904,985
EXPENSE	\$331,838,430	\$377,702,994	\$425,034,576	\$47,331,582
<i>TOTAL SURPLUS/(DEFICIT)</i>	<i>\$37,044,527</i>	<i>(\$573,403)</i>		

NOTICE OF PUBLIC HEARING
2023-2024
CITY OF MIDLAND
ANNUAL OPERATING BUDGET

Notice is hereby given that the Mayor and City Council will conduct a Public Hearing at 10:00 A.M. on Tuesday, August 22, 2022 in the City Hall Council Chamber located at 300 North Loraine, Midland, Texas.

THIS BUDGET WILL RAISE MORE REVENUE FROM PROPERTY TAXES THAN LAST YEAR'S BUDGET BY AN AMOUNT OF \$5,857,064, WHICH IS A 8.76 PERCENT INCREASE FROM LAST YEAR'S BUDGET. THE PROPERTY TAX REVENUE TO BE RAISED FROM NEW PROPERTY ADDED TO THE TAX ROLL THIS YEAR IS \$934,900.

The Public Hearing is for the purpose of allowing the public and other interested groups to make comments regarding the 2023-2024 City of Midland Budget.

(Publish August 12, 2023, or prior)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MIDLAND PROVIDING FUNDS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2021³ AND ENDING SEPTEMBER 30, 2023⁴ BY APPROVING THE BUDGET FOR SAID PERIOD AND APPROPRIATING AND SETTING ASIDE THE NECESSARY FUNDS OUT OF THE GENERAL AND OTHER REVENUES AND UNAPPROPRIATED FUND BALANCE OF THE CITY OF MIDLAND FOR SAID FISCAL YEAR FOR THE MAINTENANCE AND OPERATION OF THE VARIOUS DEPARTMENTS AND FOR VARIOUS ACTIVITIES AND IMPROVEMENTS TO THE CITY; AND ORDERING PUBLICATION

WHEREAS, as required by Article IV, Section 14, of the City Charter, the City Manager has prepared and submitted to the City Council a Budget Estimate of expenditures and revenues of all City departments, activities, and offices for the year beginning October 1, 2022³, and ending September 30, 2023⁴; and

WHEREAS, said Budget has been filed with the City Secretary of the City of Midland, Texas, as required; and

WHEREAS, notices of a public hearing upon said Budget have been duly and legally made; and

WHEREAS, said public hearing has been held and full and final consideration given said Budget;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That for the purpose of providing the funds necessary and proposed to be expended in the Budget of the City of Midland for the fiscal year beginning October 1, 2022³, and ending September 30, 2023⁴, the Budget prepared by the City Manager and submitted to the City Council for its consideration and approval is hereby approved, and the available resources and revenues of the City of Midland as set forth in said Budget for said fiscal year, are hereby appropriated and set aside for the maintenance and operation of the various departments of the Government of the City of Midland, together with the various

activities and improvements as set forth in said Budget; and the appropriations shall be strictly applied for the uses and purposes in the respective departments as provided for in said Budget.

SECTION TWO. That the said Budget for the fiscal year beginning October 1, 202³~~2~~, and ending September 30, 202⁴~~3~~, approved herein shall be attached to and made a part of this ordinance the same as if copied in full herein, said Budget being on file in the City Secretary's office referenced by the number and date of this Ordinance.

SECTION THREE. That expenditures during the fiscal year beginning October 1, 202³~~2~~, and ending September 30, 202⁴~~3~~, shall be made in accordance with the summary Budget approved by this ordinance unless otherwise authorized by a duly enacted resolution or ordinance of the City of Midland and subject to the following provisions and conditions, to wit:

1. That no expenditure may be made without Council approval which shall increase the total appropriation for any one Fund.
2. That the City Manager may make transfers to and between departments and divisions unless such transfers would increase the total appropriation within a Fund.
3. That department managers are hereby authorized to approve transfers of amounts between line items within their departments if such transfers do not significantly change the work program contemplated in the approved Budget.

SECTION FOUR. During each year while there is any liability by reason of the City's Personnel Policies or Employment Agreements, the City Council shall compute and ascertain the rate and amount of ad valorem tax, based on the latest approved tax rolls with full allowance being made for tax collection, which will be sufficient to raise the money required to pay any sums which may be or become due during any such year, in no instance to be less than two percent (2%) of such obligation, together with all interest thereon, because of the obligations assumed by the City's Personnel Policies or Employment

Agreements. Said rate and amount of ad valorem tax will be ordered to be levied against all taxable property in the City for each year while any liability exists by reason of the obligations undertaken by the City's Personnel Policies or Employment Agreements, and said ad valorem tax shall be assessed and collected each year until all of the obligations incurred in the City's Personnel Policies or Employment Agreements shall have been discharged and all liability discharged.

SECTION FIVE. For the purpose of this ordinance, certain words as used herein are defined as follows:

1. The term "agency" wherever used in the said Budget shall mean the same and be synonymous with the term "department" as used in the Charter, ordinances, resolutions, and other official documents and policies of the City of Midland, Texas.
2. The term "organization" wherever used in the said Budget shall mean the same and be synonymous with the term "division" as used in the Charter, ordinances, resolutions and other official documents and policies of the City of Midland, Texas.

SECTION SIX. All departments of the City required to be established by the City Charter, state law, or federal law are deemed to be created.

SECTION SEVEN. That all transfers from the Water and Sewer Fund and Sanitation Fund are made in compliance with Sections 1502.057, 1502.058 and 1502.059 of the Texas Government Code.

SECTION EIGHT. That the City Manager shall give notice of water rate increases to appropriate individuals and entities as required by state law.

SECTION NINE. That the City Manager is hereby authorized and directed to execute contracts for grants of Hotel/Motel Tax funds to the extent that said grants are included in the Budget.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022³; 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., 2022³, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022³.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Christy Weakland, Director of Finance

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

Updates to FY 2024 Proposed Budget

The proposed budget was submitted to City Council on August 2th, 2023. These items were added to the proposed budget after this date.

- 1) Adjustment to Ad Valorem Revenue in General fund after receiving updated certified numbers from MCAD.
- 2) \$9,362,422 removed from additional requests to the General Fund. The only supplemental requests currently are (2) Concrete Slip Form Pavers, Power Curb and Gutter Paver, and Komatsu Excavator, for a total of \$1,525,507.
- 3) Capital project requests were reduced from \$71,850,000 to \$12,500,000. This amount is requested out of the Parks Oil & Gas Fund.

	Original proposed budget	Updated Proposed Budget
<i>General Fund Revenue</i> <i>4001150</i>	\$60,863,560	\$60,337,135
<i>General Fund</i> <i>Additional Requests</i>	\$10,887,929	\$1,525,507
<i>Capital Project Requests</i>	\$71,850,000	\$12,500,000

CITY OF MIDLAND, TEXAS

ANNUAL OPERATING PROPOSED BUDGET

FOR FISCAL YEAR 2023-2024

This budget will raise more revenue from property taxes than last year's budget by an amount of \$5,857,064, which is a 8.76 percent increase from last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is \$934,900.

Tax Rate	Adopted FY 2022-23	Proposed FY 2023-24
Proposed Tax Rate	.361731	.353162
No-New-Revenue Rate	.355039	.328693
Voter-Approval Tax Rate	.361731	.353162
Voter-Approval w/Increments	N/C	.380408
Interest & Sinking (Debt Service)	.050195	.060852

Total debt obligation for City of Midland secured by property taxes: \$12,413,902

2023 Tax Rate Calculation Worksheet

Taxing Units Other Than School Districts or Water Districts

Form 50-856

City of Midland

(432) 685-7100

Taxing Unit Name

Phone (area code and number)

300 N. Lorraine, Midland, Texas 79701

www.midlandtexas.gov

Taxing Unit's Address, City, State, ZIP Code

Taxing Unit's Website Address

GENERAL INFORMATION: Tax Code Section 26.04(c) requires an officer or employee designated by the governing body to calculate the no-new-revenue (NNR) tax rate and voter-approval tax rate for the taxing unit. These tax rates are expressed in dollars per \$100 of taxable value calculated. The calculation process starts after the chief appraiser delivers to the taxing unit the certified appraisal roll and the estimated values of properties under protest. The designated officer or employee shall certify that the officer or employee has accurately calculated the tax rates and used values shown for the certified appraisal roll or certified estimate. The officer or employee submits the rates to the governing body by Aug. 7 or as soon thereafter as practicable.

School districts do not use this form, but instead use Comptroller Form 50-859 *Tax Rate Calculation Worksheet, School District without Chapter 313 Agreements* or Comptroller Form 50-884 *Tax Rate Calculation Worksheet, School District with Chapter 313 Agreements*.

Water districts as defined under Water Code Section 49.001(1) do not use this form, but instead use Comptroller Form 50-858 *Water District Voter-Approval Tax Rate Worksheet for Low Tax Rate and Developing Districts* or Comptroller Form 50-860 *Developed Water District Voter-Approval Tax Rate Worksheet*.

The Comptroller's office provides this worksheet to assist taxing units in determining tax rates. The information provided in this worksheet is offered as technical assistance and not legal advice. Taxing units should consult legal counsel for interpretations of law regarding tax rate preparation and adoption.

SECTION 1: No-New-Revenue Tax Rate

The NNR tax rate enables the public to evaluate the relationship between taxes for the prior year and for the current year based on a tax rate that would produce the same amount of taxes (no new taxes) if applied to the same properties that are taxed in both years. When appraisal values increase, the NNR tax rate should decrease.

The NNR tax rate for a county is the sum of the NNR tax rates calculated for each type of tax the county levies.

While uncommon, it is possible for a taxing unit to provide an exemption for only maintenance and operations taxes. In this case, the taxing unit will need to calculate the NNR tax rate separately for the maintenance and operations tax and the debt tax, then add the two components together.

Line	No-New-Revenue Tax Rate Worksheet	Amount/Rate
1.	2022 total taxable value. Enter the amount of 2022 taxable value on the 2022 tax roll today. Include any adjustments since last year's certification; exclude Tax Code Section 25.25(d) one-fourth and one-third over-appraisal corrections from these adjustments. Exclude any property value subject to an appeal under Chapter 42 as of July 25 (will add undisputed value in Line 6). This total includes the taxable value of homesteads with tax ceilings (will deduct in Line 2) and the captured value for tax increment financing (will deduct taxes in Line 17).	\$18,373,839,871
2.	2022 tax ceilings. Counties, cities and junior college districts. Enter 2022 total taxable value of homesteads with tax ceilings. These include the homesteads of homeowners age 65 or older or disabled. Other taxing units enter 0. If your taxing unit adopted the tax ceiling provision in 2022 or a prior year for homeowners age 65 or older or disabled, use this step.	\$0
3.	Preliminary 2022 adjusted taxable value. Subtract Line 2 from Line 1.	\$18,373,839,871
4.	2022 total adopted tax rate.	\$0.355039
5.	2022 taxable value lost because court appeals of ARB decisions reduced 2022 appraised value. A. Original 2022 ARB values: \$21,379,673 B. 2022 values resulting from final court decisions: \$13,296,190 C. 2022 value loss. Subtract B from A.	\$8,083,483
6.	2022 taxable value subject to an appeal under Chapter 42, as of July 25. A. 2022 ARB certified value: \$532,593,645 B. 2022 disputed value: \$159,041,463 C. 2022 undisputed value. Subtract B from A.	\$373,552,182
7.	2022 Chapter 42-related adjusted values. Add Line 5C and Line 6C.	\$381,635,665
8.	2022 taxable value, adjusted for actual and potential court-ordered adjustments. Add Line 3 and Line 7.	\$18,755,475,536
9.	2022 taxable value of property in territory the taxing unit deannexed after Jan. 1, 2022. Enter the 2022 value of property in deannexed territory.	\$0
10.	2022 taxable value lost because property first qualified for an exemption in 2023. If the taxing unit increased an original exemption, use the difference between the original exempted amount and the increased exempted amount. Do not include value lost due to freepoint or goods-in transit, temporary disaster exemptions. Note that lowering the amount or percentage of an existing exemption in 2023 does not create a new exemption or deduce taxable value. A. Absolute exemptions. Use 2022 market value: \$9,619,819 B. Partial exemptions. 2023 exemption amount or 2023 percentage exemption times 2022 value: + \$5,471,220 C. Value loss. Add A and B.	\$15,091,039
11.	2022 taxable value lost because property first qualified for agricultural appraisal (1-d or 1-d-1), timber appraisal, recreational/scenic appraisal or public access airport special appraisal in 2023. Use only properties that qualified in 2023 for the first time; do not use properties that qualified in 2022. A. 2022 market value. \$0 B. 2023 productivity or special appraised value: \$0 C. Value loss. Subtract B from A.	\$0
12.	Total adjustment for lost value. Add Lines 9, 10C and 11C.	\$15,091,039
13.	2022 captured value of property in TIF. Enter the total value of 2022 captured appraised value of property taxable by a taxing unit in a tax increment financing zone for which 2022 taxes were deposited into the tax increment fund. If the taxing unit has no captured appraised value in line 18D, enter 0.	
14.	2022 total value. Subtract Line 12 and Line 13 from Line 8.	\$18,740,384,497
15.	Adjusted 2022 total levy. Multiply Line 4 by Line 14 and divide by \$100.	\$66,535,673.71
16.	Taxes refunded for years preceding tax year 2022. Enter the amount of taxes refunded by the district for tax years preceding tax year 2022. Types of refunds include court decisions, Tax Code Section 25.25(b) and (c) corrections and Tax code Section 31.11 payment errors. Do not include refunds for tax year 2022. This line applies to tax years preceding tax year 2022.	\$304,721
17.	Adjusted 2022 levy with refunds and TIF adjustment. Add lines 15 and 16.	\$66,840,395
18.	Total 2023 taxable value on the 2023 certified appraisal roll today. This value includes only certified values and includes the total taxable value of homesteads with tax ceilings (will deduct in line 19). These homesteads include homeowners age 65 or older or disabled. A. Certified values.	\$17,835,931,219

PACKET

25.19

August 22, 2023

	Criminal Justice in the previous 12 months providing for the maintenance and operation cost of keeping inmates in county-paid facilities after they have been sentenced. Do not include any state reimbursement received by the county for the same purpose. B. 2022 state criminal justice mandate. Enter the amount paid by a county to the Texas Department of Criminal Justice in the 12 months prior to the previous 12 months providing for the maintenance and operation cost of keeping inmates in county-paid facilities after they have been sentenced. Do not include any state reimbursement received by the county for the same purpose. Enter zero if this is the first time the mandate applies C. Subtract B from A and divide by Line 32 and multiply by \$100 \$ \$0.000000 D. Enter the rate calculated in C. If not applicable, enter 0.	\$0 \$0 \$0.000000	
			\$0.000000
35.	Rate adjustment for indigent health care expenditures. If not applicable or less than zero, enter 0 A. 2023 indigent health care expenditures. Enter the amount paid by a taxing unit providing for the maintenance and operation cost of providing indigent health care for the beginning on July 1, 2022 and ending on June 30, 2023, less any state assistance received for the same purpose..... B. 2022 indigent health care expenditures. Enter the amount paid by a taxing unit providing for the maintenance and operation cost of providing indigent health care for the beginning on July 1, 2021 and ending on June 30, 2022, less any state assistance received for the same purpose..... C. Subtract B from A and divide by Line 32 and multiply by \$100 \$ \$0.000000 D. Enter the rate calculated in C. If not applicable, enter 0.		\$0.000000
36.	Rate adjustment for county indigent defense compensation. If not applicable or less than zero, enter 0 A. 2023 indigent defense compensation expenditures. Enter the amount paid by a county to provide appointed counsel for indigent individuals for the period beginning on July 1, 2022 and ending on June 30, 2023, less any state grants received for the same purpose. B. 2022 indigent defense compensation expenditures. Enter the amount paid by a county to provide appointed counsel for indigent individuals for the period beginning on July 1, 2021 and ending on June 30, 2023, less any state grants received for the same purpose. C. Subtract B from A and divide by Line 32 and multiply by \$100 \$ \$0.000000 D. Multiply B by 0.05 and divide by Line 32 and multiply by \$100 \$ \$0.000000 E. Enter the lessor of C and D. If not applicable, enter 0.		\$0.000000 \$0.000000
37.	Rate adjustment for county hospital expenditures. If not applicable or less than zero, enter 0 A. 2023 eligible county hospital expenditures. Enter the amount paid by a county or a municipality to maintain and operate an eligible county hospital for the period beginning on July 1, 2022 and ending on June 30, 2023. B. 2022 eligible county hospital expenditures. Enter the amount paid by a county or a municipality to maintain and operate an eligible county hospital for the period beginning on July 1, 2021 and ending on June 30, 2022. C. Subtract B from A and divide by Line 32 and multiply by \$100 \$0.000000 D. Multiply B by 0.08 and divide by Line 32 and multiply by \$100 \$0.000000 E. Enter the lessor of C and D. If not applicable, enter 0.		\$0.000000 \$0.000000
38.	Rate adjustment for defunding municipality. This adjustment only applies to a municipality that is considered to be a defunding municipality for the current tax year under Chapter 109, Local Government Code. Chapter 109, Local Government Code only applies to municipalities with a population of more than 250,000 and includes a written determination by the Office of the Governor. See Tax code 256.0444 for more information. A. Amount appropriated for public safety in 2022. Enter the amount of money appropriated for public safety in the budget adopted by the municipality for the preceding fiscal year B. Expenditures for public safety in 2022. Enter the amount of money spent by the municipality for public safety during the preceding fiscal year C. Subtract B from A and divide by Line 32 and multiply by \$1000 \$0.000000 D. Enter the rate calculated in C. If not applicable, enter 0.		\$0.000000
39.	Adjusted 2023 NNR M&O rate. Add Lines 33, 34D, 35D, 36E, and 37E. Subtract Line 38D.		\$0.282425
40.	Adjustment for 2022 sales tax specifically to reduce property values. Cities, counties, and hospital districts that collected and spent additional sales tax on M&O expenses in 2022 should complete this line. These entities will deduct the sales tax gain rate for 2023 in section 3. Other taxing units, enter zero. A. Enter the amount of additional sales tax collected and spent on M&O expenses in 2022, if any. Counties must exclude any amount that was spent for economic development grants from the amount of sales		

	tax spent		
	B. Divide Line 40A by Line 32 and multiply by \$100	\$0.000000	
	C. Add Line 40B to Line 39.		\$0.282425
41.	2023 voter-approval M&O rate. Enter the rate as calculated by the appropriate scenario below. Special Taxing Unit. If the taxing unit qualifies as a special taxing unit, multiply Line 40C by 1.08. - or - Oher Taxing Unit. If the taxing unit does not qualify as a special taxing unit, multiply Line 40C by 1.035.		\$0.292310
D41.	Disaster Line 41 (D41): 2023 voter-approval M&O rate for taxing unit affected by disaster declaration. If the taxing unit is located in an area declared a disaster area and at least one person is granted an exemption under Tax code Section 11.35 for property located in the taxing unit, the governing body may direct the person calculating the voter-approval tax rate to calculate tin the manner provided for a special taxing unit. The taxing unit shall continue to calculate the voter-approval tax rate in this manner until the earlier of 1) the first year in which total taxable value on the certified appraisal roll exceeds the total taxable value of the tax year in chich the disasster occurred, or 2) the third tax year after the tax year in which the disaster occurred If the taxing unit qualifies under this scenario, multiply Line 40C by 1.08. If the taxing unit does not qualify, do not complete Disaster Line 41 (Line D41).		\$0.000000
42.	Total 2023 debt to be paid with property taxes and additional sales tax revenue. Debt means the interest and pricipal that will be paid on debts that: (1) are paid by property taxes, (2) are secured by property taxes, (3) are scheduled for payment over a period longer than one year, and (4) are not classified in the taxing unit's budget as M&O expenses. A. Debt also includes contractual payments to other taxing units that have incurred debts on behalf of this taxing unit, if those debts meetthe four conditions above. Include only amounts that will be paid from property tax revenue. Do not include appraisal district budget payments. If the governing body of a taxing unit authorized or agreed to authorize a bond, warrent, certificate of obligation, or other evidence of indebtedness on or after Sept. 1, 2021, verify if it meets the amended definition of debt before including it here. Enter debt amount \$12,413,902 B. Subtract unencumbered fund amount used to reduce total debt \$0 C. Subtract certified amount spent from sales tax to reduce debt (enter zero if none) \$0 D. Subtract amount paid from other resources. \$0 E. Adjusted debt. Subtract B, C and D from A. \$12,413,902		
43.	Certified 2022 excess debt collections. Enter the amount certified by the collector.		\$0
44.	Adjusted 2023 debt. Subtract line 43 from line 42E.		\$12,413,902
45.	2023 anticipated collection rate. A. Enter the 2023 anticipated collection rate certified by the collector. (%) 97.50% B. Enter the 2022 actual collection rate (%) 98.56% C. Enter the 2021 actual collection rate (%) 100.86% D. Enter the 2019 actual collection rate (%) 99.03% E. If the anticipated rate in A is lower than actual rates in B, C and D, enter the lowest rate from B, C and D. If the anticipated rate in A is higher than at least one of the rates in the prior three years, enter the rate from A. Note that the rate can be greater than 100%.		99.03%
46.	2023 debt adjusted for collections. Divide line 44 by Line 45E.		\$12,535,496
47.	2023 total taxable value. Enter amount on line 21 of the No-New-Revenue Tax Rate Worksheet.		\$20,599,905,042
48.	2023 debt tax rate. Divide line 46 by line 47 and multiply by \$100.		\$0.060852
49.	2023 voter-approval tax rate. Add Lines 41 and 48.		\$0.353162
D49.	Disaster Line 49 (D49): 2023 voter-approval tax rate for taxing unit affected by disaster declaration. Complete this line if the taxing unit calculated the voter-approval tax rate in the manner provided for a special taxing unit on Line D41. Add Line D41 and 48.		
50.	COUNTIES ONLY. Add together the voter-approval tax rates for each type of tax the county levies. The total is the 2023 county voter-approval tax rate.		

SECTION 3: NNR Tax Rate and Voter-Approval Tax Rate Adjustments for Additional Sales Tax to Reduce Property Taxes

Cities, counties and hospital districts may levy a sales tax specifically to reduce property taxes. Local voters by election must approve imposing or abolishing the additional sales tax. If approved, the taxing unit must reduce its NNR and voter-approval tax rates to offset the expected sales tax revenue.
This section should only be completed by a county, city or hospital district that is required to adjust its NNR tax rate and/or voter-approval tax rate because it adopted the additional sales tax.

Line	Additional Sales and Use Tax Worksheet	Amount/Rate
51.	Taxable Sales. For taxing units that adopted the sales tax in November 2022 or May 2023, enter the Comptroller's estimate of taxable sales for the previous four quarters. Estimates of taxable sales may be obtained throught the Comptroller's Allocation Historical Summary webpage. Taxing units that adopted the sales tax before November 2022, enter 0.	\$0
52.	Estimated sales tax revenue. Counties exclude any amount that is or will be spent for economic development grants from the amount of estimated sales tax revenue. Taxing units that adopted the sales tax in November 2022 or in May 2023. Multiply the amount on Line 51 by the sales tax rate (.01, .005 or .0025, as applicable) and multiply the result by .95.	

- or -

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	Taxing units that adopted the sales tax before November 2022. Enter the sales tax revenue for the previous four quarters. Do not multiply by .95.	\$0
53.	2023 total taxable value. Enter amount on line 21 of the No-New-Revenue Tax Rate Worksheet.	\$20,599,905,042
54.	Sales tax adjustment rate. Divide line 52 by Line 53 and multiply by \$100.	\$0.000000
55.	2023 NNR tax rate, unadjusted for sales tax. Enter the rate from Line 26 or 27, as applicable, on the No-New-Revenue Tax Rate Worksheet.	\$0.328693
56.	2023 NNR tax rate, adjusted for sales tax. Taxing units that adopted the sales tax in November 2022 or in May 2023. Subtract Line 54 from Line 55. Skip to Line 57 if you adopted the additional sales tax before November 2022.	\$0.328693
57.	2023 voter-approval tax rate, unadjusted for sales tax. Enter the rate from Line 49, Line D49 (disaster) or 50 (counties) as applicable, on the No-New-Revenue Tax Rate Worksheet.	\$0.353162
58.	2023 voter-approval tax rate, adjusted for sales tax. Subtract Line 54 from Line 57.	\$0.353162

SECTION 4: Voter-Approval Rate Adjustment for Pollution Control

A taxing unit may raise its rate for M&O funds used to pay for a facility, device or method for the control of air, water or land pollution. This includes any land, structure, building, installation, excavation, machinery, equipment or device that is used, constructed, acquired or installed wholly or partly to meet or exceed pollution control requirements. The taxing unit's expenses are those necessary to meet the requirements of a permit issued by the Texas Commission on Environmental Quality (TCEQ). The taxing unit must provide the tax assessor with a copy of the TCEQ letter of determination that states the portion of the cost of the installation for pollution control.

This section should only be completed by a taxing unit that uses M&O funds to pay for a facility, device or method for the control of air, water or land pollution.

59.	Certified expenses from the Texas Commission on Environmental Quality (TCEQ). Enter the amount certified in the determination letter from TCEQ. The taxing unit shall provide its tax assessor with a copy of the letter.	\$0
60.	2023 total taxable value. Enter the amount from line 21 of the No-New-Revenue Tax Rate Worksheet.	\$20,599,905,042
61.	Additional rate for pollution control. Divide line 59 by line 60 and multiply by \$100.	\$0.000000
62.	2023 voter-approval tax rate, adjusted for pollution control. Add line 61 to one of the following lines (as applicable): Line 49, Line D49 (disaster), Line 50 (counties) or Line 58 (taxing units with the additional sale tax).	\$0.353162

SECTION 5: Voter-Approval Tax Rate Adjustment for Unused Increment Rate

The unused increment rate is the rate equal to the difference between the adopted tax rate and voter-approval tax rate adjusted to remove the unused increment rate for the prior three years.³⁹ In a year where a taxing unit adopts a rate by applying any portion of the unused increment rate, the portion of the unused increment rate must be backed out of the calculation for that year.

The difference between the adopted tax rate and adjusted voter-approval tax rate is considered zero in the following scenarios:

- a tax year before 2020;⁴⁰
- a tax year in which the municipality is a defunding municipality, as defined by Tax Code Section 26.0501(a);⁴¹ or
- after Jan. 1, 2022, a tax year in which the comptroller determines that the county implemented a budget reduction or reallocation described by Local Government Code Section 120.002(a) without the required voter approval.⁴²

Individual components can be negative, but the overall rate would be the greater of zero or the calculated rate.

This section should only be completed by a taxing unit that does not meet the definition of a special taxing unit.⁴³

Line	Unused Increment Rate Worksheet	Amount/Rate
63.	Year 3 component. Subtract the 2022 actual tax rate and the 2022 unused increment rate from the 2022 voter-approval tax rate.	
A.	Voter-approval tax rate (Line 67) from 2022 calculations.....	\$0.372210
B.	Unused increment rate (Line 66) from 2022 calculations.....	\$0.010479
C.	Subtract B from A.....	\$0.361731
D.	Adopted Tax Rate (2022)	\$0.355039
E.	Subtract D from C.....	\$0.006692
64.	Year 2 component. Subtract the 2021 actual tax rate and the 2021 unused increment rate from the 2021 voter-approval tax rate.	
A.	Voter-approval tax rate (Line 67) from 2021 calculations.....	\$0.367190
B.	Unused increment rate (Line 66) from 2021 calculations.....	\$0.000000
C.	Subtract B from A.....	\$0.367190
D.	Adopted Tax Rate (2021)	\$0.367189
E.	Subtract D from C.....	\$0.000001
65.	Year 1 component. Subtract the 2020 actual tax rate and the 2020 unused increment rate from the 2020 voter-approval tax rate.	
A.	Voter-approval tax rate (Line 65) from 2020 calculations.....	\$0.379481
B.	Unused increment rate (Line 64) from 2020 calculations.....	\$0.000000
C.	Subtract B from A.....	\$0.379481
D.	Adopted Tax Rate (2020)	\$0.358928
E.	Subtract D from C.....	\$0.020553
66.	2023 unused increment rate. Add Lines 63E, 64E, 65E.	\$0.027246
67.	2023 voter-approval tax rate, adjusted for unused increment rate. Add Line 66 to one of the following line (as applicable): Line 49, Line D49 (disaster), Line 50 (counties), Line 58 (taxing units with the additional sales tax) or Line 62 (taxing units with pollution control).	\$0.380408

SECTION 6: De Minimis Rate

The de minimis rate is the rate equal to the sum of the no-new-revenue maintenance and operations rate, the rate that will raise \$500,000, and the current debt rate for a taxing unit.⁴²

This section should only be completed by a taxing unit that is a municipality of less than 30,000 or a taxing unit that does not meet the definition of a special taxing unit.⁴³

Line	De Minimis Rate Worksheet	Amount/Rate
68.	Adjusted 2023 NNR M&O tax rate. Enter the rate from Line 39 of the Voter-Approval Tax Rate Worksheet	
69.	2023 total taxable value. Enter the amount on Line 21 of the No-New-Revenue Tax Rate Worksheet.	
70.	Rate necessary to impose \$500,000 in taxes. Divide \$500,00 by Line 69 and multiply by \$100	
71.	2023 debt rate. Enter the rate from Line 48 of the Voter-Approval Tax Rate Worksheet	

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72. **De minimis rate.** Add Lines 68, 70 and 71.

SECTION 7: Voter Approval Tax Rate Adjustment for Emergency Revenue Rate

In the tax year after the end of the disaster calculation time period detailed in Tax Code Section 26.042(a), a taxing unit that calculated its voter-approval tax rate in the manner provided for a special taxing unit due to a disaster must calculate its emergency revenue rate and reduce its voter-approval tax rate for that year.⁴⁶

Similarly, if a taxing unit adopted a tax rate that exceeded its voter-approval tax rate, calculated normally, without holding an election to respond to a disaster, as allowed by Tax Code Section 26.042(d), in the prior year, it must also reduce its voter-approval tax rate for the current tax year.⁴⁷

This section will apply to a taxing unit other than a special taxing unit that:

- directed the designated officer or employee to calculate the voter-approval tax rate of the taxing unit in the manner provided for a special taxing unit in the prior year; and
- the current year is the first tax year in which the total taxable value of property taxable by the taxing unit as shown on the appraisal roll for the taxing unit submitted by the assessor for the taxing unit to the governing body exceeds the total taxable value of property taxable by the taxing unit on January 1 of the tax year in which the disaster occurred or the disaster occurred four years ago. This section will apply to a taxing unit in a disaster area that adopted a tax rate greater than its voter-approval tax rate without holding an election in the prior year.

Note: This section does not apply if a taxing unit is continuing to calculate its voter-approval tax rate in the manner provided for a special taxing unit because it is still within the disaster calculation time period detailed in Tax Code Section 26.042(a) because it has not met the conditions in Tax Code Section 26.042(a)(1) or (2).

Line	Emergency Revenue Rate Worksheet	Amount/Rate
73.	2022 adopted tax rate. Enter the rate in Line 4 of the No-New-Revenue Tax Rate Worksheet.	
74.	Adjusted 2022 voter-approval tax rate. Use the taxing unit's Tax Rate Calculation Worksheets from the prior year(s) to complete this line. If a disaster occurred in 2022 and the taxing unit calculated its 2022 voter-approval tax rate using a multiplier of 1.08 on Disaster Line 41 (D41) of the 2022 worksheet due to a disaster, enter the 2022 voter-approval tax rate as calculated using a multiplier of 1.035 from Line 49. - or - If a disaster occurred prior to 2022 for which the taxing unit continued to calculate its voter-approval tax rate using a multiplier of 1.08 on Disaster Line 41 (D41) in 2022, complete the separate Adjusted Voter-Approval Tax Rate for Taxing Units in Disaster Area Calculation Worksheet to recalculate the voter-approval tax rate the taxing unit would have calculated in 2022 if it had generated revenue based on an adopted tax rate using a multiplier of 1.035 in the year(s) following the disaster. Enter the final adjusted 2022 voter-approval tax rate from the worksheet. - or - If the taxing unit adopted a tax rate above the 2022 voter-approval tax rate without calculating a disaster tax rate or holding an election due to a disaster, no recalculation is necessary. Enter the voter-approval tax rate from the prior year's worksheet.	
75.	Increase in 2022 tax rate due to disaster. Subtract Line 74 from Line 73.	
76.	Adjusted 2022 taxable value. Enter the amount in Line 14 of the No-New-Revenue Tax Rate Worksheet.	
77.	Emergency revenue. Multiply Line 75 by Line 76 and divide by \$100.	
78.	Adjusted 2023 taxable value. Enter the amount in Line 25 of the No-New-Revenue Tax Rate Worksheet.	
79.	Emergency revenue rate. Divide Line 77 by Line 78 and multiply by \$100.	
80.	2023 voter-approval tax rate, adjusted for emergency revenue. Subtract Line 79 from one of the following lines (as applicable): Line 49, Line D49 (disaster), Line 50 (counties), Line 58 (taxing units with the additional sales tax), Line 62 (taxing units with pollution control) or Line 67 (taxing units with the unused increment rate).	

SECTION 8: Total Tax Rate

Indicate the applicable total tax rates as calculated above

No-new-revenue tax rate.

As applicable, enter the 2023 NNR tax rate from: Line 26, Line 27 (counties), or Line 56 (adjusted for sales tax).

Indicate the line number used: 26

\$0.328693

Voter-approval tax rate

As applicable, enter the 2023 voter-approval tax rate from: Line 49, Line D49 (disaster), Line 50 (counties), Line 58 (adjusted for sales tax), Line 62 (adjusted for pollution control), or Line 67 (adjusted for unused increment) or Line 80 (adjusted for emergency revenue).

Indicate the line number used: 67

\$0.380408

De minimis rate

If applicable, enter the 2023 de minimis rate from Line 72.

N/A

SECTION 9: Taxing Unit Representative Name and Signature

Enter the name of the person preparing the tax rate as authorized by the governing body of the taxing unit. By signing below, you certify that you are the designated officer or employee of the taxing unit and have accurately calculated the tax rates using values that are the same as the values shown in the taxing unit's certified appraisal roll or certified estimate of taxable value, in accordance with requirements in Tax Code.⁵⁰

print
here

Jerry Bundick, Chief Appraiser

Printed Name of Taxing Unit Representative

sign
here



Taxing Unit Representative

August 1, 2023

Date

.....Do Not Print below here

CITY OF MIDLAND BUDGET 2023 - 2024





TO: Honorable Mayor and City Council

FROM: Morris Williams Jr., Interim City Manager

SUBJECT: 2023-2024 Budget

DATE: August 2, 2023

It is my honor to submit, for your consideration, the City of Midland Proposed Budget for Fiscal Year 2024 (FY 2024) pursuant to the City Code of Ordinances and the City Charter. We are proud to present a balanced budget for the upcoming fiscal year that will serve as the City's general operating plan beginning October 1, 2023, and ending September 30, 2024.

During the current fiscal year, the City of Midland has seen trends moving upward from the stalled growth the City faced due to the pandemic, along with the accompanying economic hardships that everyone faced at every level; local, state, and federal. The General Fund showed a slight increase in fund balance of \$352,152 against the original projected decrease of approximately \$4 million. Recent ratings provided the City an 'AAA' score from Fitch, and an 'Aa1' rating from Moody's, which continue to demonstrate the City's strong financial profile, overall stability, and robust reserves.

The City Council held their annual retreat to review council and citizen priorities and to discuss and prioritize the department's needs in conjunction with these priorities. The departments reviewed and updated the 5-year capital plan, and collaboratively scored and ranked proposed projects based on a numeric metric.

The proposed FY 2024 budget reflects Council goals and priorities, taking careful consideration to meet citizen needs, with a positive look to the future growth and prosperity of the City.

2024 PRIORITIES

1. CREATE THE PREMIER CITY IN WEST TEXAS

Ongoing quality of place improvements are necessary for the health and well-being of Midland residents. The 2020 Parks, Recreation and Open Space Master Plan was reviewed and referenced as objectives for the coming year were developed. Funds from oil and gas revenues are budgeted for various park projects, including constructing Phase 1 of the Reyes-Mashburn-Nelms master plan, installing a fitness court at Dennis the Menace Park, and making improvements to the Golf Course.

In June of 2021, certificates of obligation were issued to address quality of place improvements. \$25 million of the CO is dedicated to Parks and Recreation: \$10 million addressing the implementation of the master plan, \$13 million to execute an irrigation and turf pilot program at four city parks, and \$2 million to convert two soccer/football fields to artificial turf. Over \$13 million of these funds has been spent, with more projects underway or in the planning stages set for the 2024 budget year, including completing Hogan Park Phase 2, replacing the deteriorating park signs and beginning the implementation of the Beal Park master plan.

Plans are being made to construct a new Health Services Facility on City owned land. Providing low-cost health services to a growing community of residents is a top priority.

Funds are being requested to upgrade the services provided to the senior population. \$2.5 million in improvements are requested for the Southeast Senior Center and \$2.5 million is requested for design of a new Midland Senior Center.

The City has applied for the Texas Department of Transportation (TxDOT) bicycle and pedestrian grant to begin the City section of the Wildcatters Trail, which will connect the communities of Midland and Odessa.

2. UPGRADE CITY FACILITIES AND INFRASTRUCTURE

The City has shown a commitment to leadership in addressing critical water resources now and for the future. The City purchased the Midland Freshwater Supply District assets, which increased the storage of water and ensures additional water supply for the City, as well as saves overhead expenses for the department. A five-year funding plan that addresses the water needs of Midland's primary areas of growth has been reviewed and updated. The construction of the new northeast water system is complete, and the wastewater system is underway. Operating funds will be budgeted for other necessary improvements. Management will continue to provide leadership in the West Texas Water Partnership, along with other area municipalities, to strategize long term water resources.

The City is also committed to maintaining and improving transportation avenues for the safety of Midland citizens. The proposed budget includes approximately \$1.5 million for maintenance of city streets and approximately \$6.2 million for new infrastructure and capital improvements. The City allocated the first tranche of America Rescue Plan Act (ARPA) funds to new roads and paving unpaved roads in the City. The budget also includes funds for the annual signal system maintenance on City streets per the 5-year plan. The expansion and widening of Mockingbird Lane is listed in the supplemental project request.

As Midland grows, so does the need for updated and larger facilities. The proposed budget includes a \$1.8 million allocation for facilities capital improvements at the following locations:

- Replacement of cast iron plumbing at City Hall
- Fire Stations require roof repairs, new fences and gates, and other infrastructure improvements
- HVAC upgrades for the MLK Center
- Replace police training facility restrooms and east side ramp

- Parking lot security fence for Police
- Repair roof leaks on multiple fire stations and other upgrades
- Replace Fire's SCBA Compressor
- Replace Golf Course Carpet
- Replace inground lifts at the Garage
- Upgrade security gate at the Garage

In addition, the budget includes supplemental requests for the following facilities:

- \$10 million for the design for a new City Hall
- Police and Fire Regional Training Facility estimated at \$20.5 million
- \$2.5 million for the design of a new Midland Senior Center
- \$2.5 million improvements to the Southeast Senior Center
- Construction of a new Health Services Facility estimated at \$15 million

3. MAINTAIN A HIGH PERFORMING MIDLAND CITY TEAM

Management continues to strive for a high level of service to the public while emphasizing fiscal conservancy and moderate budgetary growth in all departments. Employee retention is key to maintaining a high level of customer service. The City will focus on training and retaining a team of reliable professionals to deliver excellent customer service to the public. Salary increases were included in the budget for all employees to assist with retention. In addition, positions were added to meet the needs of a growing community.

4. BUILD A STRONG ECONOMY WITH MORE QUALITY JOBS

Management is offering agreements under Chapter 380 of the Texas Local Government Code to encourage activity and future development in the downtown district as well as in key areas of the City. In addition, an allocation is set aside in the General Fund to pursue options for an Entertainment District and research the potential of a Cultural District in Downtown Midland.

FISCAL YEAR 2024 BUDGET HIGHLIGHTS

The proposed budget is based on a Property Tax Rate of 35.8 cents per \$100 of valuation – the Voter Approval Rate. This is higher than the tax rate for FY23 by .26 of a cent.

<i>General Fund</i>	<i>All Other Funds</i>
Five new police officers with patrol vehicles, a crime scene technician and public safety communications QA analyst	\$12.5 million budgeted from oil and gas revenues for park improvements and replacements.
New fire station alerting system and one new ambulance, with 6 accompanying crew. In addition, 6 new firefighters for entire City	\$16.1 million for replacement of fleet and equipment and \$1.9 million for new fleet and equipment.
Three positions for Animal Services kennel techs and a records specialist to help with growth.	Grapple truck and loader as well as 4 new employees for Sanitation to keep up with growth and the addition of a service center
To assist with growth in parks: two turf specialists, new sports coordinator, golf maintenance specialist.	Two customer service representatives and a Meter Shop foreman to address growth.
\$1.8 million in facilities improvements at multiple locations	Maintenance equipment for Airpark along with new maintenance specialist
New assistant oil and gas coordinator	New locker room facility for the sports complex

ECONOMIC OUTLOOK¹

Though many industries in Texas have experienced fallout from the Federal Reserve practices to decrease inflation, Texas has added jobs every month for more than two years. There has been continued uncertainty globally, which affects oil prices, and therefore the oil and gas activity and industry. Although they continue to deal with challenges of supply issues and labor shortages, these economies are experiencing expansion. The Midland Economic Index has continued to show proof of expansion and is currently rated 114.2, up from 108.0 for the same time last year. The most recent month of March 2023 reported the construction industry experienced a gain of +44.8, the manufacturing sector saw an increase of +3.0 and hospitality and tourism receipts are up 22.98% over this same time last year. Although oil prices have settled from over \$100 in March of 2022 to \$73.28 in March of 2023, rig counts have continued to climb, at 352 in March 2023, compared to 303 in March 2022.

Sales taxes have continued to rebound and even broke an all-time high mark in February 2023. Monthly sales tax receipts at the end of FY2022 totaled \$61.1 million, 19.7% more than budgeted revenue. The current fiscal year to date revenue is 20.27% more than this time last year, and every quarter of 2023 has been the highest quarter compared with the same quarters of previous years, considering even the extraordinary growth in 2019. Year-to-date receipts are above budget at 20.5% of the annual sales tax revenue budget.

Midland's assessed valuation has trended steadily upward for the last twenty years, though 2022 saw a slight stalling of this growth. Early estimates show an increase in property tax valuations of \$1.90 billion over last year's amount of \$17.5 billion. Real estate shows a slight decrease year over year, but personal property and mineral property both show healthy increases at 11% and 14% respectively. Commercial property increased slightly at around 2%.

Prior to the pandemic, Midland had one of the lowest unemployment rates in the nation remaining approximately 2%. By May of 2020, unemployment rates hit their peak at 12.3%, and has gradually dropped over the last three years. As of March 2023, Midland's unemployment rate was 2.69%.

As the economy has expanded, housing listings have decreased, with a total of 1,468 listings year to date, a 5.7% decrease over last year. However, regardless of the amount of market listings, home values have continued to climb. The median housing listing price of \$345,000 is 6.2% higher than the prior year, and permit values increased by 26.8%. Housing Permits, which is considered a lagging indicator, decreased 55% from March of 2022 to March of 2023.

Airline boarding numbers are trending toward pre-pandemic levels as people continue travelling for both business and pleasure. Enplanements as of February 2023 are 47,357, which is 19.8% higher than February of 2022 and 1.06% more than 2021.

Though there continues to be uncertainty surrounding many national and global factors affecting the Midland economy, Texas has shown growth in jobs, population, and industry, with Midland poised as one of the leaders in that growth.

¹ www.perrymangroup.com. 2023

FISCAL YEAR 2024 PLAN

General Fund

The General Fund is the principal fund of the City and is used to account for resources associated with governmental services, such as police, fire, streets, health department, parks and recreation, code compliance, building inspections and most administrative functions such as administrative services, finance, purchasing and information systems.

The proposed General Fund budget is \$168,533,718, which is \$19.8 million or 13.3% higher than the FY 2023 adopted budget, providing a balanced budget for the 2023-2024 fiscal year. A portion of this increase is due to the funding restructure of the Airport Fire and Airport Police. For FY 2022 and 2023, these divisions were budgeted directly from Airport funds. For FY 2024 they will once again be budgeted through the General Fund, with an offset in Revenue from Airport to the General Fund for this direct cost.

The General Fund unappropriated fund balance, which supports our bond ratings, self-insurance considerations, disaster recovery and major economic or regulatory change, is projected to be \$91.0 million at the end of the fiscal year 2023. This approximates a 50% reserve.

Revenue Overview

The Proposed FY 2024 Budget includes a property tax rate of 37.6 cents per \$100 valuation. This is the Voter Approval Rate. The tax rate is divided into two parts: the maintenance and operations portion and the debt service portion. The rate for the maintenance and operations portion is 31.4 cents and the rate for the debt service is 6.3 cents per \$100 valuation. These rates will produce approximately \$60.9 million in revenue for the General Fund and \$12.1 million for debt service, respectively. This levy will generate \$9.9 million more in revenue than last years' budget, \$6.7 million additional in maintenance and operations, and an increase of approximately \$3.2 million in debt service.

General Fund revenues are projected to increase by \$20.0 million, or 13.4% from the 2023 adopted budget. The three largest sources of total revenue are:

- Property tax at 37% of total
- Sales tax at 38% of total
- Franchise fees and other taxes at 25% of total

Expenditure Overview

As previously mentioned in the priorities, City Management is dedicated to maintain and grow service levels to the public, continuing with the trend of expansion and growth. Almost all departments' budgets manifest the need and desire to keep up with the growth of the City. During the budget process, departments were given allowance to increase their budget up to 3% over their 2023 budget where needed, and to add explanation where a larger increase was necessary. The City Manager's Department had the largest increase at 23%, with General Services second at 19.73%.

As the team prepared the budget for FY 2024, position control was thoroughly reviewed, budgeting for the necessary positions needed to strengthen and expand service to a thriving community.

- Five officers were added to the police force as well as a crime scene technician and a public safety communication QA analyst.
- Six firefighters were added for growth as well as six firefighters for an additional ambulance at Station 4; also added a training specialist.
- A new Multimedia Comm Specialist was added to aid in developing electronic and print media.
- Three kennel techs, a veterinary technician, two turf specialists, a maintenance specialist, and a sports coordinator were added to meet the increasing demand in Community Services.
- A new assistant oil and gas coordinator was added to aid current oil and gas coordinator.
- A new operations planner was added to assist in continuing city improvements.
- A new program analyst, systems analyst, and GIS technician were added to support city government infrastructure.
- A new building maintenance specialist was added to support the growing number of buildings in operation.
- A new Airport maintenance specialist
- A new Garage light side technician for the growing fleet
- Two new maintenance specialists for the Golf Course
- The Sanitation Department has requested two employees for the recycle division, one additional sanitation driver for growth, as well as one environmental officer.
- Customer Service is requesting two additional service representatives as well as a meter shop foreman.

Current employees were budgeted with a 5% cost of living increase. Non-sworn personnel were budgeted with a 3% progression pay. Sworn employees will continue to receive their annual step increase on the anniversary of their hire date.

Other priorities in this year's budget relating to the General Fund were to maintain street maintenance/improvements. The proposed budget includes \$1.8 million for street maintenance and approximately \$6.9 million for capital road infrastructure. Facilities' budget contains \$1.8 million in repairs and upgrades to City property.

Below is a summary of the General Fund Proposed Budget for FY 2024 by category:

EXPENDITURES	FY21 ACTUALS	FY22 ACTUALS	FY23 BUDGET	FY24 BUDGET	VARIANCE
Personnel	85,884,203	85,079,188	94,030,514	108,060,343	14.75%
Operating Expenses	9,458,113	7,358,509	8,866,800	9,860,672	11.21%
Contractual Services	26,262,593	30,520,341	36,917,087	39,985,250	9.04%
Other Uses	4,137,486	5,919,117	843,700	1,146,287	5.25%
Capital	3,513,201	6,450,572	7,892,434	9,481,166	20.13%
TOTAL	\$129,255,596	\$135,327,727	\$148,550,541	\$168,533,718	13.34%

Debt Service Fund

Revenue Overview

The Debt Service portion of the property tax is scheduled to be 6.19 cents per \$100 valuation. This is estimated to bring in \$12.5 million, which is an increase of \$3.6 million over 2023. This increase includes debt service from the 2023 Series GO bond. In addition, last year's amount was lower by \$1 million due to a planned paydown of debt service fund balance.

Expenditure Overview

Debt service principal and interest budget increased by \$2.8 million over the FY 2023 adopted budget. The last tranche of the Road Bond of \$25 million was issued in FY 2023.

Fund Balance

The Restricted Fund Balance is estimated to be \$700,192 at the end of fiscal year 2023.

Hotel/Motel Fund

Revenue Overview

The hotel/motel tax estimate for FY 2023 is proposed at \$5.5 million, which is an increase of \$.5 million, or 10% from FY 2022. Hotel/motel tax revenue has been trending back up after the significant drop in 2020 and 2021. Citywide events have picked back up, especially the sporting events that spur overnight hotel stays. The forecast for FY 2024 revenue is optimistic as growth and activities continue to escalate.

Expenditure Overview

Expenditures in the Hotel/Motel Fund must meet a two-part test to be considered an eligible expenditure:

- The expenditures must “directly enhance and promote tourism and the convention and hotel industry.”
- The expenditure must “clearly fit into one of five statutorily provided categories for expenditure of local hotel occupancy tax revenues.”

The recommended funding for the Visit Midland at the Midland Chamber of Commerce is \$1,210,650 which includes funding for the Star-Spangled Salute and the Sports and Entertainment Grant. The subgrants for outside organizations is \$930,012 in grants for 24 organizations.

The management contract with the Midland Chamber for the Bush Convention Center is funded at \$1,740,000, the full requested amount. Additionally, a \$625,738 budget is set for the Centennial Park Conservancy, to provide park maintenance.

There is also a debt service transfer of \$1,796,800 to the debt service fund for the 2016 Certificate of Obligation. The total for the FY 2024 Hotel/Motel Fund budget amounts to \$6.51 million, compared to \$6.48 million in FY 2023.

Fund Balance

At the end of FY 2022, the ending restricted fund balance was \$14.3 million. The projected Fund Balance at the end of FY 2023 is \$13.5 million. It is Management's policy to retain three years of debt service payments, totaling \$5.4 million of fund balance. This leaves an available fund balance of \$8.1 million.

Water and Sewer Fund

Revenue Overview

There is a planned 5% sewer rate increase for 2024. There will be no water rate increase for FY 2024, however, financial analysis from a recent rate study suggests that steady rate adjustments, beginning in FY 2025 will be necessary over the next several years to sustain the water supply and operations.

For a balanced budget, total revenues amount to \$93.8 million, which includes \$5.7 million appropriated from net position. For fiscal year 2024, budgeted water revenue was increased from the prior year to \$63 million and wastewater revenue was increased to \$18.4 million. Water revenue exceeded budget at the end of 2022 by \$2.4 million; wastewater revenue ended 2022 over budget by \$677,000.

Expenditure Overview

Total expenditures increased by approximately \$1.0 million.

- Personnel costs are proposed at \$10.7 million, which is a slight increase from prior year.
- Operating Expenses are budgeted at an increase of \$2.3 million. This is due mainly to the increase maintenance expenses for the new water reclamation plant as well as a dramatic increase in chemical supply costs.
- Contractual expenses are proposed at \$35.4 million, a dramatic decrease from PY of approximately \$9.4 million. The decrease is due to the cessation of the lease with Midland Freshwater Supply District #1. The related assets were purchased in 2023.

Debt Service is budgeted at \$18.9 million which includes the debt for purchase of the Midland Freshwater Supply District #1 assets.

The transfer to the General Fund is proposed at \$8.9 million and includes general fund service charges and franchise fees.

Capital expenditures are budgeted at \$5.0 million: funds are for water and sewer infrastructure improvements in conjunction with the five-year capital improvement plan.

- Plant farm pond lining replacement
- Replace lift stations (Airport and Mockingbird)
- Replace outfall lines to wastewater plant
- Replace 50 manholes in wastewater system
- Replace the annual amount of 4" iron water mains
- Annual utility extension and taps program
- New water wells at Paul Davis Well Field

Customer Service also contains a few capital expenses in response to growth of the customer base and advancements in technology. A kiosk will be going up at City Hall, and eventually another near the new customer service location.

Net Position:

The internal goal for the Water and Sewer Fund is to maintain a reserve equal to 90 days of operating expenses, or the equivalent of \$23 million dollars. At the end of FY 2022, the Water and Sewer fund had an unrestricted net position of \$59.2 million. The department estimates this balance to be \$39.2 million at the end of 2023.

Sanitation Fund

Revenue Overview

A 2% fee escalator was implemented for the 2024 fiscal year. A full fee study is underway at budget time to establish the fees for the 2025 budget.

FY 2024 budgeted revenues increased by \$13,727, which includes an appropriation of \$662,912 to balance the budget.

Expenditure Overview

Total expenditures were increased by \$13,727 from the 2023 adopted budget, proposing appropriations of \$25.3 million for FY 2024. Design work is started for two new citizen collection stations as well as the landfill entrance road, which are scheduled to be built in 2024.

Net Position:

Unrestricted net position at the end of FY 2022 was \$9.5 million and is projected to be \$7.9 million by the end of 2023. The closure/post-closure liability is approximately \$22.4 million.

Airport Fund

Revenue Overview

For the FY 2024 proposed budget, total budgeted revenue is estimated at \$14.7 million, which is an increase of 16.9% over FY2023. The Airport has experienced an increase in revenue as the activity has returned to pre-pandemic levels and continues to grow.

Expenditure Overview

Total FY 2024 proposed expenditures is \$14.7 million which includes a contingency of \$1.6 million to balance the budget. A change was made for the 2024 budget to pay for Airport Fire and 85% of Airport Police through the General Fund and reimbursed by the Airport. This amount is documented in a full cost allocation plan created by a third-party consultant.

Net Position:

At the end of FY 2022, the Airport had an unrestricted net position of \$44.9 million. The department estimates this balance to be \$36.7 million at the end of 2023.

Parks Oil & Gas Special Purpose Fund

Revenue Overview:

Total revenues are budgeted at \$13.0 million for FY 2024. This is an increase of \$2.6 million. This is budgeted conservatively due to the uncertain nature of the oil revenues supplying this fund.

Expenditure Overview

Total expenditures are budgeted at \$13.0 million for FY 2024, with \$12.5 million of this set aside for parks related capital projects.

Fund Balance:

Following the close of FY 2022, fund balance was \$22.4 million. The projection for the end of FY 2023 is \$23.4 million.

Golf Course Fund

Revenue Overview:

Total revenues are budgeted at \$3.2 million for FY 2024 with a required appropriation from net position of \$376,548. This is a decrease of \$367,581. Estimated revenue was increased in Golf Cart Rentals, General Green Fees, and Pro Shop Sales as a result of increased activities from the growing economy.

Expenditure Overview

As a balanced budget, total expenditures for the Golf Course are budgeted at \$3.2 million for FY 2024; an increase of 10.9%, or \$318,949 from the previous year.

Fund Balance:

Following the close of FY 2022, no assets were held. It is approximated the fund will have a negative position of (\$176,776) at the end of 2023.

Scharbauer Sports Complex Fund

Revenue Overview

Operating revenue is budgeted at \$3.7 million for FY 2024, which includes revenue from operations of \$1.4 million and appropriation from net position of \$2.3 million to provide a balanced budget. The increase in operational revenue is \$341,689 or 32%. Revenue opportunities are increasing as new fields are becoming available for rental.

Expenditure Overview

Total budgeted expenditures are \$3.7 million which is an increase from prior year of approximately \$237,475. This increase is due mainly to increased maintenance costs.

Fund Balance: At the end of FY 2022, the fund held \$15.4 million in unrestricted fund balance. The projection for the end of FY 2023 is \$13.2 million.

Garage Fund

Revenue Overview

Total revenues for the Garage Fund are proposed at \$30.6 million, an increase of \$4.1 million over the FY 2023 adopted budget. This includes an appropriation from net position of \$2.5 million. The proposed budget allows a labor rate of \$90 an hour to be charged by the Garage to recoup the costs of parts, equipment, and fuel. This allows the Garage to replace aging fleet and equipment in a timely manner.

Expenditure Overview

The Garage Fund attempted in 2023 to catch up from deferment in needed replacements and maintenance on equipment and vehicles. Supply chain issues have continued during the year, leaving gaps in the replacement schedule. Current year budgeted expenditures have increased 15% over 2023, in part to try to make up for this gap. The budget for capital vehicles and equipment totals \$15.7 million, \$3.7 million more than last year's budget of \$12.0 million. Total expenditures are \$30.6 million.

Net Position:

At the end of the FY 2022, the Garage Fund's unrestricted net position was \$19.6 million. The FY 2023 projected ending fund balance is expected to be \$12.8 million.

Risk Funds

The City of Midland has two internal Risk Funds: Employee Benefits, and Risk Management.

Revenue Overview:

- Operating Revenue for the Employee Benefit fund is \$15.6 million, an increase of 3.9%.
- The Risk Management Fund has a revenue budget of \$6.3 million for the FY 2024 fiscal year, which includes workers compensation and general liability revenue.

Expenditure Overview:

- The Employee Benefit Fund expenditures are budgeted at \$15.6 million, a 3.9% increase from the previous budget year.
- Risk Management Expenditures are budgeted at \$6.3 million, which includes workers compensation and general liability operations, and five personnel salary and benefits. This is an increase of 19.3% over prior year due in part to insurance premium increases.

Fund Balance:

- Employee Benefits fund balance currently \$15.3 million.
- The fund balance of the Risk Management Fund is \$6.5 million.

Technology Fund

Revenue Overview:

- The Technology fund revenue is budgeted at \$6.7 million for FY 2024. This includes the chargebacks received from departments for equipment leases and interest as well as chargebacks to the various divisions in the City for the software packages used. Chargebacks for software was added in fiscal 2023 to better allow the Technology fund to better serve the divisions regarding upgrades and hardware replacements, as well as fund two Information Technology Security personnel.

Expenditure Overview:

- The expenditures budgeted for the Technology Fund total \$6.7 million which is an increase from prior year of \$1.1 million. This increase demonstrates the increase in demand for technology across the City to continue to provide the best services possible. These funds are also used to replace scheduled technology applications for city employees.

Net Position

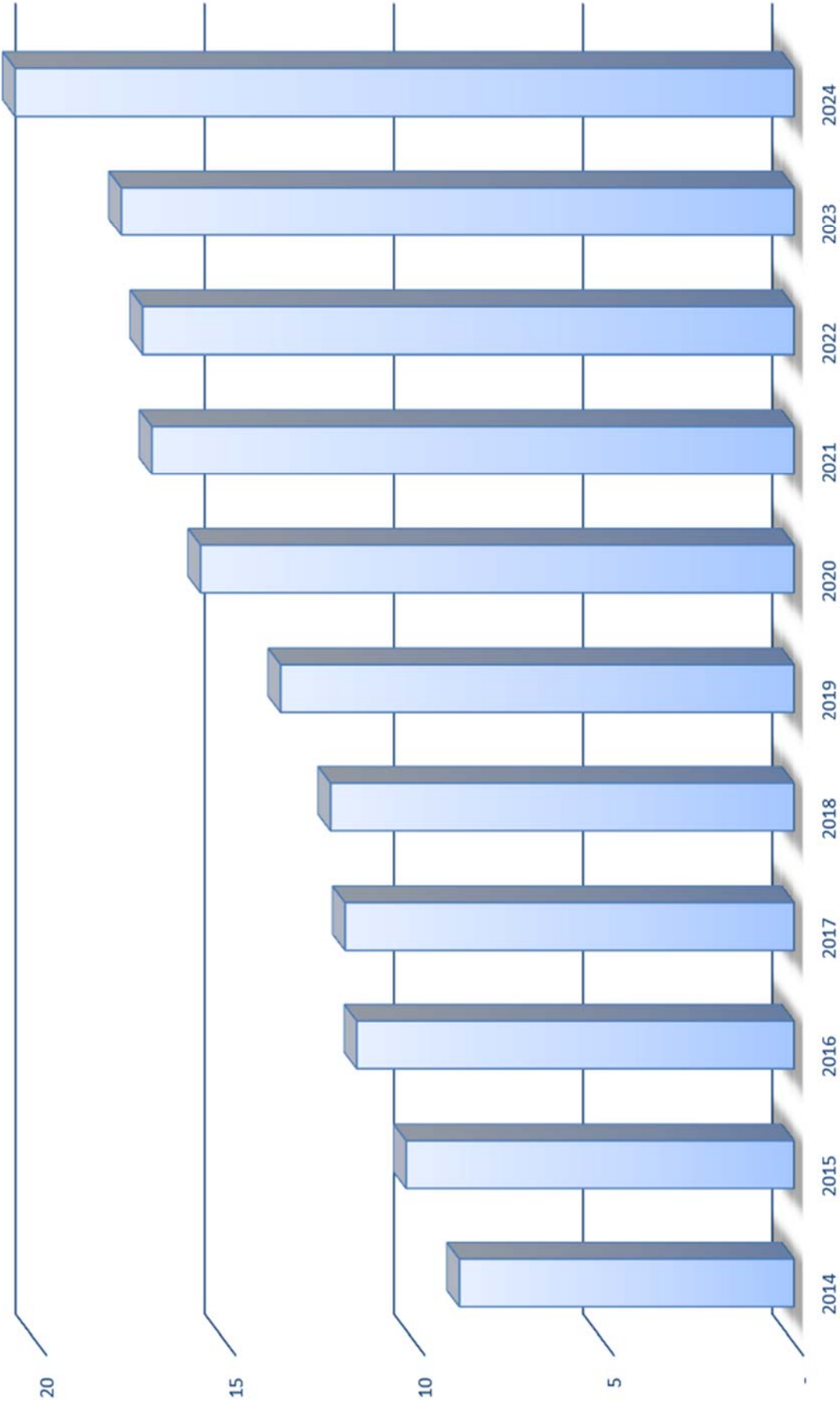
- The unrestricted net position of the Technology Fund is estimated to be \$542 thousand at the end of 2023.

NOTES:

In Compliance with the Texas Local Government Code Sec. 140.0045:

- 1) During FY 2022, \$46,475 was spent on lobbyist contracts. The budget for FY 2024 is \$50,000.
- 2) During FY 2022, \$50,021 was spent on notices required by law to be published in the newspaper. The anticipated budget for this purpose in FY 2024 is \$76,630.

Assessed Valuation for the City of Midland



PACKET

25.39 BILLION

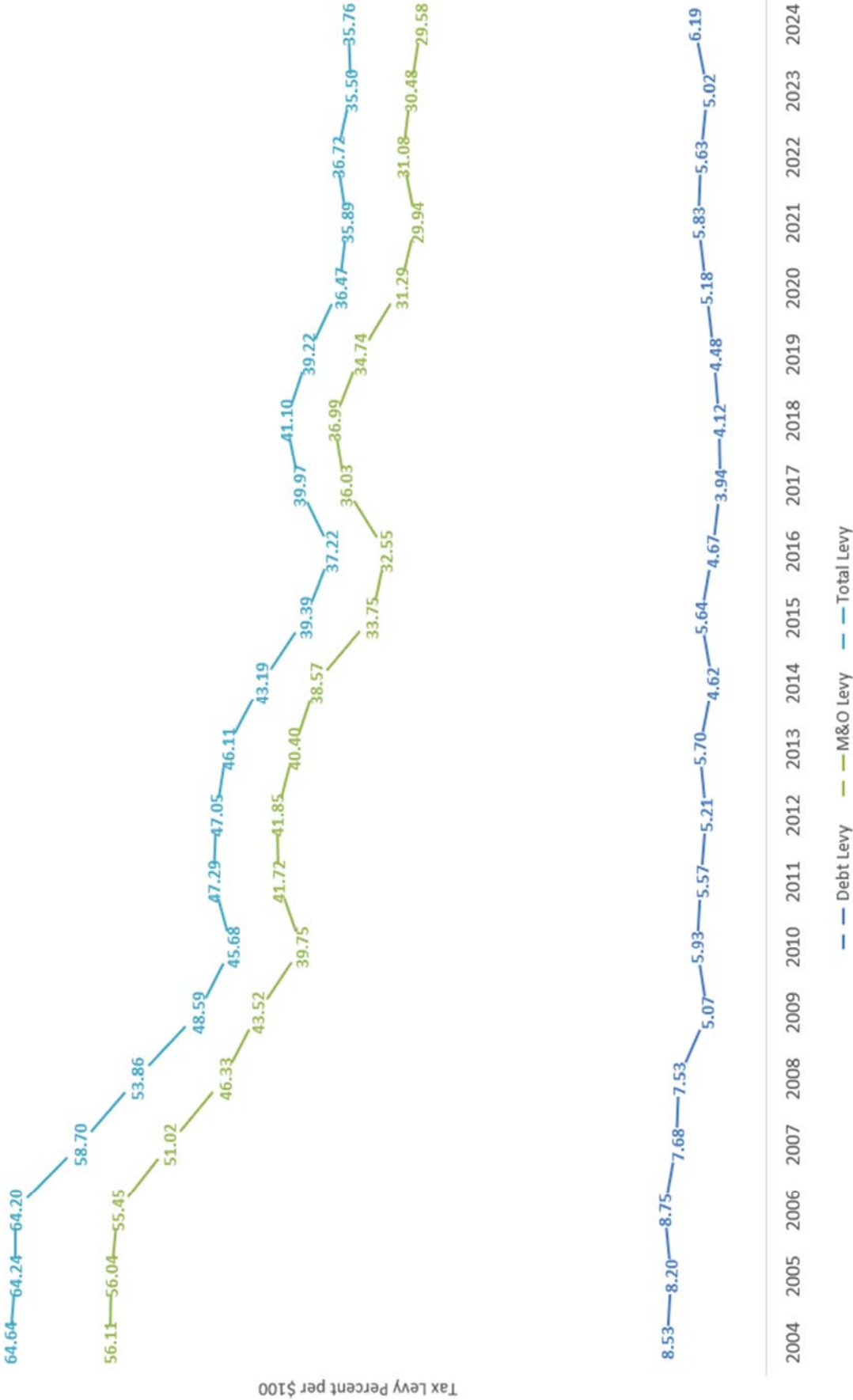
August 22, 2023

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August 22, 2023

HISTORICAL TAX LEVY
2004 TO PROPOSED 2024



Fund/Department	FY 2022 Actuals	FY 2023 Budget	FY 2024 Proposed	Budget Increase/(Decrease)
GENERAL FUND				
GENERAL FUND REVENUE TOTALS	\$145,577,628	\$148,550,541	\$168,533,718	\$19,983,177
GENERAL FUND EXPENDITURE TOTALS	\$135,327,730	\$148,693,628	\$168,533,718	\$19,840,090
<i>TOTAL SURPLUS/(DEFICIT)</i>				
<i>GENERAL FUND EXPENDITURE DETAILS:</i>				
CITY COUNCIL	\$37,291	\$45,411	\$49,654	\$4,243
CITY MANAGERS	\$1,316,627	\$1,540,723	\$1,894,742	\$354,019
CITY MANAGERS OFFICE	\$1,058,359	\$1,143,576	\$1,321,822	\$178,246
PUBLIC INFORMATION	\$258,269	\$397,147	\$572,920	\$175,773
MUNICIPAL COURT	\$2,029,237	\$2,407,684	\$2,624,072	\$216,388
LEGAL	\$1,166,037	\$1,356,459	\$1,494,500	\$138,041
CITY SECRETARY	\$660,166	\$795,676	\$812,420	\$16,744
ADMINISTRATIVE SERVICES	\$859,151	\$1,124,955	\$1,302,272	\$177,317
EMPLOYEE HEALTH & WELLNESS				
HUMAN RESOURCES	\$859,056	\$1,124,955	\$1,302,272	\$177,317
RISK MANAGEMENT	\$95			
ITSD	\$7,040,850	\$8,060,232	\$8,093,482	\$33,250
COMMUNICATION MAINT	\$757,011	\$935,659	\$778,341	(\$157,318)
GIS ADMINISTRATION		\$968,720	\$890,391	(\$78,329)
INFORMATION SYSTEM ADM	\$1,849,784	\$1,944,290	\$1,197,194	(\$747,096)
INFORMATION SYSTEMS	\$4,434,055	\$4,211,562	\$5,227,556	\$1,015,994
FINANCE	\$1,683,373	\$2,189,007	\$2,338,968	\$149,961
ACCOUNTING	\$793,281	\$1,152,586	\$1,290,320	\$137,734
FINANCE ADMINISTRATION	\$493,288	\$579,894	\$596,182	\$16,288
TREASURY	\$396,805	\$456,527	\$452,466	(\$4,061)
GENERAL SERVICES	\$3,908,642	\$5,510,362	\$6,597,402	\$1,087,040
FACILITIES SERVICES	\$3,195,236	\$4,735,418	\$5,740,632	\$1,005,214
PURCHASING	\$713,406	\$774,944	\$856,770	\$81,826
DEVELOPMENT SERVICES	\$3,712,037	\$4,787,448	\$5,470,192	\$682,744
CODE ADMINISTRATION	\$2,821,369	\$3,567,971	\$3,963,653	\$395,682
COMMUNITY DEVELOPMENT	\$166,823	\$249,432	\$266,408	\$16,976
PLANNING & DEVELOPMENT	\$723,844	\$970,045	\$1,240,131	\$270,086
ENGINEERING	\$18,883,856	\$21,422,597	\$23,617,083	\$2,194,486
GIS ADMINISTRATION	\$623,094			
ENGINEERING SERVICES	\$2,629,596	\$3,361,528	\$3,684,304	\$322,776
TRAFFIC OPERATIONS	\$2,283,125	\$2,662,777	\$3,064,318	\$401,541
TRANSPORTATION	\$13,348,042	\$15,398,293	\$16,868,461	\$1,470,168

Fund/Department	FY 2022 Actuals	FY 2023 Budget	FY 2024 Proposed	Budget Increase/(Decrease)
COMMUNITY SERVICES	\$13,398,950	\$14,839,855	\$16,994,825	\$2,154,970
ANIMAL SERVICES	\$1,648,454	\$2,275,431	\$2,917,304	\$641,873
HEALTH SERVICES	\$2,677,859	\$2,819,264	\$3,095,542	\$276,278
PARKS	\$7,059,821	\$7,528,540	\$8,446,997	\$918,457
RECREATION	\$1,396,067	\$1,515,275	\$1,876,334	\$361,059
SENIOR SERVICES	\$616,749	\$701,345	\$658,648	(\$42,697)
POLICE	\$33,841,514	\$38,974,564	\$45,435,754	\$6,461,190
AIRPORT POLICE	\$341,637	\$303,368	\$2,490,986	\$2,187,618
COMMERCIAL VEHICLE ENFORCE	\$405,854	\$500,941	\$327,625	(\$173,316)
COMMUNICATIONS	\$2,480,714	\$3,268,134	\$3,491,354	\$223,220
FIELD OPERATIONS BUREAU	\$19,085,597	\$20,858,791	\$22,474,867	\$1,616,076
INVESTIGATIVE SERVICE BUREAU	\$6,172,877	\$7,190,055	\$8,639,572	\$1,449,517
PD STEP	\$549			
POLICE ADMINISTRATION	\$1,919,764	\$2,348,215	\$3,165,938	\$817,723
SUPPORT SERVICES BUREAU	\$3,367,763	\$4,430,883	\$4,845,412	\$414,529
VCLG PROGRAM	\$66,760	\$74,178		(\$74,178)
FIRE	\$35,544,922	\$38,309,472	\$44,272,402	\$5,962,930
AIRPORT FIRE	\$2,985		\$2,453,900	\$2,453,900
EMERGENCY MANAGEMENT	\$264,431	\$285,109	\$272,846	(\$12,263)
EMERGENCY MEDICAL SERVICE	\$1,756,686	\$2,530,211	\$2,747,341	\$217,130
FIRE ADMINISTRATION	\$31,204,763	\$33,115,296	\$36,044,431	\$2,929,135
FIRE PREVENTION	\$920,900	\$938,344	\$1,161,007	\$222,663
FIRE TRAINING	\$1,395,157	\$1,440,511	\$1,592,877	\$152,366
NON-DEPARTMENTAL	\$5,947,755	\$7,329,184	\$7,535,950	\$206,766
INTERFUND TRANSFER	\$5,297,322			

WATER & SEWER FUND

REVENUE	\$91,251,210	\$92,407,132	\$93,889,574	\$1,482,442
EXPENSE	\$90,350,514	\$92,779,559	\$93,889,574	\$1,110,015
TOTAL SURPLUS/(DEFICIT)	\$900,696	(\$372,427)		

DRAINAGE FUND

REVENUE	\$1,950,397	\$2,683,585	\$2,487,450	(\$196,135)
EXPENSE	\$2,303,550	\$2,683,585	\$2,487,450	(\$196,135)
TOTAL SURPLUS/(DEFICIT)	(\$353,153)			

SANITATION FUND

REVENUE	\$20,082,051	\$25,296,242	\$25,323,172	\$26,930
EXPENSE	\$22,618,745	\$25,309,446	\$25,323,172	\$13,726
TOTAL SURPLUS/(DEFICIT)	(\$2,536,694)	(\$13,204)		

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August 22, 2023

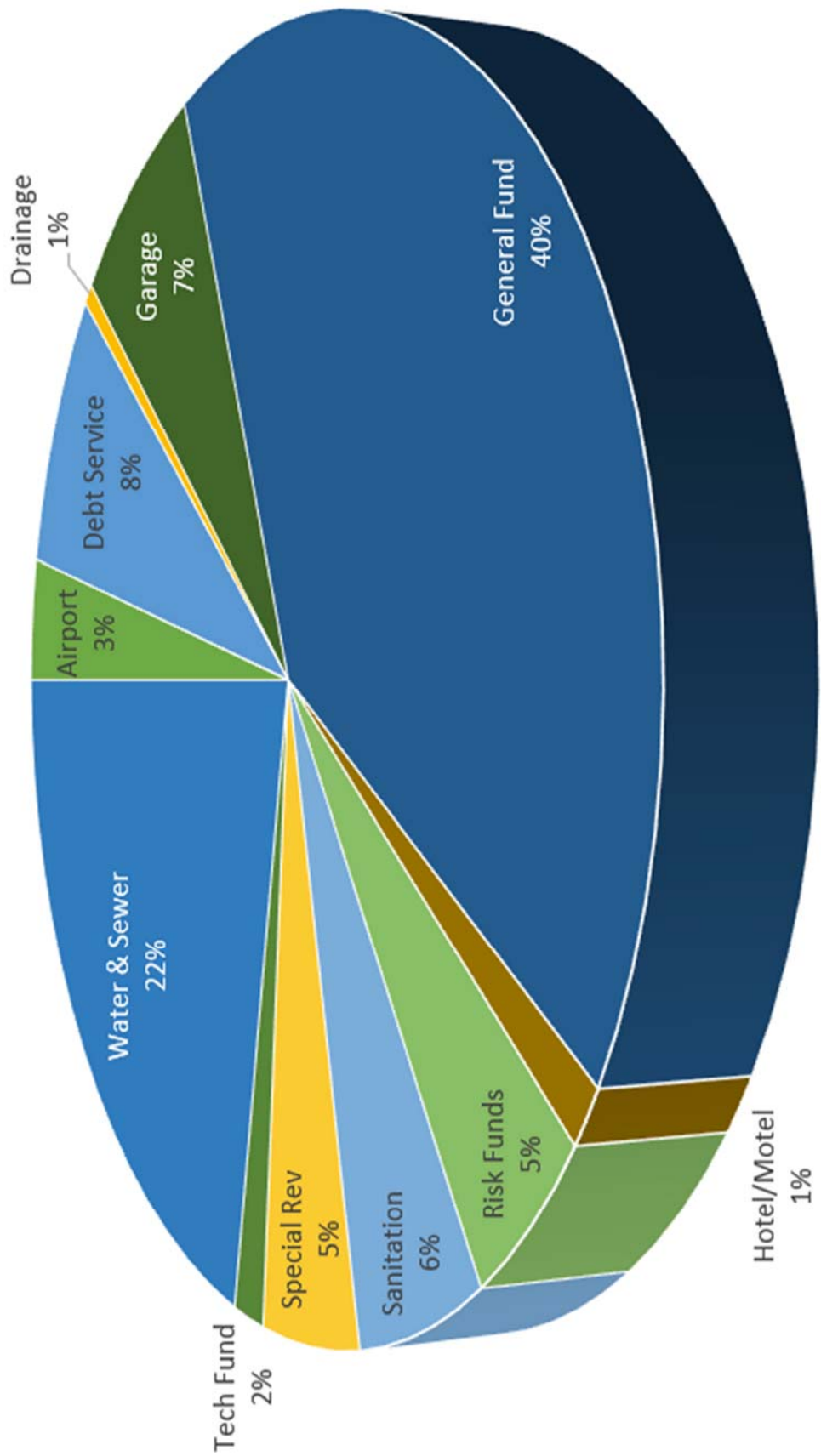
SECTION : INTRODUCTION

Fund/Department	FY 2022 Actuals	FY 2023 Budget	FY 2024 Proposed	Budget Increase/(Decrease)
AIRPORT FUND				
REVENUE	\$20,717,205	\$12,565,000	\$14,681,590	\$2,116,590
EXPENSE	\$11,572,526	\$12,590,429	\$14,681,590	\$2,091,161
TOTAL SURPLUS/(DEFICIT)	\$9,144,679	(\$25,429)		
GARAGE FUND				
REVENUE	\$21,138,752	\$26,490,699	\$30,576,637	\$4,085,938
EXPENSE	\$17,306,174	\$26,490,699	\$30,576,637	\$4,085,938
TOTAL SURPLUS/(DEFICIT)	\$3,832,578	\$0		
TECHNOLOGY FUND				
REVENUE	\$1,102,685	\$5,459,780	\$6,701,729	\$1,241,949
EXPENSE	\$2,245,698	\$5,556,210	\$6,701,729	\$1,145,519
TOTAL SURPLUS/(DEFICIT)	(\$1,143,013)	(\$96,430)		
RISK FUNDS				
REVENUE	\$17,109,840	\$20,370,560	\$21,988,914	\$1,618,354
EXPENSE	\$13,969,355	\$20,370,560	\$21,988,914	\$1,618,354
TOTAL SURPLUS/(DEFICIT)	\$3,140,484			
HOTEL MOTEL FUNDS				
REVENUE	\$4,968,821	\$6,484,166	\$6,510,000	\$25,834
EXPENSE	\$5,270,003	\$6,484,166	\$6,510,000	\$25,834
TOTAL SURPLUS/(DEFICIT)	(\$301,182)			
SPECIAL REVENUE FUNDS				
REVENUE	\$25,780,053	\$17,423,703	\$21,045,221	\$3,621,518
EXPENSE	\$12,392,013	\$17,346,529	\$21,045,221	\$3,698,692
TOTAL SURPLUS/(DEFICIT)	\$13,388,039	\$77,174		
DEBT SERVICE				
REVENUE	\$19,204,317	\$19,398,184	\$33,296,571	\$13,898,387
EXPENSE	\$18,482,122	\$19,398,184	\$33,296,571	\$13,898,387
TOTAL SURPLUS/(DEFICIT)	\$722,194			
GRAND TOTALS				
REVENUE	\$368,882,957	\$377,129,591	\$425,034,576	\$47,904,985
EXPENSE	\$331,838,430	\$377,702,994	\$425,034,576	\$47,331,582
TOTAL SURPLUS/(DEFICIT)	\$37,044,527	(\$573,403)		

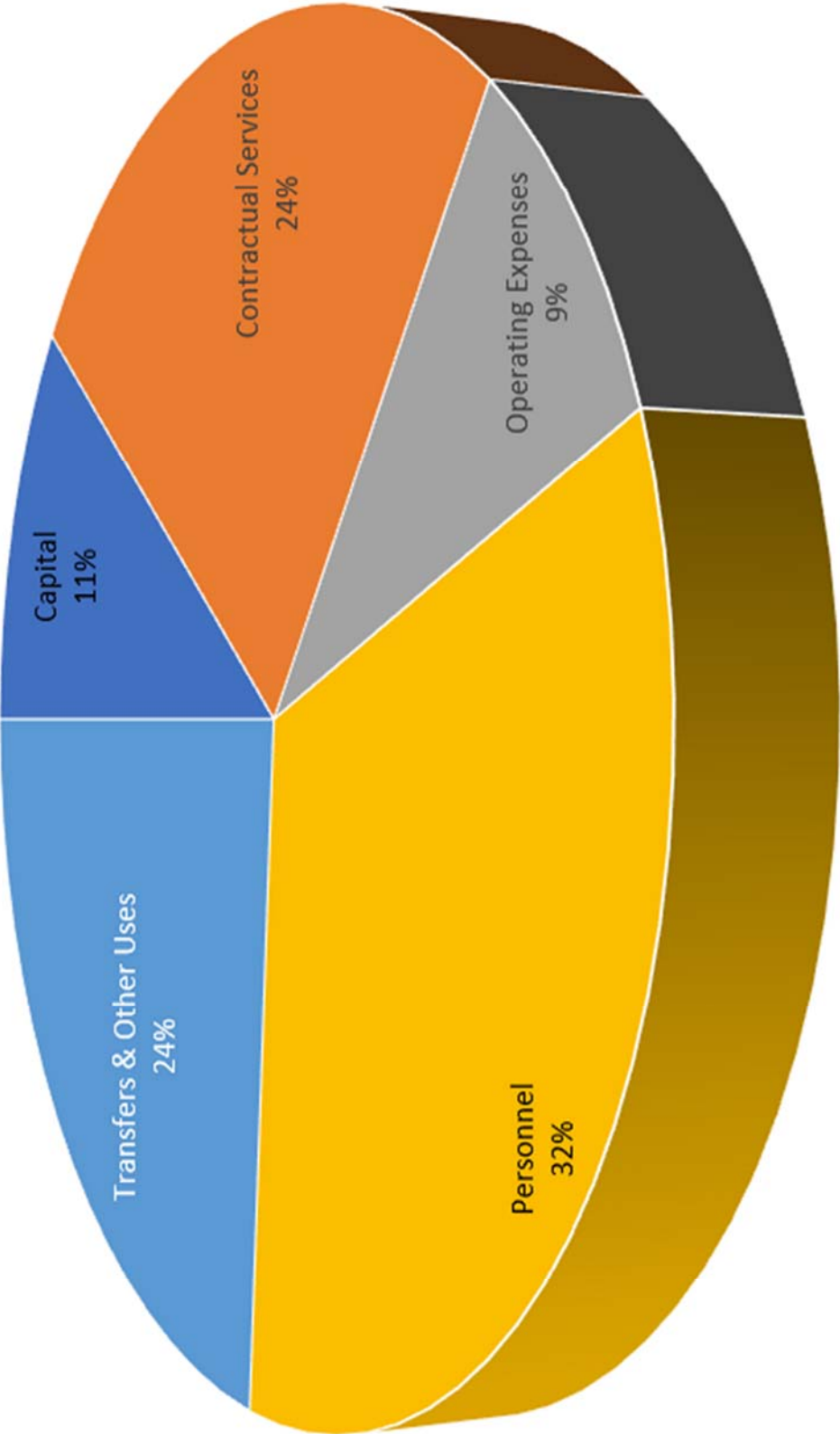
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August 22, 2023



2024 Budget by Fund



2024 Budget by Expense Type

City of Midland, TX
Fiscal Year 2024 Proposed Budget
SUMMARY OF PERSONNEL

DEPARTMENT / ORG		FULL-TIME EMPLOYEES		
		BUDGET FY2022	BUDGET FY2023	PROPOSED FY2024
LEGISLATIVE (004)				
001004	Legislative	7	7	7
		7	7	7
ADMINISTRATION (005)				
001005	City Manager's Office	5	5	5
001007	Public Information Office	3	4	5
001045	Internal Audit	NA	NA	NA
		8	9	10
MUNICIPAL COURT (010)				
001010	Municipal Court	24	23	23
		24	23	23
LEGAL (015)				
001015	Legal	8	8	8
702729	Gen Liability	2	4	4
		10	12	12
CITY SECRETARY (020)				
001020	City Secretary	6	6	6
		6	6	6
ADMINISTRATIVE SERVICES (025)				
001025	Human Resources	7	7	8
701720	Employee Health & Wellness	1	1	1
702710	Risk Management	1	2	2
702727	Risk Management	2	2	2
		11	12	13
COMMUNICATION & INFORMATION SYSTEMS (030)				
001030	Information Systems Administration	3	3	3
001032	Information Systems	20	21	23
001033	Comm Maintenance	2	2	2
001034	GIS Administration	NA	5	5
770770	Technology Fund	NA	2	2
		25	33	35
FINANCE (035)				
001035	Accounting	9	10	10
001036	Finance Administration	4	4	4
001037	Treasury	4	4	4
300340	Meter Shop	NA	NA	NA
300343	Cashiering	3	3	3
300345	Customer Service	36	32	33
		56	53	54

City of Midland, TX
Fiscal Year 2024 Proposed Budget
SUMMARY OF PERSONNEL

DEPARTMENT / ORG		FULL-TIME EMPLOYEES		
		BUDGET FY2022	BUDGET FY2023	PROPOSED FY2024
GENERAL SERVICES (040)				
001040	Purchasing	6	6	6
001041	Facilities Services	6	6	7
750751	Vehicle Services	10	10	10
750752	Garage	20	19	20
760760	Warehouse	1	1	1
		43	42	44
DEVELOPMENT SERVICES (075)				
001055	Planning & Development	9	9	9
001056	CDBG Administration	2	2	2
001060	Code Administration	32	34	35
		43	45	46
ENGINEERING SERVICES (080)				
001075	GIS Administration	5	NA	NA
001080	Engineering Services	19	22	22
400482	Stormwater Mgmt	2	2	2
001083	Traffic Operations	20	20	20
001085	Transportation	42	42	41
		88	86	85
COMMUNITY SERVICES (090)				
001090	Parks	32	33	37
001091	Animal Services	15	22	27
001093	Recreation	7	8	9
001095	Senior Services	NA	NA	NA
001100	Health Services	27	28	28
078410	Golf Course	11	11	13
078411	Pro Shop	3	3	3
079620	Sports Complex	7	10	10
		102	115	127
POLICE (110)				
001104	Communications	31	31	31
001105	VCLG Program	1	1	NA
001106	Parking Enforcement	NA	NA	NA
500107	Airport Police	NA	NA	15
001108	Commercial Vehicle Enforcement	3	3	2
001111	Police Administration	11	12	12
001112	Support Services	34	42	40
001113	Field Operations	129	126	133
001114	Investigative Services	52	51	60
PACKET		25.47	26.8	293
		261	268	293

City of Midland, TX
Fiscal Year 2024 Proposed Budget
SUMMARY OF PERSONNEL

DEPARTMENT / ORG		FULL-TIME EMPLOYEES		
		BUDGET FY2022	BUDGET FY2023	PROPOSED FY2024
FIRE (115)				
001115	Fire	219	227	241
001116	Fire Training	7	5	6
001119	Fire Prevention	8	8	8
001120	Emergency Medical Services	5	8	7
001122	Airport Fire	NA	NA	13
001125	Emergency Management	1	1	1
		240	249	276
UTILITIES (300)				
300300	Utilities Administration	5	9	8
300301	Environmental Compliance	8	8	8
300305	Paul Davis Well Field Operations	NA	NA	NA
300306	Airport Well Field & Tower Operations	NA	NA	NA
300310	Water Pollution Control Plant	23	21	21
300315	Spraberry Farm	NA	NA	NA
300320	Water Purification Plant	22	23	24
300322	MBR- Membrane Bioreactor	NA	NA	NA
300335	Water & Sewer Maintenance	27	30	30
		85	91	91
SANITATION (430)				
430400	Solid Waste Management	52	52	55
430402	Recycle	5	5	9
430405	Landfill	17	17	17
		74	74	81
AIRPORT (500)				
500500	Airport Operations	32	33	34
500107	Airport Police	15	15	NA
500122	Airport Fire	13	13	NA
		60	61	34
Total Personnel		1143	1184	1237

GENERAL FUND



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25.49

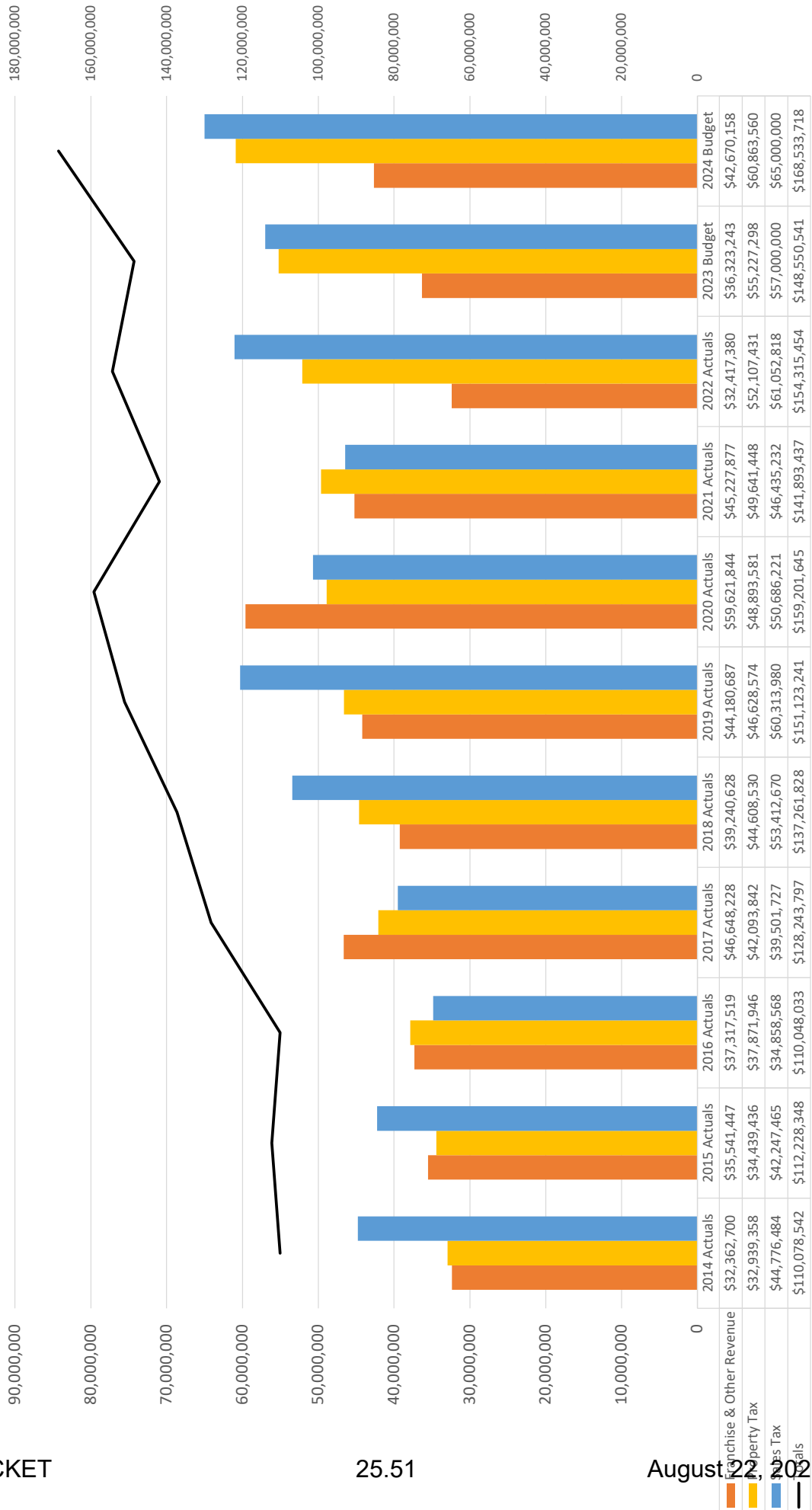
August 22, 2023

General Fund Summary

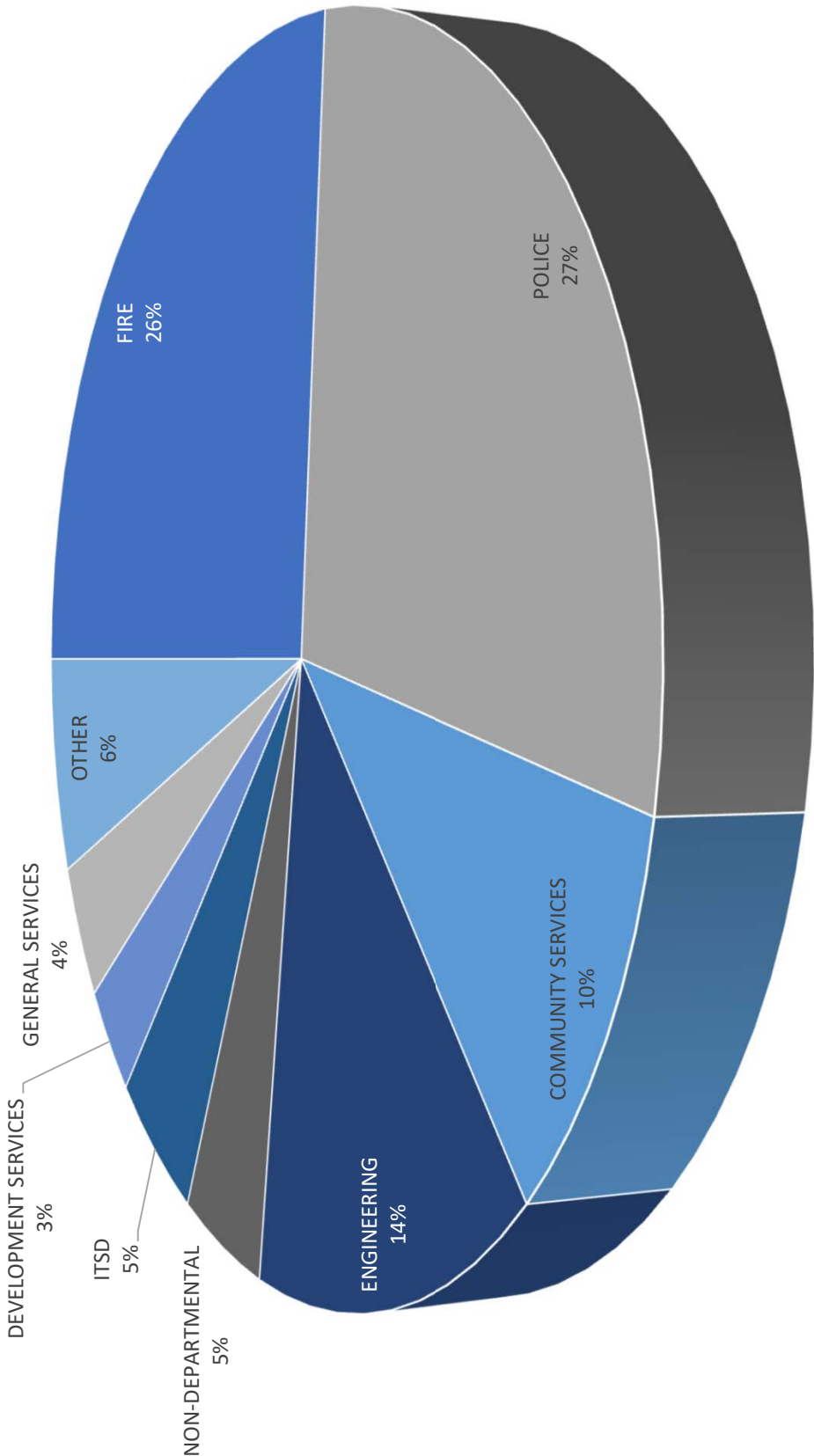
Expenditures by Department	FY21 Actuals	FY22 Actuals	FY23 Budget	FY24 Proposed	Budget Increase/(Decrease)
Legislative	28,352	37,291	45,411	49,654	4,243
City Manager's Office	1,248,889	1,316,627	1,540,723	1,894,742	354,019
Municipal Court	2,045,628	2,029,237	2,407,684	2,624,072	216,388
Legal	1,271,523	1,166,037	1,356,459	1,494,500	138,041
City Secretary's Office	493,082	660,166	795,676	812,420	16,744
Administrative Services	1,282,662	859,151	1,124,955	1,302,272	177,317
ITSD	6,996,759	7,040,850	8,060,232	8,093,482	33,250
FINANCE	1,910,237	1,683,373	2,189,007	2,338,968	149,961
GENERAL SERVICES	2,901,241	3,908,642	5,510,362	6,597,402	1,087,040
DEVELOPMENT SERVICES	3,621,555	3,712,037	4,787,448	5,470,192	682,744
ENGINEERING	19,615,357	18,883,857	21,422,597	23,617,083	2,194,486
COMMUNITY SERVICES	11,905,898	13,398,950	14,839,855	16,994,825	2,154,970
POLICE	35,303,546	33,841,514	38,974,564	45,435,754	6,461,190
FIRE	34,780,583	35,544,922	38,309,472	44,272,402	5,962,930
NON-DEPARTMENTAL	4,608,020	5,947,755	7,329,184	7,535,950	206,766
INTERFUND TRANSFER	3,700,190	5,297,322	-	-	-
Total	131,713,523	135,327,730	148,693,628	168,533,718	39,097,998

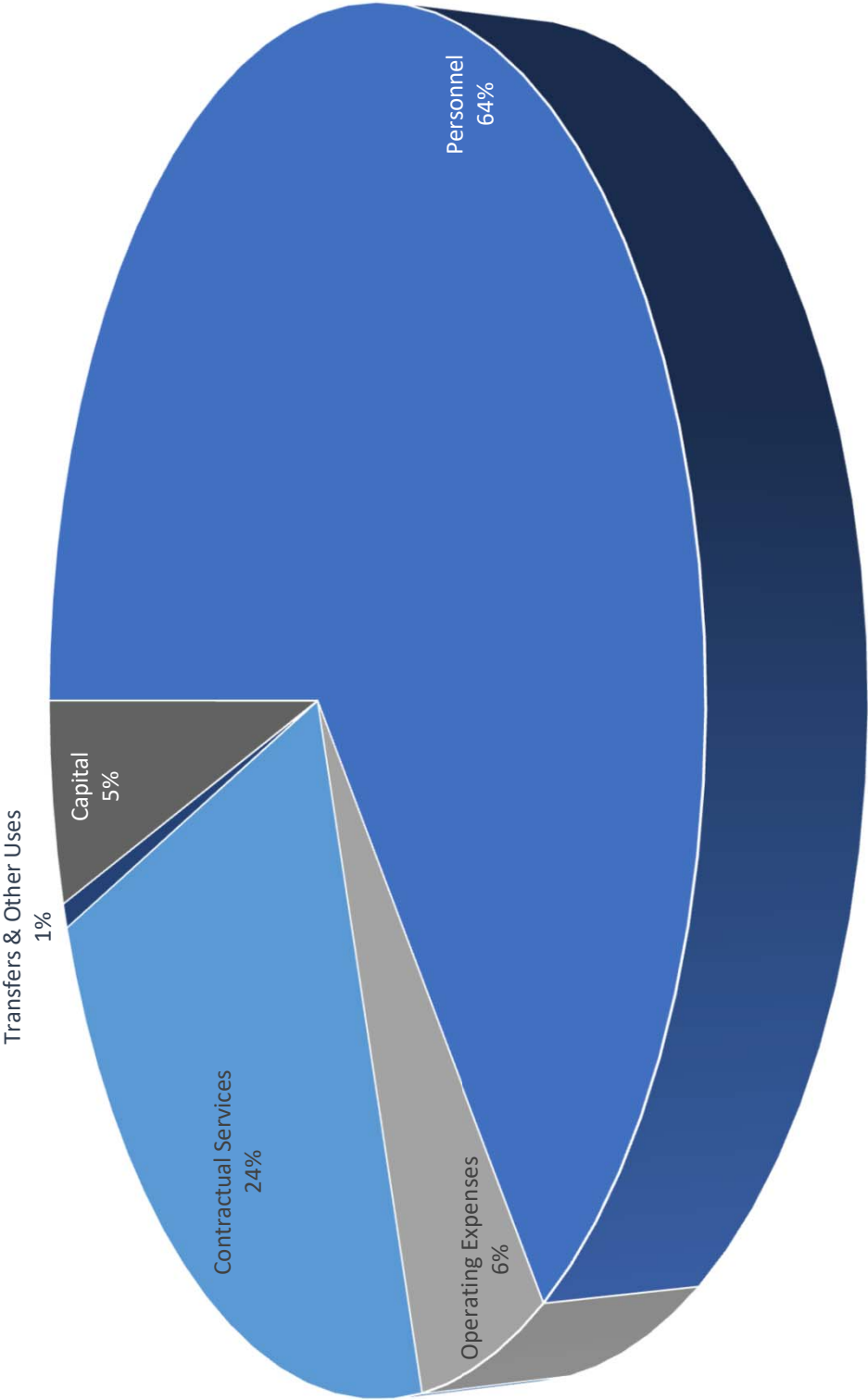
Expenditures by Category					
Personnel	88,340,961	85,079,188	94,173,601	108,060,343	13,886,742
Operating Expenses	9,459,281	7,358,509	8,866,800	9,860,672	993,872
Contractual Services	26,262,593	30,520,342	36,671,697	39,985,250	3,313,553
Transfers & Other Uses	4,137,486	5,919,118	1,089,096	1,146,287	57,191
Capital	3,513,201	6,450,573	7,892,434	9,481,166	1,588,732
Total	131,713,522	135,327,730	148,693,628	168,533,718	19,840,090

Gen Fund Revenue FY2014 to FY 2024



FY 2024 General Fund Expenditures by Department





FY 2024 General Fund by Expenditure Type

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4001005 City Manager Revenue						
40890-Miscellaneous	6,200	9,200	0	0	0.00%	0
44363-DMMD ED	0	-23,708	0	0	0.00%	0
44367-Midland Dev Corp	390,685	390,685	379,813	444,960	17.15%	65,147
45825-Hotel/Motel Fund	69,725	69,725	65,309	30,420	-53.42%	-34,889
45830-Water & Sewer Fund	1,898,343	1,898,343	1,713,892	1,978,330	15.43%	264,438
45835-Drainage Fund	16,042	16,042	31,443	37,067	17.89%	5,624
45840-Sanitation Fund	765,829	765,829	788,830	845,230	7.15%	56,400
45850-Golf Course Fund	303,538	303,538	271,334	283,951	4.65%	12,617
45870-Airport Operation Fund	2,547,539	478,563	1,024,229	4,931,828	381.52%	3,907,599
45872-Scharbauer Sports Complex Fund	1,351,673	1,351,673	936,098	645,295	-31.07%	-290,803
45875-Garage	740,697	740,697	691,865	578,896	-16.33%	-112,969
45876-Risk Managment	0	0	36,408	60,777	66.93%	24,369
45877-Employee Benefit	0	0	9,547	17,676	85.15%	8,129
45878-TECHNOLOGY	0	0	9,739	15,342	57.53%	5,603
Total	8,090,271	6,000,587	5,958,507	9,869,772	65.64%	3,911,265
4001015 Legal Revenue						
40890-Miscellaneous	124	0	0	0	0.00%	0
Total	124	0	0	0	0.00%	0
4001020 City Secretary Rev						
40730-Beer License	74,841	50,565	50,000	51,000	2.00%	1,000
40885-Passport Processing Fee	18	10	0	0	0.00%	0
40890-Miscellaneous	1,040	295	0	0	0.00%	0
Total	75,899	50,870	50,000	51,000	2.00%	1,000
4001030 Comm Info Services Rev						
44365-Midland Emer Comm Distr	110,864	110,864	105,000	108,000	2.86%	3,000
Total	110,864	110,864	105,000	108,000	2.86%	3,000
4001035 Finance Revenue						
48490-Unclassified	3,967	3,842	0	0	0.00%	0
Total	3,967	3,842	0	0	0.00%	0

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4001040 Facility & Fleet						
46010-Parking Lot	39,564	39,564	39,000	40,000	2.56%	1,000
46190-Miscellaneous Rentals	136,206	136,206	136,210	136,210	0.00%	0
49150-Recvr-Damages To City Property	47,028	-2,394	0	0	0.00%	0
Total	222,798	173,376	175,210	176,210	0.57%	1,000
4001075 Development Services Rev						
40500-Permits	2,011,364	1,712,764	2,000,000	2,060,000	3.00%	60,000
40515-Temporary Storage Permits	0	0	500	500	0.00%	0
40560-Demolition Permits	8,869	4,794	8,500	8,700	2.35%	200
40590-Temporary Sign Permits	800	14,500	2,500	2,500	0.00%	0
40600-Public Right-Of-Way Use Fees	54,492	0	0	0	0.00%	0
40656-Mobile Vendors	6,000	7,500	5,000	5,000	0.00%	0
40700-Oil & Gas Drilling Permits	285,440	539,200	250,000	350,000	40.00%	100,000
40750-Certificate Of Occupancy	50	0	0	0	0.00%	0
40800-Planning Fees	146,200	124,350	100,000	110,000	10.00%	10,000
40820-Const. Board of Appeals	500	1,000	1,000	1,000	0.00%	0
40840-Lot Deposits	800	9,800	10,000	10,000	0.00%	0
40841-Vacation Fee	14,853	26,299	35,000	35,000	0.00%	0
44950-Lot Clearing(Mowing & Demoltn)	92,771	53,298	100,000	100,000	0.00%	0
48050-Cash Over Or Short	977	2	0	0	0.00%	0
Total	2,623,116	2,493,507	2,512,500	2,682,700	6.77%	170,200
4001080 Engineering Revenue						
40570-Work On Public Property	3,330	4,170	3,000	3,000	0.00%	0
40600-Public Right-Of-Way Use Fees	4,775	7,875	5,000	5,000	0.00%	0
44910-Paving Cuts	0	0	5,000	5,000	0.00%	0
44915-Signage Fees	9,500	6,920	0	0	0.00%	0
44920-Paving Assessments	0	376	0	0	0.00%	0
47200-Civic Contributions	0	18,000	0	0	0.00%	0
Total	17,605	37,341	13,000	13,000	0.00%	0

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4001090 Community Service						
40652-Food Service & Retail Food	169,042	129,146	150,000	155,000	3.33%	5,000
40654-Daycare Permits	6,150	5,800	5,000	5,900	18.00%	900
40656-Mobile Vendors	34,860	29,620	21,000	30,000	42.86%	9,000
40658-Temporary Health Permits	4,450	5,140	3,000	5,000	66.67%	2,000
40670-Swimming Pool Permits	19,550	12,200	15,000	15,000	0.00%	0
40672-Farmers Market Permits	600	650	500	600	20.00%	100
40695-Misc Health - Septics	61,835	63,990	60,000	60,000	0.00%	0
40696-Septic Re-inspection	250	150	200	200	0.00%	0
40900-Pet Licenses	23,314	15,700	25,000	25,000	0.00%	0
40910-Impoundment Fees	1,258	925	2,000	2,000	0.00%	0
40920-Adoption Fees	36,677	47,096	35,000	36,050	3.00%	1,050
40925-Microchipping	1,641	3,067	2,000	2,000	0.00%	0
40930-Pick-Up Fees	2,780	2,035	2,000	2,000	0.00%	0
40935-Animal Vaccinations	0	115	0	0	0.00%	0
40940-Euthanasia Fees	15	15	100	100	0.00%	0
40950-Boarding Fees	5,700	6,517	5,000	5,000	0.00%	0
40960-Quarantine Fees	320	0	200	200	0.00%	0
40980-Permits (Wild Animal)	250	250	250	250	0.00%	0
40990-Dip	0	33	200	200	0.00%	0
41000-Spay/Neuter Program	41,828	26,254	30,000	30,000	0.00%	0
41040-Animal Svcs Discounts Provided	12,225	13,622	12,000	12,000	0.00%	0
41090-Miscellaneous	2,152	8,175	1,500	1,500	0.00%	0
42110-Showmobile	25,325	26,694	25,000	20,000	-20.00%	-5,000
42200-Pools - Rentals & Fees	215,114	240,678	225,000	235,000	4.44%	10,000
42210-Facilities Rental - Other	52,858	93,373	85,000	125,000	47.06%	40,000
42250-Recreation Fees	10,032	23,204	22,000	20,000	-9.09%	-2,000
42260-Concessions	72,121	84,345	50,000	65,000	30.00%	15,000
44050-Health Dept Services	311,576	274,518	200,000	250,000	25.00%	50,000
44054-Pregnancy Test	970	935	1,000	950	-5.00%	-50
44056-V. D. Test	2,230	2,390	1,000	3,000	200.00%	2,000
44057-HIV Testing	1,480	2,010	1,500	3,000	100.00%	1,500
44059-Flu Shots-Adult	1,510	630	1,000	1,250	25.00%	250
44060-Immunizations	0	6,850	2,000	5,500	175.00%	3,500
44063-Hepatitis B Vaccine-Adult	9,960	8,715	10,000	11,000	10.00%	1,000
44064-Misc Health Revenue	393	242	500	500	0.00%	0

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August 22, 2023

SECTION: GENERAL FUND

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4001090 Community Service (cont.)						
44066-T. B. Testing	7,050	7,015	6,000	7,000	16.67%	1,000
44067-Adult Immunizations	23,450	13,685	21,000	21,000	0.00%	0
44073-Clinical Visit	300	285	300	300	0.00%	0
44962-Tdh Immunization Pi	35,680	27,610	30,000	33,000	10.00%	3,000
47024-State Contr-Health Dept	272,767	335,035	250,000	350,000	40.00%	100,000
47025-MAC Claim-Health Dept	60,113	55,304	40,000	40,000	0.00%	0
47080-COVID Grant Revenue	70,467	50,573	0	0	0.00%	0
48050-Cash Over Or Short	-206	-385	0	0	0.00%	0
49053-Sale Of Recyclables	0	225	0	0	0.00%	0
49150-Recvr-Damages To City Property	25,954	0	0	0	0.00%	0
Total	1,624,041	1,624,429	1,341,250	1,579,500	17.76%	238,250

4001110 Police Revenue						
40740-Taxi & Peddler Permits	1,291	1,279	1,000	1,000	0.00%	0
40845-Alarm Permit Fees	98,294	94,337	75,000	75,000	0.00%	0
40890-Miscellaneous	1,695	2,152	0	0	0.00%	0
41100-Municipal Court Receipts	1,893,066	2,477,168	2,134,776	2,300,000	7.74%	165,224
41102-Municipal Court -CVE fines	0	63,078	0	0	0.00%	0
41105-Muni Court-Child Safety	5,153	7,965	4,500	4,500	0.00%	0
41112-Local Municipal Court Jury	871	1,120	0	0	0.00%	0
41120-Report Copies	3,023	3,488	0	0	0.00%	0
42210-Facilities Rental - Other	4,695	1,425	0	0	0.00%	0
44315-Arrest Fees	1,903	922	5,000	5,000	0.00%	0
44930-Airport Security Services	0	415	0	0	0.00%	0
44940-Storage Of Impounded Vehicles	155,069	165,849	60,000	100,000	66.67%	40,000
46000-Parking Permits	2,965	3,098	3,000	3,000	0.00%	0
47005-Government Contributions	15,794	0	50,000	50,000	0.00%	0
47022-Govt Contr-Sdhpt Step Pgm	3,943	8,211	12,000	12,000	0.00%	0
47026-Govt Contr-H.I.D.T.A. Grant	113,269	119,635	25,000	75,000	200.00%	50,000
48050-Cash Over Or Short	-92	-573	0	0	0.00%	0
48480-Reimbursement Of Budget Exp	132,695	118,664	0	0	0.00%	0
48490-Unclassified	922	10,678	0	0	0.00%	0
49045-Sale Of Minor Equipment	230	600	0	0	0.00%	0
49150-Recvr-Damages To City Property	-17,176	-4,975	0	0	0.00%	0
49155-Legal Restitution	2,844	13,389	0	0	0.00%	0
Total	2,420,454	3,087,925	2,370,276	2,625,500	10.77%	255,224

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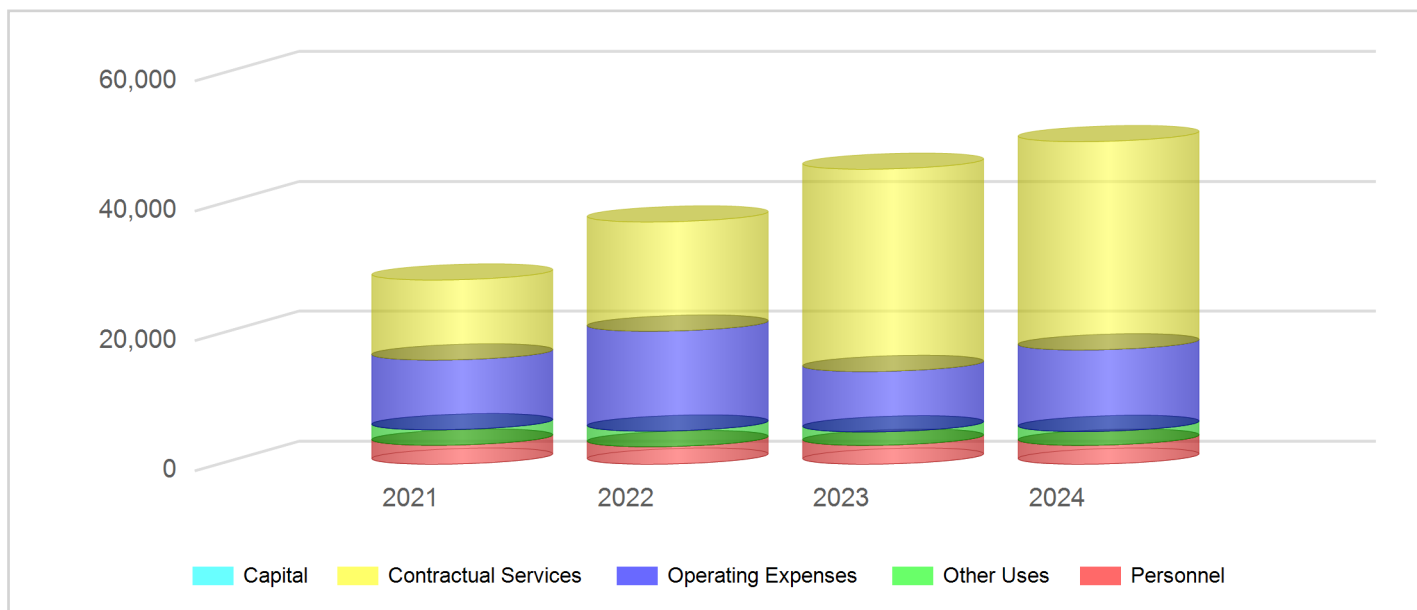
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August 22, 2023

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4001115 Fire Department Revenue						
44100-Ambulance Revenue	5,521,450	7,446,212	5,000,000	7,000,000	40.00%	2,000,000
44103-Uncollectible Ambulance Chgs	-3,417,095	-3,258,635	-1,800,000	-3,000,000	66.67%	-1,200,000
47005-Government Contributions	672,575	176,656	0	0	0.00%	0
47010-Govt Contr-Emergency Mgmt	352	0	0	0	0.00%	0
49150-Recvr-Damages To City Property	108,515	294,419	0	0	0.00%	0
Total	2,885,797	4,658,652	3,200,000	4,000,000	25.00%	800,000
4001150 General Fund Non-Dept Revenue						
40010-Ad Valorem Current	49,641,447	52,107,431	55,227,298	60,863,560	10.21%	5,636,262
40020-Ad Valorem Delinquent	363,960	981,554	400,000	400,000	0.00%	0
40025-Ad Valorem Prior Year Reversal	205,799	-205,118	0	0	0.00%	0
40030-Penalties And Interest	496,657	602,244	500,000	500,000	0.00%	0
40035-Ad Valorem Taxes Over/Short	11,597	2,264	0	0	0.00%	0
40040-Misc Tax Office Revenue	75,909	80,400	50,000	51,500	3.00%	1,500
40045-Refund Of Overpayments	77	0	0	0	0.00%	0
40046-Tax Certificates	492	-46	0	0	0.00%	0
40100-City Sales Tax	46,435,232	61,052,818	57,000,000	65,000,000	14.04%	8,000,000
40150-Telephone	799,436	915,326	1,000,000	1,000,000	0.00%	0
40160-Electric Power	4,776,467	4,954,360	4,600,000	4,600,000	0.00%	0
40170-Gas	1,473,588	1,826,480	1,400,000	1,400,000	0.00%	0
40175-Water	4,666,340	6,925,133	6,400,000	6,900,000	7.81%	500,000
40176-Sanitation	674,502	1,680,566	1,626,000	1,626,000	0.00%	0
40177-Drainage Franchise Fee	140,331	189,066	140,000	144,200	3.00%	4,200
40180-Taxicab	4,600	4,600	6,500	6,500	0.00%	0
40190-Cable TV	1,710,245	1,107,357	1,200,000	1,200,000	0.00%	0
40210-Mixed Beverage Tax	840,380	1,123,456	850,000	986,276	16.03%	136,276
40320-Bingo Tax	114,871	110,765	75,000	90,000	20.00%	15,000
43000-Interest	696,747	1,356,744	1,000,000	1,300,000	30.00%	300,000
44370-Other	33,825	1,350	0	0	0.00%	0
47200-Civic Contributions	0	208	0	0	0.00%	0
48490-Unclassified	232,973	179,599	150,000	150,000	0.00%	0
49000-Right-Of-Way Or Air Way Sales	90,962	1,093,859	1,200,000	1,200,000	0.00%	0
49010-Sale Of Land	95,000	5,001	0	0	0.00%	0
49045-Sale Of Minor Equipment	0	23	0	0	0.00%	0
49053-Sale Of Recyclables	12,166	20,117	0	10,000	0.00%	10,000

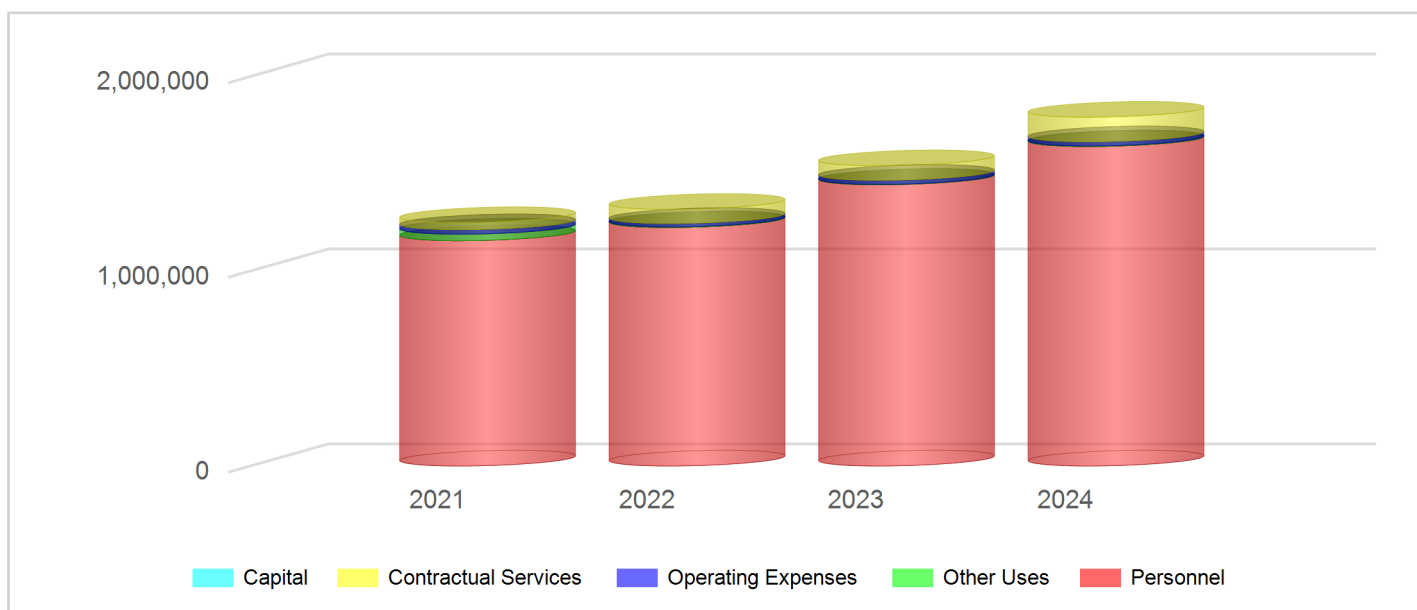
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4001150 General Fund Non-Dept Revenue (cont.)						
49090-Sale-Oil & Gas (Net-Tax Trkg)	10,291,068	0	0	0	0.00%	0
49111-Gain/Loss Sale Of Securities	-66,171	-91,497	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-588,880	-8,737,825	0	0	0.00%	0
49150-Recvr-Damages To City Property	0	50,000	0	0	0.00%	0
Total	123,229,620	127,336,234	132,824,798	147,428,036	10.99%	14,603,238
Overall Total	141,304,556	145,577,627	148,550,541	168,533,718	13.45%	19,983,177

Legislative Department



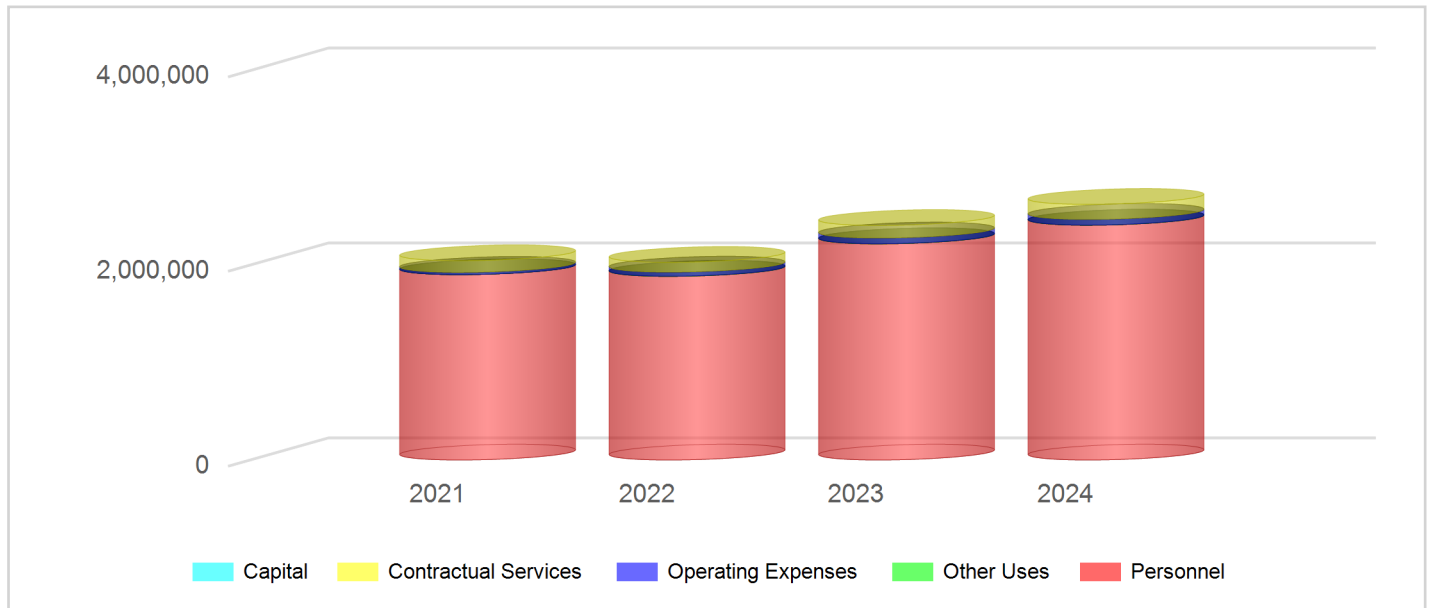
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001004 Legislative						
Personnel	2,924	2,699	2,914	2,914	0.00%	0
Operating Expenses	10,745	15,387	9,301	12,562	35.06%	3,261
Contractual Services	12,312	16,813	31,136	32,057	2.96%	921
Other Uses	2,371	2,392	2,060	2,121	2.96%	61
Total	28,352	37,291	45,411	49,654	9.34%	4,243
Overall Total	28,352	37,291	45,411	49,654	9.34%	4,243

City Manager Department



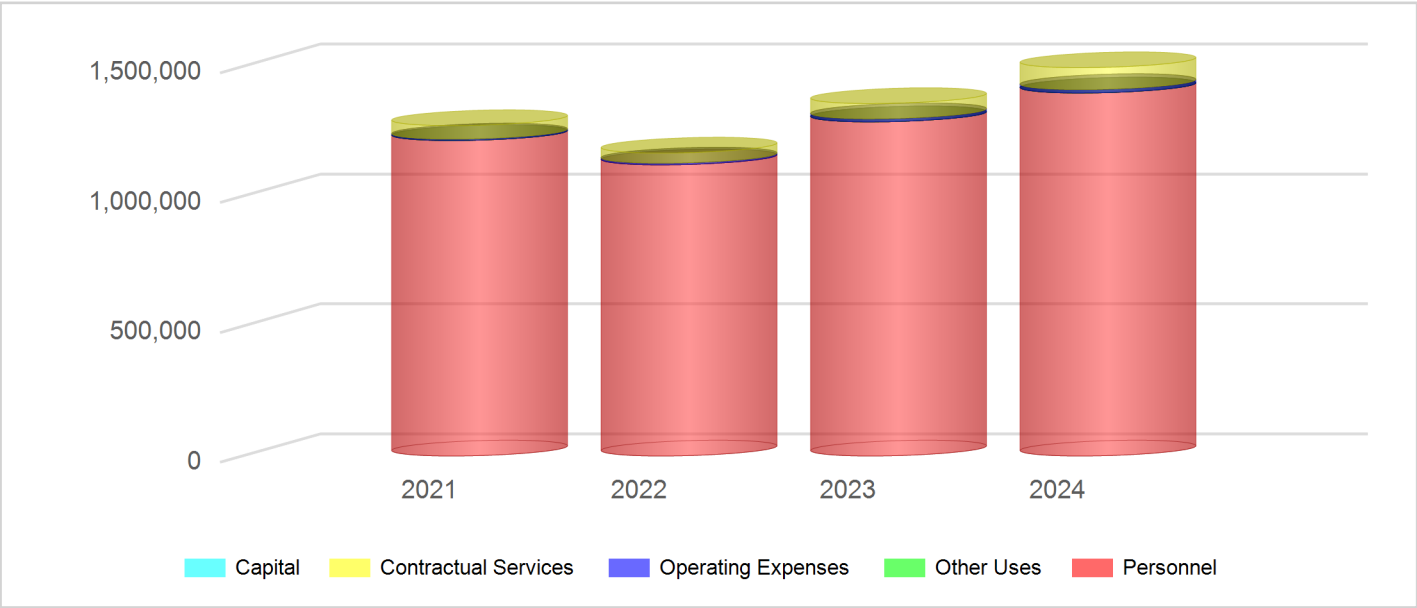
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001005 City Manager's Office						
Personnel	895,614	975,774	1,068,591	1,230,331	15.14%	161,740
Operating Expenses	19,896	15,450	15,553	16,018	2.99%	465
Contractual Services	32,724	63,991	57,372	73,352	27.85%	15,980
Other Uses	33,491	3,144	2,060	2,121	2.96%	61
Total	981,725	1,058,359	1,143,576	1,321,822	15.59%	178,246
001007 Public Communication						
Personnel	260,620	248,237	374,547	514,038	37.24%	139,491
Operating Expenses	2,449	1,265	4,869	5,012	2.94%	143
Contractual Services	4,096	8,713	17,731	53,070	199.29%	35,339
Other Uses	0	54	0	800	0.00%	800
Total	267,165	258,269	397,147	572,920	44.26%	175,773
Overall Total	1,248,889	1,316,627	1,540,723	1,894,742	22.98%	354,019

Municipal Court Department



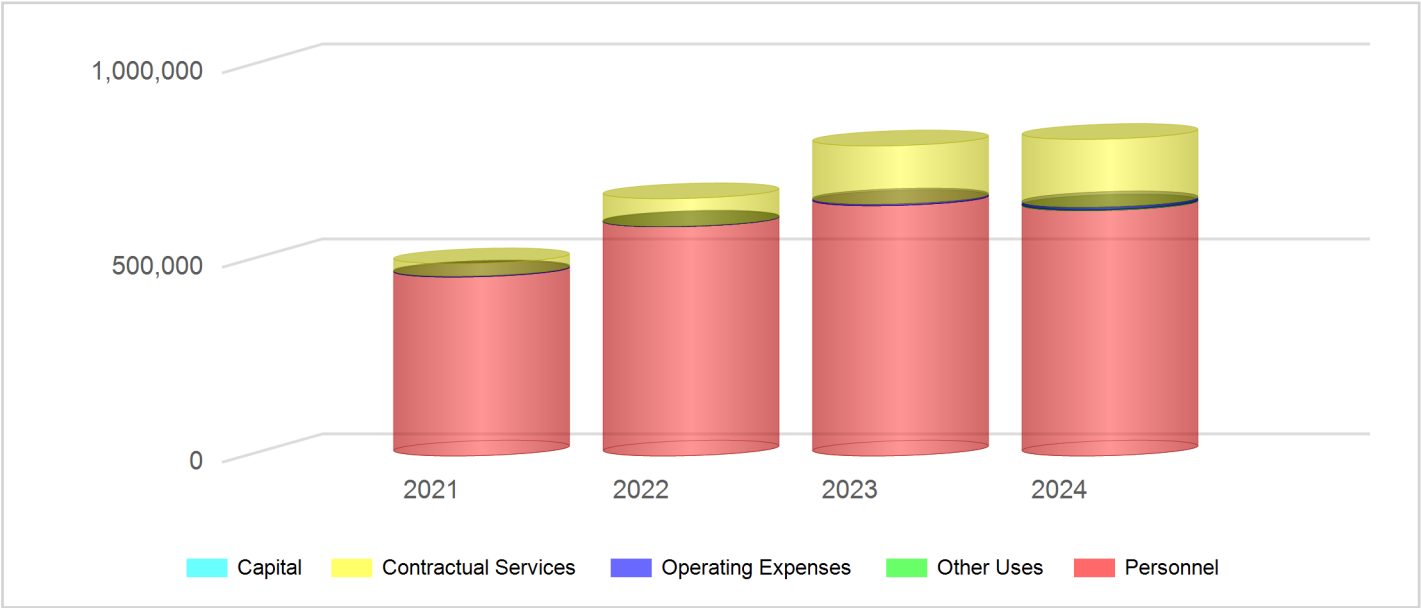
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001010 Municipal Court						
Personnel	1,901,888	1,884,527	2,218,506	2,409,482	8.61%	190,976
Operating Expenses	23,554	41,716	57,869	58,125	0.44%	256
Contractual Services	119,608	100,750	129,309	154,465	19.45%	25,156
Other Uses	578	2,244	2,000	2,000	0.00%	0
Total	2,045,628	2,029,237	2,407,684	2,624,072	8.99%	216,388
Overall Total	2,045,628	2,029,237	2,407,684	2,624,072	8.99%	216,388

Legal Department



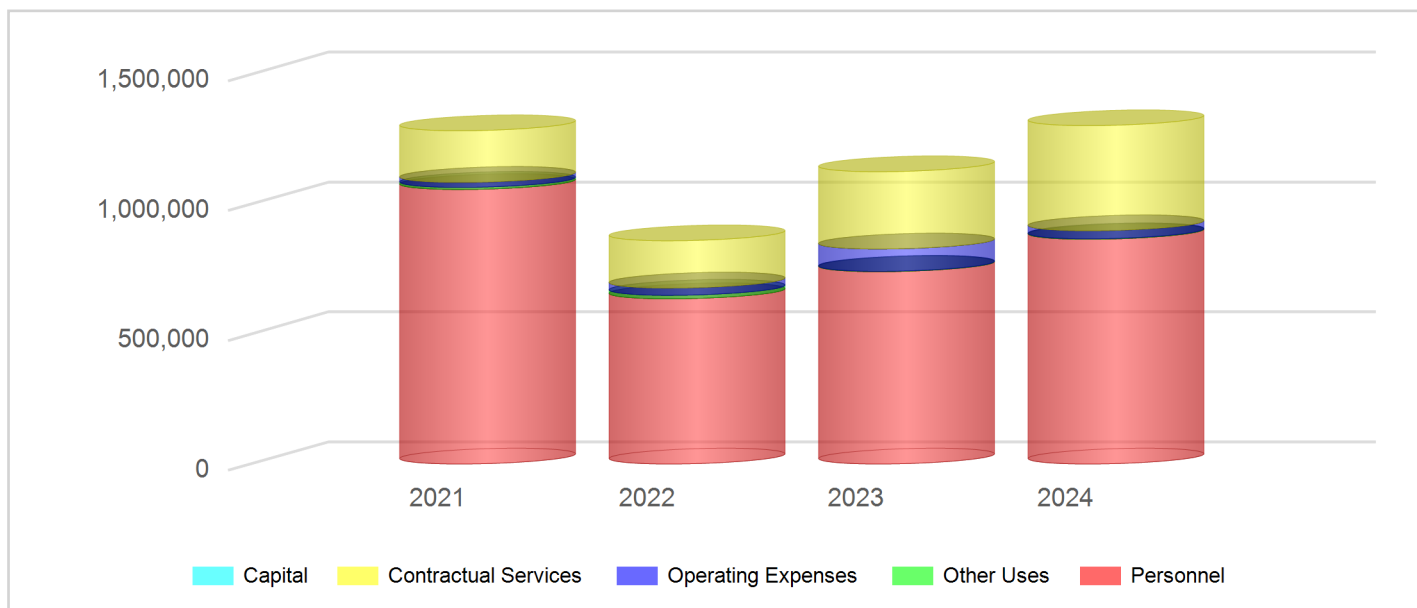
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001015 Legal						
Personnel	1,214,001	1,120,654	1,286,017	1,396,968	8.63%	110,951
Operating Expenses	5,449	6,583	11,750	13,000	10.64%	1,250
Contractual Services	51,867	38,780	58,517	84,232	43.94%	25,715
Other Uses	206	0	175	300	71.43%	125
Total	1,271,523	1,166,037	1,356,459	1,494,500	10.18%	138,041
Overall Total	1,271,523	1,166,037	1,356,459	1,494,500	10.18%	138,041

City Secretary Department



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001020 City Secretary						
Personnel	459,173	588,089	642,187	629,595	-1.96%	-12,592
Operating Expenses	2,440	1,467	4,550	7,500	64.84%	2,950
Contractual Services	31,469	70,505	148,939	173,325	16.37%	24,386
Other Uses	0	105	0	2,000	0.00%	2,000
Total	493,082	660,166	795,676	812,420	2.10%	16,744
Overall Total	493,082	660,166	795,676	812,420	2.10%	16,744

Administrative Services

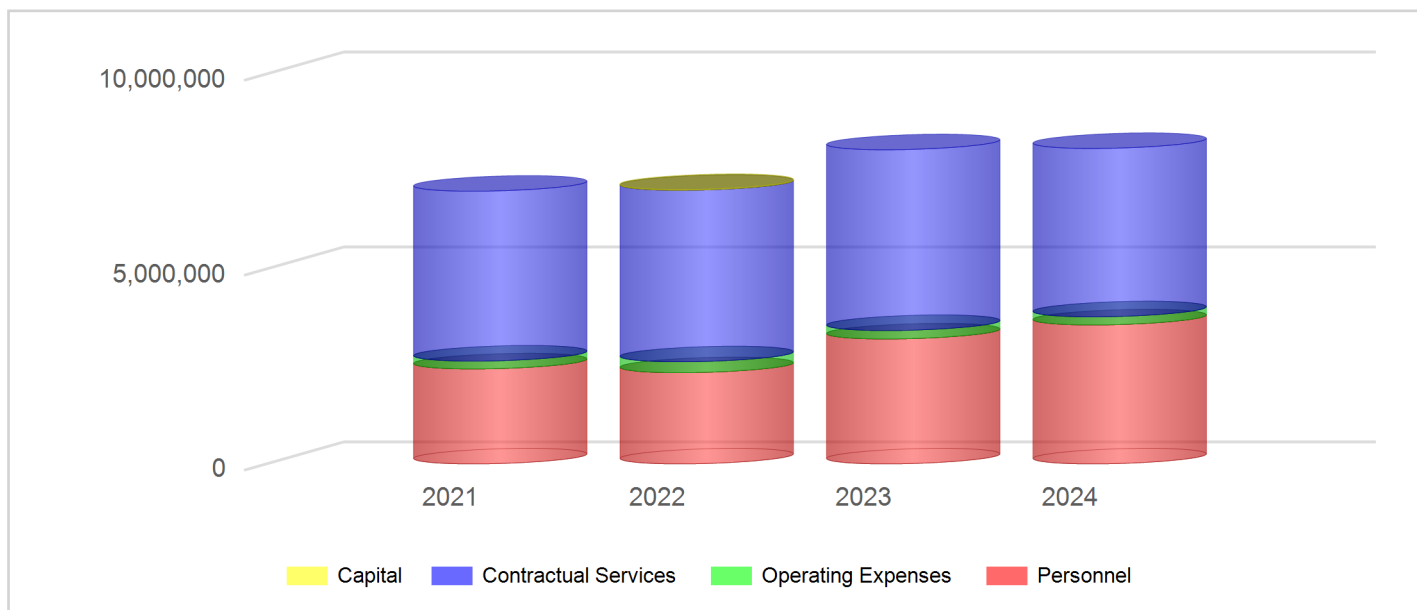


Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001025 Human Resources						
Personnel	676,707	635,965	740,268	864,946	16.84%	124,678
Operating Expenses	13,807	27,690	85,750	30,750	-64.14%	-55,000
Contractual Services	162,460	181,941	297,437	404,575	36.02%	107,139
Other Uses	8,279	13,460	1,500	2,000	33.33%	500
Total	861,253	859,056	1,124,955	1,302,271	15.76%	177,317
001026* Employee Health& Wellness						
Personnel	191,872	0	0	0	0.00%	0
Operating Expenses	2,552	0	0	0	0.00%	0
Contractual Services	2,482	0	0	0	0.00%	0
Total	196,906	0	0	0	0.00%	0
001027** Risk Management						
Personnel	187,998	0	0	0	0.00%	0
Operating Expenses	2,679	95	0	0	0.00%	0
Contractual Services	33,826	0	0	0	0.00%	0
Total	224,503	95	0	0	0.00%	0
Overall Total	1,282,662	859,151	1,124,955	1,302,271	15.76%	177,317

*Operations from Org 001026 reallocated to Org 702710 Budget year 2022

**Operations from Org 001027 reallocated to Org 702727 Budget year 2022

Information Technology Systems



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001030 Information System Adm						
Personnel	391,704	399,548	420,680	456,194	8.44%	35,514
Operating Expenses	4,588	5,695	7,715	19,300	150.16%	11,585
Contractual Services	1,207,567	1,423,821	1,515,895	721,700	-52.39%	-794,195
Capital	0	20,720	0	0	0.00%	0
Total	1,603,859	1,849,784	1,944,290	1,197,194	-38.43%	-747,096
001032 Information System						
Personnel	1,768,430	1,689,507	2,002,903	2,299,263	14.80%	296,360
Operating Expenses	41,956	88,401	24,500	29,500	20.41%	5,000
Contractual Services	2,891,628	2,656,147	2,184,159	2,898,793	32.72%	714,633
Total	4,702,014	4,434,055	4,211,562	5,227,556	24.12%	1,015,993
001033 Communication Maintenance						
Personnel	276,735	251,921	279,464	280,160	0.25%	696
Operating Expenses	154,738	185,831	175,007	143,090	-18.24%	-31,917
Contractual Services	259,412	319,259	481,188	355,089	-26.21%	-126,099
Total	690,885	757,011	935,659	778,339	-16.81%	-157,320
001034* Geographical Information						
Personnel	0	0	502,787	530,567	5.53%	27,780
Operating Expenses	0	0	9,730	16,500	69.58%	6,770
Contractual Services	0	0	456,203	343,324	-24.74%	-112,879
Total	0	0	968,720	890,391	-8.09%	-78,329
Overall Total	6,996,759	7,040,850	8,060,232	8,093,479	0.41%	33,247

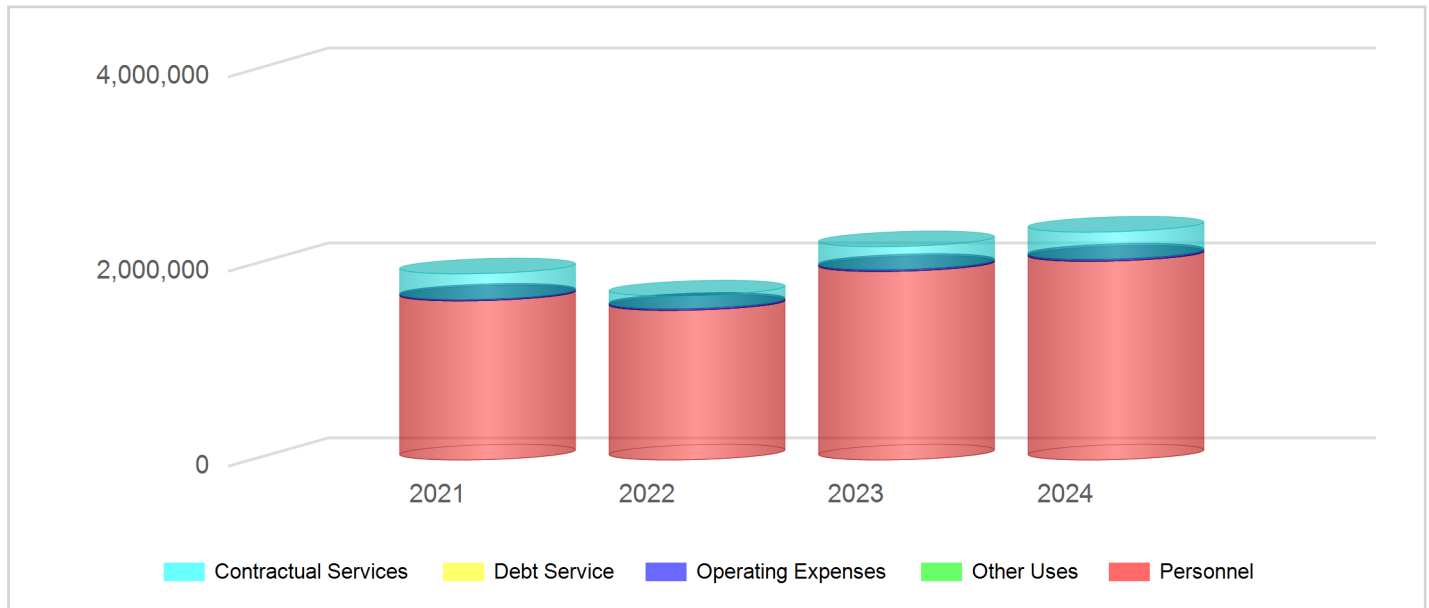
**Operations from Org 001075 reallocated to Org 001034 Budget year 2023

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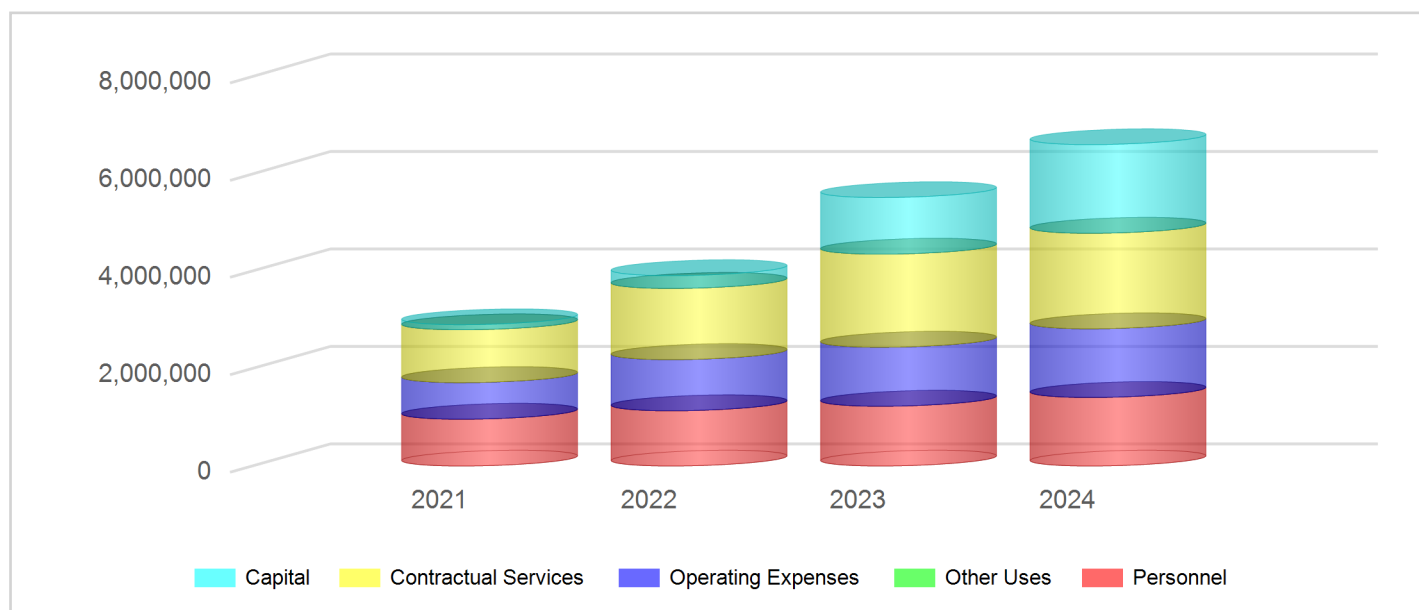
August 22, 2023

Finance Department



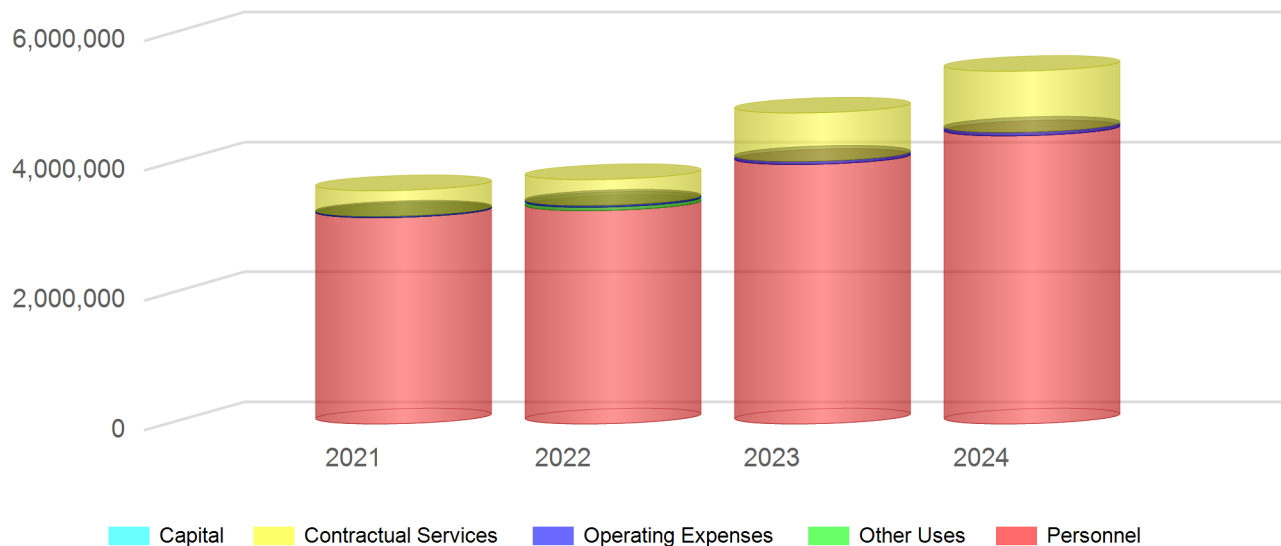
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001035 Accounting Division						
Personnel	853,487	727,514	974,523	1,068,859	9.68%	94,336
Operating Expenses	10,649	9,740	2,500	5,049	101.96%	2,549
Contractual Services	40,626	56,027	175,563	216,412	23.27%	40,849
Total	904,762	793,281	1,152,586	1,290,320	11.95%	137,734
001036 Finance Administration						
Personnel	405,036	433,773	526,239	542,004	3.00%	15,765
Operating Expenses	4,436	6,660	14,175	13,514	-4.66%	-661
Contractual Services	215,130	52,855	39,480	40,664	3.00%	1,184
Total	624,602	493,288	579,894	596,182	2.81%	16,288
001037 Treasury						
Personnel	374,379	374,196	434,349	428,191	-1.42%	-6,158
Operating Expenses	1,004	3,154	3,301	3,460	4.85%	161
Contractual Services	5,490	19,455	18,877	20,815	10.27%	1,938
Total	380,873	396,805	456,527	452,466	-0.89%	-4,061
Overall Total	1,910,237	1,683,373	2,189,007	2,338,968	6.85%	149,961

General Services Department



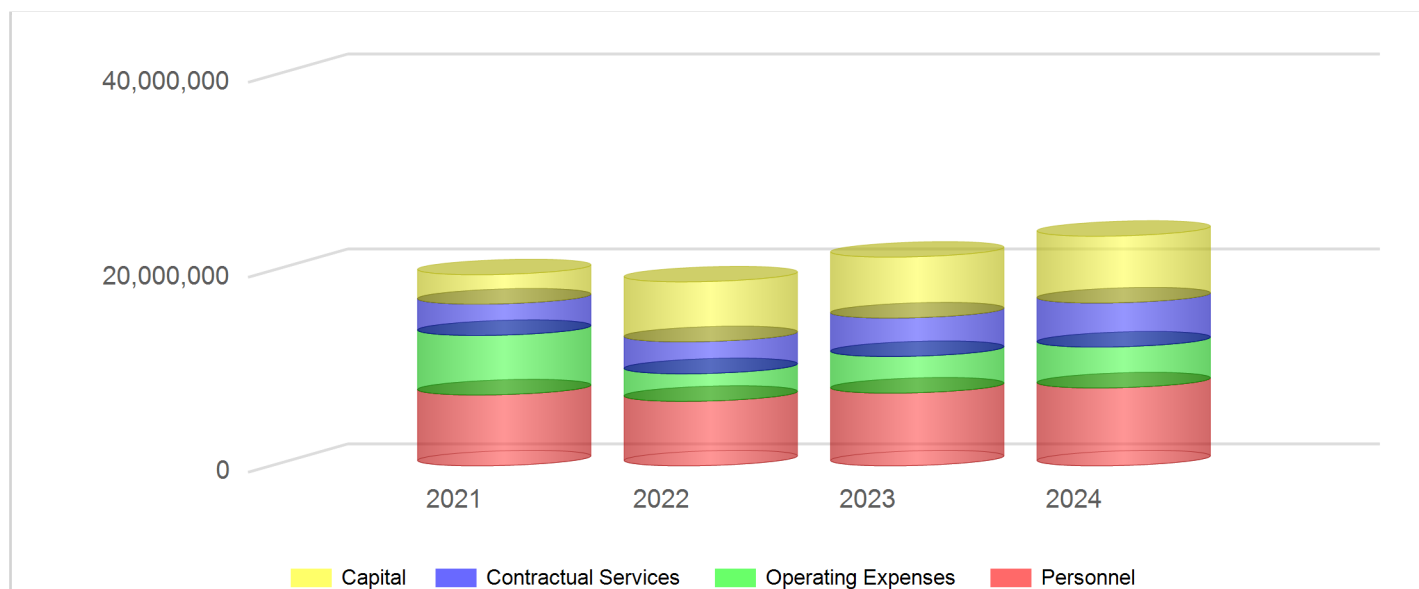
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001040 Purchasing						
Personnel	391,557	589,774	671,646	716,889	6.74%	45,243
Operating Expenses	1,120	1,394	4,086	4,210	3.06%	124
Contractual Services	32,178	40,436	99,212	135,671	36.75%	36,459
Capital	0	81,802	0	0	0.00%	0
Total	424,855	713,406	774,944	856,770	10.56%	81,826
001041 Facilities Services						
Personnel	569,378	545,182	556,378	690,567	24.12%	134,189
Operating Expenses	750,760	1,048,868	1,207,160	1,406,507	16.51%	199,347
Contractual Services	1,051,834	1,420,732	1,810,707	1,824,708	0.77%	14,002
Capital	104,414	180,454	1,161,173	1,818,850	56.64%	657,676
Total	2,476,386	3,195,236	4,735,418	5,740,632	21.23%	1,005,214
Overall Total	2,901,241	3,908,642	5,510,362	6,597,402	19.73%	1,087,040

Development Services



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001055 Planning & Development						
Personnel	644,712	644,499	797,749	870,699	9.14%	72,950
Operating Expenses	4,772	8,074	15,000	19,345	28.97%	4,345
Contractual Services	107,180	70,152	157,296	350,087	122.57%	192,791
Other Uses	107	1,119	0	0	0.00%	0
Total	756,771	723,844	970,045	1,240,131	27.84%	270,086
001056 Community Development						
Personnel	185,787	201,773	215,394	232,067	7.74%	16,673
Operating Expenses	30,434	-49,644	3,950	4,100	3.80%	150
Contractual Services	7,444	14,694	30,088	30,241	0.51%	153
Total	223,665	166,823	249,432	266,408	6.81%	16,976
001060 Code Administration						
Personnel	2,345,987	2,438,531	2,981,943	3,332,005	11.74%	350,062
Operating Expenses	17,777	22,457	32,000	34,500	7.81%	2,500
Contractual Services	277,113	309,834	554,028	557,548	0.64%	3,520
Other Uses	242	50,547	0	0	0.00%	0
Capital	0	0	0	39,600	0.00%	39,600
Total	2,641,119	2,821,369	3,567,971	3,963,653	11.09%	395,682
Overall Total	3,621,555	3,712,037	4,787,448	5,470,192	14.26%	682,744

Engineering

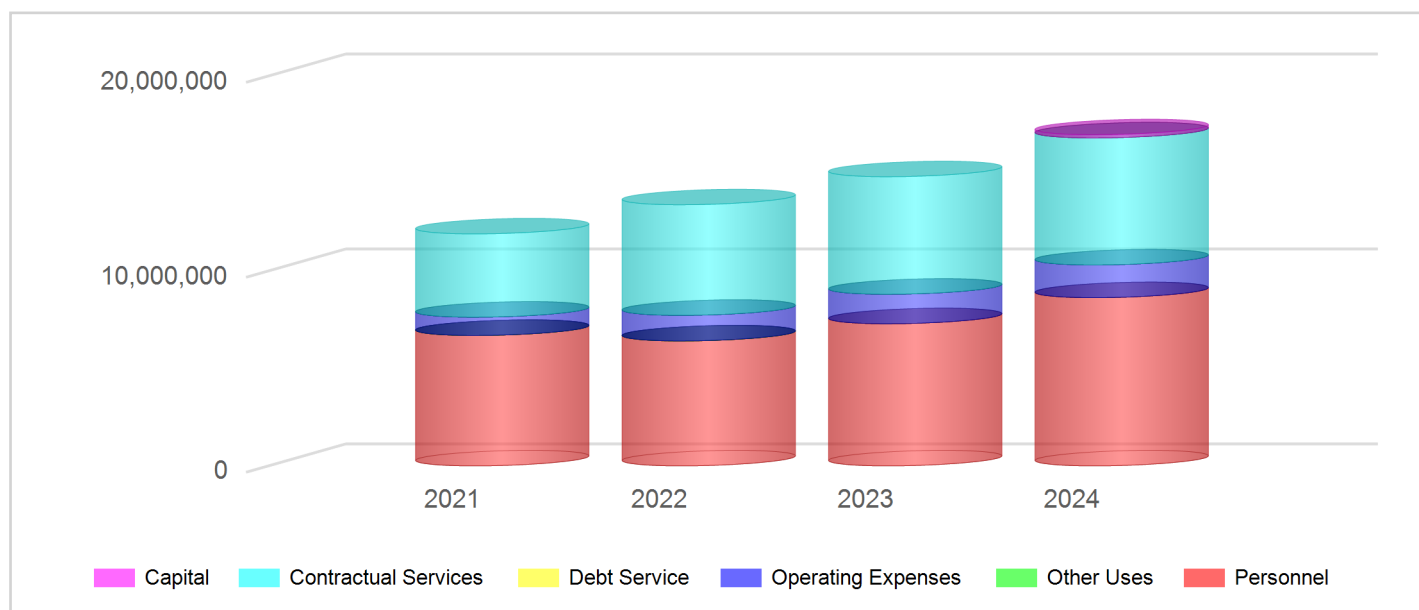


Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001075* GIS Administration						
Personnel	465,585	482,525	0	0	0.00%	0
Operating Expenses	7,120	15,173	0	0	0.00%	0
Contractual Services	90,765	125,396	0	0	0.00%	0
Total	563,470	623,094	0	0	0.00%	0
001080 Engineering Services						
Personnel	1,970,082	1,763,562	2,271,711	2,439,542	7.39%	167,831
Operating Expenses	43,536	33,209	34,200	33,000	-3.51%	-1,200
Contractual Services	851,682	832,825	1,055,617	1,211,762	14.79%	156,145
Other Uses	-110	0	0	0	0.00%	0
Total	2,865,190	2,629,596	3,361,528	3,684,304	9.60%	322,776
001083 Traffic Operations						
Personnel	1,562,794	1,475,733	1,755,940	1,887,952	7.52%	132,012
Operating Expenses	585,289	562,477	570,680	789,672	38.37%	218,992
Contractual Services	219,881	244,915	336,157	386,694	15.03%	50,537
Capital	356,832	0	0	0	0.00%	0
Total	2,724,796	2,283,125	2,662,777	3,064,318	15.08%	401,541

*Operations from Org 001075 reallocated to Org 001075 budget year 2022

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001085 Transportation						
Personnel	3,281,844	2,906,662	3,444,219	3,674,618	6.69%	230,399
Operating Expenses	5,470,410	2,219,242	3,148,446	3,370,630	7.06%	222,184
Contractual Services	2,058,752	2,078,297	2,561,868	2,925,855	14.21%	363,987
Capital	2,650,895	6,143,841	6,243,760	6,897,358	10.47%	653,598
Total	13,461,901	13,348,042	15,398,293	16,868,461	9.55%	1,470,168
Overall Total	19,615,357	18,883,856	21,422,597	23,617,083	10.24%	2,194,486

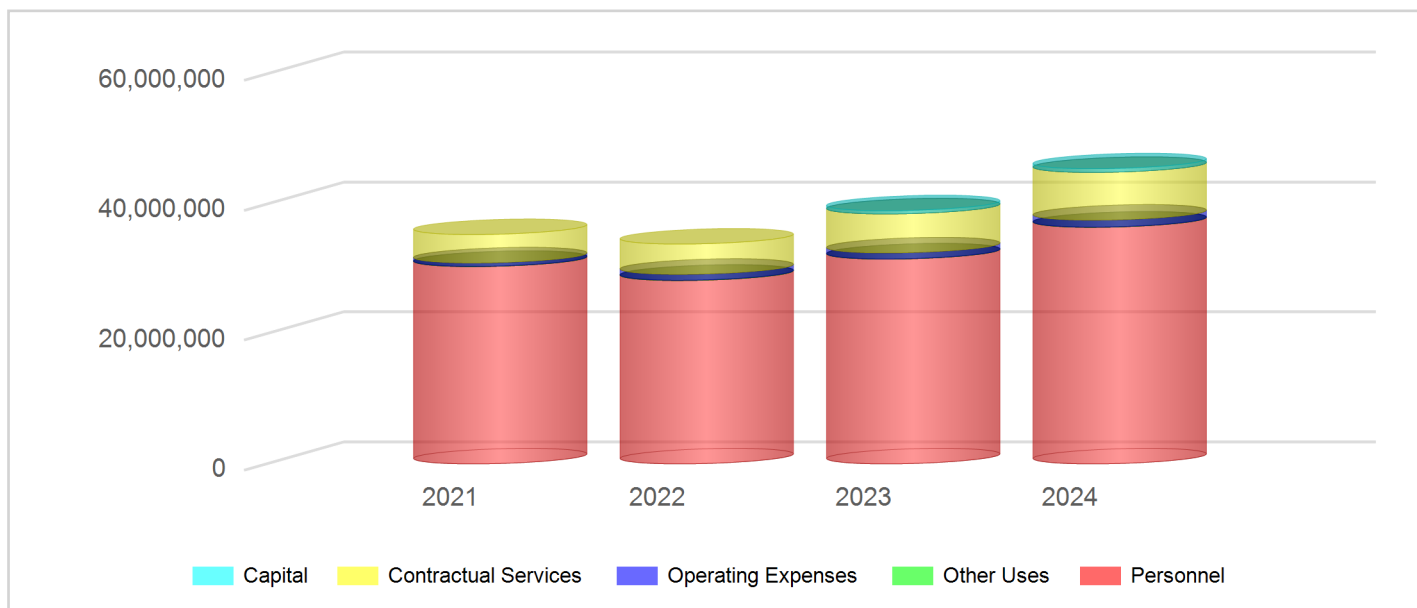
Community Services



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001090 Parks						
Personnel	2,614,806	2,089,332	2,504,653	2,825,842	12.82%	321,189
Operating Expenses	547,249	660,779	664,074	725,391	9.23%	61,317
Contractual Services	3,130,202	4,309,685	4,359,813	4,766,764	9.33%	406,951
Other Uses	75	25	0	0	0.00%	0
Capital	0	0	0	129,000	0.00%	129,000
Total	6,292,332	7,059,821	7,528,540	8,446,997	12.20%	918,457
001091 Animal Services						
Personnel	855,958	983,345	1,458,786	1,909,918	30.93%	451,132
Operating Expenses	104,333	193,866	259,800	304,500	17.21%	44,700
Contractual Services	445,124	470,183	556,845	666,386	19.67%	109,541
Other Uses	-80	1,060	0	0	0.00%	0
Capital	0	0	0	36,500	0.00%	36,500
Total	1,405,335	1,648,454	2,275,431	2,917,304	28.21%	641,873
001093 Recreation Division						
Personnel	941,690	1,118,331	1,163,946	1,458,591	25.31%	294,645
Operating Expenses	161,246	201,200	234,780	277,483	18.19%	42,703
Contractual Services	54,601	76,536	116,549	140,260	20.34%	23,711
Total	1,157,537	1,396,067	1,515,275	1,876,334	23.83%	361,059

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001095 Senior Services						
Operating Expenses	0	50	39,445	38,801	-1.63%	-644
Contractual Services	452,310	616,699	661,900	619,847	-6.35%	-42,053
Total	452,310	616,749	701,345	658,648	-6.09%	-42,697
001100 Health Services						
Personnel	2,280,952	2,219,781	2,168,252	2,438,864	12.48%	270,612
Operating Expenses	123,071	256,743	316,000	333,785	5.63%	17,785
Contractual Services	191,562	198,401	335,012	322,893	-3.62%	-12,119
Other Uses	2,799	2,934	0	0	0.00%	0
Total	2,598,384	2,677,859	2,819,264	3,095,542	9.80%	276,278
Overall Total	11,905,898	13,398,950	14,839,855	16,994,825	14.52%	2,154,970

Police Department



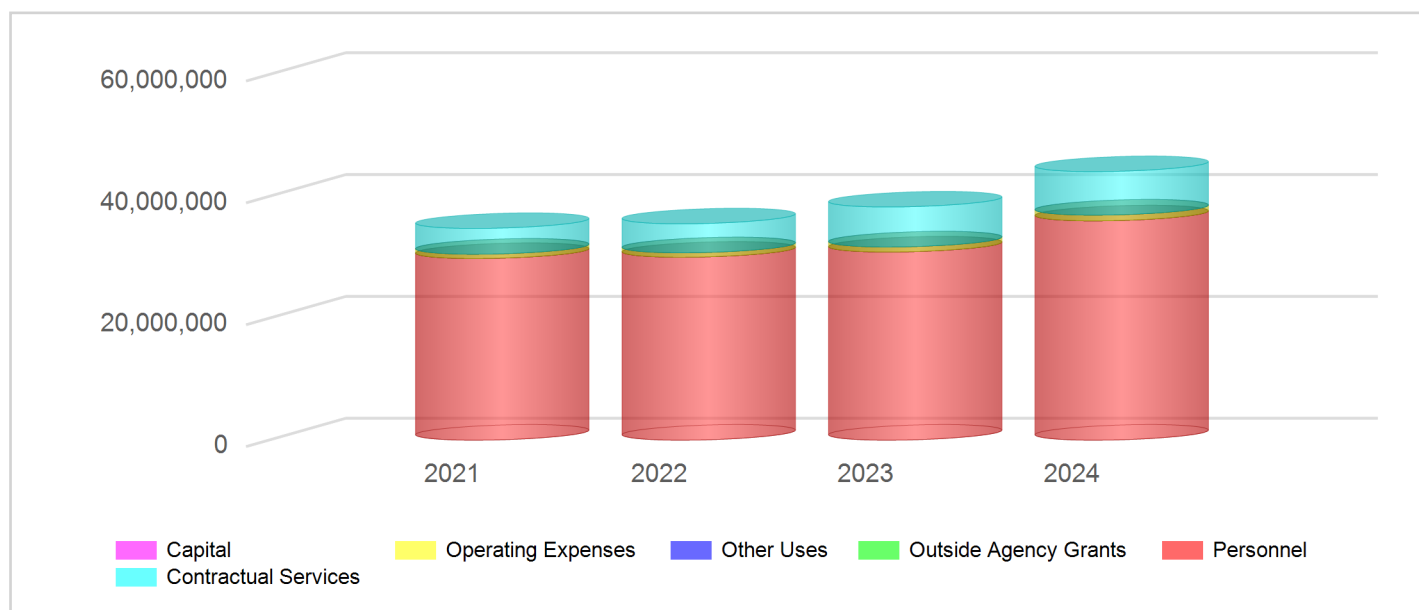
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001104 Communications						
Personnel	2,499,460	2,260,148	2,951,674	3,179,999	7.74%	228,325
Operating Expenses	66,899	62,178	74,150	43,600	-41.20%	-30,550
Contractual Services	114,670	158,388	242,310	225,647	-6.88%	-16,663
Capital	0	0	0	42,108	0.00%	42,108
Total	2,681,029	2,480,714	3,268,134	3,491,354	6.83%	223,220
001105 VCLG Program						
Personnel	64,846	66,017	71,055	0	-100.00%	-71,055
Contractual Services	1,284	743	3,123	0	-100.00%	-3,123
Total	66,130	66,760	74,178	0	-100.00%	-74,178
001107* Airport Police						
Personnel	2,053,647	341,637	303,368	2,288,725	654.44%	1,985,357
Operating Expenses	0	0	0	4,899	0.00%	4,899
Contractual Services	102,405	0	0	197,362	0.00%	197,362
Total	2,156,052	341,637	303,368	2,490,986	721.11%	2,187,618
001108 Commercial Vehicle Enforcement						
Personnel	296,473	309,075	389,651	251,833	-35.37%	-137,818
Operating Expenses	118	583	0	0	0.00%	0
Contractual Services	52,169	96,196	111,290	75,792	-31.90%	-35,498
Total	348,760	405,854	500,941	327,625	-34.60%	-173,316

* Airport Police funded 15% General Fund (00107) and 85% Airport (500107) for budget years 2022 and 2023. Budgeted under General fund for year 2024

SECTION: GENERAL FUND

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001111 Police Administration						
Personnel	1,455,793	1,628,042	1,779,235	1,801,445	1.25%	22,210
Operating Expenses	125,529	110,588	111,500	134,150	20.31%	22,650
Contractual Services	655,442	137,310	432,480	1,201,133	177.73%	768,653
Other Uses	7,207	43,824	25,000	29,210	16.84%	4,210
Total	2,243,971	1,919,764	2,348,215	3,165,938	34.82%	817,723
001112 Support Services Bureau						
Personnel	2,918,676	2,824,228	3,806,060	4,068,834	6.90%	262,774
Operating Expenses	71,670	251,004	354,058	516,877	45.99%	162,819
Contractual Services	188,586	284,507	265,295	254,066	-4.23%	-11,229
Other Uses	13,853	8,024	5,470	5,635	3.02%	165
Total	3,192,785	3,367,763	4,430,883	4,845,412	9.36%	414,529
001113 Field Operations Bureau						
Personnel	15,828,394	15,351,551	15,927,969	17,190,742	7.93%	1,262,773
Operating Expenses	183,083	409,182	326,648	296,304	-9.29%	-30,344
Contractual Services	2,657,105	3,324,594	4,116,404	4,507,821	9.51%	391,417
Other Uses	338	270	270	0	-100.00%	-270
Capital	0	0	487,500	480,000	-1.54%	-7,500
Total	18,668,920	19,085,597	20,858,791	22,474,867	7.75%	1,616,076
001114 Investigative Service Bureau						
Personnel	5,259,131	5,447,391	6,293,125	7,642,106	21.44%	1,348,981
Operating Expenses	77,645	71,421	63,181	71,080	12.50%	7,899
Contractual Services	591,187	653,447	833,749	888,636	6.58%	54,887
Other Uses	17,839	618	0	0	0.00%	0
Capital	0	0	0	37,750	0.00%	37,750
Total	5,945,802	6,172,877	7,190,055	8,639,572	20.16%	1,449,517
Overall Total	35,303,450	33,840,965	38,974,564	45,435,754	16.58%	6,461,189

Fire Department



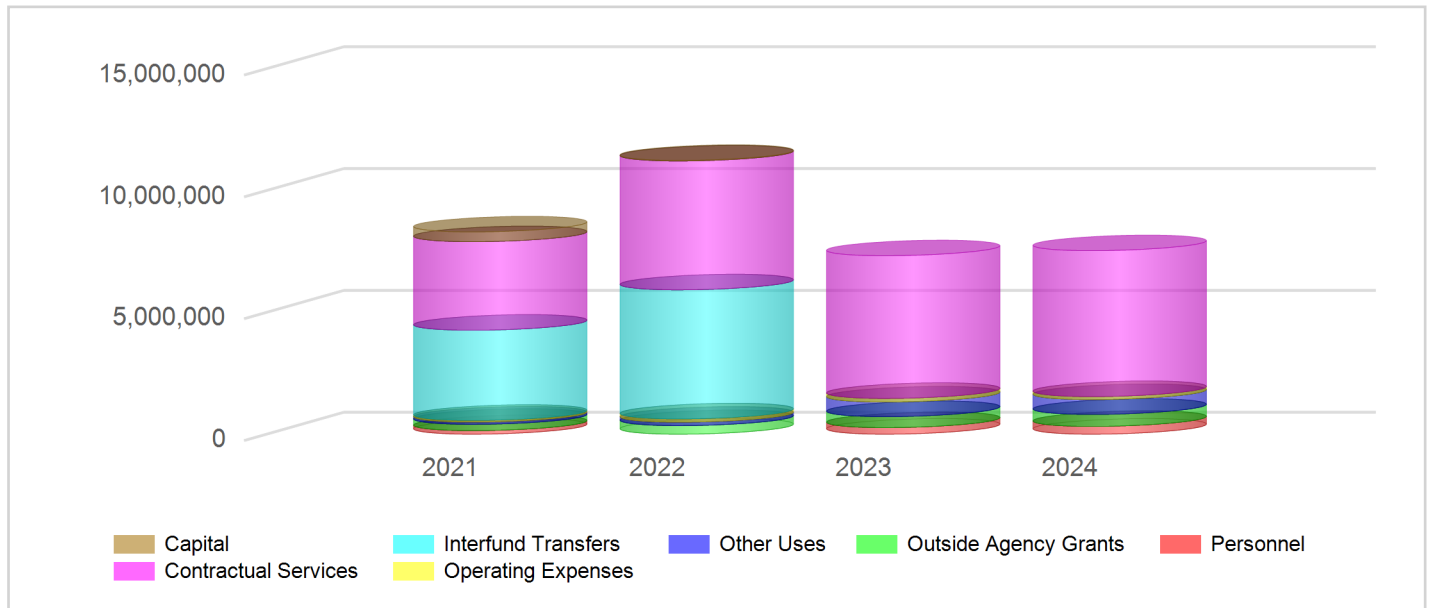
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001115 Fire Administration						
Personnel	25,319,296	27,376,495	27,823,378	30,674,366	10.25%	2,850,988
Operating Expenses	492,618	522,693	606,015	695,340	14.74%	89,325
Contractual Services	2,930,961	3,305,575	4,685,903	4,674,725	-0.24%	-11,178
Total	28,742,875	31,204,763	33,115,296	36,044,431	8.15%	2,929,135
001116 Fire Training						
Personnel	832,107	788,332	796,451	940,468	18.08%	144,017
Operating Expenses	33,238	37,672	31,450	32,380	2.96%	930
Contractual Services	89,620	94,896	110,443	188,159	70.37%	77,716
Total	954,965	920,900	938,344	1,161,007	23.73%	222,663
001119 Fire Prevention						
Personnel	1,204,015	1,244,734	1,241,433	1,302,919	4.95%	61,486
Operating Expenses	28,225	26,230	30,980	35,304	13.96%	4,324
Contractual Services	103,835	124,193	168,098	254,654	51.49%	86,556
Total	1,336,075	1,395,157	1,440,511	1,592,877	10.58%	152,366
001120 Emergency Medical Service						
Personnel	409,160	441,202	860,341	898,410	4.42%	34,069
Operating Expenses	122,540	122,023	135,790	150,875	11.11%	15,085
Contractual Services	931,046	1,193,461	1,534,080	1,698,056	10.69%	163,976
Total	1,462,746	1,756,686	2,530,211	2,747,341	8.58%	217,130

SECTION: GENERAL FUND

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001122* Airport Fire Division						
Personnel	1,904,511	1,437	0	2,163,445	0.00%	2,163,445
Operating Expenses	15,883	0	0	12,550	0.00%	12,550
Contractual Services	137,606	1,548	0	277,905	0.00%	277,905
Total	2,058,000	2,985	0	2,453,900	0.00%	2,453,900
001125 Emergency Management						
Personnel	176,327	206,918	195,466	206,210	5.50%	10,744
Operating Expenses	21,887	23,493	26,840	27,008	0.63%	168
Contractual Services	27,708	34,020	62,803	39,628	-36.90%	-23,175
Total	225,922	264,431	285,109	272,846	-4.30%	-12,263
Overall Total	34,780,583	35,544,922	38,309,472	44,117,176	15.16%	5,807,704

*Airport Fire (001122) funded under Airport (500122) for budget years 2022 and 2023. Budgeted under General fund for year 2024

Non-Departmental



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
001150 Non-Departmental						
Personnel	147,330	0	269,800	319,775	18.52%	49,975
Operating Expenses	71,885	138,421	150,000	125,000	-16.67%	-25,000
Contractual Services	3,637,642	5,293,602	5,858,823	5,991,075	2.26%	132,252
Outside Agency Grants	256,450	351,100	451,100	494,100	9.53%	43,000
Other Uses	93,652	140,877	599,461	606,000	1.09%	6,539
Capital	401,061	23,755	0	0	0.00%	0
Total	4,608,020	5,947,755	7,329,184	7,535,950	2.82%	206,766
001199 Interfund Transfer To						
Interfund Transfers	3,700,190	5,297,322	0	0	0.00%	0
Total	3,700,190	5,297,322	0	0	0.00%	0
Overall Total	8,308,210	11,245,077	7,329,184	7,535,950	2.82%	206,766

SPECIAL REVENUE FUND

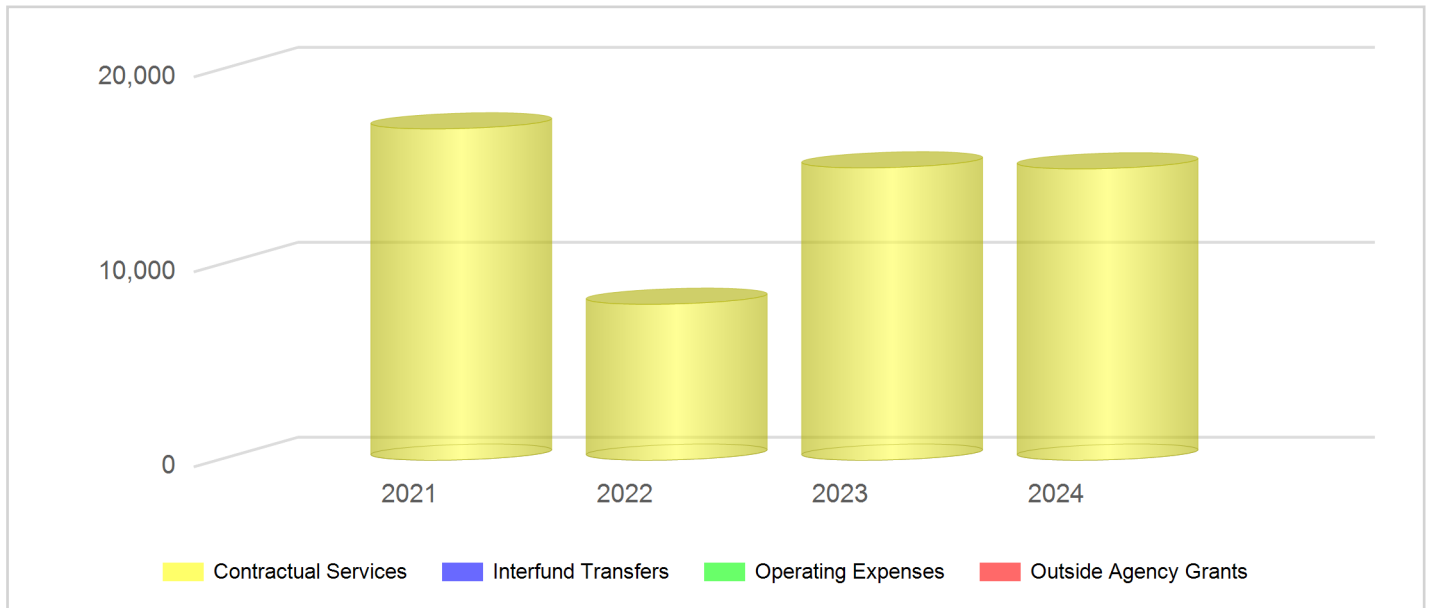


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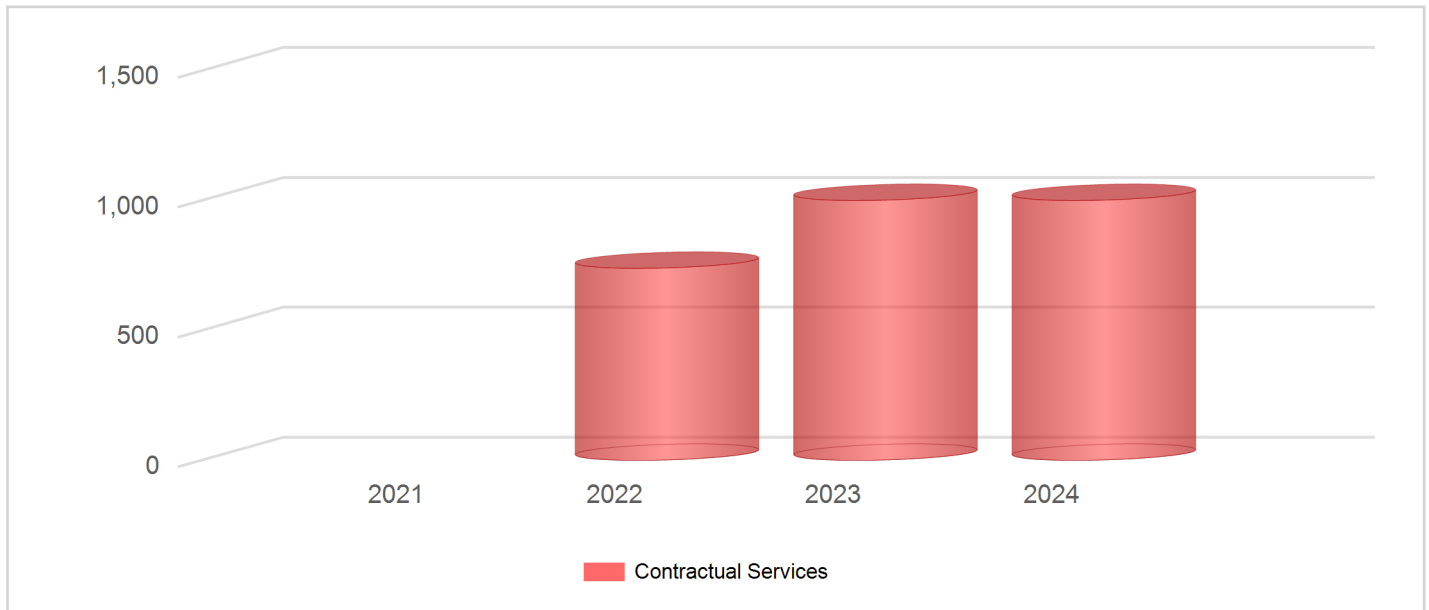
August 22, 2023

Police LEOSE Fund



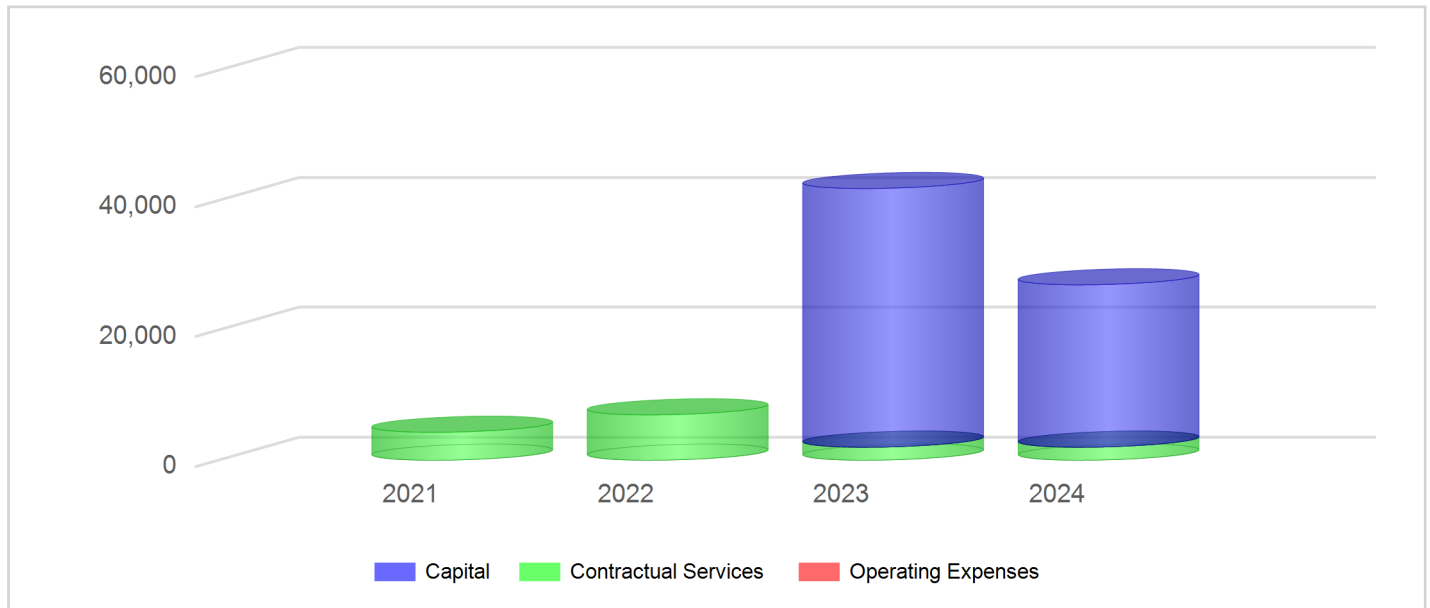
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4008110 Police Lease Revenue						
43000-Interest	14	59	0	0	0.00%	0
47005-Government Contributions	10,201	8,858	15,000	14,949	-0.34%	-51
49111-Gain/Loss Sale Of Securities	-2	0	0	0	0.00%	0
Total	10,213	8,917	15,000	14,949	-0.34%	-51
Overall Total	10,213	8,917	15,000	14,949	-0.34%	-51
008111 Police Lease Fund Expense						
Contractual Services	17,000	8,000	15,000	14,949	-0.34%	-51
Total	17,000	8,000	15,000	14,949	-0.34%	-51
Overall Total	17,000	8,000	15,000	14,949	-0.34%	-51

Fire LEOSE Fund



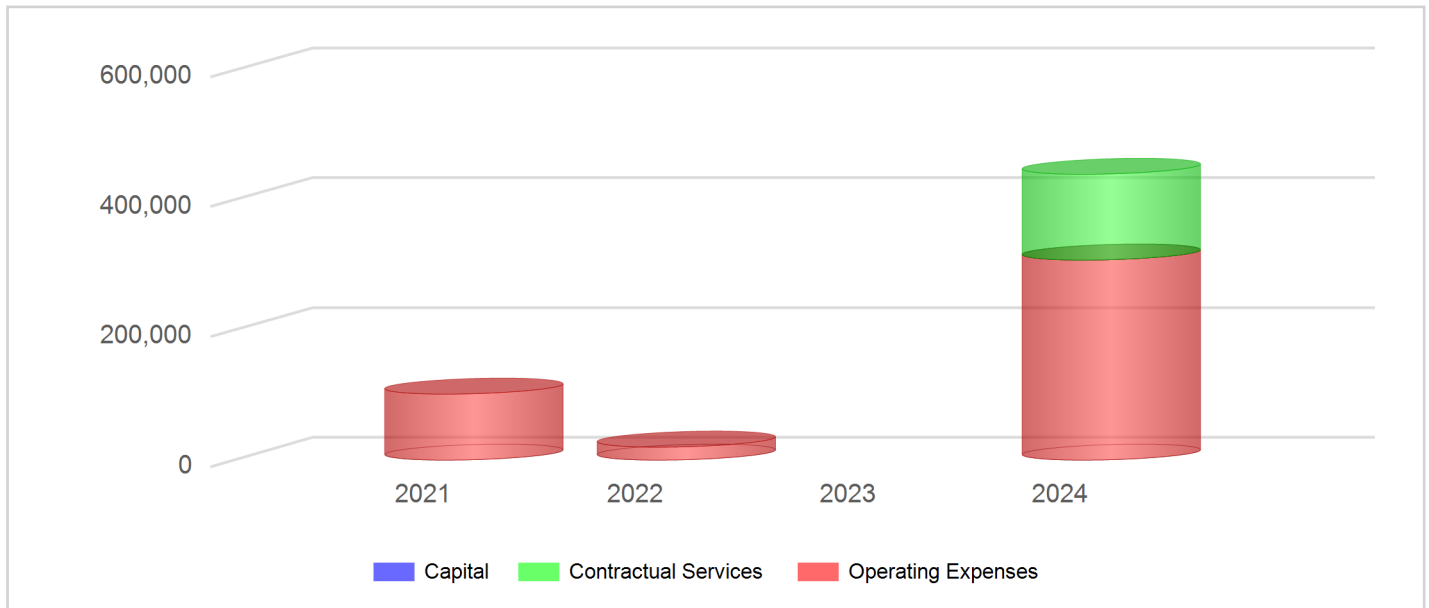
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4009115 Fire Leose Revenue						
43000-Interest	1	8	0	0	0.00%	0
47005-Government Contributions	2,531	854	1,000	1,000	0.00%	0
Total	2,532	862	1,000	1,000	0.00%	0
Overall Total	2,532	862	1,000	1,000	0.00%	0
009115 Fire Leose Fund Exp						
Contractual Services	0	739	1,000	1,000	0.00%	0
Total	0	739	1,000	1,000	0.00%	0
Overall Total	0	739	1,000	1,000	0.00%	0

Municipal Court Time Payments Fund



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4010010 Municipal Court						
41106-Muni Court-Time Payment	40,556	60,130	40,000	25,177	-37.06%	-14,823
43000-Interest	103	564	1,823	1,823	0.00%	0
49111-Gain/Loss Sale Of Securities	-20	0	0	0	0.00%	0
Total	40,639	60,694	41,823	27,000	-35.44%	-14,823
Overall Total	40,639	60,694	41,823	27,000	-35.44%	-14,823
010010 Municipal Court Time Payments						
Contractual Services	4,302	6,977	2,000	2,000	0.00%	0
Capital	0	0	39,823	25,000	-37.22%	-14,823
Total	4,302	6,977	41,823	27,000	-35.44%	-14,823
Overall Total	4,302	6,977	41,823	27,000	-35.44%	-14,823

Police Federal Seizure



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
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4070110 Police Federal Spec Purpose

43000-Interest	275	977	200	3,000	1400.00%	2,800
45001-General Fund Interfund	0	12,750	0	0	0.00%	0
49999-Miscellaneous Nonoperating	17,897	0	130,000	12,000	-90.77%	-118,000
Total	18,172	13,727	130,200	15,000	-88.48%	-115,200

4070150 Police Fed Nondept

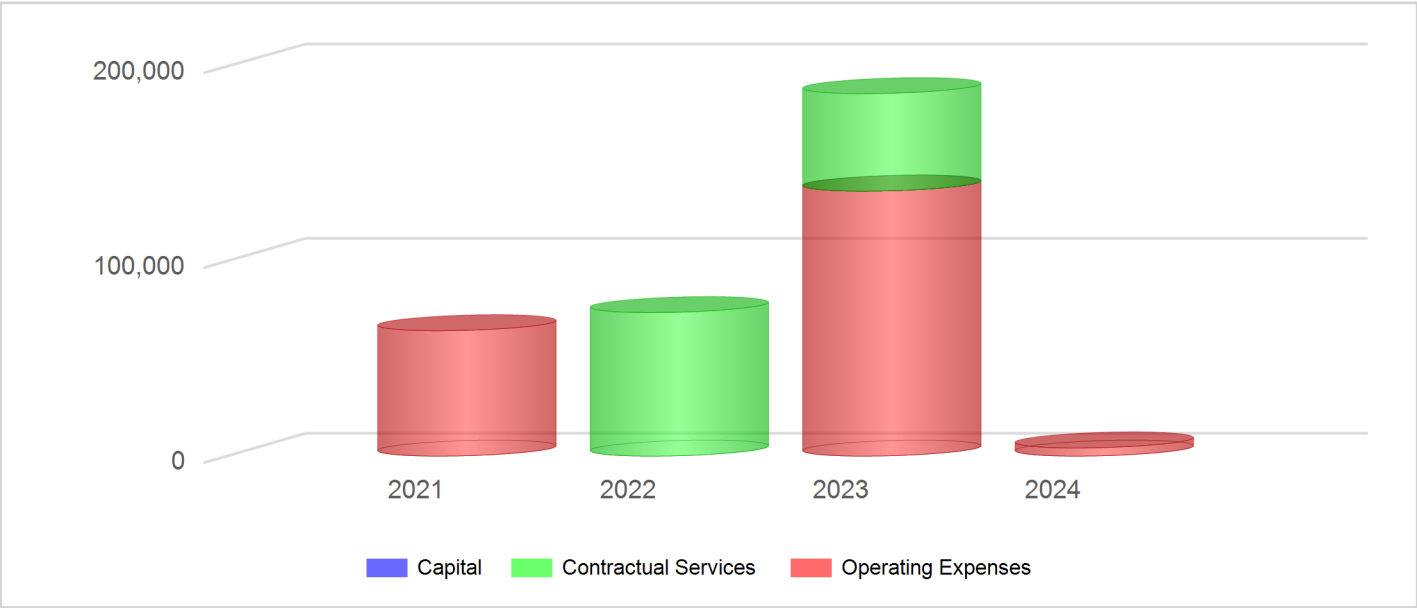
49200-Appropriated from Net Position	0	0	0	425,000	0.00%	425,000
Total	0	0	0	425,000	0.00%	425,000

Overall Total	18,172	13,727	130,200	440,000	237.94%	309,800
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070110 PD Special Federal

Operating Expenses	101,606	20,020	0	308,000	0.00%	308,000
Contractual Services	0	0	0	132,000	0.00%	132,000
Total	101,606	20,020	0	440,000	0.00%	440,000
Overall Total	101,606	20,020	0	440,000	0.00%	440,000

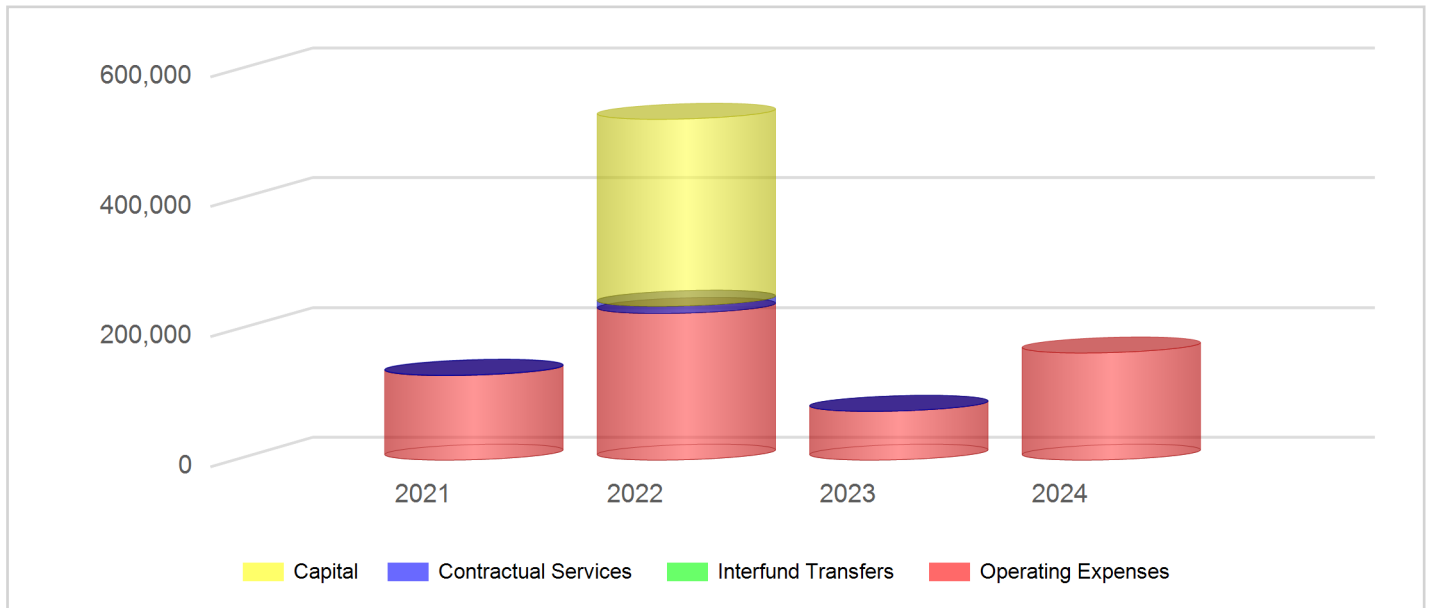
Police State Seizure



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4071110 Police State Spec Purpose Rev						
43000-Interest	256	1,100	200	200	0.00%	0
49200-Appropriated from Net Position	0	0	135,800	4,000	-97.05%	-131,800
49999-Miscellaneous Nonoperating	185,996	77,040	50,000	0	-100.00%	-50,000
Total	186,252	78,140	186,000	4,200	-97.74%	-181,800
Overall Total	186,252	78,140	186,000	4,200	-97.74%	-181,800

071110 PD Special State						
Operating Expenses	64,345	0	136,000	4,200	-96.91%	-131,800
Contractual Services	0	73,645	50,000	0	-100.00%	-50,000
Capital	0	0	0	0	0.00%	0
Total	64,345	73,645	186,000	4,200	-97.74%	-181,800
Overall Total	64,345	73,645	186,000	4,200	-97.74%	-181,800

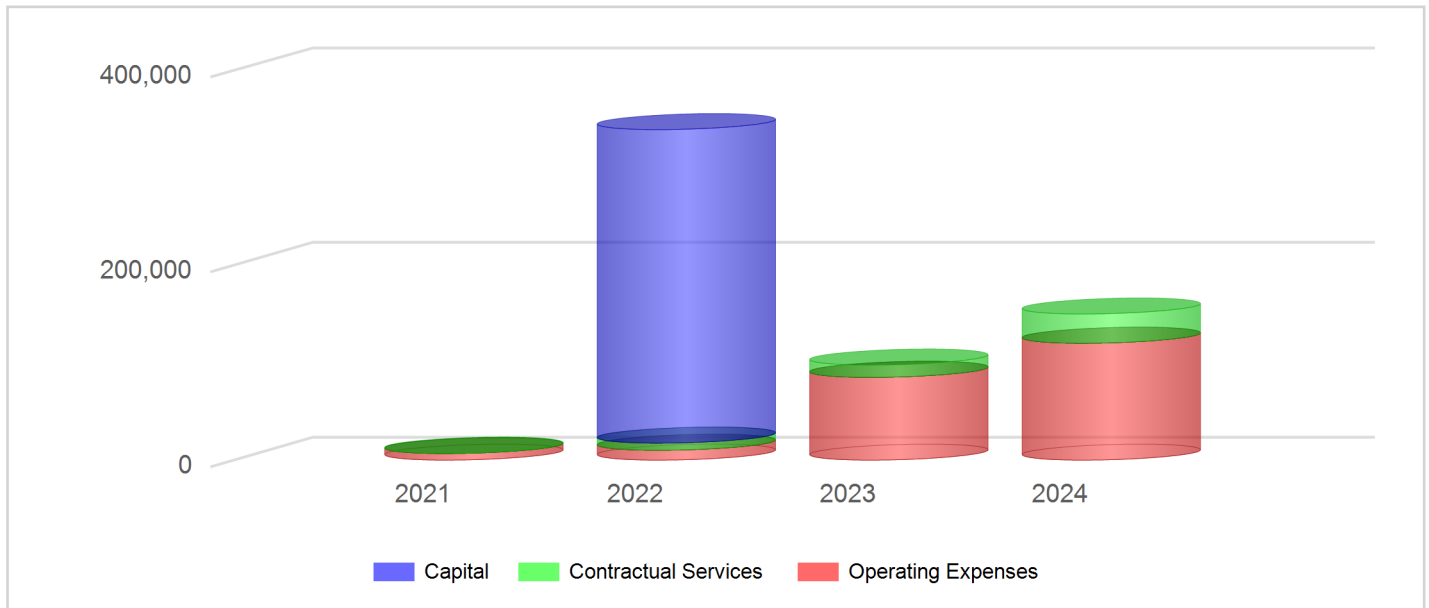
Police Technology and Equipment Fund



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4075110 PD Technology & Equip Revenue						
43000-Interest	159	332	200	200	0.00%	0
47005-Government Contributions	0	298,168	0	0	0.00%	0
47200-Civic Contributions	233,801	140,137	75,000	77,250	3.00%	2,250
49111-Gain/Loss Sale Of Securities	-26	0	0	0	0.00%	0
49200-Appropriated from Net Position	0	0	0	87,494	0.00%	87,494
Total	233,934	438,637	75,200	164,944	119.34%	89,744
Overall Total	233,934	438,637	75,200	164,944	119.34%	89,744

075110 PD Technology & Equipment						
Operating Expenses	130,094	225,790	75,000	164,944	119.92%	89,944
Contractual Services	752	11,162	200	0	-100.00%	-200
Capital	0	287,747	0	0	0.00%	0
Total	130,846	524,699	75,200	164,944	119.34%	89,744
Overall Total	130,846	524,699	75,200	164,944	119.34%	89,744

Fire Technology and Equipment Fund



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
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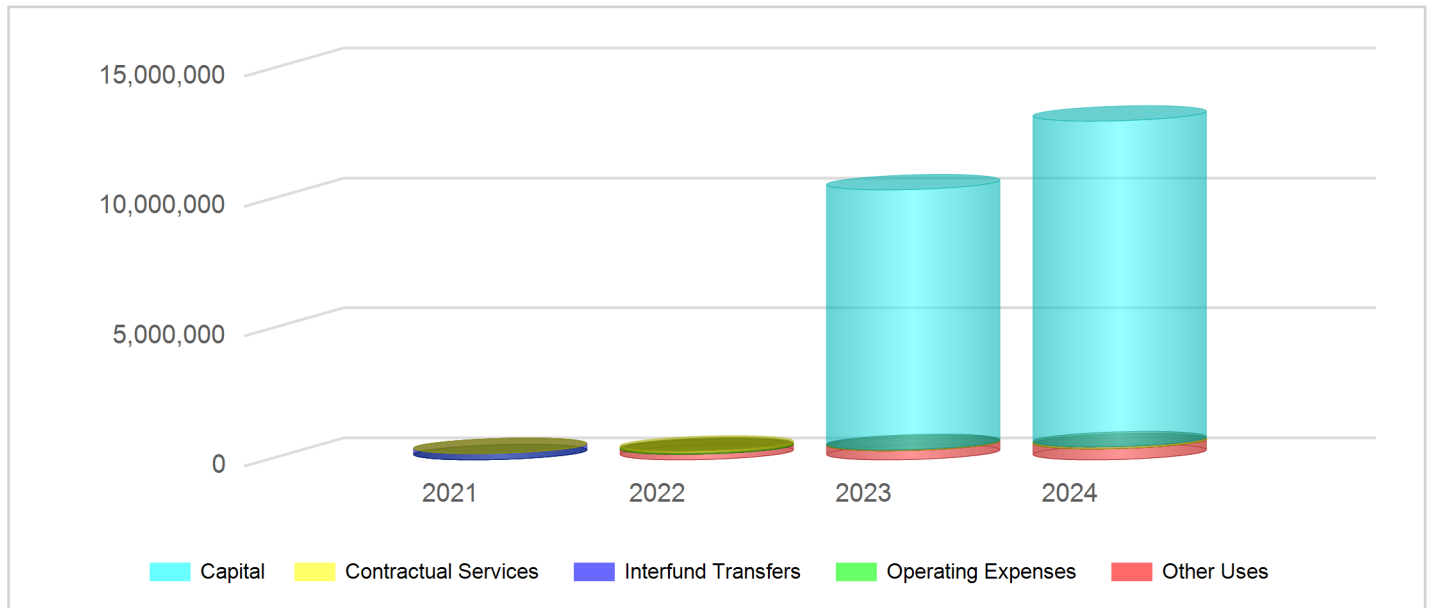
4076115 FD Technology & Equip Revenue

43000-Interest	248	514	2,000	2,000	0.00%	0
44368-Midland College	12,000	12,000	0	0	0.00%	0
47005-Government Contributions	0	182,261	0	52,400	0.00%	52,400
47200-Civic Contributions	7,750	90,742	95,600	95,600	0.00%	0
49111-Gain/Loss Sale Of Securities	-45	0	0	0	0.00%	0
Total	19,953	285,517	97,600	150,000	53.69%	52,400
Overall Total	19,953	285,517	97,600	150,000	53.69%	52,400

076115 FD Technology & Equipment

Operating Expenses	6,758	10,145	85,000	120,000	41.18%	35,000
Contractual Services	513	7,339	12,600	30,000	138.10%	17,400
Capital	0	321,750	0	0	0.00%	0
Total	7,271	339,234	97,600	150,000	53.69%	52,400
Overall Total	7,271	339,234	97,600	150,000	53.69%	52,400

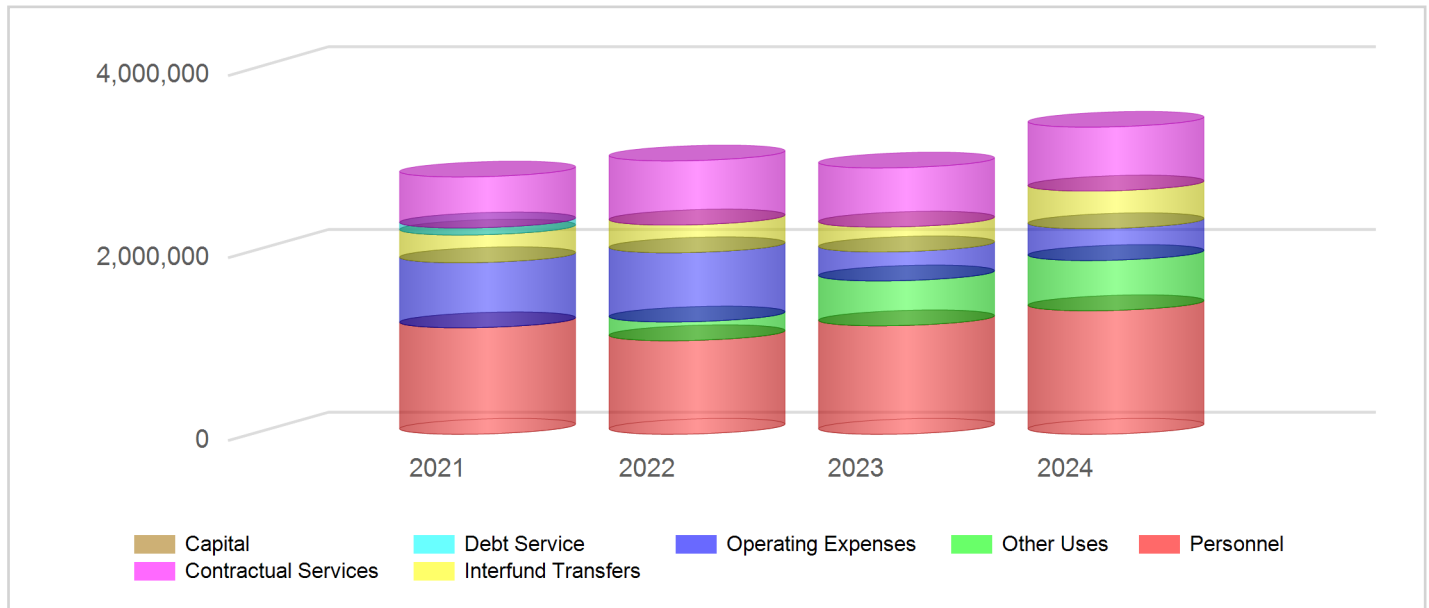
Parks Special Purpose Fund (Oil and Gas)



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4077150 Park Donation Revenue						
43000-Interest	13,694	173,162	10,000	10,000	0.00%	0
49111-Gain/Loss Sale Of Securities	1,088	-14,762	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	0	-1,410,492	0	0	0.00%	0
Total	14,782	-1,252,092	10,000	10,000	0.00%	0
4077090 Parks Special Revenue						
49200-Appropriated from Net Position	0	0	2,100,000	0	-100.00%	-2,100,000
Total	0	0	2,100,000	0	-100.00%	-2,100,000
4077094 Revenue Park Donation						
46140-Oil & Gas Leases	160,857	21,783,344	8,253,500	13,000,000	57.51%	4,746,500
47200-Civic Contributions	13,440	43,612	25,000	25,000	0.00%	0
47202-Animal Services Contributions	1,528	4,015	1,500	1,500	0.00%	0
49111-Gain/Loss Sale Of Securities	-2,627	0	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-12,291	0	0	0	0.00%	0
Total	160,907	21,830,971	8,280,000	13,026,500	57.32%	4,746,500
Overall Total	175,689	20,578,879	10,390,000	13,036,500	25.47%	2,646,500

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
077094 Park Donation & Special Purpos						
Contractual Services	3,649	77,865	40,000	77,750	94.38%	37,750
Operating Expenses	800	40,500	0	0	0.00%	0
Other Uses	0	214,602	350,000	421,031	20.29%	71,031
Capital	0	0	10,000,000	12,537,719	25.38%	2,537,719
Total	4,449	332,967	10,390,000	13,036,500	25.47%	2,646,500
077199 Interfund Transfer To						
Interfund Transfers	240,000	0	0	0	0.00%	0
Total	240,000	0	0	0	0.00%	0
Overall Total	244,449	332,967	10,390,000	13,036,500	25.47%	2,646,500

Golf Course



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4078440 Municipal Golf Course Revenue						
42500-Golf Carts	0	691,367	560,000	700,000	25.00%	140,000
42510-General Green Fees	0	981,769	850,000	1,000,000	17.65%	150,000
42520-Junior Rates	0	12,375	15,000	13,000	-13.33%	-2,000
42530-Senior Rates	0	68,804	60,000	71,000	18.33%	11,000
42550-Senior Annual Fees	0	3,150	3,000	3,250	8.33%	250
42555-Junior Annual Fees	0	3,445	200	200	0.00%	0
42560-Midland School Fees	0	8,074	5,000	8,200	64.00%	3,200
42575-Tournament Revenue	0	8,267	20,000	20,000	0.00%	0
42580-Snack Bar Rentals	0	91,432	60,000	90,000	50.00%	30,000
42600-Driving Range	0	118,228	100,000	122,000	22.00%	22,000
42610-Golf Pro Shop Equip Rental	0	25,900	20,000	26,400	32.00%	6,400
42620-Golf Pro Shop Sales	0	768,839	600,000	805,000	34.17%	205,000
48050-Cash Over Or Short	0	529	0	0	0.00%	0
48070-Discounts Earned	0	2,288	0	0	0.00%	0
Total	0	2,784,466	2,293,200	2,859,050	24.68%	565,850

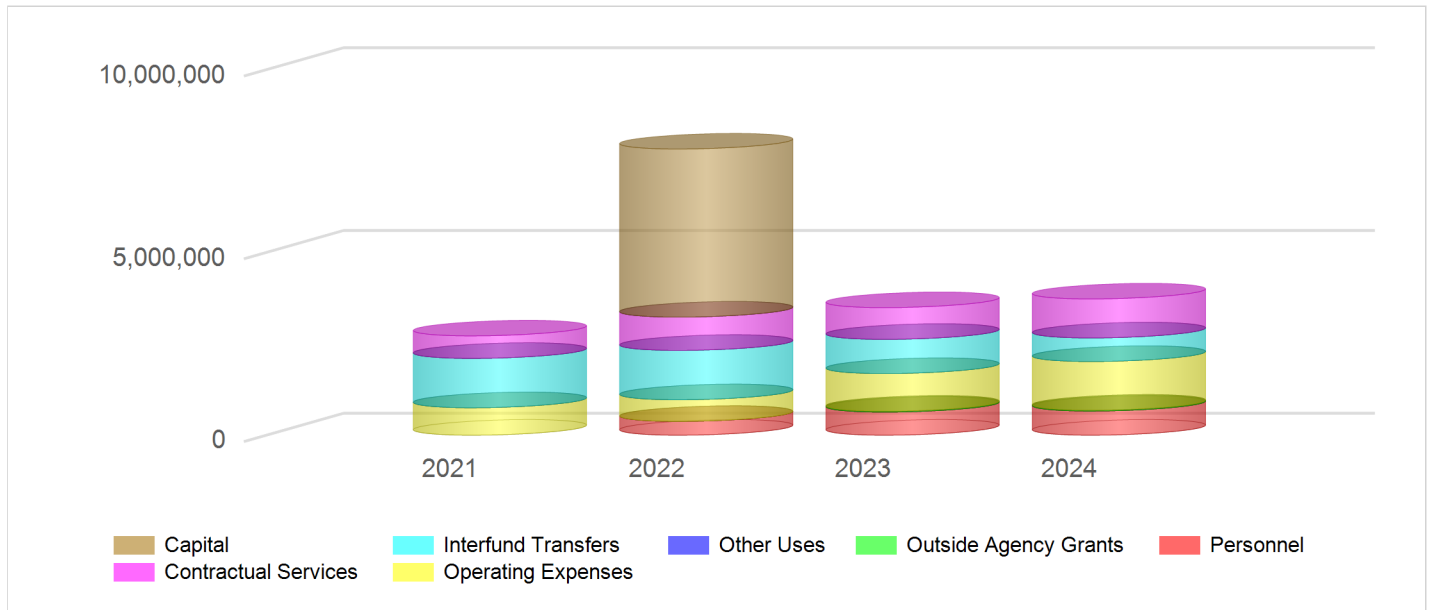
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4078150 Municipal GC Rev Nondept						
42570-PFC Fees	0	63,766	0	0	0.00%	0
42571-Capital Improvement Fee	0	175,915	0	0	0.00%	0
43000-Interest	0	8,824	0	0	0.00%	0
48060-Inventory Variation	0	805	0	0	0.00%	0
49111-Gain/Loss Sale Of Securities	0	-635	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	0	-61,084	0	0	0.00%	0
49200-Appropriated from Net Position	0	0	744,129	504,611	-32.19%	-239,518
Total	0	187,591	744,129	504,611	-32.19%	-239,518
4440150 Municipal GC Rev Nondept						
43000-Interest	3,860	0	0	0	0.00%	0
45001-General Fund Interfund	0	0	0	0	0.00%	0
45453-14 GC CO I & S Interfund	0	0	0	0	0.00%	0
47201-Capital Contributions	0	0	0	0	0.00%	0
48060-Inventory Variation	13,338	0	0	0	0.00%	0
49035-Gain/Loss Sale Of Fixed Assets	0	-2,425,468	0	0	0.00%	0
49110-Othr Fin Sources-Debt Issuance	-743	0	0	0	0.00%	0
49111-Gain/Loss Sale Of Securities	562	0	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-734	0	0	0	0.00%	0
Total	16,284	-2,425,468	0	0	0.00%	0

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4440440 Municipal Golf Course Revenue						
42500-Golf Carts	631,895	0	0	0	0.00%	0
42510-General Green Fees	910,672	0	0	0	0.00%	0
42520-Junior Rates	11,739	0	0	0	0.00%	0
42530-Senior Rates	63,755	0	0	0	0.00%	0
42550-Senior Annual Fees	3,150	0	0	0	0.00%	0
42555-Junior Annual Fees	769	0	0	0	0.00%	0
42560-Midland School Fees	1,330	0	0	0	0.00%	0
42575-Tournament Revenue	39,727	0	0	0	0.00%	0
42580-Snack Bar Rentals	81,477	0	0	0	0.00%	0
42600-Driving Range	115,082	0	0	0	0.00%	0
42610-Golf Pro Shop Equip Rental	26,330	0	0	0	0.00%	0
42620-Golf Pro Shop Sales	700,862	0	0	0	0.00%	0
48050-Cash Over Or Short	953	2,266,480	0	0	0.00%	0
48070-Discounts Earned	1,617	0	0	0	0.00%	0
Total	2,589,357	2,266,480	0	0	0.00%	0
Overall Total	2,605,641	2,813,069	3,037,329	3,363,661	10.74%	326,332
078150 GC Non Departmental						
Contractual Services	0	1,794	1,511	982	-35.00%	-529
Interfund Transfers	0	303,538	271,334	283,951	4.65%	12,617
Total	0	305,332	272,845	284,933	4.43%	12,088
078410 Golf Course Operating						
Personnel	0	748,077	848,305	1,019,515	20.18%	171,210
Operating Expenses	0	198,493	294,763	324,588	10.12%	29,825
Contractual Services	0	494,213	520,242	541,993	4.18%	21,751
Total	0	1,440,783	1,663,310	1,886,096	13.39%	222,786
078411 GC Pro Shop Operations						
Personnel	0	276,814	339,940	333,884	-1.78%	-6,056
Operating Expenses	0	560,222	23,500	24,085	2.49%	585
Contractual Services	0	205,802	125,587	156,600	24.69%	31,013
Other Uses	0	204,851	491,467	550,000	11.91%	58,533
Total	0	1,247,690	980,494	1,064,569	8.57%	84,075

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
440150 GC Non Departmental						
Contractual Services	1,798	0	0	0	0.00%	0
Interfund Transfers	303,538	0	0	0	0.00%	0
Debt Service	57,646	0	0	0	0.00%	0
Total	362,982	0	0	0	0.00%	0
440199 GC Interfund Transfer						
Interfund Transfers	-19	0	0	0	0.00%	0
Total	-19	0	0	0	0.00%	0
440410 Golf Course Operating						
Personnel	833,172	0	0	0	0.00%	0
Operating Expenses	212,973	0	0	0	0.00%	0
Contractual Services	397,067	0	0	0	0.00%	0
Total	1,443,211	0	0	0	0.00%	0
440411 GC Pro Shop Operations						
Personnel	333,227	0	0	0	0.00%	0
Operating Expenses	499,836	0	0	0	0.00%	0
Contractual Services	159,239	0	0	0	0.00%	0
Debt Service	19,915	0	0	0	0.00%	0
Total	1,012,217	0	0	0	0.00%	0
078199 Golf Course Transfer						
Interfund Transfers	0	0	0	128,063	0.00%	128,063
Total	0	0	0	128,063	0.00%	128,063
Overall Total	2,818,391	2,993,805	2,916,649	3,363,661	15.33%	447,012

*Fund 440 eliminated, Operations moved to Fund 078 Budget year 2022

Sports Complex



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4079150 SPORTS COMPLEX FUND						
43000-Interest	0	112,845	0	60,000	0.00%	60,000
43010-Interest - Nonpooled Invest	0	145,492	30,000	300,000	900.00%	270,000
49111-Gain/Loss Sale Of Securities	0	-138	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	0	-288,927	0	0	0.00%	0
49200-Appropriated from Net Position	0	0	2,240,483	2,309,973	3.10%	69,490
Total	0	-30,728	2,270,483	2,669,973	17.59%	399,490
4620150 Scharbauer SC Gen Rev						
43000-Interest	2,212	0	0	0	0.00%	0
43010-Interest - Nonpooled Invest	27,595	0	0	0	0.00%	0
45625-Scharbauer Sports Com Cns Fund	123,447	0	0	0	0.00%	0
49111-Gain/Loss Sale Of Securities	-149	0	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-1,101	0	0	0	0.00%	0
Total	152,004	0	0	0	0.00%	0

SECTION: SPECIAL REVENUE

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4620620 SSC Operating Fund Rev						
46300-Misd Use/Occupancy	65,991	0	0	0	0.00%	0
46301-Misd Operating Contribution	30,000	0	0	0	0.00%	0
46302-Football-Soccer Concession	42,756	0	0	0	0.00%	0
46303-Naming Rights-Football/Soccer	48,750	0	0	0	0.00%	0
46304-Advertising-Football/Soccer	218,102	0	0	0	0.00%	0
46306-Other Rental	84,713	0	0	0	0.00%	0
46320-Rockhound Rental	80,100	0	0	0	0.00%	0
46321-Other Rental	34,660	0	0	0	0.00%	0
46322-Baseball Concession	225	0	0	0	0.00%	0
46323-Naming Rights-Baseball	125,500	0	0	0	0.00%	0
46324-Advertising-Baseball	126,525	0	0	0	0.00%	0
46334-Advertising-Common Areas	87,000	0	0	0	0.00%	0
46335-Multi-Purpose Fields	92,288	0	0	0	0.00%	0
48480-Reimbursement Of Budget Exp	12,600	0	0	0	0.00%	0
Total	1,049,210	0	0	0	0.00%	0

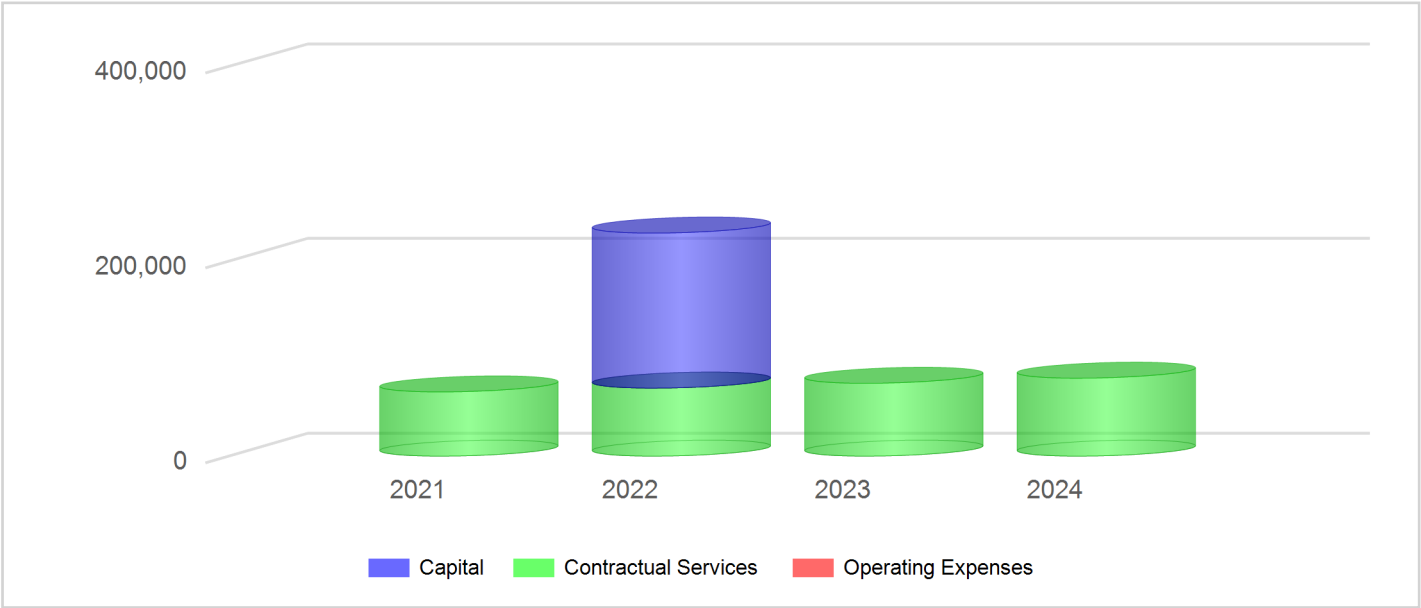
4079620 Sports Complex Operatng Fd Rev						
46300-Misd Use/Occupancy	0	65,992	61,178	65,992	7.87%	4,814
46301-Misd Operating Contribution	0	30,000	30,000	30,000	0.00%	0
46302-Football-Soccer Concession	0	46,914	50,000	58,000	16.00%	8,000
46303-Naming Rights-Football/Soccer	0	48,750	48,750	48,750	0.00%	0
46304-Advertising-Football/Soccer	0	288,217	149,000	177,000	18.79%	28,000
46306-Other Rental	0	48,713	65,000	65,000	0.00%	0
46320-Rockhound Rental	0	160,850	134,600	136,600	1.49%	2,000
46321-Other Rental	0	38,125	35,000	5,000	-85.71%	-30,000
46322-Baseball Concession	0	15,039	1,900	2,500	31.58%	600
46323-Naming Rights-Baseball	0	116,825	128,625	135,150	5.07%	6,525
46324-Advertising-Baseball	0	262,456	158,000	195,750	23.89%	37,750
46331-Rental-Common Areas	0	21,650	94,000	40,000	-57.45%	-54,000
46334-Advertising-Common Areas	0	61,500	17,250	17,250	0.00%	0
46335-Multi-Purpose Fields	0	83,324	75,000	83,000	10.67%	8,000
48480-Reimbursement Of Budget Exp	0	12,600	0	0	0.00%	0
49150-Recvr-Damages To City Property	0	21,423	0	0	0.00%	0
Total	0	1,322,378	1,048,303	1,059,992	1.12%	11,689
Overall Total	1,201,214	1,291,650	3,318,786	3,729,965	12.39%	411,179

SECTION: SPECIAL REVENUE

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
079150 SPORTS COMPLEX OPERATIONS EXP						
Contractual Services	0	30,539	31,650	45,586	44.03%	13,935
Interfund Transfers	0	1,351,673	936,098	645,295	-31.07%	-290,803
Total	0	1,382,212	967,748	690,881	-28.61%	-276,868
079620 SPORTS COMPLEX EXP						
Personnel	0	377,556	631,318	658,979	4.38%	27,661
Operating Expenses	0	592,469	1,031,465	1,333,780	29.31%	302,315
Contractual Services	0	881,234	836,961	1,021,325	22.03%	184,365
Outside Agency Grants	0	0	25,000	25,000	0.00%	0
Capital	0	4,602,154	0	0	0.00%	0
Total	0	6,453,413	2,524,744	3,039,084	20.37%	514,341
620150 Sports Complex Operations						
Operating Expenses	751,303	0	0	0	0.00%	0
Contractual Services	615,395	0	0	0	0.00%	0
Interfund Transfers	1,351,673	0	0	0	0.00%	0
Total	2,718,371	0	0	0	0.00%	0
Overall Total	2,718,371	7,835,625	3,492,492	3,729,965	6.80%	237,473

*Fund 620 eliminated, Operations moved to Fund 079 Budget year 2022

Municipal Court Technology and Equipment Fund

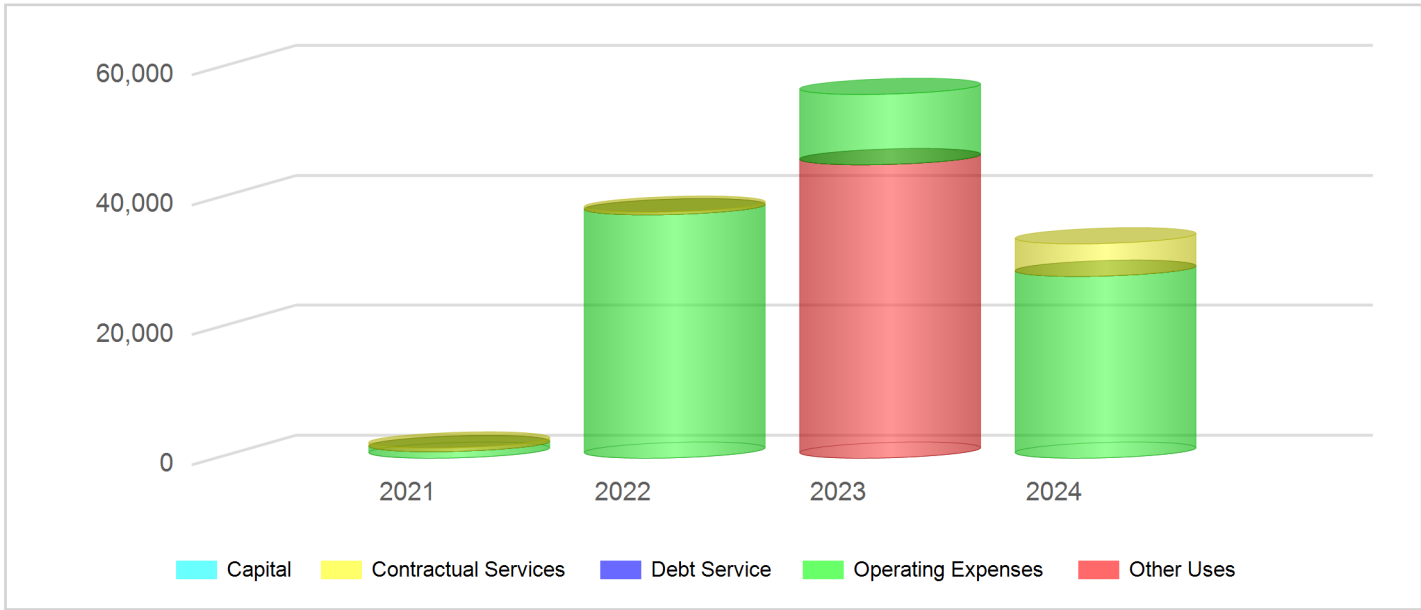


Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
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4092010 Muni Court Tech Fund Rev						
41107-Muni Court-Technology Assessmt	40,437	49,071	40,000	41,094	2.74%	1,094
43000-Interest	2,271	2,884	1,000	1,000	0.00%	0
49111-Gain/Loss Sale Of Securities	-247	-165	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-2,018	-16,659	0	0	0.00%	0
49200-Appropriated from Net Position	0	0	33,766	37,906	12.26%	4,140
Total	40,443	35,131	74,766	80,000	7.00%	5,234
Overall Total	40,443	35,131	74,766	80,000	7.00%	5,234

092010 Municipal Court Technology Fun						
Contractual Services	65,919	69,815	74,766	80,000	7.00%	5,234
Capital	0	159,142	0	0	0.00%	0
Total	65,919	228,957	74,766	80,000	7.00%	5,234
Overall Total	65,919	228,957	74,766	80,000	7.00%	5,234

Municipal Court Security Fund



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
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4093010 Muni Court Security Fund						
41108-Muni Court-Secutity Fee	46,848	58,054	55,000	32,000	-41.82%	-23,000
43000-Interest	1,906	3,888	1,000	1,000	0.00%	0
49111-Gain/Loss Sale Of Securities	-242	-272	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-1,835	-24,989	0	0	0.00%	0
Total	46,677	36,681	56,000	33,000	-41.07%	-23,000
Overall Total	46,677	36,681	56,000	33,000	-41.07%	-23,000

093010 Municipal Court Security Fund						
Operating Expenses	1,018	37,470	10,820	28,000	158.78%	17,180
Contractual Services	550	403	0	5,000	0.00%	5,000
Other Uses	0	0	45,180	0	-100.00%	-45,180
Total	1,568	37,873	56,000	33,000	-41.07%	-23,000
Overall Total	1,568	37,873	56,000	33,000	-41.07%	-23,000

HOTEL/ MOTEL FUND

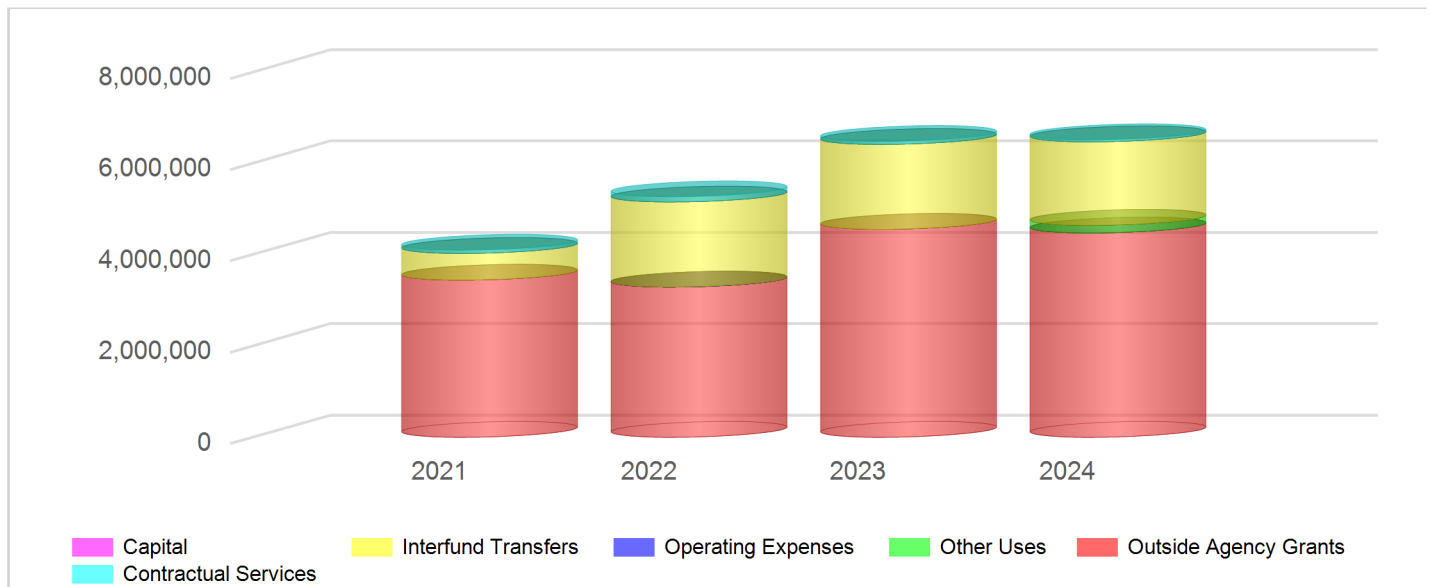


PACKET

25.98

August 22, 2023

Hotel/Motel Fund



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4090090 Hotel Motel Tax Rev						
43000-Interest	82,912	163,331	50,000	100,000	100.00%	50,000
46180-Bush Convention Center	288,160	181,493	200,000	350,000	75.00%	150,000
49111-Gain/Loss Sale Of Securities	-9,030	-11,515	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-74,665	-1,099,517	0	0	0.00%	0
Total	287,378	-766,208	250,000	450,000	80.00%	200,000
4090150 Hotel/Motel Tax nondept Rev						
40300-Hotel-Motel Tax	4,338,753	5,671,276	5,500,000	6,000,000	9.09%	500,000
40310-Short Term Rental Tax	0	40,244	5,000	60,000	1100.00%	55,000
48480-Reimbursement Of Budget Exp	0	23,509	0	0	0.00%	0
49200-Appropriated from Net Position	0	0	729,166	0	-100.00%	-729,166
Total	4,338,753	5,735,028	6,234,166	6,060,000	-2.78%	-174,166
Overall Total	4,626,130	4,968,821	6,484,166	6,510,000	0.40%	25,834
090150 Hotel Non-Dept Exp						
Contractual Services	0	42,625	7,005	7,000	-0.07%	-5
Outside Agency Grants	1,754,181	1,767,257	2,276,669	2,110,662	-7.29%	-166,007
Interfund Transfers	69,725	69,725	65,309	30,420	-53.42%	-34,889
Other Uses	0	0	0	159,070	100.00%	159,070
Total	1,823,906	1,879,607	2,348,983	2,207,152	-6.04%	-141,831

SECTION: SPECIAL REVENUE

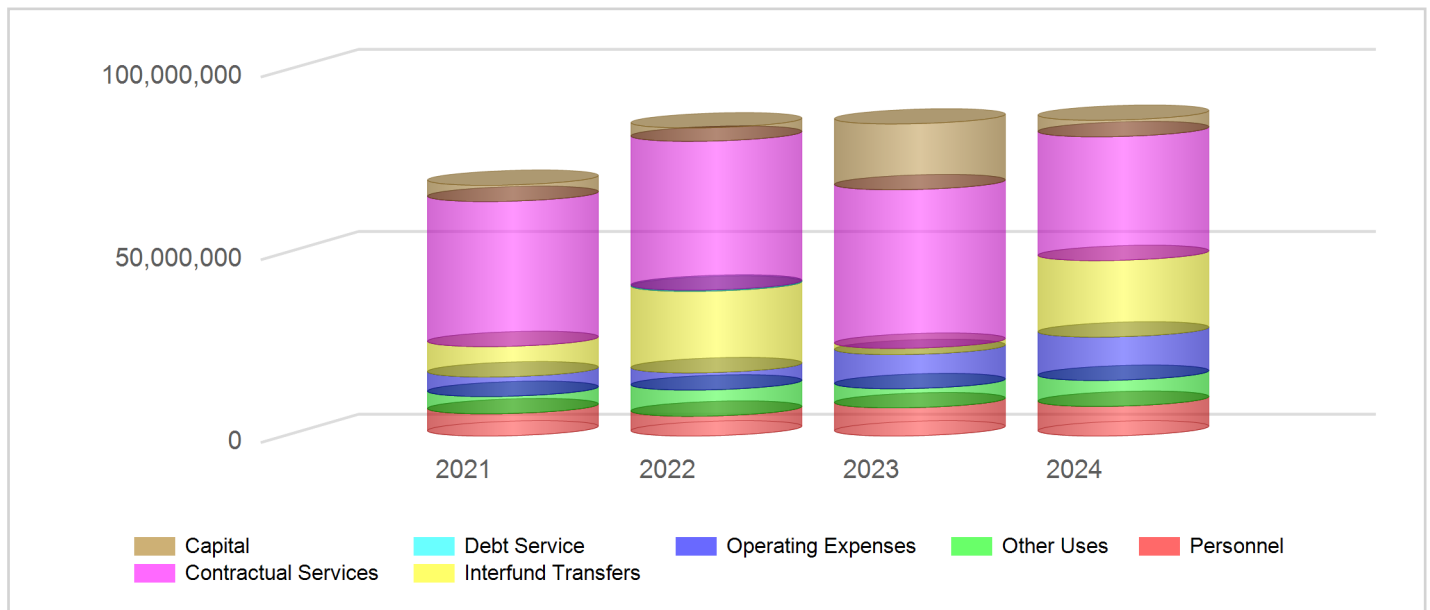
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
090199 Hotel/Motel Interfund TRF						
Interfund Transfers	515,711	1,793,275	1,793,825	1,796,800	-0.17%	-2,975
Total	515,711	1,793,275	1,793,825	1,796,800	-0.17%	-2,975
090691 Bush Convention Center Exp						
Operating Expenses	0	1,721	0	0	0.00%	0
Contractual Services	72,295	72,392	61,358	40,309	-34.30%	-21,049
Outside Agency Grants	1,688,798	1,523,008	2,280,000	2,365,739	3.76%	85,739
Total	1,761,093	1,597,121	2,341,358	2,406,048	2.76%	64,690
Overall Total	4,100,710	5,270,003	6,484,166	6,510,000	0.40%	25,834

WATER & SEWER FUND



SECTION: WATER AND SEWER FUND

Utilities



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4300150 W&S Revenue Nondept						
43000-Interest	305,809	613,368	300,000	400,000	33.33%	100,000
43010-Interest - Nonpooled Invest	21,139	21,478	25,000	25,000	0.00%	0
49111-Gain/Loss Sale Of Securities	-32,198	-43,897	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-281,048	-4,192,601	0	0	0.00%	0
49200-Appropriated from Net Position	0	0	9,581,132	5,808,574	-39.37%	-3,772,558
Total	13,703	-3,601,652	9,906,132	6,233,574	-37.07%	-3,672,558

SECTION: WATER AND SEWER FUND

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4300300 W&S Revenue Nondept						
46130-Warehouse Building	1,600	1,600	1,000	1,000	0.00%	0
46190-Miscellaneous Rentals	135,075	125,650	100,000	100,000	0.00%	0
46400-Water Sales	58,417,851	67,406,947	62,000,000	63,000,000	1.61%	1,000,000
46405-Reclaimed Water Sales	0	1,866,924	0	1,200,000	0.00%	1,200,000
46410-Sewer Service	17,063,871	17,677,215	17,500,000	18,375,000	5.00%	875,000
46420-Water Taps	95,617	71,848	100,000	60,000	-40.00%	-40,000
46430-Sewer Taps	72,150	82,250	100,000	85,000	-15.00%	-15,000
46450-Service Charges	174,731	202,335	200,000	200,000	0.00%	0
46470-Penalties	-4,537	-76	500,000	100,000	-80.00%	-400,000
46476-Uncollectible Accounts	-735,095	-6,063,532	-400,000	-1,000,000	150.00%	-600,000
46480-Farm Crops	334	163	0	0	0.00%	0
46550-Water Sample Tests	45,290	48,145	30,000	35,000	16.67%	5,000
46590-Miscellaneous - W & S Revenue	49,878	5,693,356	250,000	1,000,000	300.00%	750,000
47208-Water System Contributions	124,675,658	3,423,373	0	0	0.00%	0
48050-Cash Over Or Short	38	480	0	0	0.00%	0
48490-Unclassified	15,544	0	0	0	0.00%	0
49000-Right-Of-Way Or Air Way Sales	2,020,809	4,089,365	2,000,000	4,000,000	100.00%	2,000,000
49030-Sale Of Equipment	0	38,546	0	0	0.00%	0
49090-Sale-Oil & Gas (Net-Tax Trkg)	166,094	251,636	120,000	500,000	316.67%	380,000
49120-Legal Filing Fees Reimbursemnt	3,873	1,814	0	0	0.00%	0
49150-Recvr-Damages To City Property	14,078	-65,177	0	0	0.00%	0
Total	202,212,859	94,852,863	82,501,000	87,656,000	6.25%	5,155,000
Overall Total	202,226,562	91,251,210	92,407,132	93,889,574	1.60%	1,482,442
300150 W&S Non-Departmental						
Operating Expenses	6,250	0	0	0	0.00%	0
Contractual Services	2,247,598	2,646,346	4,798,030	4,916,945	2.48%	118,915
Interfund Transfers	1,898,343	1,898,343	1,713,892	1,978,330	15.43%	264,438
Debt Service	0	313,854	0	0	0.00%	0
Other Uses	4,666,340	6,925,133	5,000,000	6,900,000	38.00%	1,900,000
Capital	4,207,519	2,559,596	0	0	0.00%	0
Total	13,026,050	14,343,272	11,511,922	13,795,275	19.83%	2,283,353
300199 W&S Interfund Transfer To						
Interfund Transfers	6,411,714	20,409,986	0	18,957,807	0.00%	18,957,807
Total	6,411,714	20,409,986	0	18,957,807	0.00%	18,957,807

SECTION: WATER AND SEWER FUND

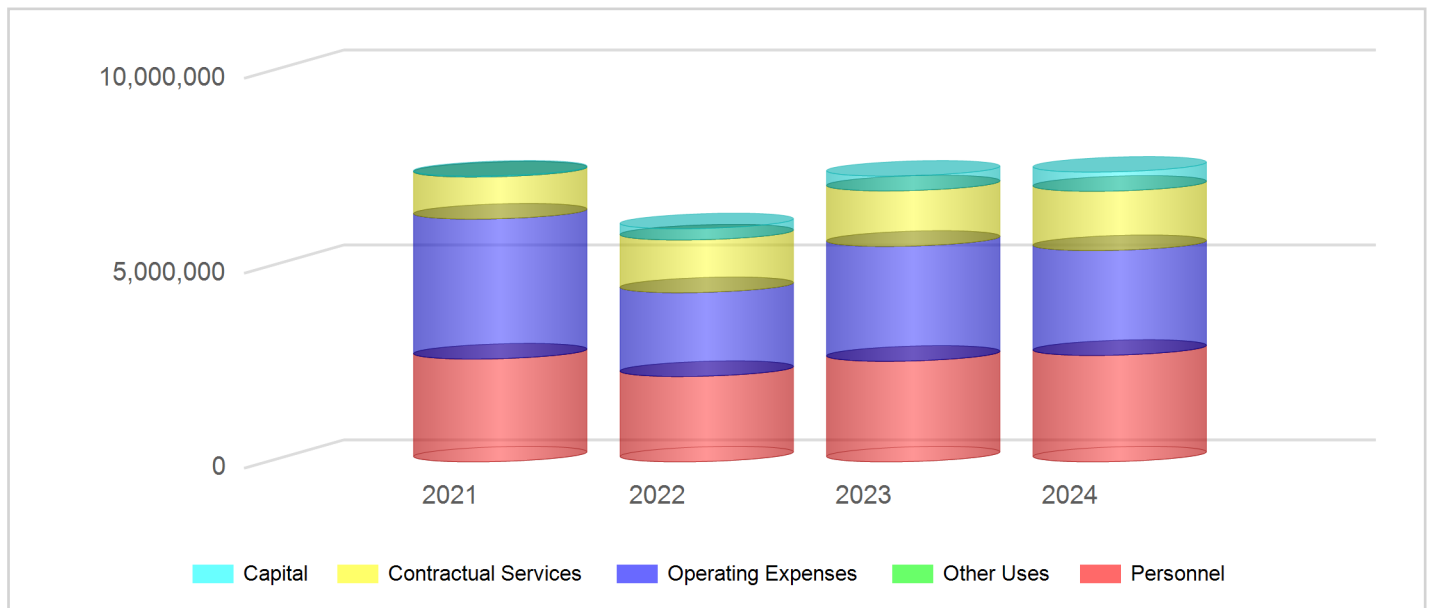
Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
300300 W&S Utilities Adm						
Personnel	707,335	756,265	1,022,385	1,033,818	1.12%	11,433
Operating Expenses	18,107	14,919	17,500	18,000	2.86%	500
Contractual Services	1,406,153	621,827	2,238,101	3,049,117	36.24%	811,016
Other Uses	57,493	101,071	10,000	12,500	25.00%	2,500
Capital	0	430,301	9,000,000	0	-100.00%	-9,000,000
Total	2,189,089	1,924,382	12,287,987	4,113,435	-66.52%	-8,174,552
300301 Environmental Compliance						
Personnel	581,175	507,336	661,866	673,921	1.82%	12,055
Operating Expenses	169,737	210,032	280,412	292,301	4.24%	11,889
Contractual Services	282,878	438,126	552,801	540,822	-2.17%	-11,979
Capital	0	0	10,000	0	-100.00%	-10,000
Total	1,033,790	1,155,494	1,505,079	1,507,044	0.13%	1,965
300305 TBAR Well Field						
Personnel	991	0	0	0	0.00%	0
Operating Expenses	0	0	626,000	1,550,000	147.60%	924,000
Contractual Services	6,852	150,803	12,853,000	2,413,440	-81.22%	-10,439,560
Other Uses	0	0	16,100	0	-100.00%	-16,100
Total	7,843	150,803	13,495,100	3,963,440	-70.63%	-9,531,660
300306 Airport Well Fields & Tower						
Personnel	-2,261	0	0	0	0.00%	0
Contractual Services	85,725	82,139	0	0	0.00%	0
Capital	43,398	0	0	0	0.00%	0
Total	126,862	82,139	0	0	0.00%	0
300310 Water Reclamation Facility						
Personnel	1,351,882	1,209,727	1,762,874	1,877,594	6.51%	114,720
Operating Expenses	351,345	1,251,456	1,218,095	1,959,945	60.90%	741,850
Contractual Services	668,345	1,860,087	1,715,778	1,932,987	12.66%	217,209
Capital	0	0	2,500,000	0	-100.00%	-2,500,000
Total	2,371,572	4,321,270	7,196,747	5,770,526	-19.82%	-1,426,221

SECTION: WATER AND SEWER FUND

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
300315 Spraberry Farms						
Personnel	38,484	0	0	0	0.00%	0
Operating Expenses	840,897	315	0	0	0.00%	0
Contractual Services	927,388	32,095	0	0	0.00%	0
Other Uses	360	0	0	0	0.00%	0
Total	1,807,129	32,410	0	0	0.00%	0
300320 Water Purification Plant						
Personnel	1,387,102	1,065,912	1,767,765	1,923,101	8.79%	155,336
Operating Expenses	1,391,230	1,653,709	3,869,769	5,189,360	34.10%	1,319,591
Contractual Services	33,320,760	34,093,622	19,905,044	19,537,653	-1.85%	-367,391
Capital	0	0	3,000,000	0	-100.00%	-3,000,000
Total	36,099,092	36,813,243	28,542,577	26,650,114	-6.63%	-1,892,463
300322 MBR Plant						
Operating Expenses	245	0	0	0	0.00%	0
Contractual Services	8,677	1,951	0	0	0.00%	0
Total	8,922	1,951	0	0	0.00%	0
300335 W&S Maintenance						
Personnel	2,021,796	1,880,840	2,506,404	2,607,935	4.05%	101,531
Operating Expenses	2,575,124	1,605,111	3,344,762	2,869,780	-14.20%	-474,982
Contractual Services	779,985	845,395	1,356,572	1,518,909	11.97%	162,337
Other Uses	18,109	140,084	200,000	200,000	0.00%	0
Capital	177,445	662,194	3,500,000	4,500,000	28.57%	1,000,000
Total	5,572,459	5,133,624	10,907,738	11,696,624	7.23%	788,886
Overall Total	68,654,521	84,368,574	85,447,150	86,454,265	1.18%	1,007,115

SECTION: WATER AND SEWER FUND

Finance Department

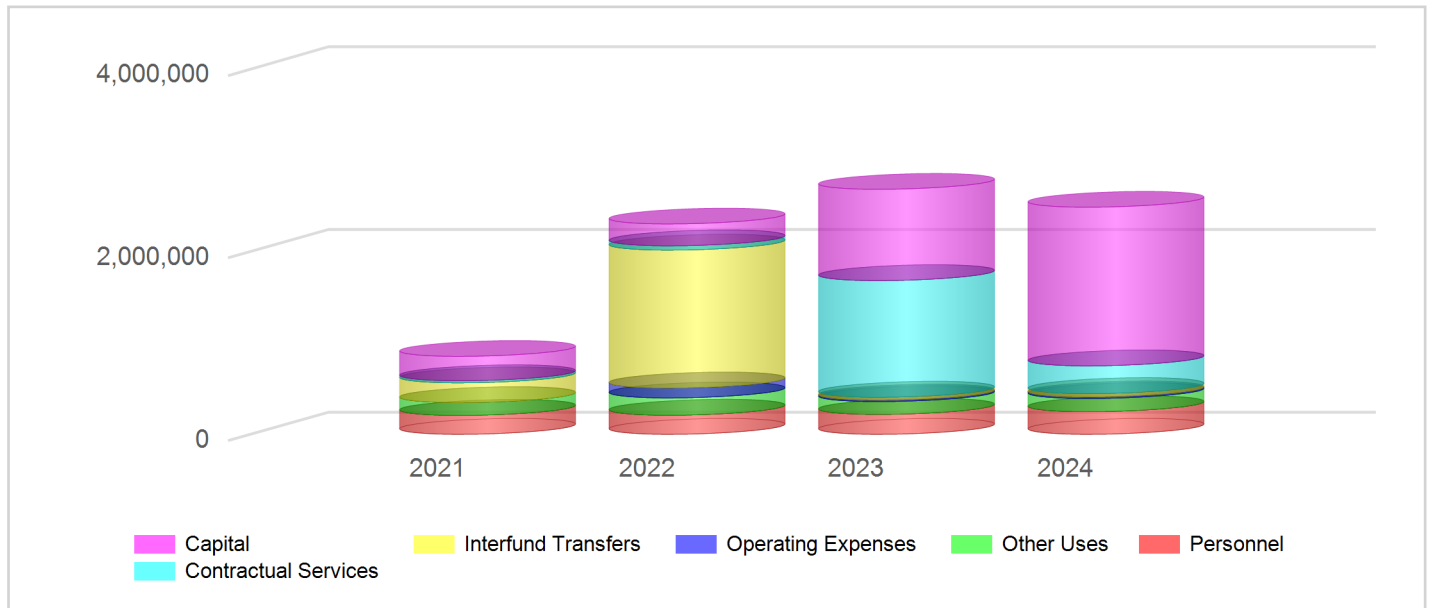


Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
300340 W&S Meter Shop						
Personnel	848,258	-15,626	0	0	0.00%	0
Operating Expenses	3,437,825	1,350	0	0	0.00%	0
Contractual Services	71,127	1,932	0	0	0.00%	0
Total	4,357,210	-12,343	0	0	0.00%	0
300343 Cashiering Division						
Personnel	190,670	200,958	215,921	231,179	7.07%	15,258
Operating Expenses	12,178	12,836	16,225	16,750	3.24%	525
Contractual Services	639,464	678,992	736,580	754,350	2.41%	17,770
Total	842,312	892,787	968,726	1,002,279	3.46%	33,553
300345 W&S Customer Service						
Personnel	1,600,309	2,006,310	2,365,968	2,502,004	5.75%	136,036
Operating Expenses	141,706	2,136,689	2,933,050	2,673,050	-8.86%	-260,000
Contractual Services	367,421	670,693	686,664	767,376	11.75%	80,712
Capital	22,983	287,804	378,000	490,600	29.79%	112,600
Total	2,132,419	5,101,497	6,363,682	6,433,030	1.09%	69,348
Overall Total	7,331,941	5,981,940	7,332,408	7,435,309	1.40%	102,901

DRAINAGE FUND



Engineering



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4400482 Drainage Revenue						
43000-Interest	21,933	45,752	15,000	15,450	3.00%	450
46476-Uncollectible Accounts	-16,950	-135,137	0	0	0.00%	0
46490-Drainage Fees	2,343,143	2,334,386	2,400,000	2,472,000	3.00%	72,000
49111-Gain/Loss Sale Of Securities	-2,604	-3,066	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-21,280	-291,539	0	0	0.00%	0
Total	2,324,242	1,950,397	2,415,000	2,487,450	3.00%	72,450
4400150 Drainage Utility Fund Nondept						
49200-Appropriated from Net Position	0	0	268,585	0	-100.00%	-268,585
Total	0	0	268,585	0	-100.00%	-268,585
Overall Total	2,324,242	1,950,397	2,683,585	2,487,450	-7.31%	-196,135
400150 Drainage Non-Departmental						
Other Uses	140,331	189,066	140,000	144,200	3.00%	4,200
Capital	266,476	149,988	0	0	0.00%	0
Total	406,806	339,054	140,000	144,200	3.00%	4,200

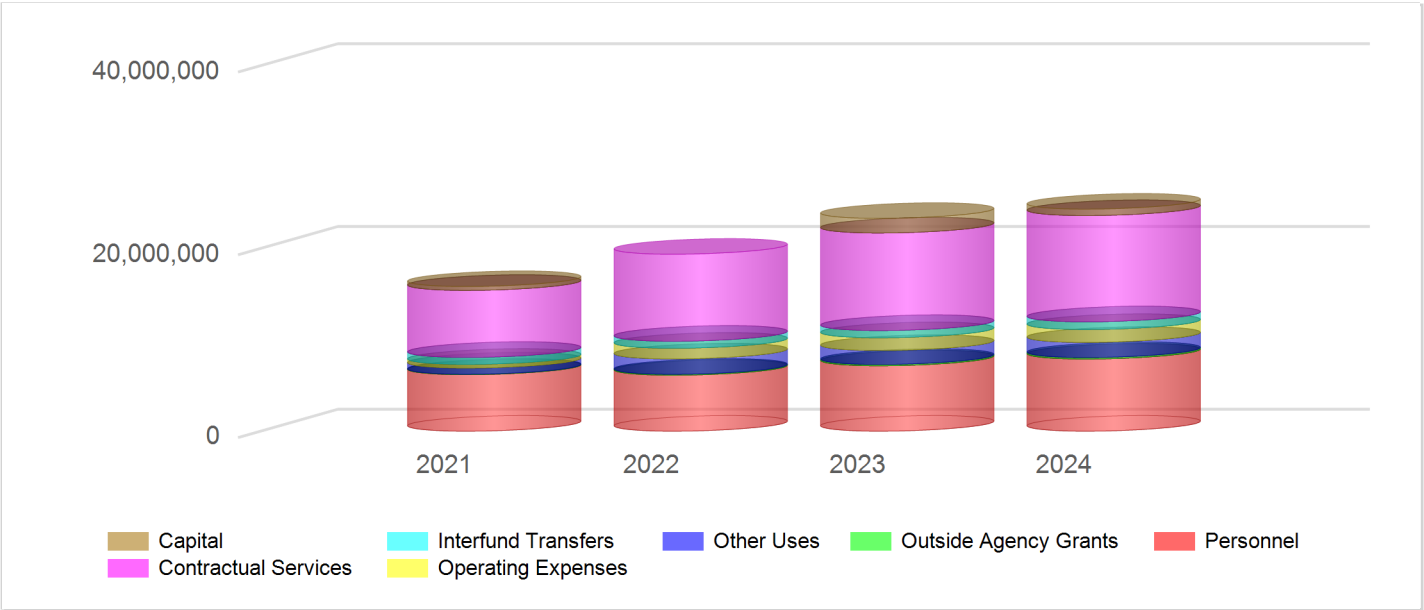
SECTION: DRAINAGE FUND

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
400482 Drainage Admin						
Personnel	207,381	209,447	218,425	247,725	13.41%	29,300
Operating Expenses	0	108,998	17,000	17,510	3.00%	510
Contractual Services	23,154	47,220	1,276,717	303,164	-76.25%	-973,553
Interfund Transfers	16,042	16,042	31,443	37,067	17.89%	5,624
Capital	0	88,594	1,000,000	1,737,784	73.78%	737,784
Total	246,577	470,300	2,543,585	2,343,250	-7.88%	-200,335
400199 Drainage Interfund Transfer						
Interfund Transfers	200,000	1,494,196	0	0	0.00%	0
Total	200,000	1,494,196	0	0	0.00%	0
Overall Total	853,384	2,303,550	2,683,585	2,487,450	-7.31%	-196,135

SANITATION FUND



Sanitation



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4430150 Sanitation Revenue Nondept						
43000-Interest	201,452	357,114	125,000	175,000	40.00%	50,000
46476-Uncollectible Accounts	-170,479	0	0	0	0.00%	0
49111-Gain/Loss Sale Of Securities	-21,473	-24,272	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-181,984	-2,318,425	0	0	0.00%	0
49200-Appropriated from Net Position	0	0	4,934,642	662,912	-86.57%	-4,271,730
Total	-172,484	-1,985,583	5,059,642	837,912	-83.44%	-4,221,730

SECTION: SANITATION FUND

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4430430 Sanitation Revenue						
44000-Garbage Collection Fees	10,451,246	12,921,416	11,000,000	14,190,000	29.00%	3,190,000
44010-Land Fill Charges-Local	6,775,389	7,482,934	7,370,000	8,107,000	10.00%	737,000
44020-Special Collections	458,475	582,240	150,000	300,000	100.00%	150,000
44022-Haulers Permit Fee	82,850	97,375	80,000	88,000	10.00%	8,000
44026-Landfill Access Fee	821,950	973,750	801,600	881,760	10.00%	80,160
44035-Recycle Fee	270,051	265,714	250,000	275,000	10.00%	25,000
44036-Litter Fee	539,697	531,076	520,000	572,000	10.00%	52,000
46470-Penalties	0	0	75,000	82,500	10.00%	7,500
46476-Uncollectible Accounts	0	-861,502	-40,000	-44,000	10.00%	-4,000
48050-Cash Over Or Short	366	-71	0	0	0.00%	0
48070-Discounts Earned	14,811	16,085	0	0	0.00%	0
49045-Sale Of Minor Equipment	0	36,020	0	0	0.00%	0
49053-Sale Of Recyclables	72,094	22,598	30,000	33,000	10.00%	3,000
49150-Recvr-Damages To City Property	483	0	0	0	0.00%	0
Total	19,487,412	22,067,634	20,236,600	24,485,260	20.99%	4,248,660
Overall Total	19,314,928	20,082,051	25,296,242	25,323,172	0.11%	26,930
430150 SW Non-Dept						
Contractual Services	564,799	845,784	1,031,098	1,015,475	-1.52%	-15,623
Interfund Transfers	765,829	765,829	788,830	845,230	7.15%	56,400
Other Uses	3,012,683	-1,212,353	3,500,000	2,626,000	-24.97%	-874,000
Capital	221,717	0	0	0	0.00%	0
Total	4,565,029	399,261	5,319,928	4,486,705	-15.66%	-833,223
430199 Sanitation Interfund Trans To						
Interfund Transfers	931,333	6,128,675	0	0	0.00%	0
Total	931,333	6,128,675	0	0	0.00%	0
430400 Solid Waste Management						
Personnel	4,409,217	4,345,928	5,220,286	5,439,910	4.21%	219,624
Operating Expenses	325,291	1,107,335	1,282,550	1,282,550	0.00%	0
Contractual Services	3,869,213	5,093,080	4,760,246	5,180,252	8.82%	420,007
Other Uses	797	377	150	150	0.00%	0
Capital	83,951	0	0	289,710	0.00%	289,710
Total	8,688,469	10,546,721	11,263,231	12,192,572	8.25%	929,341

SECTION: SANITATION FUND

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
430401 SW Litter Abatement						
Operating Expenses	0	0	6,650	6,650	0.00%	0
Contractual Services	309,227	213,458	336,295	336,500	0.06%	205
Outside Agency Grants	48,565	100,000	150,000	170,000	13.33%	20,000
Other Uses	4,441	0	27,055	27,866	3.00%	811
Total	362,233	313,458	520,000	541,016	4.04%	21,016
430402 SW Recycle						
Personnel	441,527	410,147	463,996	850,131	83.22%	386,135
Operating Expenses	811	4,312	9,500	23,700	149.47%	14,200
Contractual Services	292,450	338,686	320,887	362,084	12.84%	41,197
Capital	0	0	0	415,950	0.00%	415,950
Total	734,787	753,144	794,383	1,651,865	107.94%	857,482
430405 SW Landfill						
Personnel	1,340,393	1,378,371	1,478,325	1,611,179	8.99%	132,854
Operating Expenses	75,107	59,444	98,988	99,008	0.02%	20
Contractual Services	2,300,702	3,039,252	4,234,589	4,740,827	11.95%	506,238
Other Uses	409	421	0	0	0.00%	0
Capital	116,634	0	1,600,000	0	-100.00%	-1,600,000
Total	3,833,245	4,477,487	7,411,903	6,451,014	-12.96%	-960,889
430409 SW Interfund Transfer						
Interfund Transfers	495,000	0	0	0	0.00%	0
Total	495,000	0	0	0	0.00%	0
Overall Total	19,610,097	22,618,745	25,309,446	25,323,172	0.05%	13,726

AIRPORT FUND

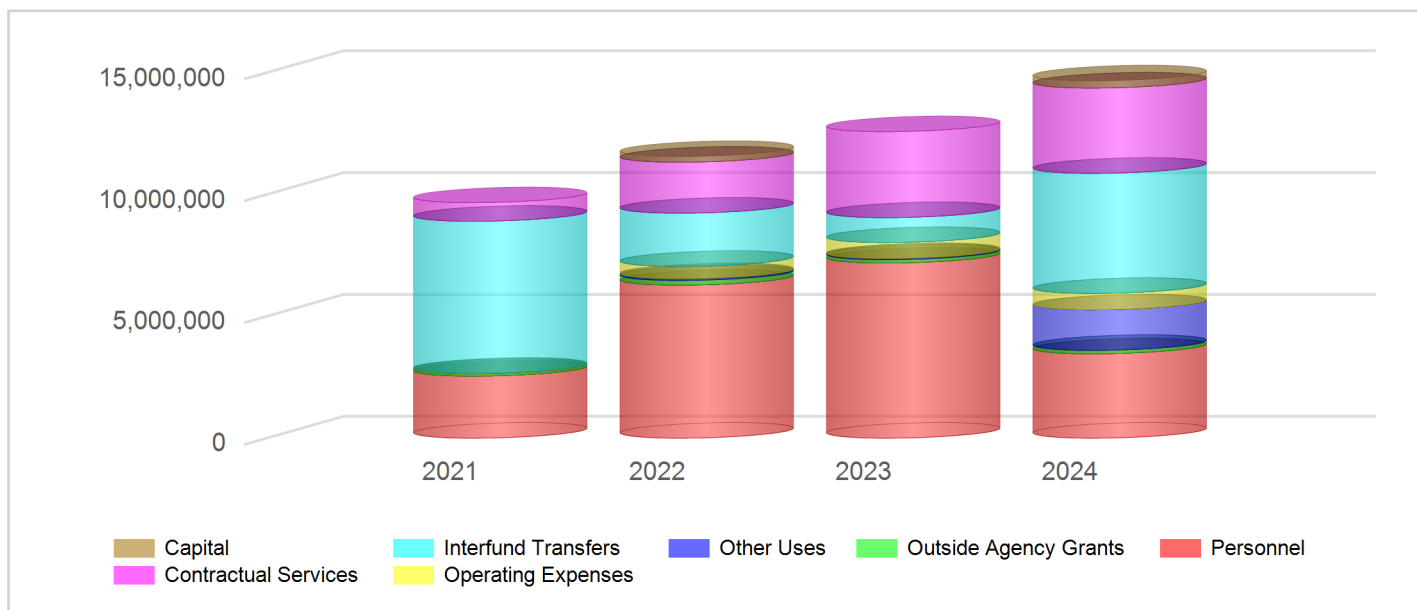


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August 22, 2023

Airport



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4500150 Airport Operations Gen Rev						
43000-Interest	183,948	472,393	50,000	50,000	0.00%	0
45798-Transfer In	8,031	0	0	0	0.00%	0
47080-COVID Grant Revenue	0	0	1,212,000	3,000,000	147.52%	1,788,000
49111-Gain/Loss Sale Of Securities	-20,780	-34,377	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-172,078	-3,284,667	0	0	0.00%	0
Total	-879	-2,846,651	1,262,000	3,050,000	141.68%	1,788,000

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4500500 Airport Operations Revenue						
46010-Parking Lot	3,868,121	6,131,322	4,500,000	4,635,000	3.00%	135,000
46015-Employee Parking	4,305	4,991	3,000	3,090	3.00%	90
46020-Off Airport Parking	16,124	17,012	10,000	10,300	3.00%	300
46210-Aviation	250,027	237,019	260,000	267,800	3.00%	7,800
46220-Terminal Building & Tower	4,290,212	5,207,353	3,700,000	3,811,000	3.00%	111,000
46230-Landing Fees	533,769	549,707	350,000	350,000	0.00%	0
46240-Gas & Oil - Terminal Gallonage	106,114	99,623	80,000	82,400	3.00%	2,400
46250-Aviation (Airpark)	137,615	137,615	150,000	154,500	3.00%	4,500
46260-Gas & Oil (Airpark Gallonage)	16,238	27,606	15,000	15,450	3.00%	450
46285-Water Royalty	73,048	78,807	15,000	15,450	3.00%	450
46287-Customer Facility Charge	0	555,240	0	0	0.00%	0
46290-Miscellaneous	104,625	199,461	100,000	103,000	3.00%	3,000
48050-Cash Over Or Short	0	-3	0	0	0.00%	0
48070-Discounts Earned	4,124	6,042	0	0	0.00%	0
49000-Right-Of-Way Or Air Way Sales	157,720	623,682	120,000	123,600	3.00%	3,600
49090-Sale-Oil & Gas (Net-Tax Trkg)	2,140,378	9,690,627	2,000,000	2,060,000	3.00%	60,000
49150-Recvr-Damages To City Property	1,507	-2,248	0	0	0.00%	0
Total	11,703,927	23,563,856	11,303,000	11,631,590	2.91%	328,590
Overall Total	11,703,048	20,717,205	12,565,000	14,681,590	16.85%	2,116,590

500107 Airport Police

Personnel	72	1,765,046	1,935,551	0	-100.00%	-1,935,551
Operating Expenses	0	0	4,923	0	-100.00%	-4,923
Contractual Services	0	133,808	96,819	0	-100.00%	-96,819
Total	72	1,898,854	2,037,294	0	-100.00%	-2,037,294

500122 Airport Fire

Personnel	0	2,058,024	2,169,400	0	-100.00%	-2,169,400
Operating Expenses	0	39,951	12,200	0	-100.00%	-12,200
Contractual Services	0	159,321	203,804	0	-100.00%	-203,804
Total	0	2,257,296	2,385,404	0	-100.00%	-2,385,404

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
500150 Airport Non Departmental						
Contractual Services	283,634	295,622	280,189	244,782	-12.64%	-35,407
Outside Agency Grants	89,316	167,070	140,000	140,000	0.00%	0
Interfund Transfers	0	239,282	1,024,229	4,931,828	381.52%	3,907,599
Other Uses	0	0	43,425	1,574,331	3525.37%	1,530,906
Total	372,950	701,973	1,487,843	6,890,941	363.15%	5,403,098
500199 Airport Interfund Transfer To						
Interfund Transfers	6,247,172	1,945,772	0	0	0.00%	0
Total	6,247,172	1,945,772	0	0	0.00%	0
500500 Airport Operations						
Personnel	2,547,996	2,461,987	3,089,256	3,465,862	12.19%	376,606
Operating Expenses	20,332	222,321	204,084	229,084	12.25%	25,000
Contractual Services	342,775	981,880	936,364	1,155,760	23.43%	219,396
Outside Agency Grants	0	27,342	0	0	0.00%	0
Other Uses	0	68,523	0	90,000	0.00%	90,000
Capital	0	237,303	0	299,736	0.00%	299,736
Total	2,911,102	3,999,356	4,229,704	5,240,442	23.90%	1,010,738
500505 Airport Terminal Building						
Operating Expenses	3,473	151,679	384,064	351,192	-8.56%	-32,872
Contractual Services	84,132	295,444	1,728,113	1,722,113	-0.35%	-6,000
Total	87,605	447,123	2,112,177	2,073,305	-1.84%	-38,872
500510 Airport Parking Lot						
Operating Expenses	20	7,839	31,800	28,800	-9.43%	-3,000
Contractual Services	6,889	155,976	249,047	305,247	22.57%	56,200
Total	6,909	163,815	280,847	334,047	18.94%	53,200
500515 Airport Airpark						
Operating Expenses	0	54,585	7,200	36,495	406.88%	29,295
Contractual Services	541	3,613	8,960	39,360	339.29%	30,400
Total	541	58,197	16,160	75,855	369.40%	59,695
500520 Airport Industrial Park						
Operating Expenses	0	33,273	13,500	30,500	125.93%	17,000
Contractual Services	46,276	66,866	27,500	36,500	32.73%	9,000
Total	46,276	100,140	41,000	67,000	63.41%	26,000
Overall Total	9,672,627	11,572,526	12,590,429	14,681,590	16.61%	2,091,161

GARAGE FUND



Garage Fund



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
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4750150 Garage Revenue

43000-Interest	86,648	190,116	75,000	100,000	33.33%	25,000
45812-Motor Vehicles Repairs	5,706,147	6,480,276	8,753,982	8,245,781	-5.81%	-508,201
45814-Motor Vehicle Lease	8,554,701	10,867,616	12,702,449	14,920,980	17.47%	2,218,531
45816-Fuel	2,117,745	3,540,520	3,303,733	3,972,169	20.23%	668,436
45915-Warehouse Handling Charges	167,666	278,669	120,000	120,000	0.00%	0
45960-Whse Chgs For COGS	873,971	831,539	650,000	650,000	0.00%	0
48060-Inventory Variation	27,162	-2,140	0	0	0.00%	0
48480-Reimbursement Of Budget Exp	0	89	0	0	0.00%	0
49030-Sale Of Equipment	463,089	205,624	100,000	100,000	0.00%	0
49035-Gain/Loss Sale Of Fixed Assets	-14,366	0	0	0	0.00%	0
49053-Sale Of Recyclables	1,225	3,655	0	0	0.00%	0
49111-Gain/Loss Sale Of Securities	-11,055	-13,930	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-81,819	-1,329,971	0	0	0.00%	0
49150-Recvr-Damages To City Property	92,301	86,690	0	0	0.00%	0
49200-Appropriated from Net Position	0	0	785,535	2,467,705	214.14%	1,682,170
Total	17,983,412	21,138,752	26,490,699	30,576,635	15.42%	4,085,936
Overall Total	17,983,412	21,138,752	26,490,699	30,576,635	15.42%	4,085,936

750150 Garage NonDepartmental

Contractual Services	86,690	95,082	131,010	167,925	28.18%	36,915
Interfund Transfers	740,697	740,697	691,865	578,896	-16.33%	-112,969
Total	827,387	835,779	822,875	746,821	-9.24%	-76,054

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August 22, 2023

SECTION: INTERNAL SERVICE

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
750751 Vehicle Services						
Personnel	832,290	754,190	843,435	874,614	3.70%	31,179
Operating Expenses	2,150,486	3,547,069	4,110,300	4,307,890	4.81%	197,590
Contractual Services	81,616	81,700	91,626	107,462	17.28%	15,836
Other Uses	97	0	563,625	563,625	0.00%	0
Capital	112,937	17,345	150,000	0	-100.00%	-150,000
Total	3,177,426	4,400,305	5,758,985	5,853,591	1.64%	94,605
750752 Garage Services						
Personnel	1,718,669	1,505,399	1,688,428	1,819,870	7.78%	131,442
Operating Expenses	3,039,342	3,466,834	3,956,421	3,927,600	-0.73%	-28,821
Contractual Services	564,785	468,467	933,342	1,009,359	8.14%	76,017
Other Uses	316	0	601,000	600,500	-0.08%	-500
Capital	7,843,044	5,600,331	11,877,232	15,723,533	32.38%	3,846,301
Total	13,166,157	11,041,032	19,056,423	23,080,862	21.12%	4,024,439
750760 Warehouse						
Personnel	120,045	113,829	113,350	120,662	6.45%	7,312
Operating Expenses	819,536	909,340	2,750	2,850	3.64%	100
Contractual Services	12,244	5,889	16,316	29,849	82.95%	13,534
Other Uses	0	0	720,000	742,000	3.06%	22,000
Total	951,825	1,029,058	852,415	895,361	5.04%	42,946
Overall Total	18,122,795	17,306,174	26,490,699	30,576,635	15.42%	4,085,936

TECHNOLOGY FUND

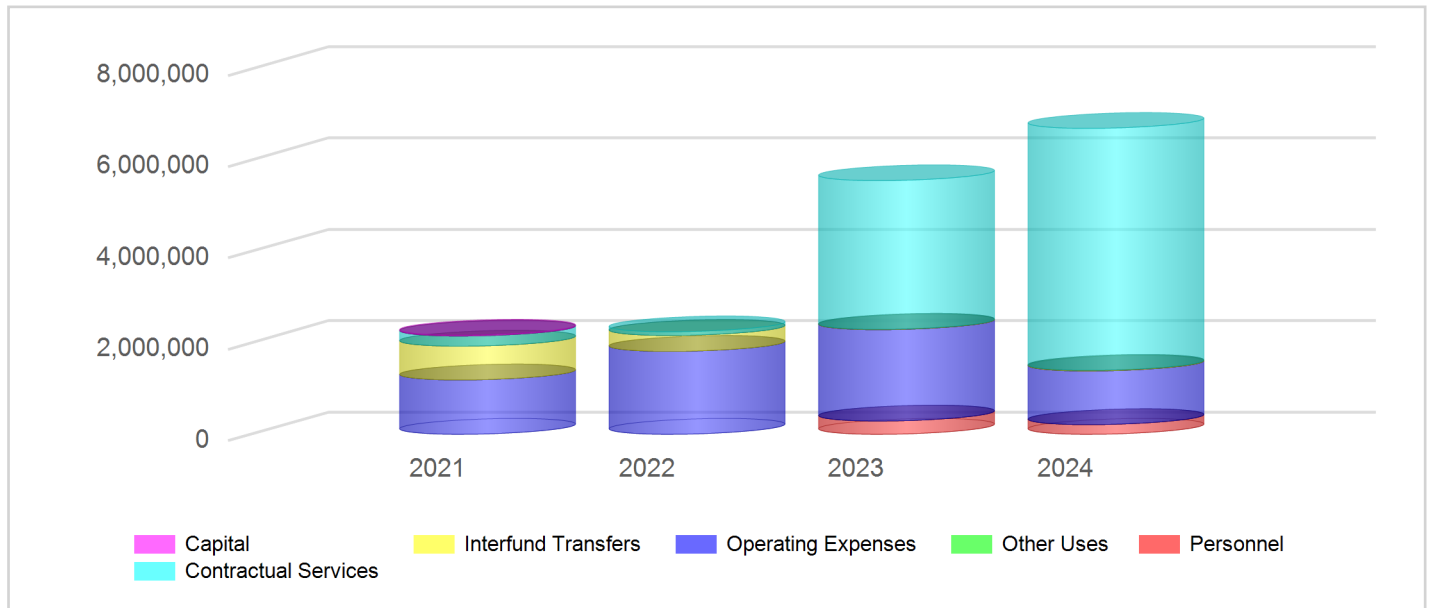


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August 22, 2023

Technology Fund

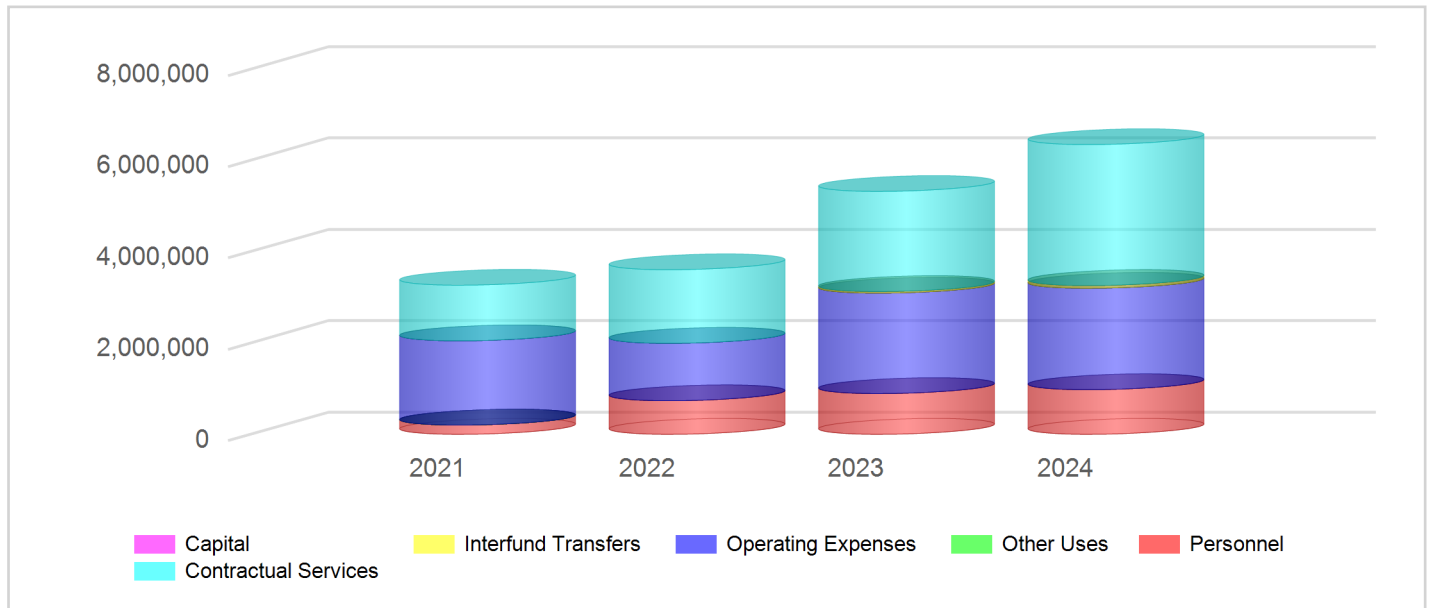


Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4770150 Technology Fund Revenue						
43000-Interest	15,276	15,969	10,000	10,000	0.00%	0
45819-Equipment Lease - Technology	1,162,460	1,182,141	5,255,573	6,691,729	27.33%	1,436,156
49111-Gain/Loss Sale Of Securities	-860	-1,023	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-11,741	-94,403	0	0	0.00%	0
49200-Appropriated from Net Position	0	0	194,207	0	-100.00%	-194,207
Total	1,165,134	1,102,685	5,459,780	6,701,729	22.75%	1,241,949
Overall Total	1,165,134	1,102,685	5,459,780	6,701,729	22.75%	1,241,949
770150 Technology NonDepartmental						
InterfundIn Transfers	0	0	9,739	15,342	57.53%	5,603
Total	0	0	9,739	15,342	57.53%	5,603
770199 Technology Interfund Transfer						
Interfund Transfers	739,155	348,524	0	0	0.00%	0
Total	739,155	348,524	0	0	0.00%	0
770770 Technology						
Personnel	0	0	290,637	211,254	-27.31%	-79,383
Operating Expenses	1,191,220	1,816,619	2,000,750	1,175,000	-41.27%	-825,750
Contractual Services	221,613	80,555	3,255,084	5,300,133	62.83%	2,045,049
Capital	19,524	0	0	0	0.00%	0
Total	1,432,358	1,897,174	5,546,471	6,686,387	20.55%	1,139,916
Overall Total	2,171,513	2,245,698	5,556,210	6,701,729	20.62%	1,145,519

RISK FUND



General Liability & Workers Compensation



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4700150* Workers Comp Self Ins Revenue						
43000-Interest	36,371	0	0	0	0.00%	0
45770-WC Gen Fund Contrib	895,090	0	0	0	0.00%	0
45771-WC Stormwater	1,296	0	0	0	0.00%	0
45772-WC Garage Contrib	36,137	0	0	0	0.00%	0
45774-WC Water & Sewer Contrib	163,053	0	0	0	0.00%	0
45775-WC Sanitation Contrib	132,518	0	0	0	0.00%	0
45776-WC Golf Contrib	16,843	0	0	0	0.00%	0
45778-WC Airport Contrib	41,961	0	0	0	0.00%	0
45782-WC Gen Liab Contrib	264	0	0	0	0.00%	0
49111-Gain/Loss Sale Of Securities	-3,756	0	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-32,471	0	0	0	0.00%	0
Total	1,287,306	0	0	0	0.00%	0

4702150 General Liability Revenue						
43000-Interest	32,361	126,201	0	0	0.00%	0
45705-Gen Liab Const Rev	50,000	0	0	0	0.00%	0
45770-WC Gen Fund Contrib	0	743,198	785,581	790,000	0.56%	4,419
45771-WC Stormwater	0	2,171	2,200	2,266	2.99%	66
45772-WC Garage Contrib	0	20,080	20,131	20,735	3.00%	604
45774-WC Water & Sewer Contrib	0	60,293	60,107	61,910	3.00%	1,803
45775-WC Sanitation Contrib	0	126,716	122,486	126,160	3.00%	3,674
45776-WC Golf Contrib	0	5,048	4,962	5,109	2.96%	147

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August 22, 2023

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4702150 General Liability Revenue (Cont.)						
45778-WC Airport Contrib	0	59,340	55,651	57,320	3.00%	1,669
45779-WC Sports Complex Contribution	0	0	693	693	0.00%	0
45782-WC Gen Liab Contrib	0	164	328	336	2.52%	8
45800-General Fund	1,085,924	1,455,661	1,222,858	1,342,070	9.75%	119,213
45810-Garage Fund	79,805	88,197	124,124	161,035	29.74%	36,911
45825-Hotel/Motel Fund	72,295	72,392	61,358	40,309	-34.30%	-21,048
45830-Water & Sewer Fund	710,517	397,412	510,009	615,249	20.63%	105,240
45840-Sanitation Fund	388,232	610,205	819,124	841,694	2.76%	22,570
45850-Golf Course Fund	1,798	1,794	1,511	982	-35.02%	-529
45870-Airport Operation Fund	228,195	256,735	240,185	204,781	-14.74%	-35,403
45872-Scharbauer Sports Complex Fund	30,368	30,539	31,650	45,586	44.03%	13,935
48480-Reimbursement Of Budget Exp	41,129	37,581	0	0	0.00%	0
49111-Gain/Loss Sale Of Securities	-4,357	-8,775	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-31,370	-838,520	0	0	0.00%	0
49200-Appropriated from Net Position	0	0	1,257,602	2,030,178	61.43%	772,577
Total	2,684,896	3,246,430	5,320,560	6,346,414	19.28%	1,025,854
Overall Total	3,972,202	3,246,430	5,320,560	6,346,414	19.28%	1,025,854

700710* Workers Compensation Costs						
Personnel	0	0	0	0	0.00%	0
Operating Expenses	1,336,834	0	0	0	0.00%	0
Contractual Services	11,138	0	0	0	0.00%	0
Capital	0	0	0	0	0.00%	0
Total	1,347,972	0	0	0	0.00%	0

702710** Workers Compensation Costs						
Personnel	0	84,644	165,682	176,343	6.43%	10,661
Operating Expenses	2,188	1,169,677	1,680,000	1,688,307	0.49%	8,307
Contractual Services	0	925	15,000	2,500	-83.33%	-12,500
Total	2,188	1,255,246	1,860,682	1,867,150	0.35%	6,468

702729 General Liability Legal						
Personnel	201,405	431,103	495,343	540,091	9.03%	44,748
Operating Expenses	795	4,794	6,800	12,200	79.41%	5,400
Contractual Services	13,424	36,579	49,957	50,350	0.79%	393
Total	215,624	472,475	552,100	602,641	9.15%	50,541

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August 22, 2023

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
702727*** Risk Management						
Personnel	0	219,204	231,068	260,712	12.83%	29,644
Operating Expenses	0	1,364	13,090	21,180	61.80%	8,090
Contractual Services	0	19,850	49,382	61,729	25.00%	12,347
Other Uses	0	0	0	0	0.00%	0
Capital	0	0	0	0	0.00%	0
Total	0	240,418	293,540	343,621	17.06%	50,081
702730 General Liability Costs						
Operating Expenses	506,519	82,107	500,000	500,000	0.00%	0
Contractual Services	1,193,871	1,554,882	2,077,830	2,972,225	43.04%	894,395
Other Uses	6	0	0	0	0.00%	0
Total	1,700,396	1,636,988	2,577,830	3,472,225	34.70%	894,395
702150 General Liability Non-Dept						
Interfund Transfers	0	0	36,408	60,777	66.93%	24,369
Total	0	0	36,408	60,777	66.93%	24,369
Overall Total	3,268,368	5,100,792	5,320,560	6,346,414	19.28%	1,025,854

*Fund 700 eliminated, operations moved to Fund 702 Budget year 2022

**Operations from Org 001026 reallocated to Org 702710 Budget year 2022

***Operations from Org 001027 reallocated to Org 702727 Budget year 2022

Employee Benefits & Unemployment Self Insurance



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4701150 Employee Benefit Fund						
43000-Interest	82,658	185,088	50,000	50,000	0.00%	0
44400-Employee Portion Health	1,236,600	1,217,970	1,800,000	1,800,000	0.00%	0
44405-Employee Portion Life Ins	120,201	109,922	100,000	100,000	0.00%	0
44407-Emp Long Term Disability	134,263	124,603	0	0	0.00%	0
44410-Retirees Portion Health	581,425	254,315	600,000	600,000	0.00%	0
44420-Dental Employee Portion	337,154	346,930	300,000	300,000	0.00%	0
44425-Vision Plan Employee	210,348	205,603	200,000	200,000	0.00%	0
45785-Employer Portion Health	10,485,633	11,152,885	10,500,000	11,025,000	5.00%	525,000
45790-Employer Life Ins Portion	148,442	134,652	150,000	150,000	0.00%	0
45799-City Portion - Retirees Health	961,700	961,701	1,000,000	1,050,000	5.00%	50,000
45945-Dental Employer Portion	407,654	446,466	350,000	367,500	5.00%	17,500
48490-Unclassified	0	-167	0	0	0.00%	0
49111-Gain/Loss Sale Of Securities	-9,742	-13,227	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-76,132	-1,263,334	0	0	0.00%	0
Total	14,620,203	13,863,409	15,050,000	15,642,500	3.94%	592,500

SECTION: INTERNAL SERVICE

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4703150* Unemployment Revenue						
43000-Interest	3,710	0	0	0	0.00%	0
45785-Employer Portion Health	40,854	0	0	0	0.00%	0
49111-Gain/Loss Sale Of Securities	-396	0	0	0	0.00%	0
49112-Inc/Dec In Fair Value Of Invst	-3,302	0	0	0	0.00%	0
Total	40,865	0	0	0	0.00%	0
Overall Total	14,661,063	13,863,409	15,050,000	15,642,500	3.94%	592,500

701720 Employee Benefit						
Personnel	0	66,770	90,047	108,809	20.84%	18,762
Operating Expenses	12,332,856	9,575,861	12,952,192	13,499,989	4.23%	547,797
Contractual Services	470,632	721,596	733,500	733,500	0.00%	0
Interfund Transfers	0	0	9,547	17,676	85.15%	8,129
Other Uses	0	0	1,264,715	1,282,526	1.41%	17,811
Total	12,803,488	10,364,227	15,050,000	15,642,500	3.94%	592,500

703740* Unemployment Expenses						
Operating Expenses	16,431	0	0	0	0.00%	0
Total	16,431	0	0	0	0.00%	0
Overall Total	12,819,919	10,364,227	15,050,000	15,642,500	3.94%	592,500

*Fund 703 eliminated, Operations moved to Fund 701 Budget year 2022

SINKING FUND



PACKET

25.129

August 22, 2023



City of Midland
Proposed Budget 2024

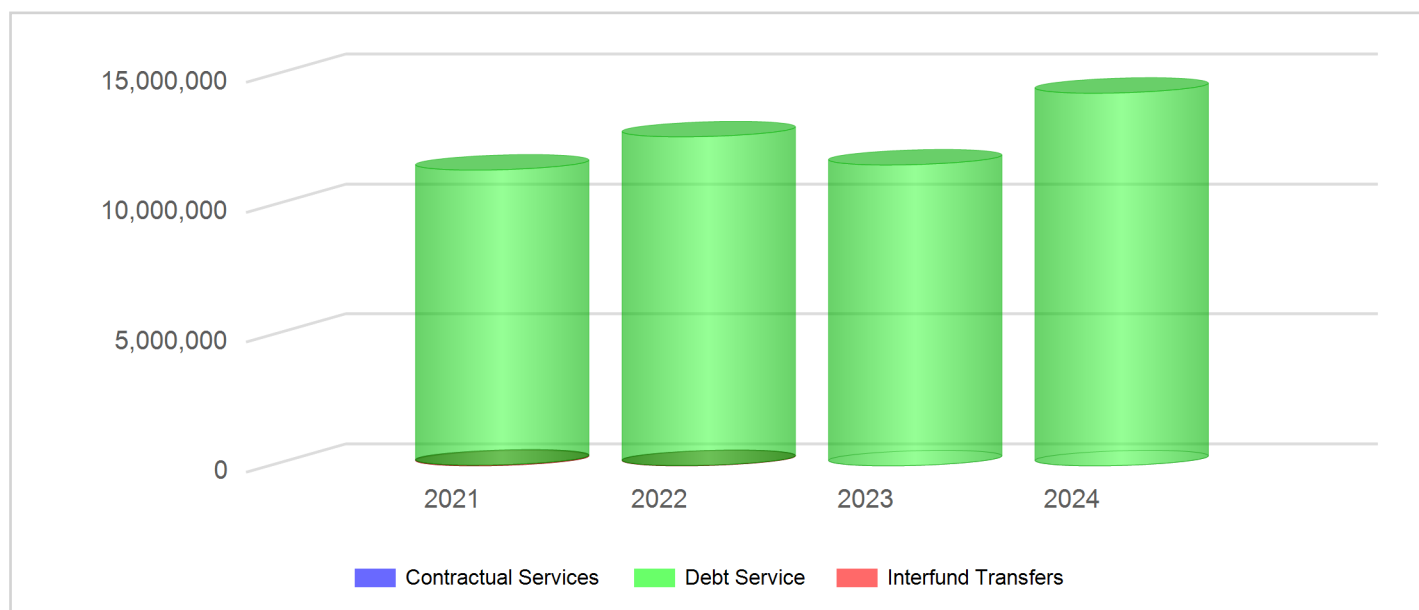
PACKET

Debt Service Summary
Fiscal Year 2024

Issuance	Total Principal	Total Interest	Fund 100 - General Debt		Water & Sewer		Golf Course		Midland Center	
			Principal	Interest	Principal	Interest	Principal	Interest	Principal	Interest
2023 GO	\$300,000	\$1,287,537	\$300,000	\$1,287,537						
2022A GO	\$0	\$7,560,693				\$7,560,693				
2022B GO	\$0	\$3,679,600				\$3,679,600				
2021 CO	\$1,685,000	\$1,658,725	\$765,000	\$753,925	\$920,000	\$904,800				
2021 Refunding 2012 GO	\$1,250,000	\$623,250	\$575,000	\$287,475	\$675,000	\$335,775				
2020 Refunding 2014 GO	\$1,610,000	\$246,914	\$1,498,966	\$229,886			\$111,034	\$17,029		
2020 GO	\$585,000	\$817,575	\$585,000	\$817,575						
2020 GO	\$765,000	\$834,225	\$260,000	\$283,800	\$505,000	\$550,425				
2019 GO Road Bond	\$1,185,000	\$1,459,875	\$650,000	\$876,950	\$535,000	\$582,925				
2019 GO-2009 Refunding	\$520,000	\$137,250	\$520,000	\$137,250						
2019 CO	\$275,000	\$300,075	\$275,000	\$300,075						
2018A Road Bond	\$2,115,000	\$1,928,313	\$1,035,000	\$975,463	\$1,080,000	\$952,850				
2018B	\$445,000	\$230,738			\$445,000	\$230,738				
2016 CO	\$785,000	\$1,011,800							\$785,000	\$1,011,800
Total	\$ 11,520,000	\$ 21,776,570	\$ 6,463,966	\$ 5,949,935	\$ 4,160,000	\$ 14,797,806	111,034		\$	1,011,800

August 22, 2023

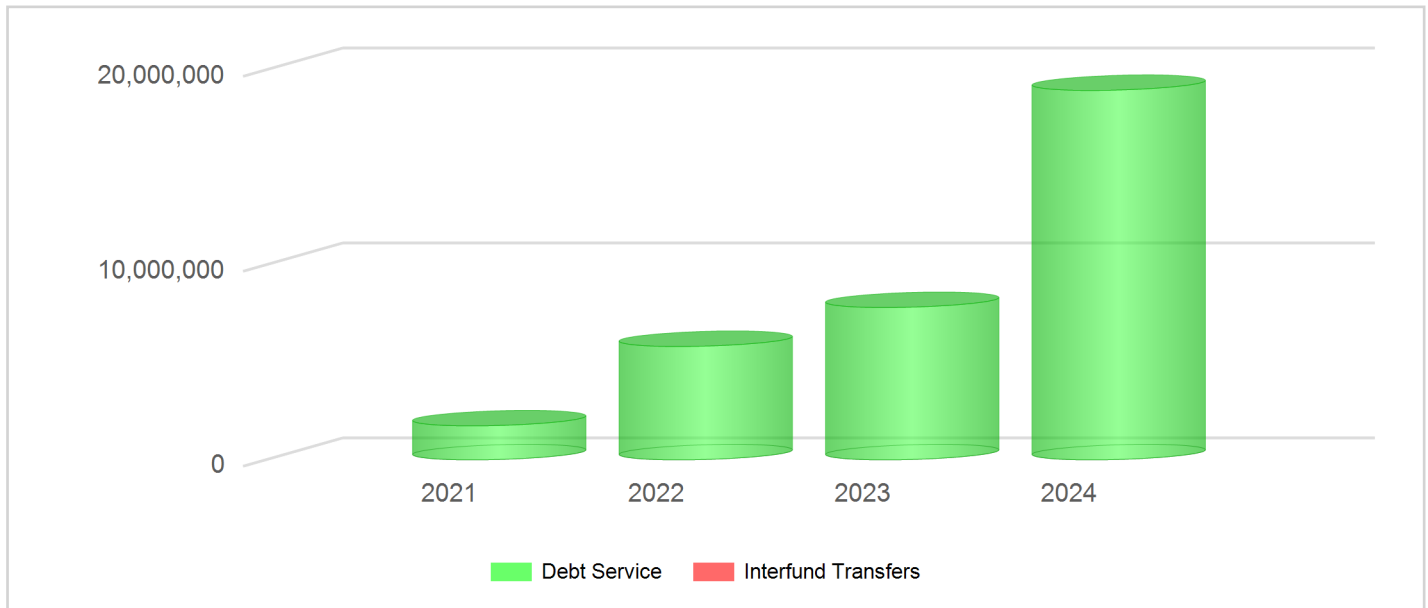
Finance Department



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4100035 Interest & Sinking						
43000-Interest	2,148	3,477	3,000	0	-100.00%	-3000
49111-Gain/Loss Sale Of Securities	-284	0	0	0	0.00%	0
Total	1,864	3,477	3,000	0	-100.00%	-3000
4100150 Interest & Sinking Fund Rev						
40010-Ad Valorem Current	9,873,536	9,448,896	8,782,630	12,413,901	41.35%	3,631,271
40020-Ad Valorem Delinquent	68,945	176,796	0	0	0.00%	0
40025-Ad Valorem Prior Year Reversal	36,776	-38,632	0	0	0.00%	0
43000-Interest	0	0	999	0	-100.00%	-999
45090-Hotel/Motel Fund Interfund	515,711	1,793,275	1,793,825	1,796,800	0.17%	2,975
45175-CO14 ST BS Bond 175 IF	111,015	0	0	0	0.00%	0
45440-Golf Course Fund Interfund	0	0	0	128,063	0.00%	128,063
48490-Unclassified	0	246	0	0	0.00%	0
49200-Appropriated from Net Position	0	0	1,000,000	0	-100.00%	-1,000,000
Total	10,605,982	11,380,582	11,577,454	14,338,764	23.85%	2,758,310
Overall Total	10,607,846	11,384,059	11,580,454	14,338,764	23.82%	2,758,310
100150 Debt Service						
Debt Service	11,354,795	12,649,897	11,580,454	14,338,764	23.82%	2,758,310
Total	11,354,795	12,649,897	11,580,454	14,338,764	23.82%	2,758,310

Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
100199 Int & Sink Fund						
Interfund Transfers	29,551	12,750	0	0	0.00%	0
Total	29,551	12,750	0	0	0.00%	0
Overall Total	11,384,346	12,662,647	11,580,454	14,338,764	23.82%	2,758,310

Utilities - Debt Service



Accounts	2021 Actuals	2022 Actuals	2023 Original Budget	2024 Proposed Budget	Variance	Difference
4303150 Debt Service Revenue						
43000-Interest	13,729	0	0	0	0.00%	0
45798-Transfer In	-9,983,474	7,813,161	7,817,730	18,957,806	142.50%	11,140,076
49101-Proceeds Of Refunding Debt	0	7,097	0	0	0.00%	0
49110-Othr Fin Sources-Debt Issuance	-141,590	0	0	0	0.00%	0
49111-Gain/Loss Sale Of Securities	3,000	0	0	0	0.00%	0
Total	-10,108,335	7,820,258	7,817,730	18,957,806	142.50%	11,140,076
Overall Total	-10,108,335	7,820,258	7,817,730	18,957,806	142.50%	11,140,076

303150 Debt Service						
Debt Service	1,745,549	5,819,476	7,817,730	18,957,806	142.50%	11,140,076
Total	1,745,549	5,819,476	7,817,730	18,957,806	142.50%	11,140,076
Overall Total	1,745,549	5,819,476	7,817,730	18,957,806	142.50%	11,140,076

MISCELLANEOUS FUND



DEPARTMENT/DIVISION FUNCTIONS

ADMINISTRATION/LEGISLATIVE:

LEGISLATIVE: The powers of government, as outlined by the City Charter and other laws, are maintained by the Mayor and Council. This body is responsible for policy leadership, the general direction of the City's government, and the appointment of various boards as the occasion arises.

CITY MANAGER OFFICE: The City Manager is the chief administrative officer of the City. He and his office are responsible directly to the Council for the execution of policies of the Council. This office is responsible for the enforcement of all laws, the appointment of all department managers with the approval of the Council, except the City Attorney, City Secretary, and the Municipal Court Judge and performs duties prescribed by the City Charter and the City Council.

PUBLIC INFORMATION: The Public Communications Office handles all media and public relations for the City of Midland representing every department/division; handles special projects for the City Manager's Office and City Council including but not limited to Annual Report, Mayor's State of the City Address, and various public relations or marketing projects as they arise; assists in marketing and special projects for all other departments. Manages and oversees the Citizen's Action Center and various other resident communication tools such as City of Midland newsletters, educational programs (Such as Midland 101), social media memberships, and City TV programming. Manager of city branding, logos, and images; designs, maintains, and produces the City of Midland website, social media sites, and other promotional print material as directed.

MUNICIPAL COURT:

MUNICIPAL COURT: The Municipal Court Judge is appointed by the City Council and holds court five days a week. The office personnel are under the general direction of the Municipal Court Judge. The office prepares and maintains records and files which pertain to court procedure. The department also serves warrants and in general makes collections for all fines assessed by the Judge.

MUNICIPAL COURT TIME PAYMENT: The Time Payment Fee is a special revenue fee that is restricted by the City for specific purposes. Article 102.030 of the Code of Criminal Procedure mandates that \$15.00 be collected from a person convicted of a misdemeanor and pays any part of the fine, court costs, restitution, or another reimbursement fee on or after the 31st day after the date judgment is entered. The City must deposit this fee into a separate account in the city's general revenue fund to be used for the purpose of improving the collection of outstanding court costs, fines, reimbursement fees, restitution, or improving the efficiency of administration of justice.

MUNICIPAL COURT TECHNOLOGY: This fund is to account for fees collected from the defendant upon conviction for a misdemeanor offense in the City of Midland Municipal Court as a cost of court. These funds are restricted for the purchase of technological enhancements for the benefit of the City of Midland Municipal Court by Texas Code of Criminal Procedure Article 102.0172.

MUNICIPAL COURT SECURITY: This fund is to account for fees collected from the defendant upon conviction for a misdemeanor offense in the City of Midland Municipal Court as a cost of court. These funds are restricted for the purchase of building security enhancements for the benefit of City of Midland Municipal Court by Texas Code of Criminal Procedure Article 102.017.

LEGAL DEPARTMENT: The City Attorney and his staff are responsible to the City Council. The department represents the City in all lawsuits and hearings; provides legal advice to all departments; and prepares necessary documents in relation to contracts, ordinances, resolutions, and other legal instruments as needed.

CITY SECRETARY'S OFFICE: This office carries out the duties outlined in the City Charter. The Secretary is required to attend all Council meetings and keep accurate minutes of the proceedings; she maintains and files all documents, books, papers, and contracts of a legal nature; she countersigns all commissions and licenses. She is the keeper of the City Seal and affixes it to documents and papers as needed when legally authorized to do so; she maintains records of all appointments to various boards and commissions. The City Secretary attends bid openings which exceed \$25,000.

ADMINISTRATIVE SERVICES:

HUMAN RESOURCES: The objectives of this department are to serve all departments and divisions by recruiting permanent, part-time, and seasonal employees. The division also maintains classification and compensation schedules; keeps personnel records on all employees; directs the City's employee benefit programs; serves as a central agency for employee recognition and training programs, and conducts other activities compatible with a sound human resource management system including policy development and enforcement.

EMPLOYEE BENEFITS: The objective of this division is to promote health and wellness initiatives in the workplace, provide health and wellness services to eligible employees, retirees, and dependents via established programs and clinics. The division is also responsible for major workforce health related programs such as FMLA compliance, workers' compensation records and services, and pre-employment physical assessments. The Employee Benefit fund accounts for the revenues and expenditures of group life insurance, medical insurance, and dental insurance. This is the City's self-insurance plan for the employees, their dependents, and our retirees. Departments of the City are charged a premium consistent with the cost of comparable insurance plans. These funds pay the claims and administrative costs when presented.

RISK MANAGEMENT: The Risk Management Division's objectives are to minimize risk, create a safe work environment and plan for or prevent events that could hinder the effectiveness of City government. Core functions include handling liability claims investigations and processing, conducting accident investigations, safety training, managing the workers' compensation program, administering employee drug and alcohol screening programs, chair and administer the Accident Review Board. The division is responsible for the operational management of general liability, general liability auto, and workers' compensation funds, and procurement and

SECTION: MISCELLANEOUS

management of Property, Error and Omission, Law Enforcement Liability, Special Events and Aviation insurance coverage.

COMMUNICATIONS & INFORMATION SYSTEMS:

ADMINISTRATION: The Administrative Division of Communications and Information Systems consists of the Department Director and Administrative Secretary. The Director is responsible for the management of the Communications and Information Systems Department. The Administrative Secretary, in addition to providing secretarial services for the Department Director, is responsible for all voice and data telecommunications orders and changes as well as review of all telecommunications invoices for payment.

INFORMATION SYSTEMS: Information Systems is responsible for the computer processing of the financial, payroll/personnel, purchasing, inventory, equipment and vehicle preventative maintenance, and utility billing information's systems for the City of Midland. The division's programming group is responsible for application software development, maintenance, and enhancement of these computer systems. In addition, the programming group supports all personal computer installations in the City and provides programming support for the Engineering Geographical Data Base System.

COMMUNICATIONS MAINTENANCE: This division is responsible for all radio maintenance for the entire City.

TECHNOLOGY: This division is responsible for the purchase of technological assets of the City. This division analyzes City wide technology needs and budgets replacements and new acquisitions for the entire City.

GIS ADMINISTRATION: The purpose of the Geographic Information System (GIS) Division is to administer, edit, and display the City of Midland spatial and nonspatial data. The Division provides and maintains geographic data, custom mapping applications, and static maps to City employees and the general public. The Division also provides GIS training and support services to end users in multiple City departments and other outside agencies.

FINANCE DEPARTMENT:

FINANCE ADMINISTRATION: The Finance Administration Division oversees all aspects of the City's financial operations. The Finance Director leads accounting staff, oversees internal controls, engages with investors, evaluations investments, monitors expenditures and manages tax compliance. The Budget Team is responsible for all aspects of developing, implementing, and monitoring the City's annual budget. The team evaluates the needs of each department, creating short and long-term budget strategies to align funds with the current economic situations. The budget is designed and implemented to comply with legislation while ensuring growth and sustainability.

ACCOUNTING: Accounting maintains budgetary controls on all expenditures and revenues of the City; maintains central accounting records; distributes and prepares financial statements; disburses on all City obligations; and has a general responsibility for financial forecasting and planning.

SECTION: MISCELLANEOUS

TREASURY: Treasury determines cash flow needs for payrolls, commodities, special services, and projects and insures that funds will be available when required. Funds in excess of present requirements are carefully and professionally managed to preserve capital and optimize safe and secure return. Treasury also maintains the banking accounts, revenue, accounts receivable, debt service and investments.

CASHIERING: The Cashiering Division works to ensure that cash receipts from various departments of the City are collected daily, properly recorded and are timely deposited at the bank.

CUSTOMER SERVICE: This office reports to the Finance Director. The division performs work related to new utility customers, preparation of bills, complaints and adjustments, bad order meters, the closeout of customers' accounts and the collection of delinquent utility bills. This division also repairs and replaces water meters.

GENERAL SERVICES DEPARTMENT:

PURCHASING: The Purchasing Division is responsible either directly or through delegation of authority, for the purchase or contracting of all materials, supplies, equipment and contractual services needed by any and all departments of the City. The Purchasing Agent reports to the Director of Facilities and Fleet Management. The duty of the Purchasing Agent is to assure that the Division's responsibilities are carried out in compliance with policies and statutes.

FACILITY SERVICES: This division maintains City Hall, Loraine Center, ten fire stations, Municipal Court, Animal Control, two Senior Centers, Health Department and several operations buildings, and does much of the maintenance of other city buildings. This division budget provides funds to pay for maintenance of heating and cooling equipment, janitorial services, general maintenance and remodeling services, and payment of electrical and natural gas bills for most of the above-mentioned facilities.

DEVELOPMENT SERVICES:

PLANNING & DEVELOPMENT: This division has the responsibility of providing technical assistance to the Planning and Zoning Commission and to the City Council on matters relating to land use, zoning, and the processing of subdivisions. This division conducts planning studies, maintains graphs and charts, land use maps, and zoning maps pertinent to planning the logical development of the City.

COMMUNITY DEVELOPMENT: This division is responsible for daily program management, oversight and coordination of the Community Development Block Grant (CDBG) program. The division prepares the annual application for funds, maintains the Consolidated Plan for Community Development and Housing Funds, contracts with subrecipient agencies, conducts fair housing programming and environmental reviews, monitors all CDBG projects, and addresses a variety of federal requirements on a general basis and for project specific situations. Additionally, the division administers the City housing programs - housing rehabilitation loans, emergency repair grants and home purchase assistance loans.

CODE ADMINISTRATION: This division makes detailed inspections of all new building, plumbing, electrical facilities, and other mechanical installation; issues various construction permits, collects water and sewer pro rata and tap fees; enforces building, electrical, plumbing, zoning, sign, swimming pool, water well and trailer park ordinances; and property maintenance codes pertaining to such matters as dilapidated structures, junk vehicles, weeds and debris, and nuisance water in streets. The division seeks out code violations and attempts to bring them into compliance. Contracts are prepared and supervised for removal of dilapidated structures and clearing of weedy lots. Complaints are filed in Municipal Court when other code violations are not corrected. The division also processes appeals to the Building Code Board of Appeals and Zoning Board of Adjustment, and reviews and proposes updating of the various codes on a continuing basis as needed.

ENGINEERING DEPARTMENT:

ENGINEERING SERVICES: The Engineering Division is one of four divisions within the Engineering Services Department and includes the responsibility for administration and oversight of the department. The Division is also responsible for review and permitting of development projects; design, review, construction management, and inspection of transportation and utility capital improvement projects; floodplain administration for the City and County; and general engineering support to internal and external customers.

TRAFFIC OPERATIONS: The Traffic Operations Division is one of four divisions within the Engineering Services Department. Its purpose is to operate and maintain traffic control and safety devices on public rights-of-way within the City limits. This includes the operation, maintenance, repair, and improvement of pavement markings, signs, traffic signals, street lighting, school flashers, emergency warning sirens, and various other traffic control devices. The Division's responsibilities also include traffic engineering review of capital and development projects; oversight of right-of-way access permitting and licensing for all City departments; collection, analysis and dissemination of traffic data; and support of other divisions for special events and emergency response.

TRANSPORTATION: The Transportation Division is one of four divisions within the Engineering Services Department. Its purpose is to operate and maintain public rights-of-way within the City limits. This includes the operation, maintenance, repair, and improvement of paved and unpaved public streets and alleys, drainage channels and basins, storm drain systems, and other related infrastructure. The Division's responsibilities also include support of city-sponsored special events and emergency response for flooding, brush and wildland fires, snow and ice events, and various other weather-related, natural and man-made incidents.

DRAINAGE FUND: Drainage (or Storm Water) Services, provided by the City Engineering Division. Providing educational information to residents, developers and contractors on the Storm Water/Drainage system and regulations. The main goal of the storm water management plan is to reduce pollutants that may be washed into the drainage system by rain. The goal of the construction element of the City of Midland's Drainage/Storm Water Management Program is to protect receiving waters from pollutants occurring at construction sites and to provide guidance and promote the continued growth in and around Midland in a manner that is compliant with federal, state, and local storm water regulations.

COMMUNITY SERVICES:

PARKS: The Community Services Director has general responsibility for all programs in Parks, Recreation, Health and Senior Services, Hogan Park Golf Course and Animal Services. The parks function of this division provides for general purpose public parks. The Park division develops and maintains a quality park system throughout the City of Midland

ANIMAL SERVICES: This division picks up and impounds stray animals, picks up dead animals, keeps records of all animals impounded, issues receipts of all fees collected, maintains the shelter properly, and enforces ordinances as passed by the City Charter and state laws as mandated.

RECREATION: The recreation function provides liaison support to numerous nonprofit and civic organizations which in turn provide for and carry out a full scope of recreational services for the citizens throughout the year. In addition to programs offered by the City, the recreational function is also carried out through a system of privatization contracts and operating agreements. The Martin Luther King Jr. Community Center provides a facility for the citizens to socialize and programming for wellness opportunities. Youth development activities are also housed in this facility. Rooms at the Martin Luther King Jr. Center are available for public use through a rental system, as are rentals of other city parks and park facilities.

HEALTH DEPARTMENT: This department is concerned with the prevention of disease and promotion of good health and well-being by community effort. Various programs carried out by this department are environmental sanitation, food establishment inspection, vector control, public health laboratory services, public health education, communicable disease control, public health laboratory services, and the maintenance of records on vital statistics such as immunization, and all illness.

SENIOR SERVICES: Senior Services provides programming to Midland's senior population and maintains two senior centers.

GOLF COURSE FUND: This division is responsible for minor construction, maintenance, development, and operation of the Municipal Golf Course and related activities.

PRO SHOP OPERATIONS: This division is responsible for minor construction, maintenance, development, and operation of the Municipal Golf Course and related activities.

PARKS OIL & GAS SPECIAL PURPOSE: This fund accounts for all the donated funds for Parks and Recreation activities. It also accounts for all revenue and expenditures related to oil leases tied to park land. Funds collected from the oil leases are used for construction and replacement projects for the City's parks.

SCHARBAUER SPORTS COMPLEX: The Sports Complex is a full-service baseball park, football, and soccer stadium with a pavilion for concerts & other shows that includes the Momentum Ballpark, Cimarex Energy Pavilion, and Astound Broadband Stadium. Scharbauer Sports Complex is home to the Midland Rockhounds, a minor league baseball team based in Midland, Texas. The Sports Complex has four multi-purpose fields that can be used for practice and/or games and seats 6,669 fans.

POLICE DEPARTMENT:

COMMUNICATIONS: The Communications Division is responsible for Midland's Public Safety telecommunications endeavor. This responsibility ranges from taking emergency 911 calls to communicating via a nationwide law enforcement computer network; from dispatching via two-way radio, to researching and installing state-of-the-art radio communications equipment. Since the 1991-92 fiscal year, the centralized dispatch center has provided dispatching services for the county sheriff's office, as well.

AIRPORT POLICE: The function of the Airport Police is to provide 24-hour security for the Midland International Airport. Officers patrol secured areas of the airport and respond to aircraft alerts. They provide security at the screening checkpoint which ensures the safety of passengers and airport employees. The Airport Police work closely with Airport Operations, Midland Fire Department, US Transportation Safety Administration, US Immigrations and Customs Enforcement, and the Federal Aviation Administration. Additionally, they provide some patrol functions in the recently annexed areas near the airport.

CVE: The basic function of the Commercial Vehicle Enforcement is weighing and checking commercial vehicle traffic operating over the public highways of this state so that compliance with the statutory provisions of law regulating weight, motor carrier safety, registration, transportation of persons, hazardous material and other property can be obtained.

POLICE ADMINISTRATION: This bureau is responsible for the administration of the entire department. In addition to those services, the Administrative Services Bureau is responsible for the offices of: Internal Affairs, Accreditation, and Personnel and Recruiting.

SUPPORT SERVICES: The Support Services Bureau is responsible for physical fitness training, in service / firearms training, telephone response reporting, police records, data entry, and property and evidence, purchasing / supply and grants. In addition, this bureau is responsible for liaison between the Police Department and the Information Systems Department for communications and computers.

FIELD OPERATIONS: The Field Operations Bureau is the department's largest bureau. The bureau's objective is to assist in the creation and implementation of policing procedures that not only combat the criminal element but also eliminate conditions that lead to crime. The bureau's purpose is to provide "first response" to all calls for police service. The bureau is comprised of the Patrol Division and the Traffic section. Specialized units within the bureau consist of Field Training Office Program, the Explosive Ordinance Detail, Emergency Operations, Bicycle Patrol, the ATV (all-terrain vehicle) Unit, K-9 Unit, and the Gang Suppression Unit. Personnel assigned to the bureau are responsible for police patrol duties, traffic control, accident investigations, initial criminal investigations, handling of explosive devices, emergency operations, training newly graduated police recruits, and car program.

INVESTIGATIVE SERVICES: The purpose is to investigate all criminal offenses assigned to the various sections within the Bureau. Investigative Service Bureau personnel will initiate and conduct thorough investigations, prepare and execute arrest and/or search warrants, prepare case reports and any other documentation or assignments required to present complete cases to

SECTION: MISCELLANEOUS

the appropriate prosecuting authority for successful prosecution of defendants. The Investigative Services Bureau gathers and disseminates information concerning criminal activity to other divisions within the Police Department. Community Relations is also assigned to this bureau. Some of the programs that they coordinate include: Cadet Program, Citizen Police Academy, and National Night Out.

POLICE LEOSE: This fund accounts for funds received from the State of Texas for the purpose of providing training to sworn officers. LEOSE stands for Law Enforcement Officers Standards and Education.

POLICE TECH & EQUIPMENT FUND: This fund will account for all donated funds received by the fire department.

FIRE DEPARTMENT: This department, under the direction of the Fire Chief, is responsible for the protection of life and property, the enforcement of fire ordinances, fire prevention, fire suppression and rescue work. The department answers all fires and related emergency calls within Midland County.

FIRE TRAINING: This division is under the direction of the Fire Chief and is responsible for all areas of training for the Fire Department.

FIRE PREVENTION: This division is under the direction of the Fire Chief and is headed up by the Fire Marshal. The division is responsible for all fire prevention activities as well as fire investigations and building code inspections.

EMERGENCY MEDICAL: This division is under the direction of the Fire Chief and operates the six ambulances stationed at the fire stations.

AIRPORT FIRE: This division is responsible for all fire and crash rescue service at the Airport.

EMERGENCY MANAGEMENT: This division is under the Fire Chief. It is responsible for coordinating all the components of the emergency management system in the jurisdiction. These components consist of fire and police, emergency medical service, public works, volunteers, and other groups contributing to the management of emergencies. This division is to make certain that the components on the emergency management system know the threats to the jurisdiction, plan for emergencies, can operate effectively in an emergency, and can conduct recovery operations after a disaster.

FIRE LEOSE FUND: This fund accounts for funds received from the State of Texas for the purpose of providing training to sworn officers. LEOSE stands for Law Enforcement Officers Standards and Education.

FD TECH & EQUIPMENT FUND: This fund will account for all donated funds received by the fire department.

GENERAL FUND NONDEPARTMENTAL: This division was established to account for all expenditure items that are not found exclusively within the functional responsibilities of any one General Fund department. The costs cover a broad range of expenditures associated with general City operations.

INTERFUND TRANSFER: This division accounts for the transfers from the General Fund to other funds to support activities that those funds cannot fully support.

HOTEL/MOTEL FUND:

HOTEL MOTEL: These are the allocations made from the Hotel/Motel Tax to various agencies.

BUSH CONVENTION CENTER: This division captures the cost of operating Bush Convention Center as well as records the debt service expense for the Bush Center Certificate of Obligations.

DEBT SERVICE: The Interest & Sinking Fund tracks the revenues such as the ad valorem tax and contributions from other funds for payment of bonds and certificates of obligations. The debt payments are also tracked in this fund.

WATER & SEWER DEPARTMENT:

UTILITIES NON-DEPARTMENTAL: This division was established to account for all expense items that are not found exclusively within the functional responsibilities of any one Water & Sewer Fund department. This division accounts for the transfers to the Water and Sewer Debt Service accounts and transfers to support miscellaneous projects financed by operating funds.

UTILITIES ADMINISTRATION: Personnel of the administrative division are responsible for the direction, supervision, and management of the following organizations within the Utilities Department: Water & Wastewater Operations, Paul Davis Well Field, Airport Well Field and Towers, Water Pollution Control Plant, Spraberry Farm, Water Purification Plant, Water & Wastewater Maintenance, Environmental Compliance and the MBR plant. Three Superintendents head these divisions.

ENVIRONMENTAL COMPLIANCE: Personnel of this division operate the water laboratory associated with the Health Department. This lab conducts tests for the City as well as other water systems in the region. They also operate the laboratory that provides information for control of the City's Water and Wastewater Plants.

T-BAR WELL FIELD: This division is responsible for the operation and maintenance of the T-Bar and Clearwater well fields out in Winkler and Loving Counties. The system operates over 50 wells and has the capacity to send up to 20 million gallons of water from the fields to the City. The division is privately operated and managed by the Utilities Department, the system operates on a 24-hour basis.

WATER POLLUTION CONTROL: This division is responsible for the treatment of sewage according to the standards set by the Texas Commission on Environmental Quality (TCEQ). The division operates the plant every day on a 24-hour basis.

PURIFICATION PLANT: This division is responsible for treating an adequate daily water supply according to standards set by the Texas Commission on Environmental Quality (TCEQ). Includes operating the Airport Well Field, which operates City water pumping stations and is responsible for the operation and maintenance of the well field collection and supply lines at Air Terminal and ground and elevated water storage reservoirs. Also responsible for the treatment of sewage according to the standards set by the Texas Commission on Environmental Quality (TCEQ). The division operates every day on a 24-hour basis

SECTION: MISCELLANEOUS

WATER & WASTEWATER MAINT: This division is responsible for the distribution of water and collection of sewage throughout the City. The division maintains water mains, fire hydrants, valves, sewer mains, manholes, and lift stations. Short main line extensions, line replacements and taps for service connections are installed by the division.

SANITATION DEPARTMENT:

SOLID WASTE MANAGEMENT: This division is responsible for the collection of refuse and its delivery to the Landfill. They also collect recyclable materials from drop-off points for delivery to our recycle contractor; provide a large item pickup service; and provide hauling service for the yard waste sites.

LITTER ABATEMENT: This division is responsible for the management of the Litter Abatement Fee.

RECYCLE: This is a new division that was extracted from the Solid Waste and Landfill divisions. The division operates the Citizens Collection Station and is responsible for the collection of recyclable materials from drop-off points for delivery to our recycle contractor and the handling and processing of yard waste and large items taken in at the Citizens Collection Station.

LANDFILL: This division operates the Landfill according to the standards set by the Texas Commission on Environmental Quality (TCEQ). The Landfill is open from 7:30 a.m. through 5:30 p.m., Monday through Saturday.

MIDLAND AIRPORT:

AIRPORT OPERATIONS: This division, under the direct supervision of the Aviation Director, is responsible for providing for the safety and convenience of the flying public. It is also responsible for the operation and maintenance of the runways, roads, ramps, electrical systems, and the repair and maintenance of warehouses, hangers, and buildings in the "aviation use area".

TERMINAL BUILDING: The division is responsible for providing for the convenience and necessities of the flying public and other persons using the Terminal Building and surrounding area. It is also responsible for the repair, maintenance, and operation of the Terminal Building, car rental building, and the control tower.

PARKING LOT: This division is responsible for the operation and policing of the parking lot during the hours the Terminal Building is open for business.

AIRPARK: This division carries out activities related to the repair, maintenance, and operation of the Airpark.

INDUSTRIAL PARK: This division is under the general supervision of the Director of Airports. The employees of this division assist in the maintenance of buildings and grounds in the Industrial Park area next to Air Terminal.

SECTION: MISCELLANEOUS

FY2024 Capital/Fixed Asset Proposed Budget			
Department	Division	Capital Detail	Amount
General Services	Information Systems	Doorway-Administrative Assistant	5,500
		Doorway datacenter	7,500
	Facilities Services	Cast iron plumbing needs to be replaced	120,000
		Several cracks throughout inside of the center need to be tape/bed/textured	11,000
		Replace 3 windows	5,700
	MLK center	Replace pipes that are leaking	12,000
		Missing bricks on the outside of building	13,000
		Several cracks in mens restroom need to be tape/bed/textured	6,000
		HVAC Replacement at MLK center 10 units	100,000
	Health & Sen. Serv.	Center needs a new fresh coat of paint	25,000
		New Generator	50,000
	PD Field Operations	New concrete on the east ramp	150,000
		New gate for entrance	7,500
		Refurbishing of Training Facility restrooms and showers	100,000
		Parking lot security fence	65,000
	Fire Department	Roof needs to be replaced	50,000
		New countertops	30,000
		New concrete for south ramp	22,500
		New countertops	30,000
		New fence on the west side of the station	11,000
		Roof needs to be replaced	88,000
		New shower bench	1,000
		LED lights throughout the station	46,000
		Station needs new paint, tape/bed/textured	30,000
		Exterior lights need to be upgraded	9,000
		Restripe parking lot	20,000
		New flooring	85,000
		Roof needs to be replaced	50,000
		Fence needs to be finished	16,000
		Exterior lights need to be upgraded near bay area	9,000
		SCBA Compressor	92,000
		Bunker lockers	28,000
		Bedroom doors	29,000
		Bay ventilation	9,400
		Polished floors	80,000
		New oven	10,000
		New countertops	30,000
			All stations garage door upgrade light sensors
	Golf Course	Replace carpet in the snack area and Pro-Shop	28,000
	Utilities Admin.	Safety shower and drain for water laboratory	7,000
		Drain for the existing safety shower at the wastewater laboratory	8,000
	Fleet Services	Upgrade security lighting	8,000
		Pavement is coming up near bay doors, shop area	15,000
		Install new ventilation fans in the welder's bay	20,000
		Upgrade and/or replace main entrance gate motor assemble & motors/senors for the garage doors	100,000
		Replace the in ground lifts	138,750
Total for General Fund: \$			1,818,850

SECTION: MISCELLANEOUS

FY2024 Internal Service Funds			
Department	Division	Capital Detail	Amount
Garage	Municipal Court	Police SUV with Upfitting	71,000
		Police SUV with Upfitting	71,000
	Information Systems	SUV	35,000
		Minivan	31,500
	Code Administration	5 1/2 T Pickups	198,000
	Engineering Services	2 1/2 T Pickups	102,700
	Traffic Division	3/4 T Pickup	61,400
	Transportation	Impact Crusher	674,850
		Asphalt Paver	286,291
		Cold Planer Machine	645,895
		Sewer Jet Vac	610,500
	Parks & Recreation	Plug Aerifier	46,424
		Riding Sand Pro	20,104
		Tractor	15,000
		3 1/2 T Pickups	122,250
		3/4 T Pickup	42,750
	Animal Services	Full Size SUV	36,500
	MLK Center	Mid-Size SUV	37,900
	Health & Sen. Serv.	Full Size SUV	49,500
	PD Field Operations	29 Police SUVs with Upfitting	2,784,000
		Police Tahoe	58,000
	PD Investigative Ser.	2 1/2 T Crew Pickup with Upfitting	132,000
	Fire Department	Fire Engine	1,245,000
		2 1/2 T Pickups with Upfitting	220,000
	FD Fire Training	2 1/2 T Pickups with Upfitting	220,000
	FD Fire Prevention	2 1/2 T Pickups with Upfitting	226,000
	Emergency Medical	Ambulance	480,000
	Golf Course	Golf Cart	46,869
		Aerator	54,551
		Sand Trap Rake	37,646
		Reelmaster Tract Unit	100,089
		Greens Mower	59,799
		130 4-Wheel Elec Carts	560,000
	Sports Complex	2 Off Road UTVs	78,900
		Genie 80' Telescopic	300,000
	Purification Plant	Mid-Size SUV	42,250
		1 T Cab & Chasis	70,100
	Water & Wastewater	Ditcher/Trench	65,000
		Backhoe with Attach	170,000
		Cab & Chasis SA	65,265
		PW & PL	41,750
		3 3/4 T Pickups	156,600
	Solid Waste Mgmt	8 Cab & Chasis TA	2,447,600
		2 Cab & Chasis TA	725,900
		2 Cab & Chasis TA	397,900
		1/2 T Pickup	39,900
	Landfill	836 Compactor	1,800,000
	Airport	3/4 T Pickup	54,950
		1/2 T Pickup	48,450
		3/4 T Pickup	46,250
		SUV with Upfitting	85,000
	Risk Management	Mid-Size SUV	37,900
	Fleet Services	Admin Car	31,500
	Warehouse	1/2 T Pickup	47,450

PACKET

25.146

August 22, 2023
Total Internal Service Funds: \$ 16,135,183

SECTION: MISCELLANEOUS

FY202 New Fleet & Equipment			
Department	Division	Capital Detail	Amount
Development Serv.	Code Administration	1/2 T Pickup	39,600
Engineering	Transportation	1/2 T Full Size Pickup	45,650
Community Services	Parks & Recreation	3 1/2 T Pickups	129,000
	Animal Services	Full Size SUV	36,500
Police	PD Field Operations	5 Police SUVs with Upfitting	480,000
	PD Investigative Ser.	Admin Car	37,750
Finance	Customer Service	2 1/2 T Pickups	88,200
		3/4 T Pickup	44,400
Sanitation	Solid Waste Mgmt	Grapple Truck	203,000
		2 1/2 T Pickup	86,710
	Recycle Center	Cab & Chasis TA	198,950
		Loader with Bucket Grap	200,000
		Off Road UTV Gas	17,000
Airport	Airpark	Cab & Chasis 1T	84,150
		John Deere Tractor	140,199
		John Deere Cutter	54,387
		Brush Attachment	21,000
			Total \$ 1,906,496

SECTION: MISCELLANEOUS

GENERAL FUND SUPPLEMENTAL REQUESTS		
COMMUNITY SERVICES		
TECHNOLOGY	Software for Public Health Inspectors	\$ 200,000
	Security Cameras for Dennis the Menace Park	\$ 40,000
	Install Fiber for internet service at Hogan Park, Reyes Mashburn Nelms Park, and Dennis the Menace Park	\$ 200,000
DEPARTMENT TOTAL		\$ 440,000
ENGINEERING		
GARAGE	(2) Concrete Slip Form Paver	\$ 706,640
	Power Curber 5700-D Curb and Gutter Paver	\$ 383,100
	Komatsu PC360LC-11 Excavator	\$ 435,767
	Extended cab Truck (Line Locator)	\$ 51,350
TECHNOLOGY	6 Security Cameras - Cuthbert Stockpile, Transportation Awning x2, Hill City, Roosevelt and Powell	\$ 158,000
OTHER CAPITAL	School Flasher Project	\$ 1,500,000
	Traffic Signal Light Replacement	\$ 1,000,000
	Annual Right of Way Acquisition	\$ 1,500,000
	COMPASS	\$ 1,500,000
	Warehouse (60' x 124' metal building)	\$ 450,000
DEPARTMENT TOTAL		\$ 7,684,857
FIRE		
GARAGE	Ambulance	\$ 480,000
	F-150 4x4	\$ 110,000
TECHNOLOGY	Fire Station alerting system	\$ 1,400,000
OTHER CAPITAL	LUCAS chest compression system	\$ 204,270
DEPARTMENT TOTAL		\$ 2,194,270
POLICE DEPARTMENT		
TECHNOLOGY	Annual Subscription from Cybercheck.	\$ 35,000
	Computer/laptop, cellphone, hotspot, mobile radio, encrypted radio , portable radio (30 Each)	\$ 112,000
GARAGE	New Vehicle - Crime Scene Investigator	\$ 37,750
OTHER CAPITAL	(2) Leica RTC 360 Laser Scanner with additional equipment	\$ 230,000
	2- BRINC Lemur 2 Drones with accessory kit	\$ 43,000
	2 DJI M30T Drones with accessory kit.	\$ 36,624
	Nomad 360 Scene Light. Mounted on stands.	\$ 9,428
	Stalker LIDAR XLR handheld	\$ 36,400
	Leica BLK Imaging Laser Scanner	\$ 28,600
DEPARTMENT TOTAL		\$ 568,802
GENERAL FUND REQUESTS TOTAL		\$10,887,929

SECTION: MISCELLANEOUS

City of Midland, TX
Capital Improvement Program

CAPITAL IMPROVEMENTS PROGRAM										
DEPARTMENT	FUNDING SOURCE	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	TOTAL ALL YEARS			
Community Services	Park Special Revenue	800,000	-	800,000	-	800,000	2,400,000			
	Park Special Revenue	-	5,000,000	-	5,000,000	-	10,000,000			
	Park Special Revenue NEW CO	1,000,000	-	-	-	-	1,000,000			
	Health Department Construction	9,000,000	-	-	-	-	9,000,000			
	Senior Center Design & Docs	1,000,000	-	-	-	-	1,000,000			
	SE Senior Center Improvements	2,500,000	-	-	-	-	2,500,000			
	Beal Park Phase I Construction (NW corner soccer fields)	12,000,000	-	-	-	-	12,000,000			
	Hogan Golf Course Restroom Replacements (five total)	350,000	-	-	-	-	350,000			
	Hogan Phase 2 Design (one baeball quad)	900,000	-	-	-	-	900,000			
	Reyes Mashburn Nelms Phase II Design & Construction Documents	-	1,000,000	-	-	-	1,000,000			
	Reyes Mashburn Nelms Phase II Construction (two baseball fields, parking)	-	-	18,000,000	-	-	-	18,000,000		
	SSC - Paint Both Stadiums	-	-	1,500,000	-	-	-	1,500,000		
	SSC - Momentum Bank Ballpark Turf	-	-	1,500,000	-	-	-	1,500,000		
	Midland Senior Center Construction	-	-	18,000,000	-	-	-	18,000,000		
	MUGS Softbal (replace restroom, locker room & lighting)	-	-	1,400,000	-	-	-	1,400,000		
	SSC - Baseball Video Board Replacement	-	-	1,000,000	-	-	-	1,000,000		
	Windlands Park Construction (building)	-	-	1,000,000	-	-	-	1,000,000		
	Beal Park Phase II Design & Construction Documents	-	-	850,000	-	-	-	850,000		
	Beal Park Ground and Splash Pad	-	-	8,500,000	-	-	-	8,500,000		
	Hogan Phase 2 Construction	-	-	12,000,000	-	-	-	12,000,000		
	Hogan Phase 3 Design (one baseball quad)	-	-	1,200,000	-	-	-	1,200,000		
	Land Acquisition for NW Regional Park (~125 acres)	-	-	12,500,000	-	-	-	12,500,000		
	Dunagan Park Lighting	-	-	-	600,000	-	-	600,000		
	MUGS Softball (lights one quad)	-	-	-	2,000,000	-	-	2,000,000		
	Hogan Golf Course Pump Station (water treatment)	-	-	-	330,000	-	-	330,000		
	Beal Park Phase II Construction (additional soccer fields, amphitheatre, playground)	-	-	-	-	-	-	-		
	Windlands Baseball (turf and lights one quad)	-	-	-	14,000,000	-	-	14,000,000		
	Hogan Phase 3 Construction	-	-	-	3,000,000	-	-	3,000,000		
	Hogan Phase 4 Design (soccer fields, covered basketball courts)	-	-	-	18,000,000	-	-	18,000,000		
	Reyes Phase 3 Design (third multipurpose field, playground, BMX area)	-	-	-	750,000	-	-	750,000		
Beal Phase 3 Design (east soccer fields)	-	-	-	1,000,000	-	-	1,000,000			
Beal Phase 3 Design (east soccer fields)	-	-	-	700,000	-	-	700,000			
Westound Stadium New Artificial Turf	-	-	-	1,000,000	-	-	1,000,000			
Momentum Ballpark New Playgrounds	-	-	-	500,000	-	-	500,000			
SSC - Auxiliary Field Turf Replacement	-	-	-	-	4,000,000	-	4,000,000			
Hogan Phase 4 Construction	-	-	-	-	10,000,000	-	10,000,000			
Reyes Phase 3 Construction	-	-	-	-	10,000,000	-	10,000,000			
Beal Phase 3 Construction	-	-	-	-	4,000,000	-	4,000,000			
SSC - Seat Replacement Both Stadiums	-	-	-	-	-	1,750,000	1,750,000			
Butler Baseball	-	-	-	-	-	-	-			
Hogan Golf Course Pro Shop Design & Construction Documents	-	-	-	-	-	-	-			
COMMUNITY SERVICES SUBTOTAL		27,550,000	83,450,000	42,680,000	33,000,000	2,550,000	189,230,000			

PACKET 1

SECTION: MISCELLANEOUS

City of Midland, TX
Capital Improvement Program

CAPITAL IMPROVEMENTS PROGRAM									
DEPARTMENT	FUNDING SOURCE	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	TOTAL ALL YEARS		
Engineering									
Engineering		1,112,000	-	-	-	-	1,112,000		
Lufkinview Ave (1) - Baird St to Terrell St		359,000	-	-	-	-	359,000		
Garfield St & Florida Ave - Signal		2,500,000	-	-	-	-	2,500,000		
Traffic Calming - 10 year program		5,000,000	-	-	-	-	5,000,000		
Signal Rehab/Upgrade - 10 year program		1,081,200	-	-	-	-	1,081,200		
Midland Draw - Fairgrounds Road to Jackson Street		600,000	-	-	-	-	600,000		
Loop 250 & Big Spring St - Operational Capacity Improvements		772,000	-	-	-	-	772,000		
Front St & Garfield St - Turn Lane Improvements		-	1,067,000	-	-	-	1,067,000		
Big Spring St & Occidental Pkwy Signal Turn Lane Improvements		-	5,250,000	-	-	-	5,250,000		
I-20 Backage (Phase 1) - Garfield Rd to Midkiff Rd		-	600,000	-	-	-	600,000		
Loop 250 & Midland Dr - Operational Capacity Improvements		-	1,067,000	-	-	-	1,067,000		
Fairgrounds Rd & Mockingbird Ln - Signal Turn Lane Improvements		-	1,000,000	-	-	-	1,000,000		
COMPASS - Various Locations		-	2,559,105	-	-	-	2,559,105		
Fairgrounds Rd. - BI20 to Pine Ave.		-	618,240	-	-	-	618,240		
Midland Draw - Golf Course Rd to Fairgrounds Rd		-	10,000,000	-	-	-	10,000,000		
Wadley Ave. - Godfrey to I Street*		-	-	359,000	-	-	359,000		
Tradewinds Blvd & Deauville Blvd - Signal		-	-	359,000	-	-	359,000		
Andrews Hwy & Midland Dr - Signal		-	-	6,000,000	-	-	6,000,000		
Golf Course Rd. - Tarleton St. to A St.*		-	-	1,500,000	-	-	1,500,000		
COMPASS - Various Locations		-	-	15,500,000	-	-	15,500,000		
Mockingbird Ln. - Garfield to A		-	-	-	6,000,000	-	6,000,000		
Mockingbird Lane (Holiday Hill to Midland Dr)*		-	-	-	5,000,000	-	5,000,000		
I-20 Backage (Phase 2) - Midkiff Rd to Rankin HWY		-	-	-	6,000,000	-	6,000,000		
Harbauer Drive - Fairgrounds Rd to Golf Course Rd	County, MDC, Developer	-	-	-	6,750,000	-	6,750,000		
Occidental Pkwy - Midkiff Rd to BS 349*	County, MDC, Developer	-	-	-	-	-	-		
Midkiff Rd - Passage Way to Occidental Pkwy	County, MDC, Developer	-	-	-	-	6,750,000	6,750,000		
Mockingbird Ln (11) - 925' E of Midkiff Rd to Garfield St		-	-	-	-	3,949,000	3,949,000		
Antelope Trl (1) - IH 20 WBFR to 2,080' S of CR 127		-	-	-	-	1,666,000	1,666,000		
Avalon Blvd. - Musial to Thomason (City Portion)*	MDC, Developer	-	-	-	-	4,250,000	4,250,000		
ENGINEERING SUBTOTAL		11,424,200	22,161,345	23,718,000	23,750,000	16,615,000	97,668,545		
Water and Sewer Utility									
Upsize 4" iron lines through out City	Operating funds	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	10,000,000		
Replace Lift Stations (Airport and Mockingbord)	Operating funds	1,500,000	-	1,500,000	-	-	3,000,000		
Replace/Rehab Outfall lines to Wastewater plant	Operating funds	1,500,000	1,500,000	1,500,000	-	-	4,500,000		
Replace/Rehab 50 Manholes in Wastewater system	Operating funds	500,000	500,000	500,000	500,000	500,000	2,500,000		
Water System Upgrades at WPP	Operating funds	1,500,000	-	-	-	-	1,500,000		
Upgrade WPP to Chlorine Dioxide	Unallocated funds	-	5,000,000	-	-	-	5,000,000		
Increase Cleanwell water storage at WPP	Unallocated funds	-	-	-	3,000,000	-	3,000,000		
Plant Farm pond liner replacement (required by TCEQ) (start FY21)	Unallocated funds	1,000,000	-	-	-	-	1,000,000		
Commission of MBR	Operating funds	-	2,000,000	-	-	-	2,000,000		
Design and construction of WPCP Digester	Bond?	-	-	-	-	-	-		
Wastewater Extension and Taps Program	Operating funds	2,000,000	2,000,000	2,000,000	2,000,000	8,000,000	13,000,000		
New W&WW facility	Unallocated funds	6,000,000	-	-	-	-	6,000,000		
Red Davis Advanced Treatment	Tbar Water Sales/ ROW Sales	-	-	-	35,000,000	-	35,000,000		
UTILITIES SUBTOTAL		16,000,000	13,000,000	7,500,000	47,500,000	12,500,000	96,500,000		



City Council Meeting

Item Number: 26
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Christy Weakland, Director
Subject: TAX RATE INCREASE FOR FISCAL YEAR 2023-2024; AN ORDINANCE FIXING THE TAX LEVY FOR THE CITY OF MIDLAND, TEXAS, FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2023, AND ENDING ON SEPTEMBER 30, 2024 (DISTRICT: NONE) (FINANCE)

Purpose:

The purpose of this item is to provide notification to the public and to allow a public forum for citizen input on the tax increase.

Recommended City Council Action:

Approve

Fiscal Impact:

The proposed Ad Valorem Tax Rate of 0.353162 per \$100 valuation for the fiscal year 2023-2024 operating budget will generate approximately \$60,256,782 in revenue for the General Fund.

Discussion:

The proposed rate of 0.353162 is composed of a voter-approval maintenance and operations rate (0.292310 per \$100 valuation) and a debt service levy (0.060852 per \$100 valuation).

This budget will raise more total property taxes than last year's budget by \$2,905,493 or 3.5%, and of that amount, \$934,900 is tax revenue to be raised from new property added to the tax roll this year.

Attached are the Chief Appraiser's 2023 Certified Estimates of Taxable Value for the City of Midland, the "Notice of Public Hearing on Tax Increase," and the "Notice of Tax Rates."

Monnie Williams Jr.

City Manager's Office

ORDINANCE NO. _____

**AN ORDINANCE FIXING THE TAX LEVY FOR THE
CITY OF MIDLAND, TEXAS, FOR THE FISCAL YEAR
BEGINNING ON OCTOBER 1, 2023, AND ENDING ON
SEPTEMBER 30, 2024**

WHEREAS, the Midland City Council voted to propose a tax rate of \$0.353162 for each one hundred dollar valuation of taxable property for the fiscal year October 1, 2023, to September 30, 2024; and

WHEREAS, the Midland City Council finds and determines that the City of Midland has fully and timely complied with all notice, hearing and other legal requirements relative to the adoption of this ordinance; and

**WHEREAS, THIS TAX RATE WILL RAISE MORE TAXES FOR
MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE;
AND**

**WHEREAS, THE TAX RATE WILL EFFECTIVELY BE RAISED BY
3.50 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND
OPERATIONS ON A \$100,000.00 HOME BY APPROXIMATELY \$-12.53.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF MIDLAND, TEXAS:**

SECTION ONE. That to pay interest and principal on outstanding bonds as they mature, a tax levy of \$0.060852 on each \$100.00 valuation of all taxable property in the City of Midland, Texas is hereby made and levied for the year 2023 to be credited to the Interest and Sinking Fund of the City.

SECTION TWO. That to raise funds to help defray current General expenses of the City, a levy of \$0.292310 on each \$100.00 valuation of all taxable property within the City is hereby made and levied for the year 2023. The collections from these levies are to be apportioned and deposited as follows:

Interest and Sinking Fund	<u>\$0.060852</u>
General Fund	<u>\$0.292310</u>
TOTAL TAX LEVY FOR ALL PURPOSES	<u>\$0.353162</u>

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; and passed to second reading on motion of Council member _____, seconded by Council member _____, with the motion being stated as “I move that the property tax rate be increased by the adoption of a tax rate of \$0.353162, which is effectively a 7.4 percent increase in the tax rate”, 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 _____, with the motion being stated as “I move that the property tax rate be increased by the adoption of a tax rate of \$0.353162, which is effectively a 7.4 percent increase in the tax rate”, seconded by Council member _____, on the _____ day of _____, A.D., 2023, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Christy Weakland, Director of Finance

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney

**2023 CHIEF APPRAISER'S CERTIFIED ESTIMATE
CITY OF MIDLAND**

GROSS VALUE	\$23,311,080,740
LOSS DUE TO AGRICULTURAL USE	(\$47,277,570)
CONSTITUTIONAL EXEMPT PROPERTY	(\$912,903,989)
DISABLED VETERAN EXEMPTION	(\$5,877,000)
DISABLED VETERAN EXEMPTION FROZEN	\$0
DISABLED VETERAN EXEMPTION (100%)	(\$74,714,878)
GENERAL HOMESTEAD EXEMPTION	\$0
GENERAL HOMESTEAD EXEMPTION FROZEN	\$0
HOMESTEAD EXEMPTION (LOCAL OPTION)	\$0
HOMESTEAD EXEMPTION FROZEN (LOCAL OPTION)	\$0
HOMESTEAD EXEMPTION (LOCAL PERCENT OPTION)	\$0
HOMESTEAD EXEMPTION (LOCAL PERCENT OPTION) FROZEN	\$0
OVER 65 EXEMPTION	\$0
FROZEN OVER 65 EXEMPTION	\$0
OVER 65 EXEMPTION (LOCAL OPTION)	(\$62,360,304)
OVER 65 EXEMPTION FROZEN (LOCAL OPTION)	\$0
DISABLED EXEMPTION	\$0
DISABLED EXEMPTION FROZEN	\$0
DISABLED EXEMPTION (LOCAL OPTION)	\$0
DISABLED EXEMPTION (LOCAL OPTION) FROZEN	\$0
ABATEMENTS	\$0
POLLUTION CONTROL	(\$2,201,175)
FREEPORT EXEMPTION	(\$20,787,586)
MINIMUM VALUE LOSS (MINERALS & PERSONAL PROPERTY	(\$995,200)
PARTIAL YEAR EXEMPTION/ LEASED VEHICLES & OTHER	(\$1,376,643)
10% CAP LOSS	(\$178,053,447)
TOTAL TAXABLE VALUE FOR 2023	\$22,004,532,948
LESS VALUE STILL UNDER PROTEST	\$4,168,601,729
TOTAL LESS PROTESTED	\$17,835,931,219
ESTIMATED VALUE THAT WILL BE CERTIFIED BY ARB	\$2,742,969,493
CERTIFIED ESTIMATE TAXABLE VALUE FOR 2023	\$20,578,900,712

I, Jerry M. Bundick, Chief Appraiser for the Midland Central Appraisal District, do solemnly swear or affirm that I have made, or caused to be made, a diligent effort to ascertain all property in the City of Midland subject to appraisal by me and that I have included in the certified estimate, the market and taxable values of property that I am aware of at an appraised value determined as required by law.



Jerry M. Bundick

Sworn to and subscribed before me the 25th day of July, 2023

**2023 CHIEF APPRAISER'S CERTIFIED ESTIMATE
CITY OF MIDLAND**

GROSS VALUE	\$18,800,346,720	\$1,380,871,230	\$2,655,886,390	\$473,976,400	\$23,311,080,740
LOSS DUE TO AGRICULTURAL USE	(\$47,277,570)	\$0	\$0	\$0	(\$47,277,570)
CONSTITUTIONAL EXEMPT PROPERTY	(\$900,847,629)	(\$4,004,880)	(\$8,051,480)	\$0	(\$912,903,989)
DISABLED VETERAN EXEMPTION	(\$5,865,000)	(\$12,000)	\$0	\$0	(\$5,877,000)
DISABLED VETERAN EXEMPTION FROZEN	\$0	\$0	\$0	\$0	\$0
DISABLED VETERAN EXEMPTION (100%)	(\$74,686,238)	(\$28,640)	\$0	\$0	(\$74,714,878)
GENERAL HOMESTEAD EXEMPTION	\$0	\$0	\$0	\$0	\$0
GENERAL HOMESTEAD EXEMPTION FROZEN	\$0	\$0	\$0	\$0	\$0
HOMESTEAD EXEMPTION (LOCAL OPTION)	\$0	\$0	\$0	\$0	\$0
HOMESTEAD EXEMPTION FROZEN (LOCAL OPTION)	\$0	\$0	\$0	\$0	\$0
HOMESTEAD EXEMPTION (LOCAL PERCENT OPTION)	\$0	\$0	\$0	\$0	\$0
HOMESTEAD EXEMPTION (LOCAL PERCENT OPTION) FROZEN	\$0	\$0	\$0	\$0	\$0
OVER 65 EXEMPTION	\$0	\$0	\$0	\$0	\$0
FROZEN OVER 65 EXEMPTION	\$0	\$0	\$0	\$0	\$0
OVER 65 EXEMPTION (LOCAL OPTION)	(\$62,122,466)	(\$237,838)	\$0	\$0	(\$62,360,304)
OVER 65 EXEMPTION FROZEN (LOCAL OPTION)	\$0	\$0	\$0	\$0	\$0
DISABLED EXEMPTION	\$0	\$0	\$0	\$0	\$0
DISABLED EXEMPTION FROZEN	\$0	\$0	\$0	\$0	\$0
DISABLED EXEMPTION (LOCAL OPTION)	\$0	\$0	\$0	\$0	\$0
DISABLED EXEMPTION (LOCAL OPTION) FROZEN	\$0	\$0	\$0	\$0	\$0
ABATEMENTS	\$0	\$0	\$0	\$0	\$0
POLLUTION CONTROL	\$0	(\$2,177,225)	\$0	(\$23,950)	(\$2,201,175)
FREEPORT EXEMPTION	\$0	(\$10,266)	\$0	(\$20,777,320)	(\$20,787,586)
MINIMUM VALUE LOSS (MINERALS & PERSONAL PROPERTY	\$0	(\$797,880)	\$0	(\$11,750)	(\$995,200)
PARTIAL YEAR EXEMPTION/LEASED VEHICLES & OTHER	(\$1,246,393)	(\$130,250)	\$0	\$0	(\$1,376,643)
10% CAP LOSS	(\$178,053,447)	\$0	\$0	\$0	(\$178,053,447)
TOTAL TAXABLE VALUE FOR 2023	\$17,530,247,977	\$1,373,472,251	\$2,647,649,340	\$453,163,380	\$22,004,532,948
LESS VALUE STILL UNDER PROTEST	\$4,063,138,619	\$94,533,130	\$30,760	\$10,899,220	\$4,168,601,729
TOTAL LESS PROTESTED	\$13,467,109,358	\$1,278,939,121	\$2,647,618,580	\$442,264,160	\$17,835,931,219
ESTIMATED VALUE THAT WILL BE CERTIFIED BY ARB	\$2,659,646,698	\$75,148,380	\$0	\$8,174,415	\$2,742,969,493
CERTIFIED ESTIMATE TAXABLE VALUE FOR 2023	\$16,126,756,056	\$1,354,087,501	\$2,647,618,580	\$450,438,575	\$20,578,900,712

I, Jerry M. Bundick, Chief Appraiser for the Midland Central Appraisal District, do solemnly swear or affirm that I have made, or caused to be made, a diligent effort to ascertain all property in the City of Midland subject to appraisal by me and that I have included in the certified estimate, the market and taxable values of property that I am aware of at an appraised value determined as required by law.


 Jerry M. Bundick
 Sworn to and subscribed before me the 25th day of July, 2023

NOTICE OF PUBLIC HEARING ON TAX INCREASE

A tax rate of \$0.353162 per \$100 valuation has been proposed by the governing body of City of Midland.

PROPOSED TAX RATE	\$0.353162 per \$100
NO-NEW-REVENUE TAX RATE	\$0.328693 per \$100
VOTER-APPROVAL TAX RATE	\$0.380407 per \$100

The no-new-revenue tax rate is the tax rate for the 2023 tax year that will raise the same amount of property tax revenue for City of Midland from the same properties in both the 2022 tax year and the 2023 tax year.

The voter-approval rate is the highest tax rate that City of Midland may adopt without holding an election to seek voter approval of the rate.

The proposed tax rate is greater than the no-new-revenue tax rate. This means that City of Midland is proposing to increase property taxes for the 2023 tax year.

A PUBLIC HEARING ON THE PROPOSED TAX RATE WILL BE HELD ON August 22, 2023 AT 10:00 AM AT City Council Chambers, 300 N Loraine, Midland, Texas.

The proposed tax rate is not greater than the voter-approval tax rate. As a result, City of Midland is not required to hold an election at which voters may accept or reject the proposed tax rate. However, you may express your support for or opposition to the proposed tax rate by contacting the members of the City Council of City of Midland at their offices or by attending the public hearing mentioned above.

YOUR TAXES OWED UNDER ANY OF THE RATES MENTIONED ABOVE CAN BE CALCULATED
AS FOLLOWS:

Property tax amount= (tax rate) x (taxable value of your property)/100

FOR the proposal:

Lori Blong	John Norman
Jack Ladd	Scott Dufford
Dan Corrales	Robin Poole
Amy Stretcher-Burkes	

AGAINST the proposal:

PRESENT and not voting:

ABSENT:

Visit [Texas.gov/PropertyTaxes](https://www.texas.gov/PropertyTaxes) to find a link to your local property tax database on which you can easily access information regarding your property taxes, including information about proposed tax rates and scheduled public hearings of each entity that taxes your property.

The 86th Texas Legislature modified the manner in which the voter-approval tax rate is calculated to limit the rate of growth of property taxes in the state.

The following table compares the taxes imposed on the average residence homestead by City of Midland last year to the taxes proposed to be imposed on the average residence homestead by City of Midland this year.

2022	2023	Change
------	------	--------

Total tax rate (per \$100 of value)	\$0.355039	\$0.353162	decrease of -0.001877, or -0.53%
Average homestead taxable value	\$325,000	\$380,000	increase of 55,000, or 16.92%
Tax on average homestead	\$1,153.88	\$1,342.02	increase of 188.14, or 16.30%
Total tax levy on all properties	\$66,893,973	\$72,751,037	increase of 5,857,064, or 8.76%

For assistance with tax calculations, please contact the tax assessor for City of Midland at or mcadhelp@midcad.org, or visit midlandtexas.gov for more information.

Notice About 2023 Tax Rates

Property tax rates in City of Midland.

This notice concerns the 2023 property tax rates for City of Midland. This notice provides information about two tax rates used in adopting the current tax year's tax rate. The no-new-revenue tax rate would impose the same amount of taxes as last year if you compare properties taxed in both years. In most cases, the voter-approval tax rate is the highest tax rate a taxing unit can adopt without holding an election. In each case, these rates are calculated by dividing the total amount of taxes by the current taxable value with adjustments as required by state law. The rates are given per \$100 of property value.

This year's no-new-revenue tax rate	\$0.328693/\$100
This year's voter-approval tax rate	\$0.380407/\$100

To see the full calculations, please visit for a copy of the Tax Rate Calculation Worksheet.

Unencumbered Fund Balance

The following estimated balances will be left in the taxing unit's accounts at the end of the fiscal year. These balances are not encumbered by corresponding debt obligation.

Type of Fund	Balance
Debt Service Fund	196,988

Current Year Debt Service

The following amounts are for long-term debts that are secured by property taxes. These amounts will be paid from upcoming property tax revenues *(or additional sales tax revenues, if applicable)*.

Description of Debt	Principal or Contract Payment to be Paid from Property Taxes	Interest to be Paid from Property Taxes	Other Amounts to be Paid	Total Payment
2018 A GO Bond (Road Bond)	1,035,000	975,463	0	2,010,463
2019 Tax & Limited Pledge Revenue CO	275,000	300,075	0	575,075
2019 GO Improvement & Refunding Bonds	520,000	137,250	0	657,250
2019 GO Road Bond	650,000	876,950	0	1,526,950
2020 Tax & Limited Pledge Revenue CO	260,000	283,800	0	543,800
2020 GO Improvement & Refunding Bonds	585,000	817,575	0	1,402,575
2020 CO Refunding	1,498,966	229,886	0	1,728,852
2021 Refunding 2012 GO	575,000	287,475	0	862,475
2021 Tax & Limited Pledge Revenue CO	765,000	753,925	0	1,518,925
2023 GO (Road)	300,000	1,287,537	0	1,587,537

Total required for 2023 debt service	\$12,413,902
- Amount (if any) paid from funds listed in unencumbered funds	\$0
- Amount (if any) paid from other resources	\$0
- Excess collections last year	\$0
= Total to be paid from taxes in 2023	\$12,413,902
+ Amount added in anticipation that the unit will collect only 99.03% of its taxes in 2023	\$121,594
= Total debt levy	\$12,535,496

This notice contains a summary of actual no-new-revenue and voter-approval calculations as certified by , on 08/02/2023 .

Visit [Texas.gov/PropertyTaxes](https://www.texas.gov/PropertyTaxes) to find a link to your local property tax database on which you can easily access information regarding your property taxes, including information about proposed tax rates and scheduled public hearings of each entity that taxes your property.

limit the rate of growth of property taxes in the state.

ORDINANCE NO. _____

**AN ORDINANCE FIXING THE TAX LEVY FOR THE
CITY OF MIDLAND, TEXAS, FOR THE FISCAL YEAR
BEGINNING ON OCTOBER 1, 2022, AND ENDING ON
SEPTEMBER 30, 2023**

WHEREAS, the Midland City Council voted to propose a tax rate of ~~\$0.355039~~ ^{87.353162} for each one hundred dollar valuation of taxable property for the fiscal year October 1, 2022, to September 30, 2023; and

WHEREAS, the Midland City Council finds and determines that the City of Midland has fully and timely complied with all notice, hearing and other legal requirements relative to the adoption of this ordinance; and

**WHEREAS, THIS TAX RATE WILL RAISE MORE TAXES FOR
MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE;
AND**

**WHEREAS, THE TAX RATE WILL EFFECTIVELY BE RAISED BY
~~1.28~~ ^{3.50} PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND
OPERATIONS ON A \$100,000.00 HOME BY APPROXIMATELY ~~\$-6.00.~~ ^{\$-12.53}**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF MIDLAND, TEXAS:**

SECTION ONE. That to pay interest and principal on outstanding bonds as they mature, a tax levy of ~~\$0.050195~~ ^{.060852} on each \$100.00 valuation of all taxable property in the City of Midland, Texas is hereby made and levied for the year 2022 to be credited to the Interest and Sinking Fund of the City.

SECTION TWO. That to raise funds to help defray current General expenses of the City, a levy of ~~\$0.304844~~ ^{.292310} on each \$100.00 valuation of all taxable property within the City is hereby made and levied for the year 2022. The collections from these levies are to be apportioned and deposited as follows:

Interest and Sinking Fund

.060852
\$0.050195

General Fund

.292310
\$0.304844

TOTAL TAX LEVY FOR ALL PURPOSES

.353162
\$0.355039

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2022³; 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., 2022³, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2022³.

~~Patrick N. Payton, Mayor~~

ATTEST:

~~Amy M. Turner, City Secretary~~

APPROVED AS TO CONTENT AND
COMPLETENESS:

Christy Weakland, Director of Finance

APPROVED AS TO FORM ONLY:

John Ohnemiller, City Attorney



City Council Meeting

Item Number: 27
Meeting Date: August 22, 2023
To: City Council / City Manager
From: Gabe McClelland,
Subject: AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 10283; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION **(DISTRICT 1) (ENGINEERING SERVICES)**

Purpose:

Consider an ordinance altering Prima facie speed limits along certain streets in the City; authorizing installation of appropriate signs and markings; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

The City attorney's Office has prepared an ordinance authorizing altering the speed limits at Big Spring Street (Business State Highway 349C and State Highway 349) generally located from just south of Loop 250 to the Martin County line. The locations for altering the speed limit are listed below:

Business State Highway 349C (both directions)

65 mph - from the northern boundary of Midland County to a point 797 feet north of Occidental Parkway

50 mph - from a point 797 feet north of Occidental Parkway to a point 370 feet south of the centerline of the south service road of Loop 250

State Highway 349 (both directions)

65 mph - from the northern City limits to the southern boundary of Martin County



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 10283; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

WHEREAS, under Section 542.202 and Section 545.356 of the Texas Transportation Code, the City Council is authorized to make certain findings based upon engineering and traffic investigations and to alter the prima facie speed limits on City streets or portions thereof; and

WHEREAS, the City Traffic Engineer has made studies and surveys of the traffic flowing along certain streets within the City limits of Midland, Texas; and

WHEREAS, the Council finds and determines from the above mentioned studies that certain streets, as hereinafter described in this ordinance, should be speed zoned to rates hereinafter set out in this ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That no person shall drive a vehicle on those certain streets as set out below at a speed greater than is reasonable or prudent under the circumstances then existing. The speed limits specified in this Section shall be lawful, but any speed in excess of the limits specified in this Section shall be prima facie evidence that the speed is not reasonable or prudent and is unlawful. Such speed limits are hereby fixed at the rates of speed indicated for vehicles traveling upon the named streets and highways, or parts thereof, described as follows:

A Street (both directions)

40 mph - from the northern terminus of A Street to the centerline of Loop 250

40 mph - from the centerline of Veterans Airpark Lane to the centerline of Scharbauer Drive

35 mph - from the centerline of Scharbauer Drive to the centerline of Wall Street

30 mph - from the centerline of Wall Street to the southern terminus of A Street

Avalon Drive (both directions)

40 mph - from the northern terminus of Avalon Drive to the centerline of Briarwood Avenue

40 mph - from the centerline of State Highway 191 to the southern terminus of Avalon Drive

Bent Tree Trail (both directions)

25 mph - in its entirety

Bluebird Lane (both directions)

35 mph - from the centerline of Midland Drive to the centerline of Kingston Drive

25 mph - from the centerline of Kingston Drive to the eastern terminus of Bluebird Lane

Briarwood Avenue (both directions)

60 mph - from the centerline of State Highway 158 to the centerline of Avalon Drive

45 mph - from the centerline of Avalon Drive to the centerline of Holiday Hill Road

40 mph - from the centerline of Holiday Hill Road to the centerline of Mathis Street

35 mph - from the centerline of Mathis Street to the centerline of Midland Drive

Business State Highway 349C (both directions)

65 mph - from the northern boundary of Midland County to a point 797 feet north of Occidental Parkway

50 mph - from a point 797 feet north of Occidental Parkway to a point 370 feet south of the centerline of the south service road of Loop 250

Candlestick Drive (both directions)

25 mph - in its entirety

Cardinal Lane (both directions)

30 mph - from the centerline of Oriole Drive to the centerline of Midland Drive

35 mph - from the centerline of Midland Drive to the centerline of Midkiff Road

Champions Drive (both directions)

25 mph - from the centerline of Tradewinds Boulevard to the centerline of Koufax Court

Clemente Court (both directions)

25 mph - in its entirety

Coliseum Court (both directions)

25 mph - in its entirety

Colt Court (both directions)

25 mph - in its entirety

Comiskey Court (both directions)

25 mph - in its entirety

Coyote Trail (both directions)

40 mph - in its entirety

Crestgate Avenue (both directions)

25 mph - from the centerline of Midland Drive to the centerline of Gateway Street

Crosley Drive (both directions)

25 mph - in its entirety

Cuthbert Avenue (both directions)

30 mph - from the western terminus of Cuthbert Avenue to the centerline of Midkiff Road

35 mph - from the centerline of Midkiff Road the centerline of Ward Street

25 mph - from the centerline of Ward Street to the centerline of Garfield Street

25 mph - from the centerline of Garfield Street to a point 220 feet east of F Street

30 mph - from a point 220 feet east of F Street to the eastern terminus of Cuthbert Avenue

Deauville Boulevard (both directions)

40 mph - from the centerline of Avalon Drive to the centerline of Loop 250

DiMaggio Court (both directions)

25 mph - in its entirety

DiMaggio Drive (both directions)

25 mph - in its entirety

Driftwood Drive (both directions)

25 mph - in its entirety

Fairgrounds Road (both directions)

45 mph - from the northern terminus of Fairgrounds Road to the centerline of Loop 250

50 mph - from the centerline of Loop 250 to the southern City limits

Florida Avenue (both directions)

35 mph - from the centerline of Garfield Street to the centerline of Big Spring Street

Garfield Street (both directions)

40 mph - from the northern terminus of Garfield Street to the centerline of Bluebird Lane

45 mph - from the centerline of Bluebird Lane to the centerline of Loop 250

40 mph - from the centerline of Loop 250 to the centerline of Wadley Avenue

35 mph - from the centerline of Wadley Avenue to the centerline of Michigan Avenue

Gehrig Avenue (both directions)

25 mph - in its entirety

Golden Gate Drive (both directions)

40 mph - from the northern terminus of Golden Gate Drive to the centerline of Briarwood Avenue

Golf Course Road (both directions)

35 mph - from the centerline of Andrew Highway/Alpine Street to the centerline of Scharbauer Drive

30 mph - from the centerline of Scharbauer Drive to the centerline of A Street

30 mph - from the centerline of Big Spring Street to the centerline of Fairgrounds Road

35 mph - from the centerline of Fairgrounds Road to the eastern terminus of Golf Course Road

Green Tree Boulevard (both directions)

35 mph - from the western terminus of Green Tree Boulevard to the centerline of Holiday Hill Road

25 mph - from the centerline of Holiday Hill Road to the centerline of Midland Drive

Griffith Court (both directions)

25 mph - in its entirety

Griffith Drive (both directions)

25 mph - from the centerline of Deauville Boulevard to the centerline of Candlestick Drive

Hall of Fame Boulevard (both directions)

25 mph - from the centerline of Avalon Drive to the centerline of Riverfront Drive

Holiday Hill Road (both directions)

40 mph - from the northern City limits to the centerline of Loop 250

Humble Avenue (both directions)

25 mph - from the centerline of Scharbauer Drive to the centerline of Big Spring Street

Illinois Avenue (both directions)

35 mph - from the centerline of Thomason Drive to the centerline of Andrews Highway

25 mph - from the centerline of Andrews Highway to the centerline of N Street

35 mph - from the centerline of N Street to the centerline of A Street

30 mph - from the centerline of A Street to the centerline of Front Street

Island Circle (both directions)

25 mph - in its entirety

Island Drive (both directions)

25 mph - in its entirety

King Kelly Court (both directions)

25 mph - in its entirety

Koufax Court (both directions)

25 mph - in its entirety

La Force Boulevard (both directions)

35 mph - from the centerline of Business Interstate 20 to the centerline of Banks Drive

30 mph - from the centerline of Banks Drive to a point 590 feet east of Banks Drive

20 mph - from a point 590 feet east of Banks Drive to a point 1,155 feet east of Banks Drive

15 mph - from a point 1,155 feet east of Banks Drive to a point 2,560 feet east of Banks Drive

30 mph - from a point 2,560 feet east of Banks Drive to the centerline of La Force Boulevard

Lamesa Road (northbound)

45 mph - from the southern City limits to a point 195 feet north of the centerline of Taylor Avenue

40 mph - from a point 195 feet north of the centerline of Taylor Avenue to a point 245 feet north of the centerline of Wall Street

35 mph - from a point 245 feet north of the centerline of Wall Street to a point 170 feet north of Wadley Avenue

45 mph - from a point 170 feet north of Wadley Avenue to the centerline of the north service road of Loop 250

Lamesa Road (southbound)

45 mph - from the centerline of the north service road of Loop 250 to a point 130 feet south of the centerline of Wadley Avenue

35 mph - from a point 130 feet south of the centerline of Wadley Avenue to a point 140 feet north of the centerline of Missouri Avenue

40 mph - from a point 140 feet north of the centerline of Missouri Avenue to a point 180 feet south of the centerline of Taylor Avenue

45 mph - from a point 180 feet south of the centerline of Taylor Avenue to the southern City limits

Legends Boulevard (both directions)

25 mph - in its entirety

Mac Drive (both directions)

25 mph - in its entirety

Mantle Court (both directions)

25 mph - in its entirety

Mays Drive (both directions)

25 mph - in its entirety

Mel Ott Lane (both directions)

25 mph - in its entirety

Memorial Court (both directions)

25 mph - in its entirety

Midkiff Road (both directions)

40 mph - from the northern terminus of Midkiff Road to the centerline of Mockingbird Drive

45 mph - from the centerline of Mockingbird Lane to the centerline of Loop 250

40 mph - from the centerline of Loop 250 to the centerline of Wall Street

35 mph - from the centerline of Wall Street to the centerline of Industrial Avenue

40 mph - from the centerline of Industrial Avenue to the centerline of Stokes Avenue

45 mph - from the centerline of Stokes Avenue to the southern City limits

Midland Drive (both directions)

35 mph - from the northern terminus of Midland Drive to the centerline of Green Tree Boulevard

45 mph - from the centerline of Green Tree Boulevard to the centerline of Loop 250

35 mph - from the centerline of Andrews Highway to the centerline of Wall Street

Mile High Lane (both directions)

25 mph - in its entirety

Mockingbird Lane (both directions)

30 mph - from the western terminus of Mockingbird Lane to the centerline of Midland Drive

45 mph - from the centerline of Midland Drive to the centerline of Midkiff Road

40 mph - from the centerline of Midkiff Road to the centerline of Big Spring Street

45 mph - from the centerline of Big Spring Street to the eastern terminus of Mockingbird Lane

Musial Way (both directions)

25 mph - in its entirety

Neely Avenue (both directions)

30 mph - in its entirety

Nolan Ryan Drive (both directions)

25 mph - in its entirety

Olympic Court (both directions)

25 mph - in its entirety

O'Rourke Street (both directions)

25 mph - in its entirety

Polo Parkway (both directions)

25 mph - from the centerline of Loop 250 to the northern terminus of Polo Parkway

Rangers Court (both directions)

25 mph - in its entirety

Riverfront Drive (both directions)

25 mph - in its entirety

Roadrunner Trail (both directions)

40 mph - in its entirety

Rustic Trail (both directions)

25 mph - in its entirety

Scharbauer Drive (both directions)

35 mph - from the centerline Golf Course Road to the eastern terminus of Scharbauer Drive

Sequoia Drive (both directions)

25 mph - in its entirety

Shea Lane (both directions)

25 mph - in its entirety

Sloan Field Boulevard (both directions)

35 mph - from the centerline of Wright Drive to the centerline of Windecker Street

30 mph - from to centerline of Windecker Street to the eastern terminus of Sloan Field Boulevard into La Force Boulevard

Solomon Lane (both directions)

30 mph - in its entirety

Spahn Street (both directions)

25 mph - in its entirety

State Highway 349 (both directions)

65 mph - from the northern City limits to the southern boundary of Martin County

Teakwood Trace (both directions)

25 mph - in its entirety

Thomason Drive (both directions)

35 mph - from the western terminus of Thomason Drive to the centerline of Holly Drive/Anetta Drive

30 mph - from the centerline of Holly Drive/Anetta Drive to the centerline of Wall Street

Three Rivers Lane (both directions)

25 mph - in its entirety

Todd Drive (both directions)

40 mph - from the northern terminus of Todd Drive to the centerline of Golf Course Road (within the City limits)

30 mph - from the centerline of Golf Course Road to the centerline of Business

Interstate 20

Tradewinds Boulevard (both directions)

35 mph - from the centerline of the south service road of State Highway 191 to the centerline of Thomason Drive

40 mph - from the centerline of Thomason Drive to the centerline of the north service road of Business Interstate 20

Tumbleweed Trail (both directions)

40 mph - in its entirety

Veterans Airpark Lane (both directions)

40 mph - in its entirety

Wadley Avenue (both directions)

40 mph - from the western terminus of Wadley Avenue to the centerline of Big Spring Street

35 mph - from the centerline of Big Spring Street to the centerline of Lamesa Road

45 mph - from the centerline of Lamesa Road to the eastern terminus of Wadley Avenue

Wagner Drive (both directions)

25 mph - in its entirety

Wagner Street (both directions)

25 mph - in its entirety

Wall Street (both directions)

35 mph - from the centerline of Andrews Highway to the centerline of B Street

30 mph - from the centerline of B Street to the centerline of Front Street

Wright Drive (both directions)

35 mph - in its entirety

SECTION TWO. That the above speed zoning is based upon findings and determinations of the City Council made as a result of certain traffic surveys and studies made by the City Traffic Engineer.

SECTION THREE. That the Traffic Engineer of the City of Midland is hereby authorized and directed to install appropriate speed zone signs commensurate with the provisions of this ordinance.

SECTION FOUR. That any person violating the prima facie speed limits established by this ordinance shall, upon conviction, be punished by a fine of not less than one Dollar (\$1.00) nor more than Two Hundred Dollars (\$200.00), as fully prescribed by Section 542.401 of the Texas Transportation Code.

SECTION FIVE. That Ordinance No. 10283 is hereby expressly repealed; and the provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

Not repealed, amended, or in any way affected by this ordinance are those ordinances establishing speed limits in school zones or school crossings and those ordinances establishing temporary regulatory construction speed limits.

SECTION SIX. That repeal of the ordinances, or parts of ordinances, effectuated by the enactment of this ordinance shall not be construed as abating any actions pending under or by virtue of such ordinances; or as discontinuing, abating, modifying or altering any penalty accruing or to accrue; or as affecting the liability of any person, firm or corporation; or as waiving any right of the municipality under any section or provision existing at the time of the passage of this ordinance.

SECTION SEVEN. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section,

subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2023; 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., 2023, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2023.

Lori Merritt Blong, Mayor

ATTEST:

Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney