

Ordinance authorizing the City Manager to execute a use privilege agreement with the Tulo-so-Midway Independent School District (“Permittee”) to install, operate, maintain, and remove a private eight-inch PVC wastewater sanitary sewer main (“Wastewater Line”) across the Haven Drive public street right-of-way, located west of McKinzie Road public right-of-way, subject to the Permittee's compliance with specified conditions.

WHEREAS, Tulo-so-Midway Independent School District (“Permittee”), desires to install, operate, maintain, and remove a private eight-inch PVC wastewater sanitary sewer main (“Wastewater Line”) across the Haven Drive public street right-of-way, located west of McKinzie Road public right-of-way;

WHEREAS, the Permittee has requested, and the City of Corpus Christi (“City”) desires to extend, a one-year term use privilege agreement (“Agreement”). At the end of the initial term, this Agreement renews automatically, in order to accomplish the purpose and use intended by the Permittee within the public right-of-way;

WHEREAS, in accordance with Article IX, Section 1 of the City Charter, the City Council authorizes the City Manager to enter into the Agreement for the benefit of the City and the Permittee, subject to the Permittee's compliance with the specified provisions of the Use Privilege Agreement.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:

SECTION 1. The City Manager, or his designee (“City Manager”), is authorized to execute a one-year term use privilege agreement (“Agreement”). At the end of the initial term, this Agreement with the Tulo-so-Midway Independent School District (“Permittee”) renews automatically, to allow the Permittee to install, operate, maintain, and remove a private eight-inch PVC wastewater sanitary sewer main (“Wastewater Line”) across the Haven Drive public street right-of-way, such Agreement at all times subject to the Permittee's compliance with the conditions specified in the Agreement. A copy of the Agreement is attached to this ordinance and being incorporated by reference into this ordinance as if fully set out herein in their entirety.

SECTION 2. The Agreement authorized in Section 1 of this ordinance is subject to the Permittee's compliance with the conditions of the Agreement including, but not limited to, the provisions specified below:

- a. In exchange for the City’s authorization for use of the public right-of-way by the Permittee for the stated purpose, the Permittee agrees to provide the City with a one-time Use Privilege Agreement fee of \$900.00.
- b. The Permittee's use of the eight-inch wastewater sanitary sewer main is strictly limited to serving the Permittee’s Tulo-so-Midway Agricultural Complex restroom facilities. Permittee may not provide wastewater service through the eight-inch wastewater sanitary sewer main

to any facilities other than the facilities specified in this section, nor may Permittee permit or allow anyone else to provide wastewater service or any other service through the eight-inch wastewater sanitary sewer main to any facility whether owned by the Permittee or by another person or entity.

- c. All costs incurred to install, operate, maintain, repair, and remove the eight-inch PVC wastewater sewer main are the sole responsibility of the Permittee.

The foregoing ordinance was read for the first time and passed to its second reading on this the _____ day of _____, 20____, by the following vote:

Nelda Martinez	_____	Brian Rosas	_____
Rudy Garza	_____	Lucy Rubio	_____
Chad Magill	_____	Mark Scott	_____
Colleen McIntyre	_____	Carolyn Vaughn	_____
Lillian Riojas	_____		

The foregoing ordinance was read for the second time and passed finally on this the _____ day of _____, 20____, by the following vote:

Nelda Martinez	_____	Brian Rosas	_____
Rudy Garza	_____	Lucy Rubio	_____
Chad Magill	_____	Mark Scott	_____
Colleen McIntyre	_____	Carolyn Vaughn	_____
Lillian Riojas	_____		

PASSED AND APPROVED this the _____ day of _____, 20____.

ATTEST:

Rebecca Huerta
City Secretary

Nelda Martinez
Mayor

USE PRIVILEGE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This use privilege agreement ("Agreement") is entered into by and between the City of Corpus Christi ("City"), a Texas home-rule municipal corporation, and the Tulooso Midway Independent School District ("Permittee"), a Texas public school district and property owner of 2653 McKinzie Road, Corpus Christi, Texas, whose business address is 9760 La Branch, Corpus Christi, Texas, 78410.

In accordance with Article IX, Section 1, of the City's City Charter and in consideration of a one-time payment of Nine Hundred Dollars (\$900.00) paid by Permittee, the receipt of which for the initial year is acknowledged, the City has granted and conveyed, and by these presents does grant and convey to Permittee, for the term and upon the conditions stated in this Agreement, a use privilege for the right to install, operate, maintain, repair, and remove approximately one hundred and twenty eight linear feet (128 L.F.) of a private eight-inch PVC sanitary sewer line ("Wastewater Line") with a steel casing across the Haven Road public street right-of-way, as shown in Exhibits "A" (Location Map) and "B" (Plan View and Profile View). Exhibits "A" and "B" are attached to this Agreement and incorporated into this Agreement by reference as if fully set out herein in their entirety. The area in which the use privilege is granted for the location of the Permittee's Wastewater Line is referred to in this Agreement as the "Use Privilege Area."

TO HAVE AND TO HOLD the same use privilege granted unto Permittee, its successors, and assigns, together with the right under the conditions specified in this Agreement, to at any time enter upon the above described Use Privilege Area to install, operate, maintain, repair, or remove Permittee's Wastewater Line, and being further understood that the use privilege granted by this Agreement is subject to the Permittee's compliance at all times with the following conditions, the City and Permittee agree as follows:

- A. This Agreement, and the rights granted under the Agreement, may be revoked at any time by the City upon providing the Permittee not less than 30 days notice in writing by the City's City Manager, or his designee ("City Manager"). In the event of a revocation by the City Manager or earlier termination of this Agreement by either party, no portion of any payment made under this Agreement is refundable to the Permittee.
- B. This Agreement is for a term of one (1) year from the date executed by the City. At the end of the initial term, this Agreement renews automatically unless the Permittee or the City provides written notice of intent not to renew

to the non-terminating party at least 60 days before the end of any annual term.

- C. This Agreement may not be assigned by Permittee without the City Manager's prior written consent.
- D. The Permittee shall acquire and maintain at all times for the term of this Agreement insurance coverage pertaining to the Use Privilege Area granted under this Agreement and the activities authorized by this Agreement. The types of required insurance coverages must be in the minimum amounts set forth in the attached Exhibit "C," the substantive content of Exhibit "C" being incorporated by reference into this Agreement as if fully set out here in its entirety. The insurance policies must name the City as an additional insured and may not be canceled, renewed, or materially changed by Permittee unless at least ten (10) days advance written notice has been provided to the City. Upon the City Manager's written request, Permittee shall provide copies of all requested insurance policies to the City's City Attorney.
- E. Should construction be deemed necessary by Permittee in the Use Privilege Area, construction plans and specifications for all proposed work shall be submitted in advance by the Permittee to the City's City Engineer for approval prior to beginning the construction process. The plans must show the depth, and location of the proposed construction and distance from existing water, storm water, wastewater, and gas lines. The Permittee shall also comply with any other laws, rules, regulations, and ordinances applicable to construction in the City and in the public right-of-way, including obtaining all required permits.
- F. Prior to the start of any approved construction, Permittee shall require every contractor and subcontractor to provide a Certificate of Insurance reflecting insurance in coverage amounts as set forth in Exhibit "C." Additionally, Permittee shall require their contractors and subcontractors to indemnify the City, its officers, officials, employees, representatives, agents, licensees, and invitees in the same manner that Permittee has provided indemnification to the City pursuant to this Agreement.
- G. Permittee shall provide all necessary and proper safety devices so as to prevent injuries or accidents in the Use Privilege Area, in as much as possible.
- H. At least 48 hours prior to beginning any approved construction, Permittee shall contact 1-800-DIG-TESS and the Lone Star Notification Center (1-800-669-8344), and any other required agency or authority. Additionally, at least 48 hours prior to beginning any approved construction, Permittee shall give notice and verify depth and location of communication lines or communication fiber optic cables, whichever is applicable, to the following:

- City Utility Departments, including Water, Storm water, Wastewater and Gas;
- American Electric Power (AEP);
- American Telephone and Telegraph (AT&T);
- CenturyTel;
- Time Warner;
- Grande Communications; and
- Any and all other certified telecommunications providers.

A City inspector may request a utility line be uncovered to verify its depth or location.

- I. Any construction process and use of the Use Privilege Area by Permittee shall not interfere with the construction, installation, operation, maintenance, repair, removal or replacement by the City or any of its agents, contractors, or franchisees of any existing or future proposed sidewalks, utility lines, or other uses. If the City or any franchisee with utilities currently located in said public right-of-way needs access to the right-of-way, Permittee shall pay for removing or relocating the private wastewater line in the Use Privilege Area to allow access to utility lines for maintenance, repair, removal, or replacement of the utility lines. The Permittee shall repair the Use Privilege Area to its original condition or cease to use the Use Privilege Area, at which time this AGREEMENT terminates immediately.
- J. Traffic Engineer requirements pertaining to this Agreement, if applicable in context:
 1. At least 48 hours prior to commencing any approved construction, the Permittee shall file and obtain approval for a traffic control plan with the City's Traffic Engineer. No closure or barricading of a public right-of-way or any portion of a public right-of-way may occur before approval of the traffic control plan and, if applicable, approval of a detour or barricade plan has been obtained from the City's Traffic Engineer.
 2. Should Permittee require a trench, pit, or similar excavation be dug during approved construction, the Permittee shall file and obtain approval for barricading said trench, pit, or excavation in accordance with the Texas Manual on Uniform Traffic Control Devices from the City's Traffic Engineer. [See paragraph "P" of this Agreement for additional requirements regarding trenches, pits and similar excavations.]
- K. If, as determined by the City Manager, damage occurs to any gas, water, storm water, or wastewater line, Permittee shall allow the City immediate access to the Use Privilege Area to perform an assessment, make repairs, or take any other action deemed necessary by the City. Determination of the

extent of damage and repairs necessary to restore the utility line(s) shall be made by the City Manager. All costs of the City associated with said damage and repair, including labor and materials, shall be paid by Permittee within 30 days of the City's invoice.

- L. Should construction become necessary near existing water or wastewater lines, Permittee shall take every precaution not to disturb the soil surrounding any such lines, including all thrust blocks.
- M. If any approved work is conducted near any existing water main, it shall be done under the inspection of a City inspector at a daily rate of three-hundred ten dollars and thirty-five cents (\$310.35) for each day spent inspecting construction, installation, maintenance, repair, removal, or replacement in the Use Privilege Area. A half-day, being four hours or more of work time by the City inspector, constitutes a whole working day for purposes of calculation. Any time in excess of eight hours a day, or on Saturday, Sunday or holidays, shall be calculated at a daily rate of fifty-eight dollars and eighteen cents (\$58.18) per hour. Any assessed inspection fees shall be paid by the Permittee to the appropriate City department within 30 days of the City's invoice. These amounts will be adjusted annually each year on August 1 to reflect any pay increases that may be attributable to the rates charged.
- N. The parties acknowledge that the Wastewater Line is not owned by the City. At any and all times Permittee shall be solely responsible for the repair and maintenance of the Wastewater Line and Use Privilege Area, including any costs associated with damage occurring due to natural weather elements/occurrences or man-made forces. Should damage occur to the Wastewater Line or Use Privilege Area, regardless of the type of damage, Permittee shall immediately repair the damage upon notice by the City. Failure to so repair terminates this Agreement immediately without any further action needed on the part of the City.
- O. Permittee shall repair, or cause to be repaired, any damage to driveways, culverts, head walls, landscaping, sidewalks, curbs, gutters, and any other structure, public or private, resulting from or caused by reason of construction, installation, maintenance, repair, removal, replacement or operation of the Wastewater Line and Use Privilege Area.
- P. If a trench, pit, or other excavation is required during approved construction, no trenches, pits, or other excavation, other than bore pits, shall be left open overnight, except as specifically authorized by the City's Director of Development Services and City's Engineer. Bore pits are not allowed open for a period of longer than 14 calendar days, regardless of location. All trenches, pits, or other excavations, other than bore pits, shall be backfilled by the Permittee promptly and in accordance with current City standards and specifications and as per the City inspector's request. All trenches, pits, and

other excavations, *including* bore pits, shall be barricaded by the Permittee in accordance with the Texas Manual on Uniform Traffic Control Devices and as approved by the City's Traffic Engineer. [See paragraph "J.2." for additional requirements pertaining to trenches, pits, and other excavations.]

- Q. If backfilling becomes necessary, all backfill, specifically including that in and around existing utilities, shall be made by Permittee according to current City standards and specifications and as required by a City inspector.
- R. Use of the Wastewater Line authorized by this Agreement is strictly limited to providing service to the Tulooso Midway High School Agricultural Complex restroom facility, located at 2653 McKinzie Road, in the Use Privilege Area. Permittee shall not provide, nor permit anyone else to provide or receive, service through said Wastewater Line, or at any facilities within the City other than the building facilities specifically included in this Agreement without first obtaining a franchise or other required approval from the City. The Permittee's use of the eight-inch wastewater sanitary sewer main is strictly limited to serving the Permittee's Tulooso Midway Agricultural Complex restroom facilities. Permittee may not provide wastewater service through the eight-inch wastewater sanitary sewer main to any facilities other than the facilities specified in this section, nor may Permittee permit or allow anyone else to provide wastewater service or any other service through the eight-inch wastewater sanitary sewer main to any facility whether owned by the Permittee or by another person or entity. All costs incurred to install, operate, maintain, repair, and remove the eight-inch PVC wastewater sewer main are the sole responsibility of the Permittee.
- S. INDEMNIFICATION. Intentionally left blank.
- T. All signatories signing this Agreement warrant and guarantee that they have the authority to act on behalf of the entity represented and make this Agreement binding and enforceable by their signatures.
- U. Unless otherwise stated in this Agreement, any notice required or permitted to be given under this Agreement must be in writing and sent by certified mail, return receipt requested to the following addresses:

If to Permittee: Tulooso Midway Independent School District
9760 La Branch
Corpus Christi, TX 78410

If to the City: City of Corpus Christi
Attn: Director, Development Services Department
P. O. Box 9277
Corpus Christi, TX 78469-9277

Any party shall, by notice to the others in accordance with the provisions of this paragraph, specify a different address or addressee for notice purposes within 10 days of any address change.

- V. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created pursuant to this Agreement are performable in Nueces County, Texas. Venue for all actions arising from, out of, or related to this Agreement must be brought in Nueces County, Texas.
- W. The Permittee further agrees, in compliance with the City of Corpus Christi Ordinance No. 17112, to complete, as part of this Agreement, the "Disclosure of Interests" form attached to this Agreement as Exhibit "D." Completed versions of Exhibit "D" by the Permittee form a part of this Agreement and are incorporated by reference into this Agreement as if set out here in their entireties.
- X. This instrument, including exhibits, constitutes the entire agreement between the City and the Permittee, and no prior written, oral, or contemporaneous promises, warranties, or representations shall be binding upon any parties. This Agreement may only be amended by written instrument signed by authorized representatives of the City and Permittee and approved as required by City law.
- Y. Any payments due by the Permittee pursuant to this Agreement will be made from current revenue available to the Permittee.

EXECUTED IN DUPLICATE this 17 day of August, 2015.

TULOSO MIDWAY INDEPENDENT SCHOOL DISTRICT

Paul B Mostella

8/17/2015
Date

Paul B Mostella, President
Board of Trustees

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on August 17, 2015, by Paul B. Mostella, President, Board of Trustees, TuloSo Midway Independent School District, a Texas public school district, on behalf of the district.

Marta Irene Chavez
Notary Public's Signature



ATTEST:

CITY OF CORPUS CHRISTI

City Secretary

By: _____
Daniel M. Grimsbo, P.E.
Director, Development Services Department

Approved as to legal form: _____, 2015

Julian Grant
Senior Assistant City Attorney
for the City Attorney

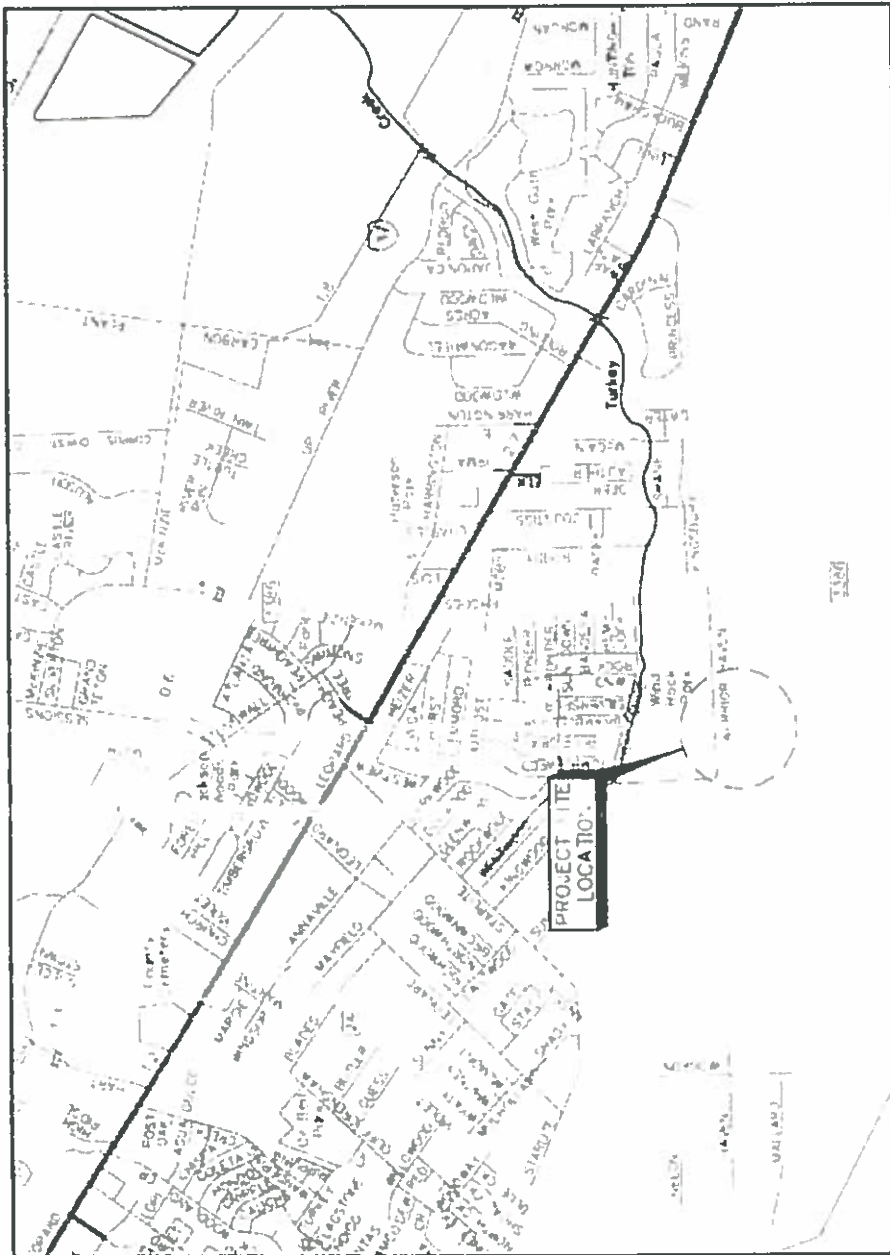
STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on _____, 2015, by Daniel M. Grimsbo, P.E., as Director, Development Services Department, of the City of Corpus Christi, a Texas Municipal Corporation, on behalf of said corporation.

Notary Public's Signature

ID 401-8

ID 401-9



LOCATION MAP
SCALE: 1" = 100'



USE PRIVILEGE AGREEMENT - TULOSO MIDWAY PRIVATE SANITARY SEWER LINE (HAVEN DR.)

EXHIBIT A

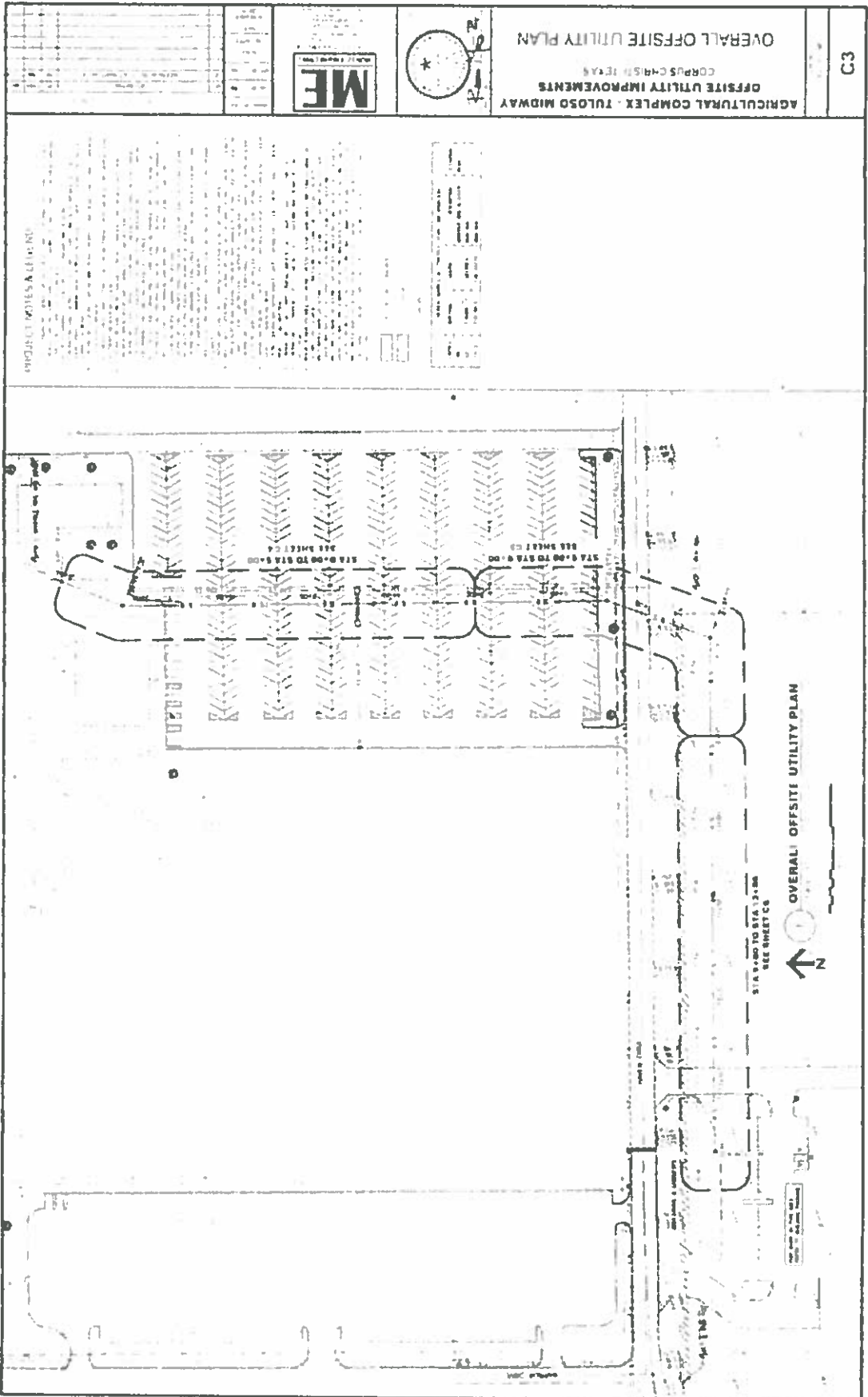


EXHIBIT B-1

ID 401-10

11-104 I

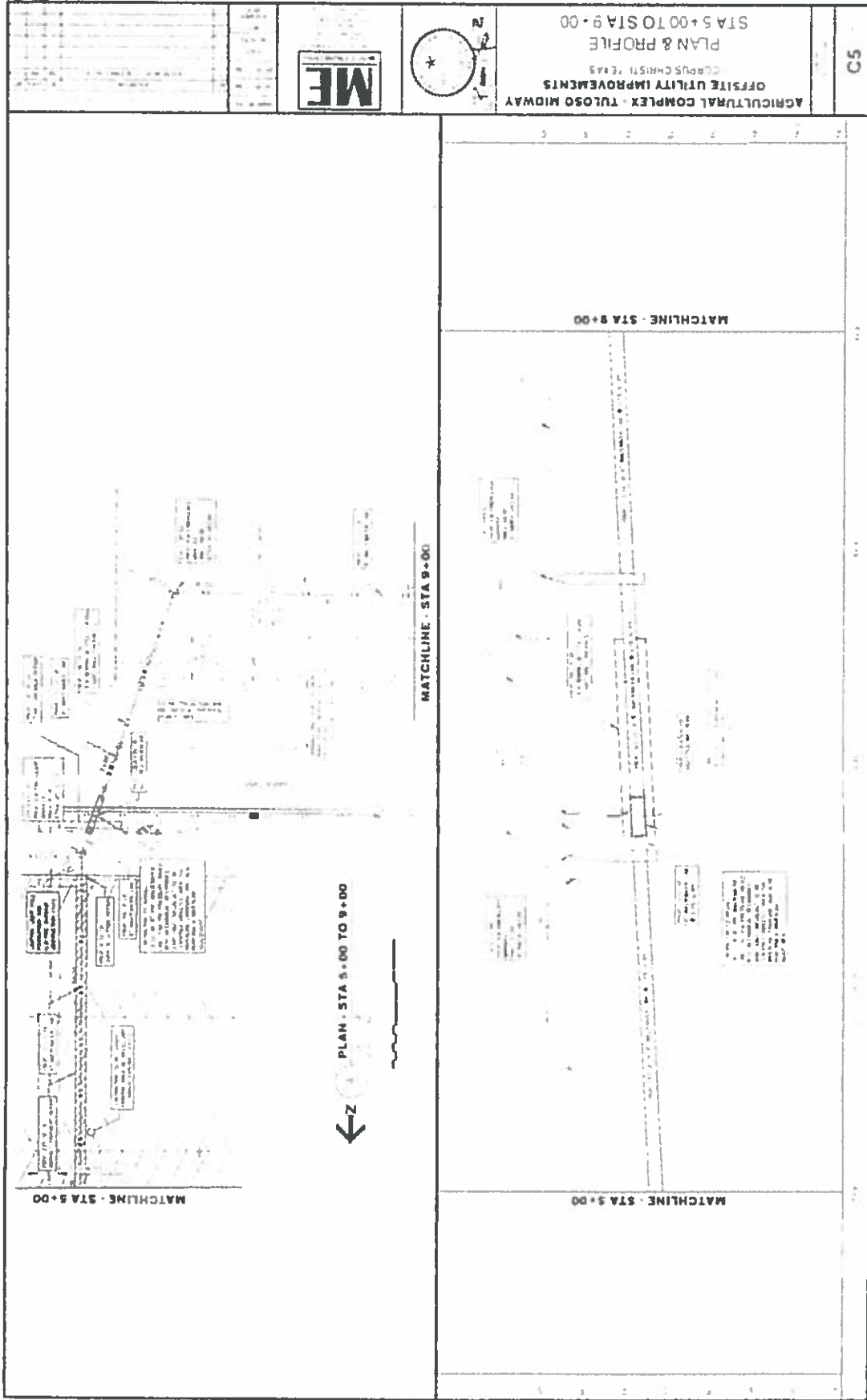


EXHIBIT B-2

C5

EXHIBIT C

INSURANCE REQUIREMENTS

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Director of Development Services one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. **The City must be listed as an additional insured on the General liability and Auto Liability policies, and a waiver of subrogation is required on all applicable policies. Endorsements must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.**

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.	Bodily Injury and Property Damage Per occurrence - aggregate
Commercial General Liability including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$500,000 Combined Single Limit
WORKERS'S COMPENSATION (All States Endorsement if Company is not domiciled in Texas)	Statutory and complies with Part II of this Exhibit.
Employer's Liability	\$500,000/\$500,000/\$500,000
PROPERTY INSURANCE	Contractor is responsible for insuring all owned, leased and rented personal property.

- C. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

ID 401-12

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Contractor will be promptly met. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Contractor shall be required to submit a copy of the replacement Certificate of Insurance to City at the address provided below within 10 days of any change made by the Contractor or as requested by the City. Contractor shall pay any costs incurred resulting from said changes. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

- D. **Contractor agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

IA 401-13

- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

2015 Insurance Requirements
Development Services
UPA – Tuloos Midway ISD Sanitary Sewer Line Project
2/13/2015 ds Risk Management

IO 401-14



**CITY OF CORPUS CHRISTI
DISCLOSURE OF INTERESTS**

City of Corpus Christi ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA".

FIRST NAME: _____

STREET: _____ CITY: _____ ZIP: _____

FIRM IS: 1. Corporation 2. Partnership 3. Sole Owner 4. Association 5. Other _____

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name	Job Title and City Department (if known)
_____	_____
_____	_____

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name	Title
_____	_____
_____	_____

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name	Board, Commission, or Committee
_____	_____
_____	_____

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 35 or more of the ownership in the above named "firm".

Name	Consultant
_____	_____
_____	_____

CERTIFICATE

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: Paul B. Mastella
(Type or Print)

Signature of Certifying Person: [Signature]

Title: Board President

Date: 8/17/2015

EXHIBIT D

IO 401-15