



Control Number: 42962



Item Number: 23

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
Legislature, Regular Session, transferred the functions  
relating to the economic regulation of water and sewer  
utilities from the TCEQ to the PUC effective  
September 1, 2014

**LAW OFFICE OF RICHARD S. HOFFMAN**

1718 BOCA CHICA BLVD  
BROWNSVILLE, TX 78520  
956-544-2345 \* 956-982-1909 fax

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PUBLIC UTILITY COMMISSION  
FILING CLERK

November 15, 2002

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NOV 19 2002

TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION  
UTILITIES AND DISTRICTS

Ms. LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
PO Box 13087 MC 105  
Austin, TX 78711-3087

Re: SOAH Docket No. 582-02-3005; TCEQ Docket No. 2002-0431-UCR  
Application of the City of Lyford for a Water CCN in Willacy County

Dear Ms. Castañuela,

Enclosed for filing in connection with the above referenced matter, please find an original and eleven copies of City of Lyford's Brief in Opposition to Proposal for Decision.

Please let me know if you have any questions or require additional information. Thank you for your usual courtesies.

Very Truly Yours,

*Richard Hoffman*

Richard S Hoffman  
Attorney for City of Lyford

*w/ Review by Eugenio Solana*

*JS*

**RECEIVED**

**SOAH DOCKET NO. 582-02-3005  
TCEQ DOCKET NO. 2002-0431-UCR**

**NOV 19 2002**

**TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION  
UTILITIES AND DISTRICTS**

**APPLICATION OF THE CITY OF  
LYFORD TO OBTAIN A WATER  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY IN WILLACY  
COUNTY**

)  
) **BEFORE THE STATE OFFICE**  
) **OF**  
) **ADMINISTRATIVE HEARINGS**  
)

**BRIEF IN OPPOSITION TO  
PROPOSAL FOR DECISION**

**I. Introduction**

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The City of Lyford (Lyford) seeks a water certificate of convenience and necessity (CCN) for a portion of Willacy County. In its final application, it is not attempting to ask or require decertification of North Alamo Water Supply Corporation's CCN but rather co-certification in some areas surrounding the City. The Mayor of Lyford and the Manager of North Alamo Water Supply Corporation have signed and filed an Agreement that designates the intended boundary line between areas of service of both parties. The City of Lyford is requesting a decision approving the Agreement and that portion of its Application that is consistent with the Agreement. The Administrative Law Judge proposes that the Commission deny Lyford's Application in its entirety and with prejudice to refilling.

The original application for a water certificate of convenience and necessity (CCN) establishes the need for the CCN for the service of the growing population of the City of Lyford and its surrounding area. The community is a poor community and many of the homes in the area are modest as are the developments that have been proposed. For developers, it is impossible, or at least impractical, to develop in the area since the water distribution mains of North Alamo are miles from the potential area of development. As the developer traditionally pays for the connection between the developer's line and the water main, and the distance to the North Alamo main is great, the sheer cost of connection could actually exceed the cost of development. As a

consequence, developers are discouraged from building and potential homeowners cannot buy. The City mains on the other hand, are close and easily accessible to the areas in question (those areas where developments are most likely). Given the authority, the City could provide the service, the developer could afford to pay for the connection and the resident could purchase. The City could then supply the water and could afford to provide the other services generally provided by a city.

## II. BACKGROUND

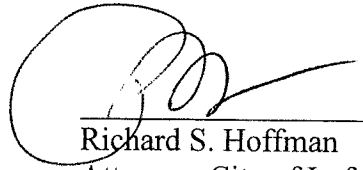
The initial Application for CCN was filed and set for hearing on July 2, 2002. Counsel for Applicant requested a rescheduling of the hearing and, after several phone calls between his office, the office of the TNRCC and the office of counsel for North Alamo, counsel sent a fax requesting that the hearing be postponed at least until September 13, 2002 so that an agreement could be reached. It was counsel's understanding that this action would result in the postponement.

The ALJ granted the motion to continue and the case was set for August 29, 2002. Prior to that day counsel understood that the parties had agreed on the boundaries, and that specifically the Mayor of Lyford and the Manager of North Alamo Water Supply Corporation had begun making a map that would establish the boundaries of service area between the two entities. The attorney for North Alamo Water Supply Corporation also indicated that he was aware that an agreement was being drawn. Counsel, mistakenly in retrospect, believed that the parties would announce their agreement and file the boundary map at a later time.

The City has filed a motion to reopen the record based on the fact that the parties had reached an agreement. During the following two weeks, maps were drawn and additional discussions took place. On October 11, 2002 an executed agreement was forwarded to counsel for North Alamo and it is understood that it was executed by the mayor's counterpart and filed with the Commission..

The City requests that the record be reopened so that a limited CCN agreed upon and so that residents in the area can have a close and affordable source of water. Without the CCN, development will be prohibitive and growth in the area will be stalled. Exhibit "A" is affidavit of

the City consultant is attached for further explanation. A copy of the signed agreement is also attached as Exhibit "B"

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a series of loops and a long horizontal stroke extending to the right.

Richard S. Hoffman  
Attorney, City of Lyford

**CERTIFICATE OF SERVICE**

I certify that on November 14, 2002, a true and correct copy of Brief in Opposition to Proposal for Decision was served by regular postage prepaid mail on the interested parties.

  
\_\_\_\_\_  
Richard S. Hoffman

J.W. Dyer  
Representative for North Alamo WSC  
Dyer & Associates  
3700 North Tenth St., Ste. 105  
McAllen, Texas 78501  
(956) 686-6601

Via Facsimile 512 239-0606  
Mr. Todd Galiga  
Staff Attorney  
TNRCC  
Mail Code 173  
P.O. Box 13087  
Austin, Texas 78711-3087

Mr. Blass Coy, Jr.  
Office of Public Interest Counsel  
TNRCC  
Mail Code 103  
P.O. Box 13087  
Austin, Texas 78711-3087

Amy Cortinas  
Utility Rates and Services Section  
Water Utilities Division – MC 103  
Texas Natural Resource  
Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711

Docket Clerk  
Office of Chief Clerk – MC105  
Texas Natural Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

**BEFORE THE  
TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION**

**AFFIDAVIT OF DONALD BADEAUX**

**BEFORE ME**, the undersigned authority, on this day personally appeared Donald Badaeux who being by me duly sworn, upon his oath deposed and said as follows:

1 "My name is Donald Badaux. I am over the age of twenty-one years, I have never been convicted of a felony, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are all true and correct.

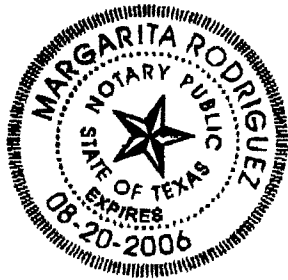
2. "I am the grant writer and consultant to the City of Lyford and am very familiar with the city, its growth patterns and its needs for infrastructure. I drafted the initial application for OCN to the TNRCC. It is my belief that without a good and affordable water source there is no likelihood of growth near the city of Lyford in the near future. With such a water source, growth will occur. While developers have expressed an interest in building subdivisions adjacent to the city limits of Lyford, once they realize that how much they will have to pay for the connection to the current water source, they feel the cost is prohibitive and they decline to continue with their building plans. The residents are in need of housing yet it is unavailable. The city water mains are accessible and connection would be cost effective for a developer. Based on that idea. A map

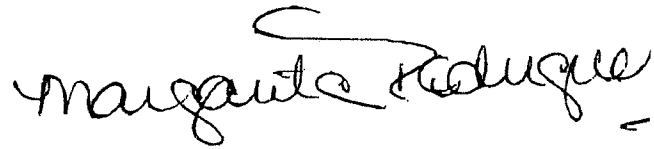
Exhibit "A"

was drawn and an agreement made between the city and the North Alamo Water Supply Corporation. I believe it is in the best interest of the city and the residents who live in or near the city that the Agreement be accepted and approved.

  
Donald Badaux

Sworn to me a notary public, this the 15<sup>th</sup> day of November, 2002.







SOAH DOCKET NO. 582-02-3005  
TNRCC DOCKET NO. 2002-0431-UCR

APPLICATION OF THE CITY OF	§	BEFORE THE STATE OFFICE
LYFORD TO OBTAIN A WATER	§	
CERTIFICATE OF CONVENIENCE	§	OF
AND NECESSITY IN WILLACY	§	
COUNTY	§	ADMINISTRATIVE HEARINGS

AGREEMENT

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Now come the parties, The City of Lyford (hereafter "Lyford") and North Alamo WSC, hereafter "Alamo" and agree as follows:

Whereas the City of Lyford has previously filed an Application to Obtain A Water Certificate of Convenience and Necessity in Willacy County and;

Whereas Alamo opposed such Application and;

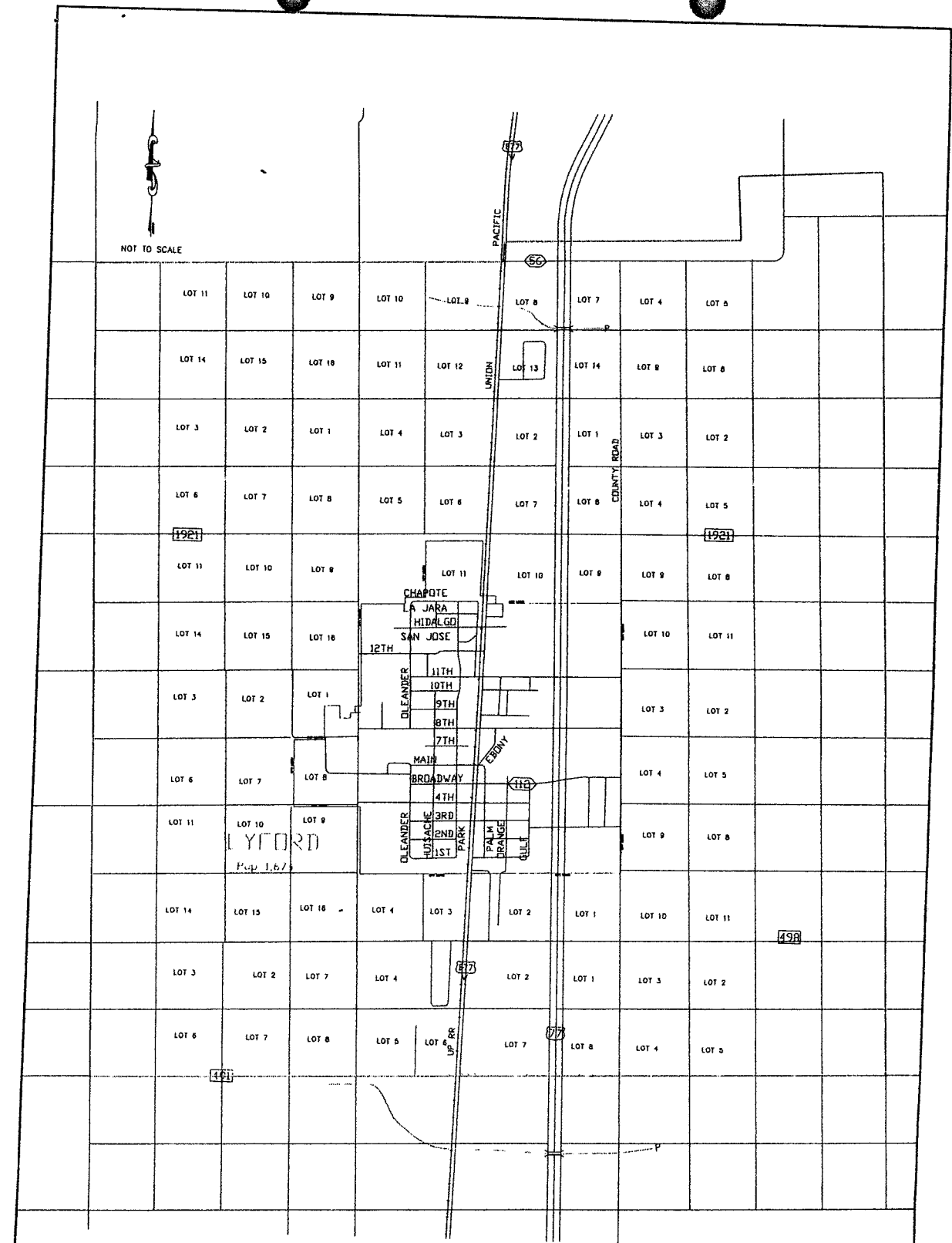
Whereas, thereafter, the parties reached an Agreement resolving their difficulties;

NOW, THEREFORE for the mutual promises contained herein and for other valuable consideration, the parties agree that the map attached hereto and marked Exhibit A designates the boundary line between areas of service of both parties.

By: S/R  
Lisandro Ramon  
Mayor of City of Lyford  
P.O. Box 310, 196 W. Main  
Lyford, Texas 78569

By: S/D  
North Alamo WSC  
J.W. Dyer, Representative for North Alamo WSC  
Dyer & Associates  
3700 North Tenth Street, Ste. 105  
McAllen, Texas 78501

Exhibit "B"



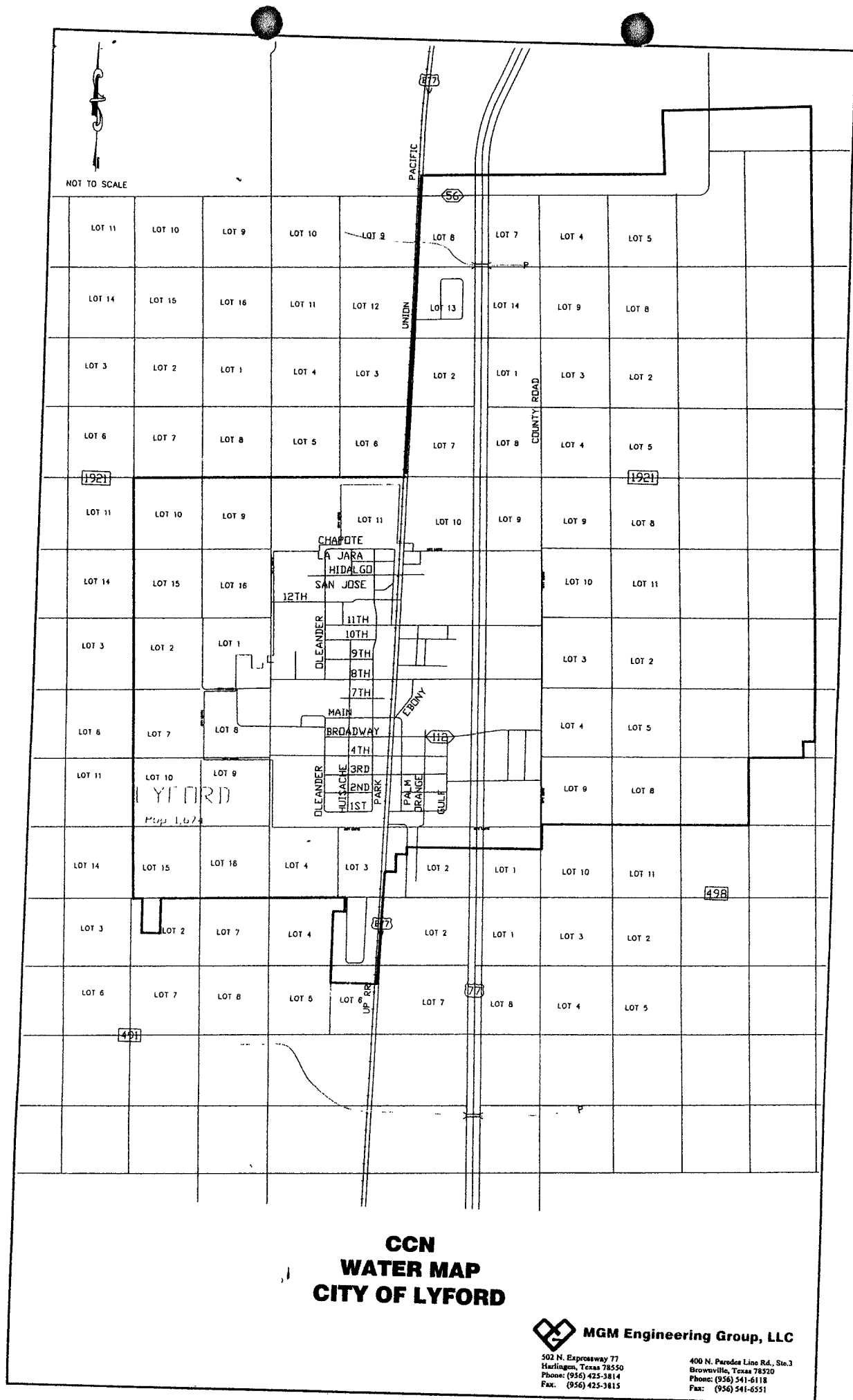
**CCN  
SEWER MAP  
CITY OF LYFORD**



**MGM Engineering Group, LLC**

502 N. Expressway 77  
Hartington, Texas 78550  
Phone: (956) 425-3814  
Fax: (956) 425-3815

400 N. Paredes Line Rd., Ste. 3  
Brownsville, Texas 78320  
Phone: (956) 541-6118  
Fax: (956) 541-6551



**MGM Engineering Group, LLC**

502 N. Expressway 77  
Harlingen, Texas 78550  
Phone: (956) 425-3814  
Fax: (956) 425-3815

400 N. Paredes Line Rd., Ste. 3  
Brownsville, Texas 78520  
Phone: (956) 541-6118  
Fax: (956) 541-6551