

CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
January 08, 2013 - 9:30 A.M.
Basement Conference Room
300 North Loraine
Midland, Texas

These items, as well as any other items on the regular posted agenda for the City Council Meeting on this date, may be discussed:

1. Receive an update from the Midland County Freshwater Supply District No. 1 regarding the delivery of water from T-Bar Ranch located in Winkler County and Loving County, Texas.

AGENDA FOR CITY COUNCIL MEETING
January 08, 2013 – 10:00 AM
Council Chamber - City Hall

The Midland City Council agenda is posted for public notice at least 72 hours prior to the Tuesday meetings. All requests to be placed on the Council agenda by the public must be submitted to the City Manager, in writing, at least one week before the Council meetings. Such written requests must be in sufficient detail to identify the subject matter as well as the contact person who will represent the matter before the Council. The City Council reserves the right to not consider matters over which the City has no jurisdiction.

OPENING ITEMS

1. Invocation - Pastor Robert Pase, Grace Lutheran Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Recognition of the 2012 Christmas Parade Float Winners.
 - b. Presentation of a Proclamation for Crime Stoppers Month.

PUBLIC COMMENT

4. Receive public comments where individuals may address the City Council on City related issues and projects. 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.

CONSENT AGENDA

5. Consider a motion approving the following minutes:
 - a. Regular Meeting of December 18, 2012.
6. Consider a resolution authorizing the execution of a contract for the purchase and installation of two (2) center pivot irrigation systems, with additional parts, for use at the City's Spraberry Farm from Lamesa Irrigation Company, of Lamesa, Texas, at a total cost of \$138,376.00. (GENERAL SERVICES) (2013 - 001)

7. Consider a resolution authorizing the execution of a Professional Services Agreement with Freese and Nichols, Inc. for Comprehensive Revisions to the City of Midland's Zoning Code Regulations; and authorizing payment therefor in the amount of \$177,000. (GENERAL SERVICES) (2013 - 002)
8. Consider a resolution awarding a 3-year service contract for dry cleaning services to Gregory DCSC, L.L.C. dba Dry Clean Super Center, of Midland, Texas, at a total cost of \$292,601.40. (GENERAL SERVICES) (2013 - 003)
9. Consider a resolution of the City of Midland, Texas, requesting that the Texas State Legislature and the Governor of Texas take action to stop Usurious Lending by Payday and Auto Title Lenders and to support cities' authority to pass ordinances aimed at curtailing credit access businesses' exploitation of economically vulnerable citizens. (CITY MANAGER'S OFFICE) (2013 - 004)
10. Consider a resolution authorizing the execution of an Interlocal Cooperation Contract between the City of Midland, the Midland Development Corporation ("MDC"), the Downtown Midland Management District ("DMMD") and the Midland Tax Increment Reinvestment Zone Number One ("TIRZ") regarding the City of Midland's Employment of a Downtown Development Coordinator, as authorized by Chapter 791 of the Texas Local Government Code; and rescinding Resolution No. 2012-337. (DOWNTOWN DEVELOPMENT) (2013 - 005)
11. Consider a resolution authorizing the acceptance of a 0.0916-acre utility easement from Victor R. Cesena; authorizing the acceptance of a 0.4769-acre utility easement from the estate of Paul B. Handel; authorizing the acceptance of a 0.2712-acre utility easement from Barefoot 6/91, LTD.; said easements being located in Section 2, Block 39, T-2-S, T&P RR Co. Survey, Midland, Midland County, Texas; and ordering recordation by the City Secretary. (ENGINEERING SERVICES) (2013 - 006)
12. Consider a resolution authorizing the acceptance of a 0.16-acre sewer line easement located in the remainder of Lot 1, Block 6, Westridge Park Addition, Section 6, Midland, Midland County, Texas; and ordering recordation by the City Secretary. (ENGINEERING SERVICES) (2013 - 007)
13. Consider a resolution authorizing an Operating Certificate for Khodiar Trade Investment dba Metro Taxi, to operate a Taxicab Business; setting forth conditions accompanying the Certificate; and establishing the terms of the Certificate. (POLICE) (2013 - 008)
14. Consider a resolution authorizing the execution of a contract with R.E. Monks Construction Company, LLC for the labor, material, equipment, and supervision necessary for the construction of Cell 7 Excavation and Liner Construction at the

City of Midland Landfill; said contract to be for a total amount of \$5,772,510.20; and appropriating funds. (SOLID WASTE) (2013 - 009)

SECOND READINGS

15. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 14-26, Block 43, Lots 14-26, Block 44, and Lots 14-26, Block 45, Greenwood Addition, Third, Fourth, and Fifth, City and County of Midland, Texas, which is presently zoned C-3, Commercial District, to be used as a PD, Planned District for a Housing Development (Generally located on the north side of Cloverdale Road, between South Jackson Street and South Webster Street); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9093)
16. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 5.00-acre tract of land out of Blocks 84 and 85, east Midland Addition, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned C-3, Commercial District, to be used as a PD, Planned District for a Housing Development (Generally located on the west side of Fairgrounds Road, south of Golf Course Road); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9094)
17. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 3.911-acre tract of land out of Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, which is presently zoned AE, Agriculture Estate District, and a 7.709-acre tract of land out of Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Shopping Center, to be used as an LR-2, Local Retail District (Generally located on the northwest corner of the intersection of North Midkiff Road and Mockingbird Lane); containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9095)
18. Consider an ordinance on second reading designating the I-20 Wildlife Preserve as parkland; amending Title IX, "Public Ways and Property", Chapter 5, "Parks and Playgrounds", Section 18, "Hours of Use of Public Parks", establishing

Subsection (C) of the City Code of Midland, Texas, so as to establish provisions concerning hours of use and rules and regulations for the I-20 Wildlife Preserve; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of five hundred dollars (\$500.00); and ordering publication. (COMMUNITY SERVICES) (9098)

PUBLIC HEARINGS

19. At approximately 10:30 a.m. hold a public hearing and consider an ordinance vacating and abandoning a 45-foot by 311.94-foot portion of Right-of-Way located adjacent to Lots 1, 2 and 3, Block 1, 349 Ranch Estates Addition, City and County of Midland, Texas (Generally located on the east side of North Big Spring Street, between Arapahoe Road and Tejas); adopting the appraisal by the City Manager of \$14,037.00; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9099)
20. At approximately 10:33 a.m. hold a public hearing regarding a proposed Oil and Gas Permit to Bluestem Energy Holdings, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Evans P 1) located 490 feet from the south line and 565 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the North Midkiff Drive, approximately 490 feet north of Mockingbird Lane.) (DEVELOPMENT SERVICES)
21. At approximately 10:36 a.m. hold a public hearing regarding a proposed Oil and Gas Permit to Bluestem Energy Holdings, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Evans A 1) located 993 feet from the north line and 490 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the North Midkiff Drive, approximately ¾ mile north of Mockingbird Lane.) (DEVELOPMENT SERVICES)
22. At approximately 10:39 a.m. hold a public hearing regarding a proposed Oil and Gas Permit to Bluestem Energy Holdings, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Evans B 2) located 490 feet from the north line and 2,328 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of North Midkiff Drive, approximately 1 mile north of Mockingbird Lane.) (DEVELOPMENT SERVICES)
23. At approximately 10:42 a.m. hold a public hearing regarding a proposed Oil and Gas Permit to Bluestem Energy Holdings, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Evans O 1) located 654 feet from the south line and 1,860 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the north side of Mockingbird Lane, approximately 1/3 mile west of North Midkiff

Drive.) (DEVELOPMENT SERVICES)

24. At approximately 10:45 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 14.05-acre tract of land out of Section 19, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned PD, Planned District for Housing Development, to be used as an amended Planned District (Generally located at the south side of West Wadley Avenue, approximately 450 feet east of Sunburst Drive); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9100)

MISCELLANEOUS

25. Consider a resolution approving the issuance of a Permit to Endeavor Energy Resources, LP ("Operator") to drill an oil and gas well within the City Limits located 2,167 feet from the north line and 600 feet from the west line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the south side of Passage Way, approximately 600 feet east of North Midkiff Road). (DEVELOPMENT SERVICES) (2013 - 010)
26. Consider a resolution approving the issuance of a Permit to Endeavor Energy Resources, LP ("Operator") to drill an oil and gas well within the City Limits located 2,167 feet from the north line and 1,950 feet from the west line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the south side of Passage way, approximately 1,950 feet east of North Midkiff Road). (DEVELOPMENT SERVICES) (2013 - 011)
27. Consider a resolution authorizing the execution of a Road Repair Agreement with Endeavor Energy Resources, LP regarding its Applications to Drill Oil and Gas Wells (Chaps No. 2 and Chaps No. 3) within the City Limits in Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (DEVELOPMENT SERVICES) (2013 - 012)
28. Consider a resolution authorizing a Right-of-Way Crossing License with the City of Midland, Texas and Endeavor Energy Resources, L.P.; said Right-of-Way License is for the purpose of installing one (1) three inch (3") oil and gas, production water poly pipeline, and one (1) four inch (4") fresh water poly pipeline all contained within an eight and one-half inch (8 ½) standard steel casing under a portion of passage way; the casing is located within the City of Midland Right- of-Way, Section 9, Block "X", H.P. Hilliard Survey, Midland, Midland County, Texas; the license term is for five (5) years, commencing with the date of this license and may be renewed at the end of the term for one

additional five (5) year term upon 90 days written request prior to expiration.
(ENGINEERING SERVICES) (2013-013)

29. Consider an ordinance vacating and abandoning a 45-foot by 215-foot portion of right-of-way located adjacent to Lots 1 and 2, Block 18, 349 Ranch Estates Addition, Section 3, City and County of Midland, Texas (Generally located on the southeast corner of State Highway 349 and Arapahoe Road); adopting the appraisal by the City Manager of \$9,675.00; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9101)
30. Consider a resolution approving the issuance of a Permit to Bluestem Energy Holdings, LLC ("Operator") to drill an oil and gas well within the City Limits located 2,073 feet from the north line and 1,009 feet from the west line, Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the east side of North Midland Drive, approximately 3/4 of a mile north of Mockingbird Lane); and providing that said permit does not require a new Road Repair Agreement but shall be consolidated under an existing Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 014)
31. Consider a resolution approving the issuance of a Permit to Callon Petroleum Operating Company ("Operator") to drill an oil and gas well within the City Limits located 947 feet from the west line and 660 feet from the south line, Section 23, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the north side of Briarwood Avenue, approximately 1/2 mile west of Golden Gate Drive); and providing that said Permit does not require a new Road Repair Agreement but shall be consolidated under an existing Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 015)
32. Consider an ordinance vacating and abandoning a 0.23-acre north/south and east/west alley adjacent to Lot 1, Block 10, and Lot 15, Block 11, Trueland Addition, Section 2, City and County of Midland, Texas (Generally located near the southwest corner of the intersection of Scharbauer Drive and North Fairgrounds Road); adopting the appraisal by the City Manager of \$902.00; waiving the fee for the cost of the Right-of-Way; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9102)
33. Consider a motion interpreting Ordinances 7500 and 6862 as they relate to the development of property for medical office and residential uses. Said ordinances regulate property generally located on the south side of Andrews Highway 200 feet east of Upland Drive. (DEVELOPMENT SERVICES)
34. Consider an ordinance amending Title III, "Departments", Chapter 1, "Water Department", Section 2, "Rates," Subsection (A), "Customers Inside of City limits," Sub-Subsection 2., "Sewer Rates," of the City Code of Midland, Texas, so as to clarify the rates charged to customers inside the City Limits for sewer service; containing a cumulative clause; containing a savings and severability

clause; and ordering publication; and the City Manager shall notify all customers outside the City Limits as required by State Law. (UTILITIES) (9103)

35. Consider a motion making appointments to various Boards and Commissions.

EXECUTIVE SESSION

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

- a. Section 551.071 Consultation with the City Attorney
 - a.1. Discuss Section 36.121 and Section 36.122 of the Texas Water Code.
- b. Section 551.072 Deliberation Regarding Real Property.
 - b.1. Discuss the purchase, exchange lease or value of real property described as Block 027, Lots 07A and 13A, Original Town Addition, Midland, Midland County, Texas.

Respectfully Submitted,

Courtney B. Sharp
City Manager

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

**MIDLAND CITY COUNCIL
MINUTES
December 18, 2012**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:30 a.m. on December 18, 2012.

Council Members present: Mayor W. Wesley Perry, Mayor Pro Tem Jerry Morales (At-Large), Council Member Scott Dufford (At-Large), Council Member Jeff Sparks (District 1), Council Member Vicky Hailey (District 2), Council Member John James (District 3), and Council Member Michael Trost (District 4).

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, General Services Director Robert Patrick, Utilities Director Stuart Purvis, Acting Engineering Director David Beard, Internal Auditor Debbie Gotovac, Public Information Officer Sara Higgins, and Multimedia Developer Ryan Stout.

1. Discussion of possible dates for the 2013 Council Retreat.

City Manager Sharp asked the City Council to check their calendars to determine a best date for the retreat. Following brief discussion, March 6 and March 7, 2013 was chosen as the dates of the retreat.

Discussion ensued about the potential format to include inviting the chairs of key boards and commissions for discussion, obtaining the same facilitator and flushing out discussion topics prior to the retreat.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:41 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., December 18, 2012.

Council Members present: Mayor W. Wesley Perry, Mayor Pro Tem Jerry Morales (At-Large), Council Member Scott Dufford (At-Large), Council Member Jeff Sparks (District 1), Council Member Vicky Hailey (District 2), Council Member John James (District 3), and Council Member Michael Trost (District 4).

Staff members present at the annex table: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, and Assistant City Manager Jim Nichols.

The Agenda Items were heard in the following order: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 29, 30, 31, 32, 12, 18, 26, 28, 33, 40, 36, 34, 35, 37, 38, 39, 43, 41, 42, 44.

OPENING ITEMS

1. Invocation - Father Bernard Getigan, St. Michael the Archangel Catholic Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Council Member James presented the Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association to Finance Director Bob McNaughton and his staff.
 - b. Mayor Perry and City Manager Sharp recognize the 2012 Certified Public Manager Graduates: Regina Stephenson and Charlene Fox.
 - c. Council Member Dufford, Mayor Perry and City Manager Sharp recognized the 2012 Management Award recipients:
Innovation - First Place was awarded to Justine Ruff, Chris Welch, Steve Hirst, Andrew Lookabaugh and Simon Bernal for the Lynx Model Project special effects.
Monetary Savings - First Place was awarded to Joanna Lowder for saving the City \$29,000 annually by changing vendors. Second place was awarded to Paul O'Neill for changing vendors for animal microchipping saving both the public and the City money.

PUBLIC COMMENT

4. Receive public comments where individuals may address the City Council on City related issues and projects. 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.

Linda Caraway, 710 Ainslee, asked that the time for outdoor watering be changed from 6-8 p.m. to 4-6 p.m. because it gets dark earlier and she has a difficult time seeing where to water. Ms. Caraway was put in contact with a member of staff.

CONSENT AGENDA

Council Member Hailey moved to approve Consent Agenda items 5 - 32 excluding 12, 18, 26, 28; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:

a. Regular Meeting of November 27, 2012.

6. Approved a resolution approving appropriating funds from the Midland Development Corporation Unappropriated Fund Balance to be used for promotional purposes. (FINANCE)

RESOLUTION NO. 2012 - 414

RESOLUTION APPROVING THE MIDLAND DEVELOPMENT CORPORATION'S APPROPRIATION OF \$590,244 FROM THE FISCAL YEAR 2011-2012 BUDGET TO BE USED FOR PROMOTIONAL PURPOSES, AS AUTHORIZED BY CHAPTER 504 OF THE TEXAS LOCAL GOVERNMENT CODE

7. Approved a resolution approving an agreement with Everbridge, Inc. of Glendale, California for hosted mass communication services for the Communications and Information Systems Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 415

RESOLUTION AWARDED A TWO-YEAR CONTRACT FOR HOSTED MASS NOTIFICATION AND COMMUNICATION SERVICES TO EVERBRIDGE, INCORPORATED, AT A TOTAL COST OF \$60,360.00; AND THESE SERVICES MAY INCLUDE REVERSE 911 SERVICE; AND CONTACTS WITH CITIZENS MAY BE MADE VIA LANDLINE, CELLULAR PHONE, TEXT MESSAGES OR EMAIL

8. Approved a resolution approving a contract for water, wastewater and fire hydrant taps for the Engineering Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 416

RESOLUTION AWARDED A CONTRACT FOR WATER, WASTEWATER AND FIRE HYDRANT TAPS TO ENTRENCH, INCORPORATED, AT A TOTAL COST OF \$517,682.50; AND APPROPRIATING FUNDS

9. Approved a resolution approving the purchase of uniforms for the Fire Department through Buyboard. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 417

RESOLUTION APPROVING THE PURCHASE OF UNIFORMS FOR THE CITY OF MIDLAND FIRE DEPARTMENT THROUGH THE BUYBOARD AT A TOTAL COST OF \$96,068.72; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COUNCIL OF GOVERNMENTS

10. Approved a resolution approving a service contract for water well service for Utilities, Parks and the Municipal Golf Course. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 418

RESOLUTION AWARDED AN ANNUAL CONTRACT FOR WATER WELL MAINTENANCE FOR THE CITY'S WATER SUPPLY TO STRAUB CORPORATION, AT A COST NOT TO EXCEED \$60,000.00 PER YEAR; AND SAID CONTRACT IS FOR A TERM OF TWO (2) YEARS, RENEWABLE FOR UP TO AN ADDITIONAL THREE (3) YEARS AT THE CITY'S OPTION; AND STRAUB CORPORATION WAS THE SOLE BIDDER

11. Approved a resolution approving the purchase of four complete side wheel roll irrigation systems for the Utilities Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 419

RESOLUTION AUTHORIZING THE PURCHASE OF FOUR COMPLETE SIDE-WHEEL ROLL IRRIGATION SYSTEMS AND SPARE PARTS FOR USE AT THE SPRABERRY FARM FACILITIES FROM MESA IRRIGATION COMPANY, OF LAMESA, TEXAS, AT A TOTAL COST OF \$61,150.00

13. Approved a resolution authorizing the execution of a Letter of Agreement between the City of Midland and the Federal Aviation Administration (FAA) Air Traffic Control Tower regarding Airport Movement Area and Vehicle Control on Airfield Surfaces. (AIRPORTS)

RESOLUTION NO. 2012 - 421

RESOLUTION AUTHORIZING THE EXECUTION OF A LETTER OF AGREEMENT BETWEEN THE CITY OF MIDLAND AND THE FEDERAL AVIATION ADMINISTRATION AIR TRAFFIC CONTROL TOWER REGARDING AIRPORT MOVEMENT AREAS AND VEHICLE CONTROL ON AIRFIELD SURFACES AT MIDLAND INTERNATIONAL AIRPORT

14. Approved a resolution of the City of Midland, Texas requesting that the Texas State Legislature and the Governor of Texas take action to approve House Bill No. 63 which was introduced by the Honorable Tom Craddick in the Regular Session of the 83rd Session of the Texas Legislature. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2012 - 422

RESOLUTION OF THE CITY OF MIDLAND, TEXAS REQUESTING THAT THE TEXAS STATE LEGISLATURE AND THE GOVERNOR OF TEXAS TAKE ACTION TO APPROVE HOUSE BILL NO. 63 WHICH WAS INTRODUCED BY THE HONORABLE TOM CRADDICK IN THE REGULAR SESSION OF THE 83RD SESSION OF THE TEXAS LEGISLATURE

15. Approved a resolution authorizing an amendment to the Permian Basin PBS agreement extending the fundraising deadline to March 31, 2013. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2012 - 423

RESOLUTION APPROVING AN AMENDMENT TO THE PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND PERMIAN BASIN PUBLIC TELECOMMUNICATIONS, INC. TO ADVERTISE OR PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES

16. Approved a resolution appropriating funds to Atmos RRM (Rate Review Mechanism) Project 8923. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2012 - 424

RESOLUTION APPROPRIATING FUNDS FROM THE GENERAL LIABILITY SELF-INSURANCE FUND TO THE ATMOS RATE REVIEW MECHANISM PROJECT (8923) IN THE AMOUNT OF \$198,032.00; SAID FUNDS REPRESENT REIMBURSEMENT FROM ATMOS FOR CONSULTING/LEGAL FEES ASSOCIATED WITH THE

STEERING COMMITTEE'S ANALYSIS OF THEIR RATE REVIEW MECHANISM COSTS; THERE IS NO IMPACT TO THE GENERAL FUND

17. Approved a resolution authorizing the City of Midland to access HOME Investment Partnerships Program funds from the Texas Department of Housing and Community Affairs through the Reservation System Participant Program; such funds to be used for Homeowner Rehabilitation Assistance and Homebuyer Assistance Programs; designating two City sources as matching funds but total City match will not exceed \$3,000.00; designating City cash reserves for funding projects pending reimbursement from the State; and appropriation of funds for the HOME Investment Partnerships Program Reservation System Participant Program. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 425

RESOLUTION AUTHORIZING THE CITY OF MIDLAND TO ACCESS THE HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS FROM THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THROUGH THE RESERVATION SYSTEM PARTICIPANT PROGRAM; SAID FUNDS WILL BE USED FOR HOME OWNER REHABILITATION AND HOME BUYER ASSISTANCE PROGRAMS; DESIGNATING SEVERAL CITY SOURCES AS MATCHING FUNDS NOT TO EXCEED \$3,000.00; DESIGNATING CITY CASH RESERVES FOR FUNDING PROJECTS PENDING REIMBURSEMENT FROM THE STATE; AND APPROPRIATING FUNDS FROM THE HOME INVESTMENT PARTNERSHIPS RESERVATION SYSTEM PARTICIPANT PROGRAM

19. Approved a motion on a request from First Baptist of Midland to approve the use and operation of golf carts on portions of Baird Street, Main Street and Texas Avenue, City owned streets within the downtown area of the City of Midland on December 9th, 16th, 23rd, 24th, and 30th, 2012 for church services within the Midland Center. (ENGINEERING SERVICES)
20. Approved a resolution to approve a contract between the City of Midland and Midland Development Corporation and to accept funds in the amount of \$1,500,000 for the construction of Briarwood Avenue between Holiday Hill Road and Avalon Drive. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 426

RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE CITY OF MIDLAND FOR IMPROVEMENTS TO BRIARWOOD AVENUE, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE; AND APPROPRIATING FUNDS THEREFOR

21. Approved a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$2,974,959 with Brighton County Development, LLC (Mike Black) for the paving and drainage improvements to serve the Cross Pointe Addition. The site is generally along the Briarwood Avenue corridor between Holiday Hill Road and Avalon Drive. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 427

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT

DEVELOPMENT AGREEMENT WITH BRIGHTON COUNTY DEVELOPMENT, LLC FOR DEVELOPMENT OF CROSS POINTE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ALONG THE BRIARWOOD AVENUE CORRIDOR, BETWEEN HOLIDAY HILL ROAD AND AVALON DRIVE); AND APPROPRIATING FUNDS IN THE AMOUNT OF \$2,974,959.00 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

22. Approved a resolution authorizing staff to advertise for bids the "D" Street Utility Improvement Project. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 428

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE DOUGLAS AVENUE AND "D" STREET WATER AND SEWER IMPROVEMENTS PROJECT; SAID PROJECT WILL BE FOR THE INSTALLATION OF NEW WATER AND SEWER MAINS ALONG DOUGLAS AVENUE AND "D" STREET

23. Approved a resolution authorizing staff to advertise for bids the COMPASS project (sidewalk, alley & street paving). (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 429

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE COMPASS PROJECT (CITY OF MIDLAND PAVING, ALLEYS, STREETS AND SIDEWALKS); SAID PROJECT WILL ESTABLISH A UNIT PRICE FOR INSTALLATION OF NECESSARY COMPONENTS TO CONSTRUCT STREETS, ALLEYS AND SIDEWALKS

24. Approved a resolution to allocate additional funds in the amount of \$58,424 to the Jal Draw Channel Lining project. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 430

RESOLUTION APPROPRIATING \$58,824 FROM THE 2001 GPCO DRAINAGE IMPROVEMENTS BOND FUND (165) UNAPPROPRIATED FUND BALANCE (5650) TO THE JAL DRAW CHANNEL LINING PROJECT (8880) FOR ADDITIONAL IMPROVEMENTS TO JAL DRAW

25. Approved a resolution authorizing staff to advertise for bids for the Lamesa Road Signal Replacement. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 431

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE LAMESA ROAD SIGNAL REPLACEMENT PROJECT; SAID PROJECT WILL BE FOR THE REPLACEMENT OF SIGNALS AT THE INTERSECTIONS OF CUTHBERT AVENUE AND LAMESA ROAD AND GOLF COURSE ROAD AND LAMESA ROAD

27. Approved a resolution to approve a contract between Kenneth Huseman Family Limited Partnership and Midland Development Corporation in the amount of \$1,500,000 for the construction of public improvements to serve the property south of I-20 and West Loop 250. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 433

RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND KENNETH HUSEMAN FAMILY LIMITED PARTNERSHIP, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE; AND AUTHORIZING PAYMENT THEREFOR

29. Approved a resolution approving a one year extension of the contract with Spraberry CGC, Inc. at the Spraberry Effluent Farm. (UTILITIES)

RESOLUTION NO. 2012 - 436

RESOLUTION AUTHORIZING THE EXECUTION OF A 1-YEAR EFFLUENT FARM LEASE RENEWAL AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS, AND SPRABERRY CGC, INCORPORATED, FOR OPERATION OF THE SPRABERRY EFFLUENT FARM; AND DIRECTING THE DIRECTOR OF UTILITIES TO TAKE ALL PROCEDURAL STEPS NECESSARY TO BID AND HAVE IN PLACE A NEW LEASE AGREEMENT FOR THE SPRABERRY EFFLUENT FARM, SAID AGREEMENT TO TAKE EFFECT PRIOR TO JANUARY 1, 2014

30. Approved a resolution approving a one year extension of the contract with Kevin Cook for part of Section 12, Block 37, TWP-3-S, T&P RR Co. Survey located at the Spraberry Effluent Farm. (UTILITIES)

RESOLUTION NO. 2012 - 437

RESOLUTION AUTHORIZING THE EXECUTION OF A 1-YEAR EFFLUENT FARM LEASE RENEWAL AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS, AND KEVIN COOK, FOR OPERATION OF THE SPRABERRY EFFLUENT FARM; AND DIRECTING THE DIRECTOR OF UTILITIES TO TAKE ALL PROCEDURAL STEPS NECESSARY TO BID AND HAVE IN PLACE A NEW LEASE AGREEMENT FOR THE SPRABERRY EFFLUENT FARM, SAID AGREEMENT TO TAKE EFFECT PRIOR TO JANUARY 1, 2014

31. Approved a resolution approving a one year lease extension with Schumann Cattle Company for a 219.3 acre portion of the Plant Farm. (UTILITIES)

RESOLUTION NO. 2012 - 438

RESOLUTION AUTHORIZING THE EXECUTION OF A 1-YEAR EFFLUENT FARM LEASE RENEWAL AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS, AND SCHUMANN CATTLE COMPANY, FOR OPERATION OF THE CONNER EFFLUENT FARM; AND DIRECTING THE DIRECTOR OF UTILITIES TO TAKE ALL PROCEDURAL STEPS NECESSARY TO BID AND HAVE IN PLACE A NEW LEASE AGREEMENT FOR THE CONNER EFFLUENT FARM, SAID AGREEMENT TO TAKE EFFECT PRIOR TO JANUARY 1, 2014

32. Approved a resolution approving a one year extension of the contract with CK Hay and Cattle Farms at the Plant Farm. (UTILITIES)

RESOLUTION NO. 2012 - 439

RESOLUTION AUTHORIZING THE EXECUTION OF A 1-YEAR EFFLUENT FARM LEASE RENEWAL AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS, AND

CK HAY & CATTLE FARMS, L.L.C., FOR EFFLUENT FARM OPERATIONS AT THE CITY'S PLANT FARM; AND RATIFYING ACTIONS TAKEN BY THE PARTIES AFTER EXPIRATION OF THE CURRENT LEASE AGREEMENT ON NOVEMBER 30, 2012; AND DIRECTING THE DIRECTOR OF UTILITIES TO TAKE ALL PROCEDURAL STEPS NECESSARY TO BID AND HAVE IN PLACE A NEW LEASE AGREEMENT FOR THE PLANT FARM, SAID AGREEMENT TO TAKE EFFECT PRIOR TO JANUARY 1, 2014

The following items were pulled from Consent Agenda and considered individually.

12. Consider a resolution approving a Professional Services Agreement with Connolly Architects and appropriating funds for renovations of the Animal Services Building. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 442

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH CONNOLLY ARCHITECTS, INCORPORATED, FOR PROFESSIONAL ARCHITECTURAL DESIGN SERVICES FOR THE CITY OF MIDLAND ANIMAL SHELTER; AND APPROPRIATING \$49,500.00 FOR SAID PROFESSIONAL SERVICES

Council Member Hailey moved to adopt Resolution No. 2012 - 442; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

18. Received and filed the Consolidated Annual Performance and Evaluation Report for 2011/2012. (DEVELOPMENT SERVICES)

Council Member Morales wanted to note that the program seems to be successful and offered congratulations.

26. Consider a resolution authorizing staff to advertise for bids the Lamesa Road Pedestrian Access Improvement Project. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 432

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE LAMESA ROAD PEDESTRIAN ACCESS IMPROVEMENT PROJECT; SAID PROJECT WILL BE FOR THE CONSTRUCTION OF SIDEWALKS, RAMPS AND CROSSWALKS ALONG BOTH SIDES OF LAMESA ROAD

Upon prompting, City Engineer David Beard provided an update on all of the projects taking place on Lamesa Road noting that they should be complete by the end of 2013.

Council Member Hailey moved to adopt Resolution No. 2012 - 432; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

28. Consider a resolution authorizing the Mayor to negotiate and execute a contract with the Midland County Fresh Water Supply District Number #1 to investigate additional water supplies in Winkler County. (UTILITIES)

RESOLUTION NO. 2012 - 435

RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AN INTERLOCAL AGREEMENT WITH THE MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT #1 FOR THE DESIGN OF A WELL TO BE DRILLED INTO THE CAPITAN REEF COMPLEX AQUIFER TO PROMOTE THE CITY'S FUTURE WATER SUPPLY; AND APPROPRIATING FUNDS

Following brief discussion Council Member Morales moved to adopt Resolution No. 2012 - 435; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

SECOND READINGS

33. Consider an ordinance on second reading on a request by COM Aquatics, Inc. for the vacation of the east/west 20 foot alley out of Block 3, "A" Street Community Center, Section 3, being a 0.16-acre portion of land adjacent to Lot 1C, Block 3, "A" Street Community Center, Section 7, City and County of Midland, Texas (Generally located near the southwest corner of the intersection of West Wadley Avenue and North "A" Street). (Development Services)

ORDINANCE NO. 9019

AN ORDINANCE VACATING AND ABANDONING A 0.16-ACRE PORTION OF THE EAST/WEST 20-FOOT ALLEY LOCATED WITHIN BLOCK 3, "A" STREET COMMUNITY CENTER, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NEAR THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST WADLEY AVEUNE AND NORTH "A" STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$17,400.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

Deputy City Secretary Reyes read the caption of Ordinance No. 9019.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9019 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

Planning Division Manager Cameron Walker reported that COM Aquatics asked that they not be charged the market rate for the property. In exchange for the land they would grant an easement to the City on the west side of their property and would pay to relocate Atmos utility lines as well as the City's sewer line to the new location. The Ordinance will not go into effect until both Atmos and the City of Midland is satisfied that their new lines have been property relocated.

Council Member Hailey moved to amend the motion by changing the cost to \$0 and making the effective date upon completion of a plat and acceptance of the sewer line; seconded by Council Member Trost. The motion to amend carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN:

None. ABSENT: None.

The motion, as amended, carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

34. At approximately 10:30 a.m. hold a public hearing and consider an ordinance on a request by Midland Habitat for Humanity for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development on Lots 14 through 26, Block 43, Lots 14 through 26, Block 44, and Lots 14 through 26, Block 45, Greenwood Addition, Third, Fourth & Fifth, City and County of Midland, Texas. (Generally located on the north side of Cloverdale Road, between South Jackson Street and South Webster Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9093

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 14-26, BLOCK 43, LOTS 14-26, BLOCK 44, AND LOTS 14-26, BLOCK 45, GREENWOOD ADDITION, THIRD, FOURTH, AND FIFTH, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED C-3, COMMERCIAL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTH SIDE OF CLOVERDALE ROAD, BETWEEN SOUTH JACKSON STREET AND SOUTH WEBSTER STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker gave an overview of the item noting the configuration of the platted lots make it difficult to develop. A request was received from Midland Habitat to take three blocks and rezone to a Planned District for a Housing Development changing to a series of cul-de-sac streets with no driveways going directly to Cloverdale Road. No letters of objection had been received.

Mayor Perry opened the public hearing at 11:29 a.m.

Eric West, 1700 West Wall, reported they had been working with Habitat for Humanity and shared a picture of what the platted land with the actual size house would look like to show that the smaller lot size would work at this location. He noted the change would result in six residential streets emptying onto Cloverdale instead of 40 driveways.

There being no one else present wishing to speak, the public hearing was closed at 11:35 a.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9093.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9093 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey,

Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

35. At approximately 10:33 a.m. hold a public hearing and consider an ordinance on a request by Chris Vore for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development on a 5.00-acre tract of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas. (Generally located on the west side of North Fairgrounds Road, approximately 950 feet south of East Golf Course Road.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9094

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 5.00-ACRE TRACT OF LAND OUT OF BLOCKS 84 AND 85, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED C-3, COMMERCIAL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE WEST SIDE OF FAIRGROUNDS ROAD, SOUTH OF GOLF COURSE ROAD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker gave an overview of the item noting it was for the placement of a three-story housing complex with up to 20 units per acre. The Planning Commission asked the applicant to consider adding more brick material on the building. The applicant has stated that they only want to do brick for the first five feet. No letters of objection were received and the Planning & Zoning Commission recommended approval. The project will be built in phases with an amenity package to be built with the second phase.

Mayor Perry opened the public hearing at 11:42 a.m.

John Dunn, 701-B Technology Circle, reported that given the current economy they had to go outside of the area to find contractors and subcontractors. The cost of the additional brick would be \$100,000. Nothing in the code speaks to the required height of brick on an apartment and they were choosing to only extend it five feet to keep costs down. He agreed to build the amenity package with the second phase but was not promising a second phase would happen because it was dependant on the economy and market. He expected the rent to be about \$850 to \$950 a unit.

John Love, 1613 East Oak, stated his concern about amenities and felt that a club house or leasing office was needed at a minimum.

There being no one else present wishing to speak, the public hearing was closed at 11:55 a.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9094.

Council Member James moved approval of the first of two readings of Ordinance No.

9094 in accordance with the Charter of the City of Midland; seconded by Council Member Morales.

When asked if there would be a leasing office, Mr. Dunn noted that one of the apartments would be used as a leasing office until the second phase was built and did not know if there would be an on-site manager.

The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

36. At approximately 10:36 a.m. hold a public hearing and consider an ordinance on a request by Dusty Evans for a zone change from AE, Agriculture Estate District on a 3.911-acre tract of land and from PD, Planned District of a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District all out of Section 8, Block "X", H.P. Hilliard Co. Survey, City and County of Midland, Texas. (Generally located on the northwest corner of the intersection of North Midkiff Road and Mockingbird Lane.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9095

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 3.911-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, AND A 7.709-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND MOCKINGBIRD LANE); 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

Planning Division Manager Cameron Walker gave an overview of the item noting the request was to add another 3.9 acres to bring the total to over 11 acres because there would be wells drilled on the property. The extra acreage was needed to help offset the distance requirements between wells and buildings. No letters of objection had been received.

Mayor Perry opened the public hearing at 11:10 a.m.

Denise Underwood, 4104 Fairwood, asked what the difference was between the current zoning and the proposed zoning. Planning Division Manager Walker replied that it would still be retail use but an additional 3 acres were being added that was originally planned for residential.

Dusty Evans, 3502 Mockingbird, noted that although the well activity had not yet been permitted, it was in the process and would restrict the use of residential and felt it would be better suited for commercial use. Otherwise he did not see the property looking any different from the commercial property across the street.

There being no one else present wishing to speak, the public hearing was closed at 11:15 a.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9095.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 9095 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James. NAY: Sparks. ABSTAIN: None. ABSENT: None.

37. At approximately 10:39 a.m. hold a public hearing and consider a resolution on a request by James Isbell for a Special Temporary Permit for the placement of a Manufactured Home on Lot 9, Block 2, Pavilion Park, Section 7, City and County of Midland, Texas. (Generally located at the east extension of Solomon Lane on the west side of North Fairgrounds Road.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 440

RESOLUTION AUTHORIZING A TEMPORARY SPECIAL PERMIT FOR A MANUFACTURED HOME ON LOT 9, BLOCK 2, PAVILION PARK, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST EXTENSION OF SOLOMON LANE ON THE WEST SIDE OF NORTH FAIRGROUNDS ROAD)

Planning Division Manager Walker gave an overview of the item noting the request was to add a guard residence on an undeveloped 130 acre portion of land that will be developed in the near future. The residence will be a manufactured home on a concrete pad. After the land has been developed the manufactured home would be removed. Staff is asking for a sketch plan of the proposed development within a couple of months of placement of the guard residence and a preliminary plat within six months. The item went to Planning and Zoning for approval. A condition of final inspection of any of the proposed constructed homes will be to have the guard residence removed. No letters of objection had been received.

Mayor Perry opened the public hearing at 12:03 p.m.

Max Richardson, 110 West Louisiana, noted he was available to answer questions and asked that the time frames be changed from two months for a sketch plan and six months for preliminary plat to six months for preliminary sketch and one year for the preliminary plat.

There being no one else wishing to speak, the public hearing was closed at 12:05 p.m.

Council Member Hailey moved to adopt Resolution No. 2012 - 440 with revision to allow 12 months only and remove Section 2 b and 2c; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

MISCELLANEOUS

38. Consider a resolution approving the issuance of a permit to Linn Operating, Inc. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Robbie 24D)

located 262 feet from the north line and 467 feet from the west line located in Section 24, Block 40, T-1-S, T&P RR Co., Survey, City and County of Midland, Texas. (Generally located on the east side of Avalon Drive, approximately 250 feet south of the extension of Mockingbird Lane.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 441

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO LINN OPERATING, INC. ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 262 FEET FROM THE NORTH LINE AND 467 FEET FROM THE WEST LINE, SECTION 24, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF AVALON DRIVE, APPROXIMATELY 250 FEET SOUTH OF THE EXTENSION OF MOCKINGBIRD LANE); PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT; AND APPROVING VARIANCES

Oil & Gas Compliance Officer Ron Jenkins reported that no letters of objection had been received and that the item had been reviewed by the Oil & Gas Advisory Committee. Linn Operating requested a variance for their office being located outside of the City Limits.

Council Member Hailey moved to adopt Resolution No. 2012 - 441; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

39. Consider a request for a motion regarding an interpretation of a note on a proposed final plat Greathouse Addition, Section 9 (Generally located on the northwest corner of the intersection of Briarwood Avenue and Mathis Street). (DEVELOPMENT SERVICES)

Planning Division Manager Cameron Walker gave an overview of the item asking the City Council to make an interpretation.

Wes Strain, 3805 Northfield, reported the covenants refer only to a residence but the property was zoned for multi-family apartments. They are unable to get title insurance on the property due to the error and asked the Council's assistance in solving the problem.

Council Member Morales moved to approve a request regarding an interpretation of a note on a proposed final plat Greathouse Addition, Section 9 (Generally located on the northwest corner of the intersection of Briarwood Avenue and Mathis Street); seconded by Council Member Dufford.

Council Member Trost asked the City Attorney if an interpretation from the Council was appropriate. City Attorney Keith Stretcher responded that Mr. Strain's position was that it was a scribbler's error and it was always meant to be multi-family. The Council can make an interpretation if it chooses but you do not go through the same notice requirements when making an interpretation.

The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James. NAY: Sparks. ABSTAIN: None. ABSENT: None.

40. Consider a motion appealing the decision by the City Building Official to deny a proposed sign permit on Lot 1A, Block 1, Homestead Park Addition, Section 2, City and County of Midland, Texas. (Generally located on the northeast corner of Garfield Street and Louisiana Avenue.) (DEVELOPMENT SERVICES)

Planning Division Manager Cameron Walker gave an overview of the item noting this item was on appeal from Planning and Zoning Commission. Staff recommended against the request. When asked if there was any precedent, Mr. Walker responded there have been no other comparable sign requests for electronic signs of this type.

Council Member James asked to question the applicant.

Justin Luon, 1412 Ainslee, noted he was from JSA Architects on behalf of the applicant. Council Member James asked if there was any concern expressed by the hospital of a changing LED sign potentially disturbing the patient rooms. Council Member Sparks reported that he spoke with the President of the hospital, sent him copies of the renderings, and the President was okay with the sign.

Council Member Morales asked if the brightness of the sign could be adjusted if needed. Mr. Luon responded that from a technical standpoint, it was possible.

Jim Coffin, 4905 San Antonio, representing the church, reported that they would follow the code as to brightness requirements and confirmed that the sign could be dimmed and brightened by adjusting the amount of power the sign uses. He also stated you would not be able to feel the intensity of the sign past Michigan Street and that the sign is designed to not interfere with street lights. When asked why the sign was designed so far out of code compliance, Mr. Coffin reported that the sign was designed prior to learning about the code requirements when the church prepared their master plan in 2011 and was designed to proportionally fit the building.

Council Member James moved to approve a motion appealing the decision by the City Building Official to deny a proposed sign permit on Lot 1A, Block 1, Homestead Park Addition, Section 2, City and County of Midland, Texas. (Generally located on the northeast corner of Garfield Street and Louisiana Avenue.); seconded by Council Member Sparks.

Bob Oaks, 5707 Los Patios Drive, noted they would not be selling anything on the sign. It would only be used for information about church activities and encouragement to the people who drive the area. There are no homes within 200 feet with the exception of Garfield and Louisiana. He ensured it would be in good taste and would match the building.

Mayor Perry confirmed that if the motion was approved, the sign could be built.

The motion carried by the following vote: AYE: Morales, Hailey, Perry, Dufford, James, Sparks. NAY: Trost. ABSTAIN: None. ABSENT: None.

41. Consider a motion interpreting Chapter 11-7a Revised Outdoor Sign Regulations regarding the use of advertising on EZ Rider transportation shelters in all zoning districts. (DEVELOPMENT SERVICES)

Assistant City Manager Nichols noted that this item was a follow-up to a briefing item discussed previously. Staff interpreted what was heard and tried to put together criteria for where and how advertising signage would be appropriate and would fit into the overall scheme of the City.

Planning Division Manager Walker noted signage is already allowed within the C-1 District. The EZ Rider would like to have shelters generating revenue outside of the district. Staff asked Council to make an interpretation of the sign ordinance as to whether advertising signs could be used on bus shelters throughout the City. Staff suggests that signs not be located in residential areas or adjacent to residential areas and that the signs shall not exceed four feet above grade and may face inside or outside. EZ Rider shall be responsible for content.

Discussion ensued about the number of shelters that would allow for signage and the size of signs.

A motion was made by Council Member James to continue the item to the January 8, 2012 meeting; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

42. Consider an ordinance designating the I-20 Wildlife Preserve as parkland and establishing Title IX "Public Ways and Property," Chapter 5 "Parks and Playgrounds," Section 18 "Hours of Use of Public Parks," Subsection C of the City Code of Midland, Texas (COMMUNITY SERVICES)

ORDINANCE NO. 9098

AN ORDINANCE DESIGNATING THE I-20 WILDLIFE PRESERVE AS PARKLAND; AMENDING TITLE IX, "PUBLIC WAYS AND PROPERTY", CHAPTER 5, "PARKS AND PLAYGROUNDS", SECTION 18, "HOURS OF USE OF PUBLIC PARKS", ESTABLISHING SUBSECTION (C) OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO ESTABLISH PROVISIONS CONCERNING HOURS OF USE AND RULES AND REGULATIONS FOR THE I-20 WILDLIFE PRESERVE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); AND ORDERING PUBLICATION

Deputy City Secretary Reyes read the caption of Ordinance No. 9098.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9098 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

43. Consider a motion making appointments to various Boards and Commissions.

Council Member James moved to appoint Link Grimes to the TIRZ Board as a City appointment and confirm the reappointment of Isabelle Blanchard to the Permian Basin Airport Board for the City of Pecos; seconded by Council Member Dufford. The motion

carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

It was noted that both Midland College and Midland County had made appointments to the TIRZ Board and the Council accepted those appointments.

EXECUTIVE SESSION

44. Mayor Perry announced that pursuant to Texas Government Code §551.101, the Council will hold an Executive Session which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:

a. Section 551.071 Consultation with the City Attorney

a.1. Discuss with the City Attorney contemplated litigation and legal issues involved in litigation styled Richard Sanchez, Heather Sanchez, Todd King and Laci King v. Union Pacific Railroad, Inc., and Smith Industries, Inc., in a State District Court in Midland County, Texas.

a.2. Discuss a matter 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 551.072 Deliberation Regarding Real Property.

b.1. Discuss the purchase, exchange, lease or value of real property described as Block 55, Original Town Addition, Midland, Midland County, Texas.

Council Member Trost recognized Council Member Vicky Hailey and thanked her for her 9 years of service to the Community and to District 2.

Mayor Perry recessed the meeting to Executive Session at 12:39 p.m. The Council met in Executive Session until 1:35 p.m.

All of the business at hand having been completed, the meeting adjourned at 1:35 p.m.

PASSED AND APPROVED the 8th day of January, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 1/8/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a contract for pivot irrigation systems and parts for the Spraberry Farm. 5778-13

Purpose:

Approval of a resolution authorizing the purchase of two center pivots for use at the Spraberry Farm.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

138,376.00 Water and Sewer Fund

Discussion:

These pivots are for replacement of two older units at the farm and are used for the distribution of effluent water. There are approximately 27 pivots in use and we replace two per year. We received two bids. Lamesa Irrigation is the low bidder. The total reflects a deduction of \$10,714.00 for trade-in of old pivot parts not salvaged by the City.

Therefore, please consider approval of a resolution authorizing the purchase of the pivots from Lamesa Irrigation Company of Lamesa, Texas for a total of \$138,376.00.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT FOR THE PURCHASE AND
INSTALLATION OF TWO (2) CENTER PIVOT
IRRIGATION SYSTEMS, WITH ADDITIONAL PARTS,
FOR USE AT THE CITY'S SPRABERRY FARM FROM
LAMESA IRRIGATION COMPANY, OF LAMESA,
TEXAS, AT A TOTAL COST OF \$138,376.00**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for the supply and installation of two (2) center pivot irrigation systems, with additional parts, for use at the City's Spraberry Farm; and

WHEREAS, Bid No. 5778-13 was opened on December 19, 2012, with the lowest and most responsible bid being submitted from Lamesa Irrigation Company as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract for the purchase and installation of the above listed center pivot irrigation systems, with additional parts, from Lamesa Irrigation Company, at an estimated total price not to exceed \$138,376.00, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Lamesa Irrigation Company for said center pivot irrigation systems from funds available in the Fiscal Year 2012 – 2013 Water and Sewer Fund (300) Utilities (300) Spraberry Farm (0315) Irrigaion Equipment (8425) budget account upon proper receipt of invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2013, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5778-13 Pivot Irrigation System OPENED December 19, 2012 Est. Cost: \$150,000.00			Carter & Co. Irrigation PO Box 777 Seminole, TX 79360 Michael Carter (432) 758-2053		LaMesa Irrigation 1609 N Hwy 87 Lamesa, TX 79331 Terry Coleman (806) 872-5479	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
1	1	1320 feet Pivot #10-1 w/auto reverse	67,962.5400	\$67,962.54	\$68,290.00	\$68,290.00
		Brand Model	Zimmatic 9500		Zimmatic	
2	1	1300 feet Pivot #11-4 w/auto reverse	67,590.7300	\$67,590.73	\$67,850.00	\$67,850.00
		Brand Model	Zimmatic 9500		Zimmatic	
3	2	Lot Pivots - Trade in	2,500.0000	(\$5,000.00)	(\$5,357.00)	(\$10,714.00)
4	20	3/4 HP Motors with capps for Zimatic Pivots	170.0000	\$3,400.00	\$175.00	\$3,500.00
		Brand Model	Zimmatic			
5	20	Wheel Gear Boxes with short shaft	268.5000	\$5,370.00	\$265.00	\$5,300.00
		Brand Model	Zimmatic			
6	10	Motors and Center Drive Combos for Zimatic Pivots	355.0000	\$3,550.00	\$415.00	\$4,150.00
		Brand Model	Zimmatic			
		Pivot Delivery	18-Jan-13		Not Specified	
					Cashier Check included w/bid	
TOTALS:				\$142,873.27		\$138,376.00
						\$0.00

Bidding Summary:

11 Bid requests were issued.

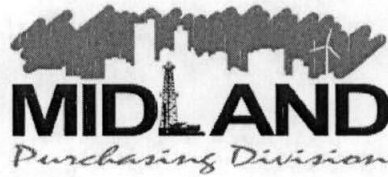
2 Bids listed above

1 NO BIDS were received.

Ewing Irrigation

8 Bidders did not respond.

Benmark Supply, South Plains Implement, Valley Irrigation & Pump Services, Morton Irrigation, Gicon Pumps & Equipment, Mesa Irrigation, Consolidated Pipe & Tube, Massey Irrigati



THE CITY OF MIDLAND

CONTRACT

Contract No.5778-13

THIS CONTRACT, effective the 9th day of January, 2013, by and between the City of Midland, hereinafter referred to as the "Owner or City", and Lamesa Irrigation Company, hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 138,376.00 DOLLARS
2. **Scope of Work:** The Contractor shall perform all work described for Replacement of Center Pivots of this Contract in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary

EXHIBIT B..... Intentionally Omitted

EXHIBIT C..... Bonding Instructions for Public Works Contract of \$50,000 and More.

EXHIBIT D..... Wage Scale.

3. **Owner:** The words "Owner's Representative" or "representative" shall mean Stuart Purvis or his 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 the Owner to act in any particular capacity under this Contract.

4. **The Owner'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. Owner'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. Owner's representative will not be responsible for the Contractor's failure to perform the work in accordance with the contract.

5. **Contractor:** Unless otherwise stipulated, the Contractor 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. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

5.1. The Contractor 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 the Contractor'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. The Contractor 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 Owner to be done by the Contractor to accomplish any alteration or addition to the work as shown on the Specifications.

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

7. **Safety:** The Contractor 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: 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.

8.1. 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.

8.2. 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.

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

If the Contractor should fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree as part of the consideration for the awarding of this contract, the Owner may withhold permanently from Contractor's total compensation, the sum of N/A Dollars (\$), not as a penalty but as liquidated damages for the breach of the contract as herein set forth for each calendar day that the Contractor shall be in default after the time stipulated for completing the work.

9.1. TIME IS OF THE ESSENCE IN THIS CONTRACT.

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

11. **Warranty:** Neither the final payment nor any provision in this contract shall relieve the Contractor 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. The Owner shall give notice of observed defects with reasonable promptness.

12. **Remedy:** The Owner 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 the Contractor to make payments promptly to subcontractors or for material or labor which the Owner may pay as an agent for the Contractor; or

12.4. Damages to another contractor or subcontractor.

When the above grounds to withhold payment are removed, or the Contractor provides a surety bond satisfactory to the Owner, which will protect the Owner in the amount withheld, payment shall 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 the Owner of any kind whatsoever.

14. **Wage Scale:** The Contractor 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. **Payment:** After all work is completed by the Contractor, and the Owner has inspected and approved that work, the Owner shall within thirty-one (31) days thereafter issue payment to the Contractor in the amount of the contract and subsequent verified Change Orders. The Owner shall be the final judge of when work is completed by the Contractor. 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.

15.1. **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.

16. **No Third Party Beneficiary:** The Owner'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.

17. **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.

18. **Sovereign Immunity:** By executing this contract the Owner is not waiving its right of sovereign immunity. The Owner is retaining its immunity from suit. The Owner is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

19. **Insurance**

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

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

Worker's Compensation: Statutory limits

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

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

The Business Automobile Liability insurance provided by Contractor 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 Contract.

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.

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 Worker's Compensation Insurance, shall name the City as an additional insured on a claims 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.

IMPORTANT NOTICE

If for any reason your insurance agency or provider cannot supply the endorsements on the certificate EXACTLY as shown in the above paragraph entitled "Insurance" and on the included example, a letter from the provider shall be included with the certificate with those reasons stated.

You must carry Worker's Compensation Insurance to be considered 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.

20. **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.

21. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISIONS, 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 TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR OWNER'S NEGLIGENCE.

22. **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.

23. **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 respondeat 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.

24. **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, Contractor or his legal representative, shall give the City Manager, or any other reasonable official of the Owner, notice in writing (consisting of one original and seven copies of notice attached to a copy of this

Contract) of such damages, duly verified, within one-hundred 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 Owner from any liability whatsoever. The Owner is under no obligation to provide notice to Contractor that Contractor's notice is insufficient. Owner 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, 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 if Owner has actual or constructive notice or knowledge of said claim or alleged damages. Contractor agrees that the requirements of this entire Contract are reasonable.

25. **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.

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

Contract No: 5778-13

OWNER, City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract: Contract No.5778-13

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day 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 _____, 2013.

Notary Public, State of Texas



CITY OF MIDLAND

PURCHASING DIVISION

DATE: 10-26-2012

BID REQUEST

PAGE: 01

(THIS IS NOT AN ORDER)

BID NO: 5778-13

OPENING TIME: 11:00 AM

CLOSING DATE: 12-19-2012

CITY OF MIDLAND
300 NORTH LORAIN
P. O. BOX 1152
MIDLAND, TX 79702

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, Suite 330
UNTIL 11:00 A.M. FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED
TO: Spraberry Farm, 11501 FM 1379, Midland Texas

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Pivot Irrigation Systems and parts for the Spraberry Farm in accordance with the attached cost summary, specifications and contract.		
				TOTAL	\$ 138,376 ⁰⁰

NOTICE TO BIDDERS:

- FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
- BIDS SHALL BE DELIVERED TO THE CITY IN A SEALED PACKAGE (ENVELOPE, ETC) **UNLESS THE CITY STATES THAT THE BID MAY BE FAXED OR E-MAILED**. OTHERWISE, BIDS FAXED OR E-MAILED DIRECTLY TO THE CITY WILL BE REJECTED. A SEALED BID MAY BE FAXED TO A THIRD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
- IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/CONTRACTOR MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.
- IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 3, 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/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.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

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

COMPANY NAME: Lamesa Irrigation
ADDRESS 1609 N. Hwy 87
CITY Lamesa ST Tx ZIP 79331
PHONE NO. 806.872-5479 FAX NO. 806.872-2615
EMAIL: _____

CASH DISCOUNT: _____ % _____ DAYS

DELIVERY CAN BE MADE 30-60 days

AUTHORIZED SIGNATURE [Signature]

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

Exhibit "A"

CITY OF MIDLAND - COST SUMMARY SHEET

BID # 4098-12 FOR: Center Pivot Irrigation Systems OPENING: 11/16/2011			Camera Irrigation 11609 N. Hwy 87 Camera TX Contact Name: 79331 Phone Number:	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
		Disassemble and remove old systems and Supply and install the following:		68290.00
1	1	1320 feet Pivot #10-1 w/auto reverse		
		Brand	Zimatic	
		Model		
2	1	1300 feet Pivot #11-4 w/auto reverse	67850.00	
		Brand	Zimatic	
		Model		
3	2	Lot Pivots -trade in	5357.00	10,714.00
4	20	3/4 HP Motors with capps for Zimatic Pivots	175.00	3,500.00
		Brand		
		Model		
5	20	Wheel Gear Boxes with short shaft	265.00	5300.00
		Brand		
		Model		
6	10	Motors and Center Drive Combos for Zimatic Pivots	415.00	4150.00
		Brand		
		Model		
		CITY WILL SALVAGE ALL SALVAGABLE PARTS		
Total :			\$	138,376.00
Pivot Delivery:				

THE CITY OF MIDLAND

SPECIFICATION

021-9810

For
Center Pivot Replacement

1. SCOPE

The work to be performed under this section consists of supplying the center pivot irrigation equipment, parts, electrical equipment, instrumentation, and accessories as specified herein. The irrigation equipment supplied shall form a complete and operational irrigation system in the quantities specified on the request for bid. Installation and final assembly will be performed by the successful bidder

2. VENDOR CONTACT:

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

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

OR

FAX: (432)685-0523

Email: purchasing@midlandtexas.gov

All vendors on the bid list will then be notified of the questions and presented an answer. Information provided by other City personnel shall not be considered binding.

3. DEFINITIONS

3.1. OWNER

City of Midland

3.2. CONTRACTOR

Successful Bidder

4. DOCUMENTS

Contract

Exhibit A - These specifications, Proposal or Cost Summary

Exhibit B – Insurance requirements

Exhibit C – Bonding Requirements

Exhibit D – Wage Schedule

5. REFERENCES

Abbreviations used in the specifications and contract documents are defined as follows:

AAMA Architectural Aluminum Manufacturers Association

AASHTO American Association of State Highway and Transportation Officials

ACI American Concrete Institute

AFBMA	Anti-Friction Bearing Manufacturer's Association
AGA	American Gas Association
AGMA	American Gear Manufacturer's Association
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
APA	American Plywood Association
ASCE	American Society for Civil Engineers
ASME	American Society for Mechanical Engineers
ASSE	American society for Sanitary Engineers
ASTM	American society for Testing and Materials
AWG	Average Wire Gauge
AWPA	American Wood Products Association
AWWA	American water Works Association
CISPI	Cast Iron Soil Pipe Institute
CRSI	Concrete reinforcing Steel Institute
CS	Commercial Standard
Fed Spec	Federal Specifications
IBBM	Iron Body, Bronze Mounted
IEEE	Institute of Electrical and Electronics Engineers
IFI	Industrial Fasteners Institute
IPS	Iron Pipe Size
MIL	Military Specification
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NPT	National Pipe Thread
OSHA	Occupational Safety and Health Administration
PCI	Pre-stressed concrete Institute
SAE	society of Automotive Engineers
SSPC	Steel Structures Painting Council
UL	Underwriters' Laboratories
US	U. S. Bureau of Standards
USBR	U. S. Bureau of Reclamation

6. REQUIREMENTS

Vendor shall comment in the right margin as to whether or not his bid meets or exceeds the minimum specification shown. Please explain how it exceeds or falls short of the requirement. Use blue or Black ink if completed by hand or typewriter. A separate sheet may be used as long as each item is identified

and the sheet(s) are signed.

Requirement

Vendor Comment

6.1. PERMITS/COMPLIANCE WITH LAW

6.1.1. Permits and Licenses:

6.1.1.1. The Contractor shall, at his expense, obtain all permits and licenses necessary for the performance of the 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 work. (Call 685-7390 for permit information.)

6.1.2. Taxes:

6.1.2.1. Portions of the contract qualify for exemption pursuant to the provisions of the Texas Limited Sales, Excise and Use Tax Act. (Refer to Texas Tax Code, Title 2, Subtitle E, Chapter 151, Subchapter H, Subsections 151.309, 151.311 and 151.3111.)

6.1.2.2. Tax Exemption Certificate.

The Contractor may obtain a sales tax exemption certificate from the City of Midland upon request from the Purchasing Office.

6.1.2.3. All labor performed on the project, all materials incorporated into the project and other costs such as overhead allocation qualify for the exemption. However, equipment, parts for equipment, and tools purchased for use on the project, but are not incorporated may not qualify for the exemption.

6.1.2.4. Contractor shall be responsible for the determination of what portion, if any, of the contract has taxes due and payment of said taxes. DO NOT BILL ANY SALES OR USE TAX TO THE OWNER.

6.2. GENERAL

6.2.1. Award

6.2.1.1. If the Contract is awarded, it may 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.

6.2.1.2. 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.

6.2.2. Bid Validity Period

6.2.2.1. Unless otherwise stated, bids shall be valid for a minimum of 90 days.

6.3. Project requirements:

6.3.1. GENERAL DESCRIPTION OF THE WORK:

6.3.1.1. The work to be performed under these specifications and subsequent Contract, consists of dismantling and removing existing irrigation equipment and furnishing and installing the center pivots turnkey in locations as directed by the Owner (The City). The units being replaced are listed on the *Request for Bid*. See the Center Pivot Schedule Paragraph 6.5.6 on page 12 for more information.

6.3.2. LAND FOR CONSTRUCTION PURPOSES.

6.3.2.1. The Contractor will be permitted to use available land belonging to the Owner for construction purposes and for the storage of materials and equipment.

6.3.2.2. The location, scheduled time that it may be used and the extent of use shall be coordinated with the Owner.

6.3.3. NOTICES TO OWNERS AND AUTHORITIES.

6.3.3.1. When it is necessary to deny access by Owners or tenants to their property, or when any utility service connection must be interrupted, Contractor shall give notices sufficiently in advance to enable the affected persons to make provisions therefore.

6.3.4. UNFAVORABLE CONSTRUCTION CONDITIONS.

6.3.4.1. During unfavorable weather, wet ground, or other unsuitable construction conditions, the Contractor shall confine his operations to work which will not be affected adversely by such conditions.

6.3.4.2. No portion of the work shall be constructed under conditions which would adversely the quality or efficiency thereof, unless special means or precautions are taken by Contractor to perform the work in a proper manner.

6.3.5. Applicable Codes.

6.3.5.1. References to local codes in these specifications, contract documents or any of the related exhibits, shall mean codes used, required, or adopted by the City of Midland, Texas.

6.3.6. REFERENCE STANDARDS

6.3.6.1. Reference to the standards of any technical society, organization, or association, or to codes of local or state authorities, shall mean the latest standard code, specification, or tentative standard adopted and published at the date of receipt of bids, unless specifically stated otherwise.

6.4. Center Pivot Irrigation System

6.4.1. SCOPE

6.4.1.1. The work to be performed under this section consists of supplying the center pivot irrigation equipment, parts and accessories as specified herein.

6.4.1.2. The irrigation equipment supplied shall form a complete and operational irrigation system.

6.4.2. GENERAL

6.4.2.1. The center pivot irrigation equipment shall be used to irrigate crops at the Spraberry Ranch site with effluent pumped from the Terminal Storage Reservoir.

6.4.2.2. The irrigation equipment shall be designed to provide the most uniform application of effluent possible.

6.4.2.3. The equipment shall consist of low pressure drop nozzle center pivot

irrigation systems. Each unit shall be a complete hot dip galvanized, electric, self propelled, self aligning, gear driven irrigation system.

6.4.2.4. The center pivot equipment shall be able to withstand a wind load equivalent to a 90 mph wind directed perpendicular to the axis of the equipment with a 1:1 safety factor.

6.4.2.5. An oil filled pressure gauge shall be furnished and installed in the riser at each pivot location and shall be suitable for use over the range of operating pressures of each unit.

6.4.2.6. Equipment furnished and installed under this specification shall be fabricated, assembled, erected, and placed in the proper operating condition in full conformity with drawings, specifications, engineering data, instructions and recommendations of the equipment manufacturer unless otherwise noted by the Engineer.

6.4.2.7. The center pivot irrigation equipment shall be manufactured by Valmont, Raincat, Reinke, Lindsay, or Zimmatic meeting these minimum specifications.

6.4.2.7.1. No other manufacturers will be acceptable unless approved in writing prior to opening of bids.

6.4.2.8. One operator's manual shall be provided for each system.

6.4.3. GENERAL EQUIPMENT STIPULATIONS

6.4.3.1. The General Equipment Stipulations shall apply to all equipment furnished under this specification.

6.4.4. Power Supply

6.4.4.1. The power supply to the center pivot assembly is 480 volts, 60 Hz, 3 phase. A control power transformer shall be provided with the equipment to supply 120 volt, single phase, or any other control voltage required for the operation of the system.

6.4.5. Structural Design

6.4.5.1. The center pivot spans shall be of the bow-string truss design using the water line in compression and a fixed length tension rod (of high tension steel) as a tension member. Each truss shall form a structurally sound span between the vertical wheel base supports under normal operating conditions and field topography. Truss rods shall be $\frac{3}{4}$ " with manufacturer's standard heavy duty under truss braces.

6.4.6. Pivot Assembly

6.4.6.1. The pivot assembly shall consist of four (4) legs of 4" x 4" x 3/8" angle iron with four (4) 2" x 2" x 3/16" angle braces on all four sides. An adjustable ring lock elbow shall be included connection to the first span must be flexible to allow for grade changes on the first tower.

6.4.6.2. Wheel Base – Minimum wheel base for the center pivot system shall be 156 inches. Maximum span length is 160 feet.

6.4.7. Span Connectors

6.4.7.1. All span connectors shall be of the pinned-hinge, uni-knuckle, or ball and socket type of connection allowing for free horizontal, vertical, and rotational movement about the connection for the field topography

6.4.7.2. All span connections shall be outside the water line creating an unobstructed flow path.

6.4.8. Span Couplers

6.4.8.1. The span coupling shall consist of a belted neoprene/rubber boot with screw clamp.

6.4.8.2. The span coupler shall form a watertight joint under normal operating conditions and be replaceable without disassembly of the span connector.

6.4.9. Speed of Rotation

6.4.9.1. The minimum rotation time @ 100% speed shall be a full circle (360°) in 18 hours. The speed shall be based on the radii shown in the center pivot schedule to the last drive wheel and the specified combination of drive motor, gear box and tire size.

6.4.10. DRIVE MOTORS AND GEAR BOXES

6.4.10.1. Drive motors shall :

6.4.10.1.1. operate from 3 phase 480 volt, 60 Hz electrical power;

6.4.10.1.2. be manufactured and warranted by the irrigation system manufacturer;

6.4.10.1.3. be sealed against moisture and dust contamination;

6.4.10.1.4. be located at the approximate center of each self-propelled tower;

6.4.10.1.5. be designed specifically for center pivot applications and shall comply with applicable provisions of the NEMA and IEEE Standards; and,

6.4.10.1.6. rated for a continuous duty cycle and have inherent overload protection.

6.4.10.1.6.1. Drive motors shall be limited to a maximum current draw of 1.8 amps and shall be rated for a minimum of ¾ HP.

6.4.10.1.6.2. Ball bearings shall be double sealed.

6.4.10.1.6.3. Motor leads shall run in ¾" conduit and extend up the tower leg 3 to 4 feet.

6.4.10.1.7. Each self-propelled tower shall be driven by a gear drive and motor located at the center of the tower and a single reduction worm gear box located at each wheel.

6.4.10.1.7.1. The steel hubs shall be mounted directly on the wheel gear box output shaft.

6.4.10.1.7.2. Wheel gear boxes shall be either Valley, Zimmatic or approved equal and shall have a 5 year /5,000 hour warranty, minimum.

6.4.10.1.7.3. The gear drive system shall develop torque adequate to propel the system up 15 percent slopes, and at the same time cross over 12" high

ridges between rows, but not less than 36,000 inch pounds continuous, and capable of 120,000 inch pounds of instantaneous torque.

6.4.10.1.8. The wheel gear box shall:

- 6.4.10.1.8.1. have a minimum reduction ratio of 50:1;
- 6.4.10.1.8.2. have a minimum output shaft diameter of 2¼”;
- 6.4.10.1.8.3. have a built-in lubricant expansion chamber;
- 6.4.10.1.8.4. be sealed against moisture and dust contamination;
- 6.4.10.1.8.5. be specifically designed for center pivot irrigation systems;
- 6.4.10.1.8.6. have bearings with an average life of no less than 15,000 hours (computed per AFBMA); and,
- 6.4.10.1.8.7. be supplied filled with oil to the normal operating level which shall submerge all bearings.

6.4.10.1.8.7.1. The lubrication shall be suitable for an operating period of at least 20,000 hours or 5 years, whichever occurs first, and shall meet AGMA Grade 7C specifications.

6.4.10.1.9. Cross shafts with universal joints connecting the drive motors with the gear boxes shall be adequately sized to deliver the maximum operating torque and shall be shielded to prevent contact with the garments of operating personnel.

6.4.11. Rims

6.4.11.1. All rims shall be of proper size for the tires furnished and shall be hot dip galvanized to ASTM 123 specifications.

6.4.12. Tires

6.4.12.1. All tires shall be new four ply rated 14.9 x 24, high flotation type tire with a tractor grip design.

6.4.13. SPAN CLEARANCE

6.4.13.1. The center pivot spans shall be of standard profile design with ground clearance of 8 foot minimum and 10 foot maximum as measured on a level surface.

6.4.14. Drain Plugs

6.4.14.1. Each system shall be equipped with drain plugs which will automatically drain the system when not under operating pressure.

6.4.15. FLUSH VALVE

6.4.15.1. Each system shall be equipped with a manually operated flush valve (4 inch minimum) located on each end tower.

6.4.15.1.1. The valve and discharge piping shall be braced to the end tower.

6.4.15.1.2. The valve shall be 5 feet above the ground and the discharge shall be directed away from the operator.

6.4.16. NOZZLE DROPS

- 6.4.16.1. Nozzle drops shall be spaced as required for the nozzles furnished.
- 6.4.16.1.1. Unused collars shall be plugged.
- 6.4.16.1.2. Drops shall be of sufficient lengths to discharge the water (effluent) at the specified height above the ground surface as directed by the Owner.
- 6.4.16.1.3. They shall have minimum 12 inch furrow arms (gooseneck), and ¾ inch "Polydrop" extension tubes.
- 6.4.16.1.4. Each drop shall be equipped with a plastic ball, cut-off valve above each nozzle.

6.4.17. ELECTRICAL

- 6.4.17.1. The center pivot shall be furnished and installed in accordance with all applicable local and National Electrical Code requirements.
- 6.4.17.2. The system shall include a complete and operational control package consisting of all equipment and devices necessary to operate the system as described in these specifications.
- 6.4.17.3. All control panels shall be readily accessible to the maintenance personnel.
- 6.4.17.3.1. They shall be totally waterproof.
- 6.4.17.3.2. Entrances into, exits from, and penetrations of the enclosure shall be made using sealing type hubs to reduce the possibility of collection of water or other contaminants at the point of connection and shall also be made in such a manner as to preserve the minimum NEMA rating of the enclosure.
- 6.4.17.3.3. Dimensions of the enclosures shall not be less the maximum dimensions of the enclosed equipment plus the required electrical clearances as specified in the National Electrical Code.
- 6.4.17.3.4. Enclosures shall be made of fiberglass and shall have doors covering the controls to prevent vandalism.
- 6.4.17.3.5. Doors shall have non-corroding hinges or other means of attachment.
- 6.4.17.3.6. Locking mechanisms shall also be provided on the master control panel.

6.4.18. MASTER CONTROL PANEL

- 6.4.18.1. A master control panel shall be furnished and located at the center pivot riser pad.
- 6.4.18.2. The master control panel shall include, but not be limited to the following controls and feature:
 - 6.4.18.2.1. A nameplate stating the design voltage, phase and frequency of the incoming power supply and the amperage per phase which shall be the ampacity of the main thermal magnetic circuit breaker.
 - 6.4.18.2.2. Electrically actuated misalignment mechanism to render the system inoperable if misalignment of the system occurs.
 - 6.4.18.2.3. Percentage timer for the end self-propelled tower controlling speed of

rotation.

6.4.18.2.4. Manual and automatic reversing control mechanism shall be provided.

6.4.18.2.4.1. The automatic reversing mechanism shall permit travel of the pivot through an arch of rotation as specified.

6.4.18.3. Momentary power interruption restart circuit to restart the pivot after a time delay when power is restored.

6.4.18.3.1. This control shall not override the misalignment feature for more than 5 seconds.

6.4.18.4. An elapsed time meter which will accumulate total of hours of operating time.

6.4.18.5. Transformers capable of handling voltage reductions required for all functions of the control system.

6.4.18.5.1. Transformers shall be of the isolation type with proper over-current protection for the transformers, conductors, and control devices they serve.

6.4.18.5.2. All control circuits shall operate at 100 volts AC.

6.4.18.5.3. All control switches shall be rated at 600 volts.

6.4.19. RUN LIGHT

6.4.19.1. Run lights shall be provided for each pivot.

6.4.19.1.1. One light shall be mounted above the control panel and shall be clearly visible from a half mile distance.

6.4.19.1.2. The second light shall be mounted at the end tower.

6.4.20. TOWER ALIGNMENT CONTROL

6.4.20.1. Towers will be kept in proper alignment by a micro-switch and cam system.

6.4.20.1.1. All alignment systems shall have a backup to automatically shut down the entire center pivot should any tower become misaligned beyond normal operational limits.

6.4.20.1.2. All micro-switches shall be effectively sealed against moisture and dust contamination.

6.4.21. TOWER CONTROL BOX

6.4.21.1. Each tower shall have an auxiliary tower box to control its functions, including the following:

6.4.21.1.1. A definite purpose long life contactor rated at 30 amps, 600 volts, 7.5 hp, and for 10 million mechanical operations.

6.4.21.1.2. Micro-switch rated 600 volts.

6.4.21.1.3. On-Off switch rated at 7.5 hp, at 600 volts, and safety interlock with the control panel enclosure.

6.4.21.2. Each tower box shall be fitted with a suitable weather tight enclosure.

6.4.22. GROUNDING

6.4.22.1. All systems shall have proper grounding.

6.4.23. SAFETY SIGNS

6.4.23.1. Safety signs describing the automatic starting of the machine, grounding requirements, high voltage, caution and other pertinent safety signs shall be provided and prominently displayed.

6.4.24. COLLECTOR RING

6.4.24.1. The collector ring will be mounted on a stainless steel J tube that extends through the rotating swivel.

6.4.24.2. It shall not be an external type collector ring.

6.4.24.3. There shall be a watertight seal around the tube.

6.4.24.4. A collector ring cover with gaskets shall be provided to protect the internal electrical components against the environment

6.4.24.5. The collector ring shall consist of a minimum of 10 sliding contactors rated at 600 volts and 35 amps minimum.

6.4.24.6. To assure positive contact of the brushes to the contact point, leaf springs shall be used.

6.4.24.7. Slip rings shall be seamless and not more than 4 inches in diameter.

6.4.25. CONDUCTORS

6.4.25.1. Conductors in the irrigation cable shall be a minimum of 14 AWG, copper, type THWN, stranded for s for all control circuits;

6.4.25.2. at least 18 AWG, copper type THWN, stranded for low current signal carrying circuit;

6.4.25.3. and a minimum of no. 10 AWG, copper, type THWN stranded for all three phase motor power conductors.

6.4.25.4. Conductors used to connect or interconnect to or between components within an enclosure shall be rated for 300 volts AC minimum for circuitry utilizing 300 volts or less and for 600 volts minimum for circuits utilizing voltages from 300 to 600 volts AC.

6.4.25.5. Cable jacketing shall be resistant to sunlight, moisture, and corrosion.

6.4.25.5.1. It should also provide mechanical protection, flexibility and be suitable for operation within a temperature range of 15° F and 140° F.

6.4.25.6. All conductors shall be color coded for proper identification, and this coding shall be uniform throughout the entire system.

6.5. MATERIAL

6.5.1. GENERAL

6.5.1.1. All products and materials shall be new and unused.

6.5.1.2. After delivery to the site all materials shall be suitably stored and protected

against damage, vandalism, and the Contractor's construction operations.

- 6.5.1.3. Any material that becomes damaged prior to acceptance by Owner shall be rejected and replaced at the Contractor's expense.

6.5.2. WATER LINE PIPE

- 6.5.2.1. All water line pipe shall be of the nominal diameters (OD) required to provide the amount of water (effluent) called for in the CENTER PIVOT SCHEDULE, hot dip galvanized to the latest ASTM 123 specifications and have a minimum 0.115" wall thickness.

- 6.5.2.2. Water line pipe shall have ¾ inch collars at 40 inch centers in the top of the pipe to provide for future LEPA operations.

- 6.5.2.3. Design calculations shall be provided to prove the hydraulic design.

- 6.5.2.4. Piping shall be formed from a ISI/SAE 1010 coil sheet or approved equal.

6.5.3. STRUCTURAL MEMBERS

- 6.5.3.1. All structural members including span braces, tower supports, base beams, miscellaneous bolts, mounting brackets, truss rods, span trusses, and miscellaneous stiffeners shall be hot dip galvanized to the latest ASTM 123 specifications.

- 6.5.3.2. The minimum amount of zinc shall be 2.0 oz/ sq. foot average.

- 6.5.3.3. Truss rods shall be one piece and of a fixed length with a minimum diameter of ¾ inch.

- 6.5.3.4. All Welding of structural members shall be done in accordance with the best welding practices as outlined by the American Welding Society (AWS) and performed by qualified welders.

- 6.5.3.5. Vertical tower support legs shall be constructed of four 3"x 4" x ¼" angles bolted to a 6-5/8" x 11 gauge tubular non-towable mobile base.

- 6.5.3.6. Legs must have a minimum of five tie braces.

- 6.5.3.7. Corrosion resistant lock nuts or lock washers shall be used at all bolted connections on the tower supports, base beams, span braces, span trusses and truss rods.

- 6.5.3.8. All fasteners used on the system shall be grade 5 zinc coated or better.

6.5.4. SPAN LAYOUT

- 6.5.4.1. The center pivot spans shall be laid out from the center pivot riser tower to a radius shown in the pivot schedule as follows:

- 6.5.4.1.1. Spans shall be laid out in a manner that no tire track shall be within 25 feet of any obstruction located in the irrigation area or as far away from obstruction as practically possible.

- 6.5.4.1.2. The maximum span length shall be 146 feet for 8 inch pipe and 160 feet for 6-5/8 inch pipe.

- 6.5.4.1.3. The pipe diameter of the end-boom on all units shall be at least 5 inches.

6.5.4.1.4. The maximum length of the end-boom shall be 40.0 feet.

6.5.4.1.5. The diameter of the center riser pipe shall be 8 inches on all center pivot irrigation units. Riser shall have a poly seal gasket for high and low pressure.

6.5.5. NOZZLES

6.5.5.1. Nozzles shall be Senniger Orlando or approved equal

6.5.5.2. These nozzles shall be mounted on single polydrop extension tubes at an average height of 34 inches above the ground.

6.5.5.3. The first nozzle drop shall be no closer than 40 feet to the stationary pivot point tower.

6.5.5.4. The instantaneous application rate shall not exceed 2.25 inches per hour.

6.5.5.4.1. The sprinkler Package shall be computed at 90 percent application efficiency.

6.5.6. CENTER PIVOT SCHEDULE

6.5.6.1. The center pivots shall be designed for the maximum flow, maximum radius and acreage listed in the following schedule:

Unit No.	Operating Pressure	Flow (gpm)	Radius	Acres/Unit	Options	Budget Yr Replaced
2-3	25	800	1320	138	Auto Reverse	2004
2-4	23	800	1315	140	Auto Reverse	2011
3-1	21	900	1320	145	Auto Reverse W/ Spray Booms	2004
3-2	25	900	1320	139	Auto Reverse	2012
3-4	25	900	1320	138	Auto Reverse	2004
10-1	25	800	1320	125	Auto Reverse	2013
10-2	25	800	1320	120	Auto Reverse	2007
10-3	25	800	1294	115	Auto Reverse	2012
10-4	25	800	1294	120	Replace (1) joint of span pipe only	2007
10-4	25	800	1294	120	Auto Reverse	2008
11-1	25	800	1300	121	Auto Reverse	2004
11-2	25	800	1300	121	Auto Reverse	2005
11-3	25	800	1300	121	Auto Reverse	2006
11-4	25	800	1300	121		2013
12-1	25	800	1430	57	Auto Reverse	2005
12-2	25	800	913.05	30	Auto Reverse	2009
13-1	25	800	1316	124	Auto Reverse	2002
13-2	25	800	1008	36	Auto Reverse	2010
13-3	25	800	1325	63		1984
14-1	25	800	1326	126	Auto Reverse	2011
14-2	25	800	1008	35	Auto Reverse	2010
14-3	25	800	924	61		2007
14-4	25	800	1144.64	98		2009
15-1	25	800	1085	84	Auto Reverse	2006
15-2	25	800	1318	123	Auto Reverse	2003
15-3	25	800	1325	63	Auto Reverse	2008
Schumann	25	800	1280	118	Auto Reverse	2005

.Removed the * since we are not doing end guns anymore.

6.5.6.2. Contractor shall include with submittals what pressure at the given flow rate and nozzle type/ spacing will be required. Up to 35 psig is available.

6.5.6.3. The Owner will select which center pivots will be replaced first.

6.5.7. EQUIPMENT CONNECTION:

6.5.7.1. Seamless, 8 inch high pressure, aluminum irrigation pipe with a minimum wall thickness of .064 inches shall be used for connecting the center pivot irrigation equipment to the existing riser valve openers.

6.5.7.2. A line valve and a gravel screen shall be furnished and installed in each connecting pipe.

6.5.7.3. All valves and pipe shall be provided with quick disconnect ring lock assemblies.

6.5.8. LINE VALVE

6.5.8.1. Line valve bodies shall be made of 12 gauge galvanized steel and shall be designed to withstand an internal pressure of 100 psig. Line valves shall be operated by a tee handle arrangement which adjusts the position of an internal flap.

6.5.8.2. Line valves shall be operated by a tee handle arrangement which adjusts the position of an internal flap.

6.5.8.3. Valves shall be capable of sealing a 50 psig shutoff head.

6.5.8.4. Line valves shall be as manufactured by the Pierce Company or approved equal.

6.5.9. GRAVEL SCREENS

6.5.9.1. Gravel screens shall be provided in 20 gauge galvanized iron with 3/32 inch openings.

6.5.9.2. The screens shall be of the ring type for insertion in 8 inch pipe and shall be 3 feet long.

6.5.9.3. Gravel screens shall be as manufactured by Tri-Matic, Inc. or approved equal.

6.5.10. DRAWINGS AND DATA

6.5.10.1. The successful bidder (Contractor) shall submit complete specifications, data and catalog cuts or drawings covering each item of equipment furnished to the Owner for approval.

6.5.10.2. Data and specifications for each item shall include, but not be limited to the following:

6.5.10.2.1. Center Pivot Irrigation Equipment

6.5.10.2.1.1. Name of the Manufacturer

6.5.10.2.1.2. Type and Model Number

6.5.10.2.2. Nozzles

6.5.10.2.2.1. Name of Manufacturer

6.5.10.2.2.2. Type and Model Number

6.5.10.2.2.3. Spacing

6.6. ELECTRICAL

6.6.1. SCOPE

6.6.1.1. This section covers the installation of electrical equipment furnished under the other sections; and furnishing and installing all additional equipment and materials needed for the electrical requirements of these specifications and contract.

6.6.2. CODES AND PERMITS:

6.6.2.1. All work shall be performed and all materials shall be in accordance with the National Electrical Code and applicable local regulations and ordinances.

6.6.2.2. The Contractor shall, at his own expense, arrange for and obtain all necessary permits, inspections, and approval by the proper authorities in local jurisdiction of such work.

6.6.3. RELATION TO OTHER WORK

6.6.3.1. Electrical work shall be performed to conform with the construction schedule and progress of other trades.

6.6.3.2. Electrical apparatus on all equipment shall be handled, set in place, connected, checked out, serviced and placed in readiness for proper operation to the satisfaction of the Owner and Engineer, all within the scope of work intended under this section.

6.7. REVIEW OF EQUIPMENT AND MATERIALS

6.7.1. All Materials and equipment shall be submitted for review.

6.7.2. Each sheet of descriptive literature submitted shall be clearly marked to identify the material or equipment as follows:

6.7.2.1. Equipment and materials descriptive literature and drawings shall show the specification paragraph for which the equipment applies.

6.7.2.2. Sheets or drawings showing more than the particular item under consideration shall have crossed out all but the pertinent description of the item for which review is requested.

6.7.2.3. Equipment and materials descriptive literature not readily cross referenced with the drawings or specifications shall be identified by a suitable notation.

6.7.2.4. Schematics and connecting diagrams for all electrical equipment shall be submitted for review.

6.7.2.4.1. A manufacturer's standard connection diagram or schematic showing more than one scheme of connection will not be accepted, unless it is clearly marked to show the intended connections.

6.8. POWER SERVICES ENTRANCES

6.8.1. Power services for this project have been provided under a previous contract.

6.9. GENERAL PROCEDURE

6.9.1. Electrical work shall be performed in accordance with the following except as otherwise specified or indicated on the drawings.

6.9.2. SETTING OF EQUIPMENT

6.9.2.1. All equipment shall be installed level and plumb.

6.9.3. SEALING OF EQUIPMENT

6.9.3.1. All openings into equipment shall be screened or sealed as required to prevent the entrance of rodents and insects the size of wasps and mud-daubers.

6.9.4. INSTALLATION OF CONDUIT

6.9.4.1. A conduit shall be routed from each center pivot unit stub-up conduit previously installed to each center pivot unit control panel.

6.9.4.2. A pull box, as specified herein, shall be mounted on the existing stub up conduit with the new conduit routed from the pull box.

6.9.4.3. The conduit installed shall be the same size as the existing stub up conduit.

6.9.4.4. Conduit installation shall conform to the following requirements:

6.9.4.4.1. Terminations and connections of rigid steel conduit shall be threaded.

6.9.4.4.2. Conduits shall be reamed, free of burrs, and terminated with conduit bushings.

6.9.4.4.3. Exposed rigid conduit shall be installed parallel to structural members and surfaced.

6.9.4.4.4. Conduit shall be rigidly supported by galvanized hardware and framing materials including nuts and bolts.

6.9.4.4.5. Conduit connections to sheet metal enclosures shall be securely fastened by locknuts inside and outside.

6.9.4.4.6. Conduits shall be capped during construction to prevent entrance of dirt, water and trash.

6.9.5. SEALING OF CONDUITS

6.9.5.1. After cable has been installed and connected, conduit ends shall be sealed by Johns-Mansville "Duxseal" or approved equal, forced into conduits to a minimum depth equal to the conduit diameter.

6.9.6. INSTALLATION OF CABLE

6.9.6.1. Cable for this project as provided under a previous contract.

6.9.6.2. The cable shall be routed from the pull box at the center pivot unit stub-up conduit to the center pivot unit control panel in conduit as specified herein.

6.9.6.3. Cable connections at the center pivot control panel shall be as

recommended by the center pivot supplier.

6.9.6.4. Care shall be taken to protect the cable and avoid kinking of conductors, cutting or puncturing the jacket, contamination from oil or grease, or damage in any manner.

6.9.6.5. Cable installation shall conform with the following requirements:

6.9.6.5.1. Stranded conductor cable shall be terminated by lugs, cup washers or pressure type connectors

6.9.6.5.2. Stranded cable shall not be wrapped around screw type terminals.

6.9.6.5.3. Cable shall not be pulled tight against bushings nor pressed heavily against enclosures

6.9.6.5.4. cable pulling lubricants shall be as recommended by the cable manufacturer for that particular type cable.

6.9.6.5.5. Cables in vertical risers shall be supported Kellems woven grips or approved equal where necessary to prevent heavy loading on cable connectors because of the weight of the cable.

6.9.7. INSTALLATION OF GROUNDING MATERIALS

6.9.7.1. Electrical system grounding and equipment grounding shall be installed in compliance with the National Electrical Code and shall conform to the following applicable requirements.

6.9.7.1.1. All ground conductors shall be bare, soft drawn, copper cable or bar, not smaller than 12 AWG.

6.9.7.1.2. Ground cable splices and joints which will be inaccessible upon completion of construction shall be made with the "Cadweld" process or approved equal.

6.9.7.1.3. Ground connections to equipment and ground buses shall be by ground lugs or clamps.

6.9.7.1.4. Connections to enclosures not provided with ground busses or terminals shall be by clamp type lugs added under permanent assembly bolts or under new bolts drilled and added through enclosures or by grounding locknuts or bushings.

6.9.7.1.5. Ground conductors on equipment shall be formed to the contour of the equipment and firmly supported.

6.9.7.1.6. All Ground connection hardware, bolts and nuts shall be high strength, high conductivity copper alloy.

6.9.7.1.7. Ground rods shall be 5/8 inch by 8 foot, Copperweld or approved equal.

6.9.7.1.8. A ground rod shall be driven at each center pivot control panel for connection of grounding conductors.

6.10. JUNCTION BOXES

6.10.1. Boxes shall be constructed of PVC or fiberglass.

6.10.2. Box sizes, thickness, and installation details shall comply with the National

Electrical Code.

6.10.3. Bolt-on junction box covers 3'0" square or larger, or heavier than 25 pounds, shall have a rigid handle.

6.10.4. Covers larger than 3'0" by 4'0" shall be split.

6.10.5. Pull boxes shall be NEMA Type 3R

6.11. RIGID CONDUIT

6.11.1. Unless otherwise specified, all raceways shall be heavy wall, galvanized, PVC coated rigid steel conduit, ANSI C80.1.

6.11.2. PVC coated steel conduit shall be as manufactured by Robroy Industries or approved equal.

7. SUBMITTALS

7.1. LAYOUT DATA

7.1.1. Contractor shall keep neat and legible notes of measurements and calculations made by him in connections with the layout of the Work.

7.1.2. Copies of such data shall be furnished to the Owner for use in checking Contractor's layout as provided under lines and grades.

7.1.3. All such data considered of value to Owner will be transmitted to Owner with other records upon completion of the Work.

7.2. CONSTRUCTION PHOTOGRAPHS

7.2.1. Owner shall be responsible for the production of all construction photographs required by Owner.

8. TEMPORARY FACILITIES

8.1. OFFICE AT SITE OF WORK

8.1.1. During the performance of the work described herein, Contractor shall maintain a suitable office at or near the site of the work which shall be the headquarters of his representative authorized to receive drawings, instructions or other communications or articles.

8.1.2. Any communication given to said representative or delivered at Contractor's office at the site of the Work in his absence shall be deemed to have been delivered to contractor.

8.1.3. Copies of the Drawings, Specifications and other contract documents shall be kept at Contractor's office at the site of the work and available for use at all times.

8.2. WATER

8.2.1. Potable water is not available at the site.

8.2.1.1. Contractor shall supply water for potable and sanitary facilities at his own expense.

8.2.2. Construction Water

8.2.2.1. Secondary effluent water will be available and shall be coordinated with the Owner's field personnel.

8.2.2.2. This supply of non-potable water shall be furnished without charge.

8.3. POWER

8.3.1. Contractor shall provide all power for heating, lighting, operation of Contractor's plant or equipment, or any other use by Contractor.

8.4. TELEPHONE SERVICE

8.4.1. Contractor shall make all necessary arrangements and pay all installation charges for telephone lines at his office at the site.

8.5. SANITARY FACILITIES

8.5.1. Contractor shall furnish temporary sanitary facilities at the site, as provided herein, for the needs of all construction workers and others performing work or furnishing services on the project.

8.5.2. Sanitary facilities shall be of reasonable capacity, properly maintained through the construction period, and obscured from public view to the greatest practical extent.

8.5.3. If toilets of the chemically treated type are used, at least one toilet will be supplied for each 20 men.

8.5.4. Contractor shall enforce the use of such sanitary facilities by all personnel at the site.

8.6. MAINTENANCE OF TRAFFIC

8.6.1. Contractor shall conduct his work to interfere as little as possible with public travel.

8.6.2. Whenever it is necessary cross, obstruct or close roads, public or private, Contractor shall provide and maintain suitable and safe bridges, detours, or other temporary expedients for the accommodation of public and private travel, and shall give reasonable notice to owner's of private roads before interfering with them.

8.6.3. Such maintenance of traffic will not be required when Contractor has obtained permission from the owner and tenant of private property, or from the authority having jurisdiction over public property involved, to obstruct traffic at the designated point.

8.7. FENCES

8.7.1. All existing fences affected by the Work shall be maintained by Contractor until completion of the Work

8.7.2. Fences which interfere with construction operations shall not be relocated or dismantled until permission is obtained from the owner of the fence, and the period the fence may be left relocated or dismantled has been agreed upon.

8.7.3. Gates shall be kept closed and locked at all times when not in use.

8.8. SECURITY

8.8.1. Contractor shall be responsible for the protection of the site, and all Work, materials, equipment and existing facilities thereon, and material in the salvage yards against vandals and other unauthorized persons.

8.8.2. No claim shall be made against Owner by reason of any act of an employee or trespasser, and contractor shall make good all damage to Owner's property resulting from his failure to provide security measures as specified.

8.8.3. Security measures shall include such additional security fencing, barricades, lighting, watchman services, and other measures as required to protect the site.

8.9. ACCESS ROADS

8.9.1. All access roads used by the Contractor shall be within the construction areas

8.9.2. Construction traffic across uncleared areas will not be permitted.

8.9.3. Existing roads may be used.

8.9.4. If the Contractor must have a road across an uncleared area outside the construction area, the Contractor must receive permission from the Owner.

8.10. PARKING

8.10.1. Owner will direct Contractor to suitable parking areas for the use of all construction workers and others performing work or furnishing services in connection with the Project, as required to avoid any need for parking personal vehicles where they may interfere with public traffic, Owner's operations, or construction activities.

8.11. POLLUTION CONTROL

8.11.1. Contractor shall prevent the pollution of drains and watercourses by sanitary wastes, sediment, debris and other substances resulting from construction activities.

8.11.2. No sanitary wastes will be permitted to enter any drain or watercourse.

8.11.3. Reasonable measures shall be taken to prevent sediment, debris or other such materials from entering any drain or watercourse.

9. GENERAL EQUIPMENT STIPULATIONS

9.1. SCOPE

9.1.1. All equipment furnished and installed under these specifications and relative contract documents shall conform to the general stipulations set forth in this section except as otherwise specified in other sections of the specifications.

9.2. COORDINATION

9.2.1. Contractor shall coordinate all details of the equipment with other parts of the work, including verification that all structures, piping, wiring, and equipment components are compatible.

9.2.2. Contractor shall be responsible for all structural and other alterations in the

Work required to accommodate equipment differing in dimensions or other characteristics from that contemplated in contract drawings or specifications.

9.3. MANUFACTURER'S EXPERIENCE

- 9.3.1. Unless specifically named in the specifications, a manufacturer shall have furnished equipment of the type and size specified which has been in successful operation for not less than the past five years.

9.4. WORKMANSHIP AND MATERIALS

- 9.4.1. Contractor shall guarantee all equipment against faulty or inadequate design, improper assembly, or erection, defective workmanship or materials, and leakage, breakage, or other failure.
- 9.4.2. Materials shall be suitable for the service conditions.
- 9.4.3. All equipment shall be designed, fabricated and assembled in accordance with the best modern engineering and shop practice.
- 9.4.4. Individual parts shall be manufactured to standard sizes and gauges so that repair parts, furnished at any time, can be installed in the field.
- 9.4.5. Like parts of duplicate units shall be interchangeable.
- 9.4.6. New equipment shall not have been in service at any time prior to delivery, except as required by tests.
- 9.4.7. Except as otherwise specified, structural and miscellaneous fabricated steel used in equipment shall conform to AISC standards.
- 9.4.8. All structural members shall be designed for shock or vibratory loads.
- 9.4.9. Unless otherwise specified, all steel which will be submerged, all or in part, shall be at least ¼ inch thick.

9.5. LUBRICATION

- 9.5.1. Equipment shall be adequately lubricated by systems which require attention no more frequently than weekly during continuous operation.
- 9.5.2. Lubrication systems shall not require attention during startup and shutdown and shall not waste lubricants.
- 9.5.3. Lubricants of the type recommended by the equipment manufacturer shall be provided in sufficient quantity to fill all lubricant reservoirs and to replace all consumption during testing, startup and operation prior to acceptance by the Owner.
- 9.5.4. Lubricant facilities shall be convenient and accessible.
- 9.5.5. Oil drains and fill openings shall be easily accessible from the normal operating area or platform.
- 9.5.6. Drains shall allow for convenient collection of waste oil in containers, from the normal operating area or platform without removing the unit from its normal installed position.

9.6. ELEVATION

- 9.6.1. Since the elevation of the site is approximately 2600 feet, all equipment

furnished shall be designed to meet stipulated conditions and to operate satisfactorily at this elevation.

9.7. ELECTRIC MOTORS

9.7.1. Unless otherwise specified, motors furnished with equipment shall meet the following requirements:

9.7.1.1. Designed and applied in accordance with NEMA, ANSI, IEEE, AFBMA, and NEC for the duty service imposed by the driven equipment, such as frequent starting, intermittent overlaid, high inertia, mounting configuration, or service environment.

9.7.2. Rated for continuous duty at 40° C ambient, unless the application is well recognized for intermittent duty service as a standard industry practice.

9.7.3. Insulated with Class A, Class B, class F, or Class H insulation and designed for a service factor of 1.00, 1.15, or greater.

9.7.4. When operating at a service factor load, maximum observable temperature rise of insulation and motor parts, as determined by resistance or thermometer methods, shall not exceed the NEMA allowable limits for the type of motor, the type of enclosure, and the particular application with regard to continuous and intermittent duty.

9.7.5. To ensure long motor life, nameplate horsepower, regardless of service factor, shall be at least 115 percent of the maximum load imposed by the driven equipment.

9.7.6. Designed for full voltage starting

9.7.7. De-rated, if required, for the altitude at which the equipment is installed.

9.7.8. Clamp type grounding terminal shall be installed inside the motor conduit box

9.7.9. External conduit boxes shall be oversized at least one size larger than NEMA standards.

9.7.10. Totally enclosed motors shall have a continuous moisture drain which also excludes insects

9.7.11. Bearings shall be either oil or grease lubricated.

9.7.11.1. Manufacturer's standard motor may be supplied on integrally constructed, packaged assemblies such as appliances, tools, unit heaters, and similar equipment specified by model number, in which case a redesign of the unit would be required to furnish motors, of other than the manufacturer's standard design.

9.7.11.2. However, in all cases, totally enclosed motors are preferred and shall be furnished if offered by the manufacturer as a standard option

9.7.12. Totally enclosed motors shall be furnished on all equipment.

9.8. SAFETY GUARDS

9.8.1. All moving or rotating parts shall be covered on all sides by a safety guard.

9.8.2. Safety guards shall be fabricated from 16 USS gauge or heavier galvanized

or aluminum clad sheet steel or ½-inch mesh galvanized expanded metal.

9.8.3. Each guard shall be designed for easy installation and removal.

9.8.4. All necessary supports and accessories shall be supplied for each guard

9.8.5. Supports and accessories, including bolts, shall be galvanized.

9.9. SPECIAL TOOLS AND ACCESSORIES

9.9.1. Equipment requiring periodic repair and adjustment shall be furnished complete with all special tools, instruments, and accessories required for proper maintenance.

9.9.2. Equipment requiring special devices for lifting or handling shall be furnished complete with those devices.

9.10. SHOP PAINTING

9.10.1. All steel and iron surfaces shall be protected by suitable paint or coatings applied in the shop.

9.10.2. Surfaces which will be inaccessible after assembly shall be protected for the life of the equipment.

9.10.3. Exposed surfaces shall be finished smooth, thoroughly cleaned, and filled as necessary to provide a smooth uniform base for painting.

9.10.4. Surfaces to be painted after installation shall be shop painted with one or more coats of primer which will adequately protect the equipment until finish coats are applied.

9.10.5. Electric motors, speed reducers, starters and other self-contained or enclosed components shall be shop primed or finished with high grade oil resistant enamel suitable for coating in the field with alkyd enamel.

9.10.6. Coatings shall be suitable for the environment where the equipment is installed.

9.10.7. Shop primer for steel and iron surfaces shall be Cook "391-N-142-Clorocon Barrier Coat", Koppers "No. 10 Inhibitive Primer", Mobil "13-R-28 Chromox Primer", or Tnemec "77 Chem-Prime". Any other coating process shall be approved in writing prior to the bid opening.

9.10.8. Machined, polished and non ferrous surfaces which are not to be painted shall be coated with a rust preventive compound, Houghton "Rust Veto 344" or Rust-Oleum "R-9" or other approved equal.

9.11. PREPARATION FOR SHIPMENT

9.11.1. All equipment shall be suitably packaged to facilitate handling and protect against damage during transit and storage.

9.11.2. All equipment shall be boxed, crated, or otherwise completely enclosed and protected during shipment, handling and storage.

9.11.3. All equipment shall be protected from exposure to the elements and shall be kept thoroughly dry at all times.

9.11.4. Painted surfaces shall be protected against impact, abrasion, discoloration and other damage.

9.11.5. All painted surfaces which are damaged prior to acceptance of equipment, shall be repainted to the satisfaction of the Engineer.

9.11.6. Grease and lubricating oil shall be applied to all bearings and similar items

9.11.7. Each item of equipment shall be tagged or marked as identified in the delivery schedule or on the drawings.

9.11.8. Complete packing lists and bills of material shall be included with each shipment.

10. MEASUREMENT AND PAYMENT

10.1. SCOPE

10.1.1. This section covers methods of measurement and payment for items of work under these specifications and contract documents.

10.2. GENERAL

10.2.1. The bid price shall cover all work required by these specifications and contract documents:

10.2.2. All costs in connection with the proper and successful completion of the Work, including furnishing all materials, equipment, supplies and appurtenances; providing all construction plant, equipment and tools; and performing all necessary labor and supervision to fully complete the Work, shall be included in the completely installed price bid per 1320 foot Center Pivot System.

10.3. CENTER PIVOT IRRIGATION EQUIPMENT

10.3.1. The price bid for the center pivot irrigation equipment shall be based on the furnishing and installing all new center pivot irrigation equipment including all costs for piping, controls, riser tower, structural components, self-propelled towers with drive motors and gear boxes, tires, nozzles, emergency stops, accessories and appurtenances, and all other costs of the center pivot irrigation system.

11. SITE HOUSE KEEPING

11.1. DAILY:

11.1.1. Contractor shall at all times keep the premises free from accumulations of waste materials and rubbish.

11.1.2. Contractor shall provide adequate trash receptacles about the site and shall be promptly empty the containers when filled.

11.1.3. Volatile wastes shall be properly stored in covered metal containers and removed daily.

11.1.4. Wastes shall not be buried or burned on the site except as specified herein.

11.1.4.1. Disposal of wastes into waterways is not acceptable.

11.2. END OF PROJECT

11.2.1. All wastes shall be removed from the site and disposed of in a manner complying local, state and federal pollution laws.

11.2.2. Adequate cleanup shall be a condition for recommendation of progress payments when applicable.

11.2.3. Contractor shall coordinate any salvage operations and storage with the Owner.

12. QUALITY ASSURANCE

Owners Representative or his designate my inspect any or all phases of the work performed. Rejected work shall be corrected before any payment is made for the project.

13. BID WAIVERS:

A. WAIVER OF ATTORNEY FEES: BY SUBMITTING THIS 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 CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE BID, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE BID DOCUMENTS, OR THE CONSTRUCTION, VALIDITY, INTERPRETATION, AWARD, OR BREACH OF THE CONTRACT. THE BIDDER SPECIFICALLY AGREES THAT IF THE BIDDER BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS BID, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE BID DOCUMENTS, OR THE CONSTRUCTION, VALIDITY, INTERPRETATION, AWARD, OR BREACH OF THE CONTRACT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE 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 BID DOCUMENTS INCLUDING BUT NOT LIMITED TO THE CONTRACT. THE BIDDER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE BIDDER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

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

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

BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES THAT THE BIDDER UNDERSTANDS ALL OF THE TERMS OF THE BIDDING DOCUMENTS AND CONSENTS TO THE BIDDING PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT.

BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE BIDDER AND THE CITY OF MIDLAND, TEXAS.

THE BIDDER AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT.

BY SIGNING THE REQUEST FOR BID AND/OR BELOW, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S).

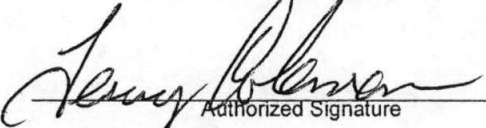
<u>Lamesa Irrigation</u> Company Name	<u>806-872-5479</u> Phone
<u></u> Authorized Signature	<u>806-872-2615</u> Fax
<u>Terry Coleman</u> Print Above Name	<u>12-12-12</u> Date
<u>mesairrigation @ pics.net</u> Email Address	

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, issued by a bank satisfactory to the Owner, 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 owner, must accompany the bidder's proposal, as a guaranty that the bidder will enter a contract and execute the required payment bond and guaranty in the forms provided within fifteen (15) days after notice of award of contract to him. Bids or proposals without the required bid guaranty will not be considered. All bid sureties and payment bonds shall name the City of Midland as Obligee.

*A cash security such as a cashier's check 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

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

_____ of the City of _____ County of _____,
and State of _____ as Principal, and _____

_____ (hereinafter called the Surety(s)), as Surety(s), 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____, to _____, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, 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.

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

PROVIDED further that this Payment Bond is submitted in compliance with Chapter 2253 of the Texas Government Code.

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 this contract, assignment thereof, or to the work to be performed thereunder.

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

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

(hereinafter called the principal(s)), as principal(s), and _____

_____,
(hereinafter called the Surety(s)), as Surety(s), are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), 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____, to furnish and deliver the following equipment:

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 copied at length herein, as well as the Principals 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 bidders, general and special conditions and other contract documents, including any addendums 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.

PROVIDED further that this Performance Bond is submitted in compliance with Chapter 2253 of the Texas Government Code.

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 effect its obligation on this Bond, and it does waive notice of any such change, extension of time, alteration or addition to the terms of this contract, assignment thereof, or to the work to be performed thereunder.

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

EXHIBIT "D"

PREVAILING WAGE RATE SCHEDULE HEAVY CONSTRUCTION as of September 3, 2010 General Decision: TX100001

<u>Classification</u>	<u>Rate/hr</u>	<u>Fringes</u>
Air Tool Operator	9.05	
Asphalt Distributor Operator	10.46	
Asphalt Heater Operator	11.21	
Asphalt Paving Machine Operator	9.38	
Asphalt Raker	9.53	
Asphalt Shoveler	7.33	
Batching Plant Weigher	11.15	
Broom or Sweeper Operator	8.01	
Bulldozer Operator	10.88	
Carpenter	10.10	
Concrete Finisher-Paving	11.25	
Concrete Finisher Structures	10.03	
Concrete Paving Saw Operator	15.00	
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator	11.94	
Crusher, Screen Plant Operator	9.00	
Electrician	19.00	
Flagger	7.29	
Form Builder/Setter-Structures	10.01	
Form Setter - Paving & Curb	9.43	
Foundation Drill Operator, Truck Mounted	18.00	
Front End Loader Operator	10.04	
Laborer - Common	8.25	
Laborer Utility	9.62	
Mechanic	14.05	
Milling Machine Operator, Fine Grade	12.20	
Motor Grader Operator Rough	14.36	

<u>Classification</u>	<u>Rate/hr</u>	<u>Fringes</u>
Motor Grader Operator, Fine Grade	13.24	
Oiler	10.67	
Painter, Structures	11.00	
Pavement Marking Machine Operator	9.26	
Planer Operator	17.50	
Reinforcing Steel Setter, Paving	9.50	
Reinforcing Steel Setter, Structure	11.85	
Roller Operator, Pneumatic, Self Propelled	7.55	
Roller Operator, Steel Wheel, Flat Wheel/Tamping	8.66	
Roller Operator, Steel Wheel, Plant Mix Pavement	9.81	
Scraper Operator	7.78	
Servicer	8.22	
Slip Form Machine Operator	13.64	
Spreader Box Operator	10.07	
Tractor Operator, Pneumatic	8.58	
Traveling Mixer Operator	9.71	
Truck driver, lowboy-Float	11.42	
Truck driver, Single Axle, Heavy	11.00	
Truck driver, Single Axle, Light	7.55	
Truck driver, Tandem Axle, Semi-Trailer	9.02	
Wagon Drill, Boring Machine, Post Hole Driller Operator	8.86	
Welder	9.75	
Work Zone Barricade Servicer	8.64	

Welders – Receive rate prescribed for craft performing operation to which welding is incidental.

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 (29 CFR 5.5(a) 1(ii)).



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 1/8/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a professional services agreement with Freese & Nichols for consulting services for the Comprehensive Zoning Ordinance Update for the Planning Division. RFQ 5390-12

Purpose:

Approval of a resolution approving a professional services agreement for consulting services for the Comprehensive Zoning Ordinance Update for the Planning Division.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$177,000.00 General Fund

Discussion:

Please consider approval of a resolution authorizing the City Manager and City Attorney to execute a professional services agreement with Freese and Nichols, Inc. Three firms responded to our advertisement for Request for Qualifications. The Planning staff recommends entering into an agreement with Freese and Nichols, Inc. The professional services expenditures shall not exceed \$177,000.

Therefore, please consider approval of a resolution authorizing the execution of a professional services agreement with Freese and Nichols, Inc. of Dallas, Texas in an amount not to exceed \$177,000.



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: Consider a resolution approving a contract with Freese Nichols Inc, (FNI) to complete a revision of the City's zoning regulations.

Purpose: Consider approval of a contract with Freese Nichols Inc, (FNI) to complete a revision of the City's zoning regulations.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

The FY 2012-13 budget includes \$180,000 to proceed with this important revision to the zoning regulations.

Discussion:

Staff received three responses from qualified firms to complete the proposed work. The Planning Office staff independently reviewed each submittal and completed a scoring sheet to determine the preferred provider. FNI was the preferred professional consulting firm. FNI has submitted a draft contract and timing schedule with anticipated work beginning late January with a lump sum cost of \$177,000.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
PROFESSIONAL SERVICES AGREEMENT WITH
FREESE AND NICHOLS, INC. FOR COMPREHENSIVE
REVISIONS TO THE CITY OF MIDLAND'S ZONING
CODE REGULATIONS; AND AUTHORIZING
PAYMENT THEREFOR IN THE AMOUNT OF \$177,000**

WHEREAS, the City of Midland advertised a Request for Qualifications for professional services for comprehensive revisions to the City of Midland's zoning code regulations; and

WHEREAS, Freese and Nichols, Inc. has agreed to perform said professional services for an estimated \$177,000; and

WHEREAS, the City Council finds that Freese and Nichols, Inc. is qualified to perform said professional services; and

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

WHEREAS, the City Council finds that Freese and Nichols, Inc. provides professional services for a fair and reasonable price; and

WHEREAS, the City Council finds it to be in the public interest to execute a professional services agreement with Freese and Nichols, Inc. as the most highly qualified provider of said professional services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional services agreement with Freese and Nichols, Inc. for said professional services. A copy said agreement is attached hereto as Exhibit "A" and incorporated herein for all legal

purposes.

SECTION TWO. That the City Treasurer is hereby authorized and directed to make payment to Freese and Nichols, Inc., pursuant to the terms of said agreement, in an amount not to exceed \$177,000.00, from funds available in the Fiscal Year 2012-2013 General Fund (001) Development Services (075) Planning and Development (0055) Consulting Fees (3450) budget account upon receipt of proper invoice or statement 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AGREEMENT FOR PROFESSIONAL SERVICES

STATE OF TEXAS §

COUNTY OF MIDLAND §

This AGREEMENT is entered into by City of Midland, Texas, hereinafter called "Owner" and Freese and Nichols, Inc., hereinafter called "FNI." In consideration of the AGREEMENTS herein, the parties agree as follows:

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this AGREEMENT: Owner agrees to employ FNI; FNI agrees to perform professional services in connection with the Project; Owner agrees to pay to FNI compensation. The Project is described as follows: Development of a new zoning ordinance.
- II. **SCOPE OF SERVICES:** FNI shall provide professional services in connection with Project as set forth in Attachment SC - Scope of Services and Responsibilities of Owner which is attached to and made a part of this AGREEMENT.
- III. **COMPENSATION:** Owner agrees to pay FNI for all professional services rendered under this AGREEMENT in accordance with Attachment CO - Compensation which is attached hereto and made a part of this AGREEMENT. FNI shall perform professional services as outlined in the "Scope of Services" for a lump sum fee of \$177,000. Details concerning the fee are included in Attachment CO.

If FNI's services are delayed or suspended by Owner, or if FNI's services are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this AGREEMENT has been revised.
- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement as set forth as Attachment TC shall govern the relationship between the Owner and FNI.

Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than Owner and FNI, and all duties and responsibilities undertaken pursuant to this AGREEMENT will be for the sole and exclusive benefit of Owner and FNI and not for the benefit of any other party.

This AGREEMENT constitutes the entire AGREEMENT between Owner and FNI and supersedes all prior written or oral understandings.

This contract is executed in two counterparts.

IN TESTIMONY HEREOF, they have executed this AGREEMENT, the _____ day of _____, 20____.

ATTEST:

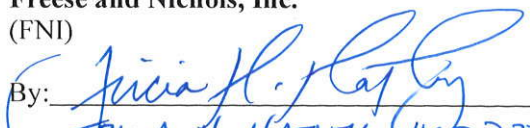
City of Midland, Texas
(OWNER)

By: _____

Print or Type Name and Title

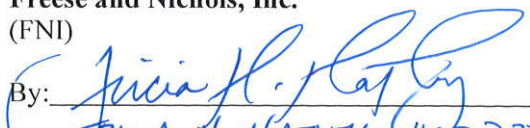
ATTEST:

Freese and Nichols, Inc.
(FNI)

By:  _____

Print or Type Name and Title


EDMUND HAYS, ASSOCIATE


TRICIA H. HATLEY, VICE PRESIDENT

SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER

ARTICLE I

BASIC SERVICES: FNI shall provide the following professional services in connection with the development of the Project:

Division 1: Introduction

The purpose of this Scope of Services is to develop a new zoning ordinance to replace the City's existing zoning ordinance.

Division 2: Outline of the New Zoning Regulations

The new zoning ordinance will generally be organized as follows and will address the following eight (8) major sections. Notably, subsections for each major section may be modified at a later date depending on diagnostic results.

Section 1. General Provisions

- 1.01. Enacting Clause
- 1.02. Purpose
- 1.03. Zoning District Map Regulations and Management
- 1.04. Zoning District Boundaries
- 1.05. Compliance Required / Interpretation / Rules of Construction

Section 2. Zoning Districts

- 2.01. Zoning Districts Established
- 2.02. Equivalency Table (if necessary)
- 2.03. Residential Zoning Districts
- 2.04. Nonresidential Zoning Districts
- 2.05. Special Zoning Districts
- 2.06. Dimensional Standards Tables

Section 3. Land Uses

- 3.01. Uses Permitted by District
- 3.02. Classification of New and Unlisted Uses
- 3.03. Use Chart
- 3.04. Conditional Development Standards
- 3.05. Regulations of Specific Uses
- 1.06. Nonconforming Uses and Structures

Section 4. Site Development Requirements

- 4.01. Landscape Requirements
- 4.02. Tree Preservation Requirements
- 4.03. Screening Standards
- 4.04. Off-Street Parking and Loading Requirements
- 4.05. Lighting Standards
- 4.06. Accessory Structure Standards
- 4.07. Supplementary Regulations
- 4.08. Nonresidential Development Standards

- 4.09. Nonresidential Design Standards
- 4.10. Residential Cluster Development Option
- 4.11. Residential Development Standards

Section 5. Development Review Bodies

- 5.01. Director of Development Services
- 5.02. Planning & Zoning Commission
- 5.03. City Council
- 5.04. Board of Adjustment

Section 6. Development Review Procedures

- 6.01. Zoning Upon Annexation
- 6.02. Zoning Text and Map Amendments
- 6.03. Platting Property Not Zoned
- 6.04. Creation of Building Site
- 6.05. Certificates of Occupancy and Compliance
- 6.06. Site Plan Requirements
- 6.07. PD Application and Review
- 6.08. Specific Use Permit (SUP)
- 6.09. Amortization of Nonconforming Uses
- 6.10. Complete Application Requirements

Section 7. Zoning Relief Procedures

- 7.01. Zoning Regulation Appeal
- 7.02. Zoning Variance
- 7.03. Zoning Special Exception
- 7.04. Zoning Vested Rights Petition

Section 8. Definitions

Division 3: Project Services

Phase 1: Diagnostic Report

A diagnostic analysis and report of the City's existing zoning ordinance and approval process will lay the foundation for writing the new zoning ordinance. This diagnostic evaluation will result in the definition of problems and issues arising out of the City's current ordinance and practices against the backdrop of community-approved goals and objectives. After a consensus is reached between City Staff and FNI regarding the direction of the new zoning ordinance, then FNI will begin the rewrite process.

Task 1: Identify and Diagnose Issues Arising from the Use of the Current Zoning Ordinance

- Analyze land use conflicts that have occurred within the City, and identify possible causes arising from current zoning regulations.
- Analyze the City's existing zoning regulations and identify deficiencies in number and type of zoning districts, land uses, site development standards.
- Analyze the City's zoning development review procedures and identify opportunities for expediting or simplifying approval of applications.
- FNI will conduct several interviews, arranged by City Staff, with users of the Zoning Ordinance from the public and private sectors.
- ***Meetings:*** Eight (8) to sixteen (16) hours of in-person interviews for Task 1 at City Hall, held in one (1) day or two (2) consecutive days.

Task 2: Prepare a Draft Diagnostic Report

- FNI will prepare a diagnostic report summarizing the results of the investigation and defining issues for consideration in developing the new zoning ordinance.
- One conference call will be held between City Staff and FNI to review the diagnostic report.
- City Staff will provide one (1) consolidated set of City Staff comments regarding the diagnostic report for the consultants to review prior to the meeting.
- A consensus will be reached at the end of the conference call regarding the issues identified in the report and how these issues will be addressed in the creation of the new zoning ordinance.
- ***Meetings:*** *One (1) conference call meeting will be held to review the draft report and discuss any questions or necessary revisions.*

Task 3: Refine Issues and Develop Creative and Realistic Solutions

- Critical issues and objectives will be formalized and documented as part of this task.
- This task will incorporate City Staff's comments received during Task 2, as well as FNI's professional expertise in the development and update of zoning regulations.
- The result of this task will be a set of realistic solutions responding to each of the items identified as issues with the current zoning regulations.
- City Staff will provide one (1) consolidated set of City Staff comments regarding the diagnostic report for the consultants to review prior to the meeting.
- ***Meetings:*** *One (1) conference call meeting will be held to discuss any remaining issues in order to finalize the report.*

Task 4: Prepare a Final Diagnostic Report

- The Diagnostic Report will summarize the findings and provide recommendations pertaining to revisions to the City's development regulations, including a summary of the proposed resolution of each issue defined in Task 3.
- The report will incorporate an outline of the proposed recommendations on how the City's procedures and regulations can be made more user-friendly, as well as opportunities the City can pursue to enhance its public image and to proactively encourage cooperation and high quality products from the development community.
- ***Meetings:*** *One (1) joint workshop between the City Council and Planning and Zoning Commission will be held to review and gain approval from both bodies of the Final Diagnostic Report.*

Phase 2: Preparation of the New Zoning Ordinance

The development process for creating the new zoning ordinance will be divided into three distinct parts: (1) general provisions, zoning districts, and land uses, (2) development requirements and (3) zoning procedures.

The rationale for dividing the zoning ordinance review into three parts is to allow for focused and topical discussion between City Staff and FNI. Additionally, the review of the zoning ordinance is more efficient if divided into manageable parts, rather than attempting to review the entire ordinance at one time. Experience has proven that dividing the Ordinance into parts allows for more in-depth discussion, review, and understanding of the material.

Task 1: Develop Draft General Provisions, Zoning Districts, and Land Use Regulations

- FNI will draft Section 1, Section 2, and Section 3 of the new zoning ordinance (please see Division 2 for an outline of included elements).

- FNI will hold one (1) orientation meeting with City Staff at City Hall. The purpose of the meeting is for FNI to unveil and provide a detailed explanation of the elements within this task before City Staff conducts a review of the text. The orientation meeting enables City Staff to become familiar with the new text and the rationale behind the text to increase the efficiency of the review process.
- After the orientation meeting, two (2) staff feedback conference calls will be held to review City Staff comments.
- City Staff will provide one (1) consolidated set of City Staff comments for the consultants to review one (1) day prior to the first feedback meeting. City Staff's first review period is anticipated to be approximately two (2) weeks.
- **Meetings:** *One (1) meeting at the City and two (2) conference calls will be held for Task 1.*

Task 2: Develop Draft Development Requirements (e.g., Landscaping Requirements)

- FNI will draft Section 4 of the new zoning ordinance (please see Division 2 for an outline of included elements).
- FNI will hold one (1) orientation conference call meeting with City Staff.
- After the orientation meeting, two (2) staff feedback conference calls will be held to review City Staff comments.
- City Staff will provide one (1) consolidated set of City Staff comments for the consultants to review one (1) day prior to the first feedback meeting. City Staff's first review period is anticipated to be approximately two (2) weeks.
- **Meetings:** *One (1) meeting at the City and two (2) conference calls will be held for Task 2.*

Task 3: Develop Draft Zoning Procedures (e.g., Site Plans, Variances, Vested Rights, etc.)

- FNI will draft Section 5, Section 6, and Section 7 of the new zoning ordinance (please see Division 2 for an outline of included elements).
- FNI will hold one (1) orientation conference call meeting with City Staff.
- After the orientation meeting, two (2) staff feedback conference calls will be held to review City Staff comments.
- City Staff will provide one (1) consolidated set of City Staff comments for the consultants to review one (1) day prior to the first feedback meeting. City Staff's first review period is anticipated to be approximately two (2) weeks.
- **Meetings:** *One (1) meeting at the City and two (2) conference calls will be held for Task 3.*

Phase 3: Public Input, Review, and Ordinance Adoption

Based upon one (1) consolidated set of City Staff comments, FNI will prepare any revisions to the zoning ordinance. A document, as approved by the City Staff, will be delivered to the City. The ordinance will also be delivered in an electronic format suitable for display to the public.

Public input is important for the zoning ordinance. The ordinance will utilize the public input gathered during the comprehensive plan. This input will help shape the issues within the new zoning ordinance. Then after the public review draft has been created, opportunities will be given for additional public input. Specifically, at the end of public workshops, time should be budgeted to allow for public comments. It is assumed that after watching the ordinance presentation by FNI and the discussion by either the City Council or Planning and Zoning Commission that the public may want to ask questions and provide their input at the end of these workshops.

Task 1: Public Workshops for the City Council and the Planning and Zoning Commission

- FNI will present the zoning ordinance at two (2) Planning and Zoning Commission workshops and two (2) City Council workshops.
- Similar to the City Staff orientation meetings, these workshops are designed to provide a foundation to help the City Council and the Planning and Zoning Commission understand the new zoning ordinance and its benefits.
- These workshops shall take approximately 90 to 120 minutes and will be an overview of the entire ordinance.
- **Meetings:** *Four (4) Public Workshops for Task 1.*

Task 2: Public Hearings

- FNI will present the zoning ordinance at one (1) public hearing for the Planning and Zoning Commission and one (1) public hearing for the City Council.
- **Meetings:** *Two (2) Public Hearings for Task 2.*

Division 4: Total Number of Meetings

This scope includes nineteen (19) meetings, as outlined below.

- Phase 1: Four (4) total meetings.
 - One (1) meeting of in-person interviews, meeting shall include between eight (8) to 16 hours of interviews and may take place over one (1) day or two (2) consecutive days.
 - Two (2) conference calls between City Staff and FNI.
 - One (1) joint workshop between the City Council and Planning and Zoning Commission.
- Phase 2: Nine (9) total meetings.
 - Three (3) meetings at City Hall between City Staff and FNI.
 - Six (6) conference calls between City Staff and FNI.
- Phase 3: Six (6) total meetings.
 - Two (2) Planning and Zoning Commission Workshops.
 - Two (2) City Council Workshops.
 - One (1) public hearing for the Planning and Zoning Commission.
 - One (1) public hearing for the City Council.

Division 5: Deliverables

FNI will provide the City with all electronic files (e.g., Microsoft Word, Adobe PDF, and GIS files) needed to open, edit, and print the final document. FNI will not print any copies of the document (including review and final documents).

ARTICLE II

ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by Owner, which are not included in the above described basic services, are described as follows:

- A. GIS mapping services or assistance with these services.
- B. Making property, boundary and right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.

- C. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by Owner.
- D. Providing renderings, model, and mock-ups requested by the Owner.
- E. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by Owner or 2) due to other causes not solely within the control of FNI.
- F. Assisting Owner in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- G. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities. The estimated cost per additional trip for project support is about \$4,500 each.
- H. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.

ARTICLE III

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule:

Twelve months from Notice to Proceed as shown in the attached Schedule.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Owner or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this AGREEMENT and in Attachment CO.

ARTICLE IV

RESPONSIBILITIES OF OWNER: Owner shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this AGREEMENT. Such person shall have contract authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to FNI's services for the Project.
- B. City Staff shall be responsible for all public notifications, organization of public hearings, mailings, selecting and procuring meeting locations, and the creation of any adoption ordinances. City Staff shall perform all mapping services (GIS, etc.) related to the zoning map for this project, if any. Subsequently, no mapping services related to the zoning map will be performed by FNI as part of the project.

- C. Provide all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including, previous zoning ordinance, zoning map, reports and any other data relative to design or construction of the Project. Existing ordinances and mapping shall be submitted in electronic format for use with standard Microsoft software.
- E. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this AGREEMENT.
- F. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Owner deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- G. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- H. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Owner may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Owner may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as Owner may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- I. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this AGREEMENT or other services as required.
- J. Bear all costs incident to compliance with the requirements of this Article IV.

ARTICLE V

DESIGNATED REPRESENTATIVES: FNI and Owner designate the following representatives:

Owner's Designated Representative –

Owner's Accounting Representative –

FNI's Designated Representative – Daniel Harrison, AICP; 1701 N. Market Street, Suite 500 LB51, Dallas, Texas, 75202; (214) 217-2374; Daniel.Harrison@freese.com

FNI's Accounting Representative – Leah Granger; 1701 N. Market Street, Suite 500 LB51, Dallas, Texas, 75202; (214) 217-2258; Leah.Granger@freese.com

LUMP SUM WITH ADDITIONAL WORK BASED ON COST TIMES MULTIPLIER

- A. **Basic Services:** Compensation to FNI for the Basic Services in Attachment SC shall be the lump sum of One Hundred Seventy-Seven Thousand Dollar (\$177,000.00). If FNI sees the Scope of Services changing so that additional services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify Owner for Owner's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

- B. **Schedule of Charges:**

<u>POSITION</u>	<u>BILL RATE</u>
PRINCIPAL	225
GROUP MANAGER	225
SENIOR ENGINEER	185
ENGINEER (PE)	150
ENGINEER (EIT)	115
ARCHITECT INTERN	95
LANDSCAPE ARCHITECT	150
SENIOR URBAN PLANNER	200
URBAN PLANNER	115
GIS ANALYST	120
DESIGNER	115
TECHNICIAN	95
OPERATIONS ANALYST / ACCOUNTING SPECIALIST	100
WORD PROCESSING/SECRETARIAL	90
CO-OP / INTERN	70

EXPENSES**Plotting**

Bond	\$2.50 per plot
Color	\$5.75 per plot
Other	\$5.00 per plot

Printing

Offset and Xerox Copies/Prints	\$0.10 per side copy
Color Copies/Prints	\$0.50 per side copy
Binding	\$5.75 per book

Travel

Standard IRS rates

Computer

Computer Usage \$10.00/hour

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These rates will be adjusted annually.



TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** The term Owner as used herein refers to the City of Midland, Texas. The term FNI as used herein refers to Freese and Nichols, Inc., its employees and agents; also its subcontractors and their employees and agents. As used herein, Services refers to the professional services performed by Freese and Nichols pursuant to the AGREEMENT.
2. **CHANGES:** Owner, without invalidating the AGREEMENT, may order changes within the general scope of the WORK required by the AGREEMENT by altering, adding to and/or deducting from the WORK to be performed. If any change under this clause causes an increase or decrease in FNI's cost of, or the time required for, the performance of any part of the Services under the AGREEMENT, an equitable adjustment will be made by mutual agreement and the AGREEMENT modified in writing accordingly.
3. **TERMINATION:** The obligation to provide services under this AGREEMENT may be terminated by either party upon ten days' written notice. In the event of termination, FNI will be paid for all services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.
4. **CONSEQUENTIAL DAMAGES:** In no event shall FNI or its subcontractors be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as loss of product, loss of use of the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems.
5. **INFORMATION FURNISHED BY OWNER:** Owner will assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. FNI shall have no liability for defects or negligence in the Services attributable to FNI's reliance upon or use of data, design criteria, drawings, specifications or other information furnished by Owner. FNI shall disclose to Owner, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by Owner to FNI that FNI may reasonably discover in its review and inspection thereof.
6. **INSURANCE:** FNI shall provide to Owner certificates of insurance which shall contain the following minimum coverage (All limits in thousands):

Commercial General Liability General Aggregate \$2,000	Workers' Compensation Each Accident \$500
Automobile Liability (Any Auto) CSL \$1,000	Professional Liability \$3,000 Annual Aggregate
7. **SUBCONTRACTS:** If, for any reason, at any time during the progress of providing Services, Owner determines that any subcontractor for FNI is incompetent or undesirable, Owner will notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the AGREEMENT shall create any contractual relation between any subcontractor and Owner.
8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports data and other project information developed in the execution of the Services provided under this AGREEMENT shall be the property of the Owner upon payment of FNI's fees for services. FNI may retain copies for record purposes. Owner agrees such documents are not intended or represented to be suitable for reuse by Owner or others. Any reuse by Owner or by those who obtained said documents from Owner without written verification or adaptation by FNI will be at Owner's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data and other project information in the execution of the Services provided under this AGREEMENT in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to Owner, and FNI shall indemnify and hold harmless Owner from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.
9. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the Services required by this AGREEMENT, FNI does not take possession or control of the subject site, but acts as an invitee in performing the services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.

10. **OPINION OF PROBABLE COSTS:** FNI will furnish an opinion of probable project development cost based on present day cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices.
11. **CONSTRUCTION REPRESENTATION:** If required by the AGREEMENT, FNI will furnish Construction Representation according to the defined scope for these services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the Contract Documents. In performing these services, FNI will endeavor to protect Owner against defects and deficiencies in the work of Contractors; FNI will report any observed deficiencies to Owner, however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for the supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or the safety precautions and programs incident to the work of the Contractor. FNI shall not be responsible for the acts or omissions of any person (except his own employees or agent) at the Project site or otherwise performing any of the work of the Project. If Owner designates a person to serve in the capacity of Resident Project Representative who is not a FNI's employee or FNI's agent, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in writing and made a part of this AGREEMENT before the Construction Phase of the Project begins.
12. **PAYMENT:** Progress payments may be requested by FNI based on the amount of services completed. Payment for the services of FNI shall be due and payable upon submission of a statement for services to OWNER and in acceptance of the services as satisfactory by the OWNER. Statements for services shall not be submitted more frequently than monthly. Any applicable new taxes imposed upon services, expenses, and charges by any governmental body after the execution of this AGREEMENT will be added to FNI's compensation.

If OWNER fails to make any payment due FNI for services and expenses within thirty (30) days after receipt of FNI's statement for services therefore, the amounts due FNI will be increased at the rate of one percent (1%) per month from said thirtieth (30th) day, and, in addition, FNI may, after giving seven (7) days' written notice to OWNER, suspend services under this AGREEMENT until FNI has been paid in full, all amounts due for services, expenses and charges.

13. **ARBITRATION:** No arbitration arising out of, or relating to, this AGREEMENT involving one party to this AGREEMENT may include the other party to this AGREEMENT without their approval.
14. **SUCCESSORS AND ASSIGNMENTS:** OWNER and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and FNI are hereby bound to the other party to this AGREEMENT and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this AGREEMENT.

Neither OWNER nor FNI shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of services hereunder.

15. **PURCHASE ORDERS:** If a Purchase Order is used to authorize FNI's Services, only the terms, conditions/instructions typed on the face of the Purchase Order shall apply to this AGREEMENT. Should there be any conflict between the Purchase Order and the terms of this AGREEMENT, then this AGREEMENT shall prevail and shall be determinative of the conflict.
16. **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.



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 1/8/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a contract for dry cleaning services for 3 years for the Police Department, Fire Department, Municipal Court, Garage and Water & Wastewater. 5843-13

Purpose:

Approval of a resolution authorizing the execution of a service contract for dry cleaning services for the Police, Fire, Municipal Court, Garage and Water & Wastewater departments.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$292,601.40 General, Garage and Water & Sewer Funds

Discussion:

We are recommending award to the lowest responsive/responsible bidder for this service.

Therefore, please consider approval of a resolution authorizing the execution of a contract with Gregory DCSC, LLC dba Dry Clean Super Center of Midland, Texas for an estimated three year cost of \$292,601.40.

RESOLUTION NO.

RESOLUTION AWARDING A 3-YEAR SERVICE CONTRACT FOR DRY CLEANING SERVICES TO GREGORY DCSC, L.L.C., DBA DRY CLEAN SUPER CENTER, OF MIDLAND, TEXAS, AT A TOTAL COST OF \$292,601.40

WHEREAS, the City Manager advertised plans and specifications for dry cleaning services; and

WHEREAS, Bid No. 5843-13 was opened on December 12, 2012, with the lowest and most responsible bid being submitted from Gregory DCSC, L.L.C., dba Dry Clean Super Center, of Midland, Texas, at \$292,601.40 as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Gregory DCSC, L.L.C., dba Dry Clean Super Center, for said project;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Gregory DCSC, L.L.C., dba Dry Clean Super Center, for said project at a cost not to exceed \$292,601.40, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That upon receipt of proper invoices or statements approved by the City Manager, the City Treasurer is hereby authorized and directed to pay Gregory DCSC, L.L.C., dba Dry Clean Super Center, pursuant to the terms of said contract from funds available in the following Fiscal Year 2012 – 2013 budget accounts not to exceed the following amounts:

- General Fund (001) Municipal Court (010) Municipal Court (0010) Laundry and Cleaning (3230).....\$2,000.00
- General Fund (001) Engineering Services (080) Transportation (0085)

- Laundry and Cleaning (3230).....\$4,820.00
- General Fund (001) Police (110) Police Administration (0111) Laundry and Cleaning (3230).....\$42,000.00
- General Fund (001) Fire (115) Fire (0115) Laundry and Cleaning (3230).....\$45,000.00
- Water and Sewer Fund (300) Engineering Services (080) Water and Wastewater (0335) Laundry and Cleaning (3230).....\$13,600.00
- Garage Fund (750) General Services (040) Garage (0752) Laundry and Cleaning (3230).....\$15,000.00

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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5843-13 Dry Cleaning & Laundry Service for City of Midland OPENED December 12, 2012 Est. Cost: \$130,000.00			Dry Clean Super Center 4218 W Wadley Midland, TX 79707 Claire Gregory (432) 699-3200		Comet Cleaners 4711 Briarwood Midland, TX 79707 Burt Fisher (432) 557-3419	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
		MPD & Municipal Court				
1	14000	Uniform Shirts	2.1000	\$29,400.00	\$4.00	\$56,000.00
2	10000	Uniform Pants (100% Polyester & Poly/Wool Blends)	2.1000	\$21,000.00	\$4.00	\$40,000.00
3	200	Uniform "Cargo" Pants (65/35 Poly/Cotton - Laundered)	2.1000	\$420.00	\$4.00	\$800.00
4	250	SWAT Shirts (BDU Shirts, ie: camos, blacks, navy blues)	2.1000	\$525.00	\$4.00	\$1,000.00
5	500	SWAT Pants (BDU Pants, ie: camos, blacks, navy blues)	2.1000	\$1,050.00	\$4.00	\$2,000.00
6	50	SWAT Field Jacket	2.1000	\$105.00	\$4.00	\$200.00
7	300	Winter Jackets and Coats	2.1000	\$630.00	\$4.00	\$1,200.00
8	100	Wind Breakers (embroidered or silkscreened)	2.1000	\$210.00	\$4.00	\$400.00
9	120	Ties	2.1000	\$252.00	\$4.00	\$480.00
10	50	Parade Attire (white gloves, ascots, braids)	2.1000	\$105.00	\$4.00	\$200.00
11	10	Police Cap Tops	2.1000	\$21.00	\$4.00	\$40.00
12	150	Uniform "Cargo" Shorts (also includes bike shorts)	2.1000	\$315.00	\$4.00	\$600.00
13	100	Polo Style Uniform Shirts	2.1000	\$210.00	\$4.00	\$400.00
14	150	T-Shirts (w/printed POLICE logos)	2.1000	\$315.00	\$4.00	\$600.00
15	10	Table Cloths	2.1000	\$21.00	\$4.00	\$40.00
16	12	Judges Robes (Dry Clean)	2.1000	\$25.20	\$4.00	\$48.00
		Plainclothes Men & Women				
17	150	2 Pc. Suits	4.2000	\$630.00	\$4.00	\$600.00
18	2500	Dress Slacks (Dockers, etc.)	2.1000	\$5,250.00	\$4.00	\$10,000.00

19	3500	Dress Shirts/Blouses	2.1000	\$7,350.00	\$4.00	\$14,000.00
20	50	Ladies 2 Pc. Pants Suits	4.2000	\$210.00	\$4.00	\$200.00
21	1800	Jeans (Wrangler "colored" dress jeans & reg. Denim)	2.1000	\$3,780.00	\$4.00	\$7,200.00
22	30	Dress Coats	2.1000	\$63.00	\$4.00	\$120.00
23	40	Ladies Skirts	2.1000	\$84.00	\$4.00	\$160.00
24	30	Ladies Dresses	2.1000	\$63.00	\$4.00	\$120.00
		TOTAL COST FOR MPD & COURT		\$72,034.20		\$136,408.00
		Fire Department				
25	7000	Uniform Pants (100% Polyester), Slacks, Trousers, EMS Pants	2.1000	\$14,700.00	\$4.00	\$28,000.00
26	250	Winter Jackets	2.1000	\$525.00	\$4.00	\$1,000.00
27	226	Sport Coats, Blazers, Suit Coats	2.1000	\$474.60	\$4.00	\$904.00
28	26	Dress Uniform Coats	2.1000	\$54.60	\$4.00	\$104.00
29	100	Ties	2.1000	\$210.00	\$4.00	\$400.00
30	25000	Uniform Shirts, Non-Uniform Shirts	2.1000	\$52,500.00	\$4.00	\$100,000.00
31	3000	Golf Shirts, T-Shirt, Polo Shirts	2.1000	\$6,300.00	\$4.00	\$12,000.00
32	400	Jeans, Dress Slacks, Dockers, Etc.	2.1000	\$840.00	\$4.00	\$1,600.00
33	300	Windbreakers	2.1000	\$630.00	\$4.00	\$1,200.00
34	50	Hoods (Nomex/PBI)	2.1000	\$105.00	\$4.00	\$200.00
35	6000	Uniform Pants - 65/35; Poly/Cotton	2.1000	\$12,600.00	\$4.00	\$24,000.00
36	2000	EMS Pants - 65/35; Poly/Cotton	2.1000	\$4,200.00	\$4.00	\$8,000.00
		TOTAL COST FOR MIDLAND FIRE DEPARTMENT		\$93,139.20		\$177,408.00
		Water & Wastewater Division & Garage Division				
1	24000	Uniform Shirts	2.1000	\$50,400.00	\$4.00	\$96,000.00
2	24000	Uniform Pants	2.1000	\$50,400.00	\$4.00	\$96,000.00

3	200	Coveralls	2.1000	\$420.00	\$4.00	\$800.00
		TOTAL COST FOR WATER & WASTEWATER		\$101,220.00		\$192,800.00
		Garage Division				
1	6240	Uniform Shirts	2.1000	\$13,104.00	\$4.00	\$24,960.00
2	4120	Uniform Pants	2.1000	\$8,652.00	\$4.00	\$16,480.00
3	2120	Jeans	2.1000	\$4,452.00	\$4.00	\$8,480.00
		TOTAL COST FOR GARAGE		\$26,208.00		\$49,920.00
		Maximum number of garments that will be placed in a single garment bag	5		3	
TOTALS:				\$292,601.40		\$556,536.00

Bidding Summary:

5 Bid requests were issued.

2 Bids listed above

0 NO BIDS were received.

3 Bidders did not respond.

Adcock's Cleaners, Snowwhite Laundry & Cleaners, Fashion Cleaners

DRY CLEANING AND LAUNDRY SERVICE AGREEMENT

#5843-13

THIS AGREEMENT is effective this 9th day of January, 2013, by and between the **CITY OF MIDLAND**, (hereinafter referred to as the "City"), and Gregory DCSC, LLC dba Dry Clean Super Center, (hereinafter referred to as the "Contractor").

1 Contractor agrees to provide laundry, dry cleaning and minor repair services, as particularly specified in the specifications attached hereto as Exhibit "B" and incorporated herein by reference for all legal purposes, for the City's Fire Department (hereinafter referred to as "Fire") and Police Department (hereinafter referred to as "Police") and Municipal Court (hereinafter referred to as "Court") and Water & Wastewater Division (hereinafter referred to "Water & Wastewater") and Garage Division (hereinafter referred to "Garage") uniforms. Uniforms, for the purpose of this agreement means regular uniforms as well as clothing worn by Detectives, undercover officers and Judges robes. Minor repairs, for the purpose of this agreement means those repairs listed in section 4 of this agreement. The Contractor shall charge the City for dry cleaning and laundering per item as is detailed in Exhibit "A1" and Exhibit "A2" attached hereto and incorporated herein by reference for all legal purposes. The total amount paid to Contractor over the 3 year term of this agreement should not exceed \$292,601.40.

2 Services provided to the City may be authorized either through the use of City Departmental Purchase Orders, Central Purchase Orders or by Procurement Card. For services rendered that are not paid by Procurement Card, the Contractor shall maintain separate accounts for Fire, Police, Court, Water & Wastewater and Garage uniforms and shall bill the City separately each month. Invoices shall be mailed to the City of Midland, P. O. Box 1152, Midland, TX, 79702, Attention: Fire Department, or Attention: Police Department or Attention: Municipal Court or Attention: Water & Wastewater or Attention Garage, as the case may be. The City shall issue payment within 30 days of receipt of invoice. Each invoice shall list a total price for the month's services for each department. All services provided shall be subject to verification as to quantities and quality delivered as herein provided.

3 The uniforms shall be delivered to the Contractor and picked up from the Contractor by

individual Fire, Police, Court, Water & Wastewater and Garage personnel. The Contractor shall perform all laundry and dry cleaning services within two (2) days of the uniform being deposited with Contractor. Minor repairs shall be completed within the time set out in section 4. The Contractor shall provide a night depository facility for the receipt of uniforms. The night depository facility shall be secure from theft and shall be convenient for use by Police, Fire, Court, Water & Wastewater and Garage personnel.

3.1 If the Contractor has more than one store or drop off location, all such stores or drop off locations shall be available to Fire, Police, Court, Water & Wastewater and Garage personnel for the purpose of dropping off uniforms and Contractor shall not restrict the availability or use of any store or drop off location from being used as a drop off location for uniforms. Additionally, uniforms shall be picked up at the store or drop off location where originally deposited, unless otherwise noted on the charge ticket.

4. At the request of individual Fire, Police, Court, Water & Wastewater and Garage personnel, the Contractor shall provide the following minor repair services on the uniforms at no extra charge:

- Tears or Rips - no more than 6" long
- Worn Spots
- Loose Seams/Hems
- Lost Buttons or Broken Buttons

4.1 A repair of any other description shall not be considered a minor repair and is beyond the scope of this agreement. Minor repairs must be performed at the Contractor's depository facility. Contractor shall complete all minor repairs within two (2) days of the uniforms being deposited with Contractor. The Contractor shall store all uniforms at its depository facility until picked up by the individual Police, Fire, Court, Water & Wastewater and Garage personnel.

5. The Contractor shall perform the highest quality professional work in dry cleaning, laundering and repairing. All laundered shirts must be starched as specified by individual Police, Fire, Court, Water & Wastewater and Garage personnel. Special care must be shown to any item requiring such, such as removing liners from jackets prior to dry cleaning. All uniforms must be returned by the Contractor in a clean, odor free, pressed condition. Contractor agrees to hang only one item per hanger and protected with a garment bag. Contractor agrees to place no more than 5 articles in a single garment bag.

6 **TERM:** The Contractor shall perform all work described in the attached Minimum Functional and Performance Specifications and in any manner described thereon, for a period of three years from the date of execution of this agreement unless sooner terminated as provided in this agreement.

6.1 **Extensions:** In the event that both parties agree, a one year renewal may be made following the original term and one renewal following the first renewal term. The renewal may be approved by the City Manager on behalf of City Council.

6.2 **Default Termination:** Should the Contractor default on any of its obligations hereunder, including its obligation to provide the highest quality dry cleaning, laundering and minor repair services as is required by section 5, the City may cancel this agreement upon giving 30 days written notice to the Contractor. During that 30 day period, should the Contractor remedy its default, then this agreement shall continue in full force and effect. In the event of such termination, all monies due the Contractor from the City shall be retained by the City to the extent necessary to compensate the City for its damages for the Contractor's breach of the agreement. However, any such retention of monies or any term of this paragraph shall not restrict the City from pursuing any other remedy it may have to recover its full damages resulting from a breach of this agreement.

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

7. **Insurance:** The Contractor shall reimburse and hold the City harmless for any damages to or loss of any uniform occurring while in the possession of the Contractor. The Contractor shall carry property damage insurance (Bailee's Insurance) with limits of no less than \$200,000.00. Contractor shall provide an insurance certificate to the City indicating the name of the insurance company providing coverage, the type of coverage and the amount of the insurance carried. The Contractor's insurance shall waive all rights of subrogation in favor of the City.

8. **INDEMNITY: THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE CITY'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 CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

a. THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE 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 THE CITY, THE 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 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 CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

b. THE CONTRACTOR AGREES THAT HE WILL INDEMNIFY AND SAVE THE 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, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY 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 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 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 CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

9. The waiver of a breach of any term of this agreement shall not operate as a waiver of any subsequent or any other breach of this agreement.

10. The Contractor shall maintain its night depository and cleaning facility within the corporate limits of the City of Midland at 4218 West Wadley, Midland, Texas.

11. **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.

12. **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 CITY, REGARDING THE

AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE CONTRACT. THE 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 CITY AND THE CONTRACTOR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

13. RELEASE: NOTWITHSTANDING ANY OTHER PROVISIONS, 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 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 TAKINGS CLAUSES OF THE

TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

14. **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 City; 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 respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City 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 City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Contractor 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 Contractor's work. Contractor shall assume exclusive responsibility for the work. Contractor is entirely free to do the work in its own way.

15 **Assignment:** Contractor 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 City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

16. **No 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.

17. **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.

18. **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 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 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 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, 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 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.

19. **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.

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

21. **PROMPT PAY ACT** - The City and Contractor agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

By execution of the Agreement, the Contractor hereby represents and warrants to the City of Midland, Texas, the Contractor has read and understood the Agreement.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed on the date first set forth above.

CONTRACTOR

Authorized Signature

Please Print Signature

CITY OF MIDLAND, TEXAS

By _____
Courtney B. Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Corporate Acknowledgment: Agreement 5843-13

THE STATE OF TEXAS

§

§

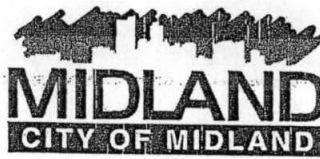
COUNTY OF MIDLAND

§

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of _____, 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 an 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 _____, 2013.

Notary Public, State of Texas



THE CITY OF MIDLAND

DETAIL SHEET

FOR
Dry Cleaning & Laundry
(EXHIBIT A1)

ITEM	DESCRIPTION	QTY ¹	COST EA	TOTAL
MIDLAND POLICE DEPARTMENT & MUNICIPAL COURT Men & Women				
1	Uniform Shirts	14,000	2.10	29,400.00
2	Uniform Pants (100% Polyester & Poly/Wool Blends)	10,000	2.10	21,000.00
3	Uniform "Cargo" Pants (65/35 Poly/Cotton - laundered)	200	2.10	420.00
4	SWAT Shirts (BDU Shirts, ie: camos, blacks, navy blues)	250	2.10	525.00
5	SWAT Pants (BDU Pants, ie: camos, blacks, navy blues)	500	2.10	1,050.00
6	SWAT Field Jackets	50	2.10	105.00
7	Winter Jackets and Coats	300	2.10	630.00
8	Wind Breakers (embroidered or silkscreened)	100	2.10	210.00
9	Ties	120	2.10	252.00
10	Parade Attire (white gloves, ascots, braids)	50	2.10	105.00
11	Police Cap Tops	10	2.10	21.00
12	Uniform "Cargo" Shorts (also includes bike shorts)	150	2.10	315.00
13	Polo Style Uniform Shirts	100	2.10	210.00
14	T-Shirts (w/printed POLICE logos)	150	2.10	315.00
15	Table Cloths	10	2.10	21.00
16	Judges Robes (Dry Clean)	12	2.10	25.20
Plainclothes Men & Women				
17	2 pc. Suits	150	4.20	630.00
18	Dress Slacks (Dockers, etc.)	2,500	2.10	5,250.00
19	Dress Shirts/Blouses	3,500	2.10	7,350.00
20	Ladies 2 pc. Pants suits	50	4.20	210.00
21	Jeans (Wrangler "colored" dress jeans & reg. Denim)	1,800	2.10	3,780.00
22	Dress Coats	30	2.10	63.00
23	Ladies Skirts	40	2.10	84.00
24	Ladies Dresses	30	2.10	63.00
TOTAL COST FOR MPD & COURT				71,769.60
FIRE DEPARTMENT Dry Cleaning				
25	Uniform Pants (100% Polyester), Slacks, Trousers, EMS Pants	7,000	2.10	14,700.00
26	Winter Jackets	250	2.10	525.00
27	Sport Coats, Blazers, Suit Coats	226	2.10	474.60
28	Dress Uniform Coats	26	2.10	54.60
29	Ties	100	2.10	210.00

ITEM	DESCRIPTION	QTY ¹	COST EA	TOTAL
MIDLAND POLICE DEPARTMENT & MUNICIPAL COURT Men & Women				
<u>Laundry</u>				
30	Uniform Shirts, Non-Uniform Shirts	25,000	2.10	52,500.00
31	Golf Shirts, T-Shirt, Polo Shirts	3,000	2.10	6,300.00
32	Jeans, dress Slacks, Dockers, etc.	400	2.10	840.00
33	Wind Breakers	300	2.10	630.00
34	Hoods (Nomex/PBI)	50	2.10	105.00
35	Uniform Pants - 65/35; Poly/Cotton	6,000	2.10	12,600.00
36	EMS Pants - 65/35; Poly/Cotton	2,000	2.10	4,200.00
TOTAL COST FOR MFD				93,139.20
GRAND TOTAL				164,908.80

1 - Quantity is for two years

NOTE: No 100% Silk, Leather, Fur, Fleece or other exotic materials will be submitted for cleaning nor should be accepted by the contractor according to this contract. Any special requests will be the responsibility of the employee unless otherwise specified. If the contractor chooses to clean these items it is his/her responsibility to collect the fees for such from the individual employee.

IV.A.1. Name Of Insurance Company: America First

2. Type of Coverage Carried: Special For Replacement

3. Amount of Insurance Carried: 250,000

Address of the Night Drop location: 4718 W. Wadley

Addresses of alternate drop locations for daytime drops and pick-ups:

Maximum number of garments that will be placed in a single garment bag: ~~6~~ 5

BIDDERS NOTE:

This detail sheet must be completed and submitted with the bid for the bid to be considered.

BID WAIVERS:

WAIVER OF ATTORNEY FEES: BY EXECUTING THIS AGREEMENT, 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 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 CONTRACTOR SPECIFICALLY AGREES THAT IF THE CONTRACTOR BRINGS

ITEM

DESCRIPTION

QTY¹

COST EA

TOTAL

MIDLAND POLICE DEPARTMENT & MUNICIPAL COURT Men & Women

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 AGREEMENT. THE CONTRACTOR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE CONTRACTOR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

Dry Clean Super Center

Company Name

12/10/12

Date

Claire Gregory

Authorized Signature

528-7180/699-3200

Phone

Claire Gregory

Print Above Name

699-3202

Fax



Vendor Name: _____

THE CITY OF MIDLAND DETAIL SHEET

FOR
Dry Cleaning and Laundry
(EXHIBIT A2)

WATER AND WASTEWATER DIVISION & GARAGE DIVISION

ITEM	DESCRIPTION	QTY ¹ 2 YEARS	COST EA.	2 YR TOTAL
Water and Wastewater:				
1	Uniform Shirts	24,000	\$ <u>2.10</u>	\$ <u>50,400.00</u>
2	Uniform Pants	24,000	\$ <u>2.10</u>	\$ <u>50,400.00</u>
3	Coveralls	200	\$ <u>2.10</u>	\$ <u>420.00</u>
	Total cost for Water & Wastewater			\$ <u>101,220.00</u>
Garage Division:				
1	Uniform Shirts	6,240	\$ <u>2.10</u>	\$ <u>13,104.00</u>
2	Uniform Pants	4,120	\$ <u>2.10</u>	\$ <u>8,652.00</u>
3	Jeans	2,120	\$ <u>2.10</u>	\$ <u>4,452.00</u>
	Total cost for Garage			\$ <u>26,208.00</u>

IV.A.1. Name Of Insurance Company: America First

2. Type of Coverage Carried: Special for Replacement

3. Amount of Insurance Carried: 250,000

Address of the Night Drop location: 4218 W. Wadley, Midland

Addresses for daytime drops and pick-ups:

4218 W. Wadley, Midland

Maximum number of garments that will be placed in a single garment bag: 685

¹Estimates only

Vendor Name: DryClean SuperCenter

BIDDERS NOTE:

This detail sheet must be completed and submitted with the bid for the bid to be considered.

BID WAIVERS:

A. WAIVER OF ATTORNEY FEES: BY SUBMITTING THIS 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 CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE BID, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE BID DOCUMENTS, OR THE CONSTRUCTION, VALIDITY, INTERPRETATION, AWARD, OR BREACH OF THE AGREEMENT. THE BIDDER SPECIFICALLY AGREES THAT IF THE BIDDER BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS BID, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE BID DOCUMENTS, OR THE CONSTRUCTION, VALIDITY, INTERPRETATION, AWARD, OR BREACH OF THE 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 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 BID DOCUMENTS INCLUDING BUT NOT LIMITED TO THE AGREEMENT. THE BIDDER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE BIDDER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

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

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

Vendor Name: ~~Star~~ Dry Clean Super Center

2. WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE BID DOCUMENTS OR THE AGREEMENT DOCUMENTS;

3. ACCEPTANCE OR REJECTION OF ANY BIDS; OR

4. AWARD OF THE AGREEMENT.

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).

If this form is not signed and included with your bid documents your bid will be considered non-responsive and will be rejected.

Dry Clean Super Center		12/11/12
Company Name		Date
Claire Gregory		432 699-3200
Authorized Signature		Phone
Claire Gregory		432 699-3202
Print Above Name		Fax

CITY OF MIDLAND

SPECIFICATION

940-2001.000

Dry Cleaning

for the Water & Wastewater Division and the Garage Division

Exhibit "B"

1. SCOPE:

Dry cleaning for the Water & Wastewater Division and the Garage Division will be provided in accordance with these specifications and the attached "Dry Cleaning Service Agreement".

2. INTENT:

The City intends to contract the services herein for a two year period with a possibility of two additional one year extensions. The City desires to have as many locations as possible for personnel to be able to drop off their cleaning.

3. VENDOR CONTACT:

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

The City Of Midland

Office of the Purchasing Agent

OR

FAX: (432) 685-0523

P.O. Box 1152

EMAIL: purchasing@midlandtexas.gov

Midland, TX 79702

All vendors on the bid list will then be notified of the questions and presented an answer. Information provided by other City personnel shall not be considered binding. 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.

4. REQUIREMENTS

4.1. INSURANCE:

The successful bidder shall have insurance to cover all articles in their possession at all times (See Contract Minimum). Bidder to furnish the following information:

4.1.1. NAME OF INSURANCE COMPANY

4.1.2. TYPE OF COVERAGE CARRIED

4.1.3. AMOUNT OF INSURANCE CARRIED

Selected Bidder shall be required to provide an Insurance Certificate prior to execution of the Agreement.

4.2. QUANTITIES:

All quantities shown on the detail sheet are estimates ONLY. Actual quantities will vary.

4.3. CONTRACT PERIOD:

Bids are requested to cover two years dry cleaning service only.

4.4. GARMENTS:

Bids are requested for dry cleaning service for items as shown on the attached detail sheet, EXHIBIT A.

4.5. COSTS:

The bidder shall indicate on the detail sheet the cost of this service for each item for each cleaning. The costs shall include all charges as noted below.

4.6. REPAIRS:

4.6.1. MINOR REPAIRS - The successful bidder shall at no extra charge do all minor repairs to all uniforms as required to maintain them in a serviceable condition. Such repairs shall include:

- ☞ rips and tears less than 6".
- ☞ worn spots.
- ☞ loose or open seams.
- ☞ lost OR broken buttons.

NOTE: Repairs of any other description shall not be considered a minor repair and is beyond the scope of this agreement and have prior approval of charges by the designated representative before any work is performed.

4.7. SERVICE:

4.7.1. **TURNAROUND** - The successful bidder must be able to provide two-day or less service, except in the case of minor repairs which may be up to two (2) additional days.

4.7.2. **NIGHT DEPOSITORY** - Night depository facility is mandatory. A night depository facility, secure from theft, and convenient for use by Water & Wastewater personnel is mandatory.

4.7.3. MULTIPLE STORES/DROPS:

4.7.3.1. Where the successful bidder has more than one store location taking in Dry cleaning, all of the stores/drops shall be available for the purpose of dropping off and picking up articles falling within the scope of this bid request and Agreement.

4.7.3.2. Articles shall be picked up at the location where dropped unless otherwise noted on the drop ticket.

4.7.3.3. The successful bidder shall have ample storage space for cleaned uniforms etc., until picked up by City.

4.7.4. **PERSONNEL & EQUIPMENT** - All bidders shall have sufficient employees and equipment (not coin operated machines) to do professional work, this includes starching uniform shirts, repairs and etc.

4.7.4.1. If under *extraordinary circumstances*, clothing has to be cleaned at another location, the clothes shall not be left unattended.

4.7.5. JACKETS:

4.7.5.1. Most jackets have removable liners that must be removed before dry cleaning.

4.7.5.2. These liners are zipped and buttoned-in for easy removal.

4.7.5.3. Bidders should note that these liners must be removed before dry cleaning.

4.8. PACKAGING

4.8.1. Only one pair of pants, one shirt or other article of clothing shall be hung on a single hanger.

4.8.1.1. However, more than one article, as may be practical, may be placed in a plastic garment protector bag.

4.8.1.2. ALL ARTICLES SHALL BE DELIVERED IN A PLASTIC GARMENT BAG.

4.9. DOCUMENTATION

The successful bidder will furnish an adding machine tape with each bundle of tickets indicating the dollar amount of each bundle.

5. QUALITY ASSURANCE:

5.1. CLEANING FLUIDS

- 5.1.1. The use of cleaning fluid or material that leaves an unpleasant odor in clothing shall be cause for rejection of cleaned articles and they shall be re-cleaned at no additional charge.

5.2. CLEANED ARTICLES SHALL BE RENDERED BACTERIA FREE.

5.3. ODORS

- 5.3.1. Cleaned articles that are picked up which have sour or other unpleasant odors shall be rejected and re-laundered at no additional charge.

5.4. UNNECESSARY REPAIRS

- 5.4.1. Any article received without necessary repairs being made shall be rejected and returned for repair. If repairs necessitate dry cleaning, it shall be performed at no additional charge.

5.5. UNRESOLVED PROBLEMS & COMPLAINTS

- 5.5.1. Continued complaints of the above shall be cause for termination of this agreement.

6. AWARD

The City and Bidder agree that, if the Agreement is awarded, that 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. Further, City reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City reserves the right to award the bid to the lowest responsible bidder.

NOTE TO ALL BIDDERS: Bidders are responsible for meeting or exceeding the requirements set forth in these specifications and agreement and should bid accordingly.



CITY OF MIDLAND

SPECIFICATION

940-2000-00

Laundry & Dry Cleaning for Police & Fire Departments And, Municipal Court Exhibit "B"

1. SCOPE:

Dry cleaning, pressing and laundry service for the Midland Municipal Court, Police and Fire Departments will be provided in accordance with these specifications and the attached "Dry Cleaning and Laundry Service Agreement".

2. INTENT:

The City intends to contract the services herein for a two year period with a possibility of two additional one year extensions. The City desires to have as many locations as possible for personnel to be able to drop off their cleaning and/or laundry.

3. VENDOR CONTACT:

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

The City Of Midland
Office of the Purchasing Agent OR FAX: (432) 685-0523
P.O. Box 1152
Midland, TX 79702

All vendors on the bid list will then be notified of the questions and presented an answer. Information provided by other City personnel shall not be considered binding.

4. DEFINITIONS

4.1. UNIFORM SHIRTS:

Dark Navy or Light Blue or White long sleeve and short sleeve shirts with shoulder patches. These shirts can have the following fabric contents: Poly/cotton blend, Poly/wool blend, Dacron/Polyester or 100% polyester.

4.2. UNIFORM PANTS:

Dark Navy pants with or without striping. These pants can have the following fabric contents: 100% Polyester, Poly/wool or Poly/cotton blends.

4.3. UNIFORM "CARGO" PANTS:

Dark Navy pants with cargo pockets on sides of pants just above the knee. Fabric content: Poly/cotton blend. These pants should be laundered and starched, NOT DRY

CLEANED.

4.4. SWAT SHIRTS:

Black, Navy or Urban Camouflage in color with department shoulder patches and/or SWAT patches. BDU or Battle Dress Uniform in style. These shirts can have the following fabric contents: poly/cotton, cotton ripstop.

4.5. SWAT PANTS:

Black, Navy or Urban Camouflage in color with department shoulder patches and/or SWAT patches. BDU or Battle Dress Uniform in style. These pants can have the following fabric contents: poly/cotton, cotton ripstop.

4.6. SWAT FIELD JACKETS:

Black, Navy or Urban camouflage in color with department shoulder patches and/or SWAT patches. BDU or Battle Dress Uniform in style which includes (4) bellowed pockets on the front of the jacket. These jackets can have the following fabric contents: poly/cotton, cotton ripstop.

4.7. WINTER JACKETS/ COATS:

Dark Navy in color. These jackets will have department shoulder patches and the manufacturer will be Blauer, Inc. or Fechheimer for the Police Dept. The Fire Dept has various brands of winter jackets/coats. These jackets/coats will have detachable fur collars and removable liners. These jackets have the following fabric contents: 100% nylon outer shell with removable "thinsulate" liner.

4.8. WIND BREAKERS (embroidered or silk screened for Police):

Dark Navy in color. These jackets will have snap closures in front and will be either embroidered or silk screened with department insignia on sleeves, back and front sides of the jacket. These jackets will also either be lined or unlined. The fabric content can be 100% polyester.

4.9. WIND BREAKERS (silk screened for Fire Department):

Dark Navy with "Fire Dept." screen printed on the backside of the jacket. These will need to be laundered not dry cleaned. The fabric content contains the following: 100% nylon.

4.10. TIES:

Dark Navy in color, or multi colored/multi patterned for "plain clothes" officers. These ties may either be regular or clip on styles. Fabric Contents can consist of 100% polyester.

4.11. PARADE ATTIRE:

These items are used for the Honor Guard. They consist of white cotton or polyester gloves, nylon white braids, cotton or polyester white ascots.

4.12. POLICE CAP TOPS:

Dark Navy or White police cap tops can consist of 100% polyester or 100% wool blends.

4.13. UNIFORM "CARGO" SHORTS:

Dark Navy in color. The fabric consists of the following: Poly/cotton blend.

4.14. BIKE SHORTS:

Dark Navy shorts. These shorts have a 100% nylon outer shell with lycra spandex inner short with built-in padding.

4.15. POLO STYLE UNIFORM SHIRTS:

These shirts will be of various colors, have department insignia embroidered on them and of "pull over" style. These shirts will also include "dress" polo style shirts for "plain clothes" officers. (Sometimes referred to as golf shirts.)

4.16. T-SHIRTS:

These shirts will be of poly/cotton blend or 100% cotton and have department insignia silk-screened on front and/or back of the shirts.

4.17. 2 PC. SUITS:

These shall consist of a matching men's or ladies dress jacket and dress slacks.

4.18. TABLE CLOTHS:

These are of various colors and consist of cotton/polyester blends.

4.19. SUIT JACKETS:

These include sport jackets, dress suit jackets, dress western style jackets and blazers. Fabric contents can include wool blends, cotton/poly blends, polyester, etc. No leather jackets or jackets with leather elbow patches will be accepted.

4.20. DRESS SLACKS:

These shall include: dress slacks, Levi's Dockers or similar style pants.

4.21. JEANS:

These shall include Wrangler or other brand name denim jeans in either denim blue or other various colors. Western style in nature. These shall also include ladies Roper brand, Silverlake brand, Rockies brand, etc. The fabric content can contain 100% cotton.

4.22. DRESS SHIRTS/BLOUSES:

These shall include all men's and ladies dress style shirts and blouses of various colors and styles. The fabric contents can include: Cotton, cotton/poly blends, rayon, dacron blends, etc. All 100% silk, leather, fur or fleece is unacceptable.

4.23. LADIES SKIRTS:

These include several different styles and fabric contents.

4.24. DRESS COATS/JACKETS:

These include heavy winter type jackets for wear with plain clothes. The fabric contents are various.

4.25. LADIES DRESSES:

These shall consist of either one or two piece dresses. No 100% silk items should be accepted.

4.26. EMS PANTS:

These pants are dark navy or black. The fabric contents can include: poly/cotton or cotton.

4.27. HOODS:

These hoods are Nomex or PBI fabric. These will need to be laundered not dry cleaned.

4.28. UNIFORM SHORTS:

These shorts are dark navy or black. The fabric contents can include: poly/cotton or cotton.

5. REQUIREMENTS

5.1. INSURANCE:

The successful bidder shall have insurance to cover all articles in their possession at all times (See Contract Minimum). Bidder to furnish the following information:

5.1.1. NAME OF INSURANCE COMPANY

5.1.2. TYPE OF COVERAGE CARRIED

5.1.3. AMOUNT OF INSURANCE CARRIED

Selected Bidder shall be required to provide an Insurance Certificate prior to execution of the Agreement.

5.2. QUANTITIES:

All quantities shown on the detail sheet are estimates ONLY. Actual quantities will vary.

5.3. CONTRACT PERIOD:

Bids are requested to cover two years dry cleaning and pressing and laundry service.

5.4. GARMENTS:

Bids are requested for dry cleaning and pressing and laundry service for items as shown on the attached detail sheet, EXHIBIT A.

5.5. COSTS:

The bidder shall indicate on the detail sheet the cost of this service for each item for each cleaning. The costs shall include all charges as noted below.

5.6. REPAIRS:

5.6.1. MINOR REPAIRS:

The successful bidder shall at no extra charge do all minor repairs to all uniforms as required to maintain them in a serviceable condition. Such repairs shall include:

-  rips and tears less than 6".
-  worn spots.
-  loose or open seams.

lost OR broken buttons.

NOTE: Repairs of any other description shall not be considered a minor repair, and are beyond the scope of this agreement and shall have prior approval of charges by the designated representative before any work is performed.

5.7. SERVICE:

5.7.1. TURNAROUND:

The successful bidder must be able to provide two-day or less service, except in the case of minor repairs which may be up to two (2) additional days.

5.7.2. NIGHT DEPOSITORY:

Night depository facility is mandatory. A night depository facility, secure from theft, and convenient for use by Police and Fire personnel is mandatory.

5.7.3. MULTIPLE STORES/DROPS:

5.7.3.1. Where the successful bidder has more than one store location taking in Dry cleaning/laundry, all of the stores/drops shall be available for the purpose of dropping off and picking up articles falling within the scope of this bid request and Agreement.

5.7.3.2. Articles shall be picked up at the location where dropped unless otherwise noted on the drop ticket.

5.7.3.3. The successful bidder shall have ample storage space for cleaned uniforms etc., until picked up by City.

5.7.4. PERSONNEL & EQUIPMENT:

All bidders shall have sufficient employees and equipment (not coin operated machines) to do professional work, this includes starching uniform shirts, repairs and etc. Any portion of work that will be sub-contracted shall be noted in the bid. The City reserves the right to approve sub-contractors. Sub-contractors shall supply the City with the same insurance coverages and endorsed as required by the Agreement and specifications herein.

5.7.4.1. If, under extraordinary circumstances, clothing has to be cleaned at another location, the clothes shall not be left unattended.

5.7.5. JACKETS:

5.7.5.1. Most jackets have removable liners that must be removed before dry cleaning.

5.7.5.2. These liners are zipped and buttoned-in for easy removal.

5.7.5.3. Bidders should note that these liners must be removed before dry cleaning.

5.7.6. PACKAGING:

Only one pair of pants, one shirt or other article of clothing shall be hung on a single hanger. However, more than one article, as may be practical, may be placed in a plastic garment protector bag.

- **ALL ARTICLES SHALL BE DELIVERED IN A PLASTIC GARMENT BAG.**
- **ALL PANTS SHALL BE DELIVERED ON HANGERS WITH CARDBOARD SLEEVES.**

5.7.7. DOCUMENTATION:

The successful bidder will furnish an adding machine tape with each bundle of tickets indicating the dollar amount of each bundle.

6. QUALITY ASSURANCE:

6.1. Odors:

6.1.1. The use of cleaning fluid or material that leaves an unpleasant odor in clothing shall be cause for rejection of cleaned articles and they shall be re-cleaned at no additional charge.

6.1.2. Laundered articles that are picked up which have sour or other unpleasant odors shall be rejected and re-laundered at no additional charge.

6.1.3. Any article received without necessary repairs being made shall be rejected and returned for repair. If repairs necessitate re-laundering, dry cleaning or pressing, it shall be performed at no additional charge.

6.2. Continued complaints of the above shall be cause for termination of this agreement.

NOTE TO ALL BIDDERS: Bidders are responsible for meeting or exceeding the requirements set forth in these specifications and agreement and should bid accordingly.

7. AWARD

7.1. The City and Bidder agree that, if the Agreement is awarded, that 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. Further, City reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City reserves the right to award the bid to the lowest responsible bidder.



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Courtney Sharp, City Manager

SUBJECT: Consider a resolution of the City of Midland, Texas, requesting the Texas State Legislature and Governor of Texas take action to compel payday and auto title lenders to stop usurious lending and comply with the same standards as licensed consumer lenders in Texas.

Purpose:

To encourage the Texas Legislature and Governor to take action regarding payday and auto title lenders.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

N/A

Discussion:

This discussion will encourage the state to take action in the next legislature session to "cap" interest rates charged by payday and auto title lenders. It also calls for these lenders to comply with consumer protections laws.

RESOLUTION NO. _____

**RESOLUTION OF THE CITY OF MIDLAND, TEXAS,
REQUESTING THAT THE TEXAS STATE
LEGISLATURE AND THE GOVERNOR OF TEXAS
TAKE ACTION TO STOP USURIOUS LENDING BY
PAYDAY AND AUTO TITLE LENDERS AND TO
SUPPORT CITIES' AUTHORITY TO PASS
ORDINANCES AIMED AT CURTAILING CREDIT
ACCESS BUSINESSES' EXPLOITATION OF
ECONOMICALLY VULNERABLE CITIZENS**

WHEREAS, the Council of the City of Midland represents the citizens of the City of Midland; and

WHEREAS, citizens of the City of Midland are deeply concerned about the harmful effects of payday and auto title lending practices in our community and throughout Texas; and

WHEREAS, in the state of Texas there are over 3,000 of these lending storefronts, operating outside of state usury laws, evading licensed consumer lending standards under Texas law, and making over \$3 billion in high-cost loans to Texas families each year; and

WHEREAS, there are at least 19 of these loan businesses in our local community promising “easy credit” only to hurt people with annual percentage rates upwards of 500% and loan terms that often pull people deeper into debt; and

WHEREAS, in response to the targeting of working families, senior citizens, and military families who struggle to pay rent, bills, and provide for other basic needs, at least 16 states and the District of Columbia have adopted 36% or lower annual percentage rate cap for these small loans; and

WHEREAS, upon the Department of Defense’s finding that these loans, “undermine military readiness, harm the morale of troops and their families, and add to the cost of fielding an all-volunteer fighting force”, the federal government enacted a rate cap of 36% for loans up to 90 days and up to \$2,000 to protect certain members of the military from exploitation; however, Texas payday lenders have found ways to evade the rate cap and continue to exploit the military community; and

WHEREAS, to prevent payday and auto title lenders from trapping borrowers in a perpetual cycle of debt, other states have implemented provisions such as rate caps, fee caps, prorated fees, and limits on the total number of loans per consumer to ensure that

borrowers can actually repay loans on time; and in these states, payday and auto title businesses continue to operate in compliance with these standards; and

WHEREAS, we see a crisis in our community and it is vital that the Texas State Legislature take immediate action.

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

SECTION ONE. That the City of Midland urges the Texas State Legislature and the Governor of Texas to take action in the next regular session of the State Legislature in 2013 to enact laws that will:

- A. End the exploitative practices of credit access businesses that hurt our communities and struggling Texans by charging usurious and immoral rates and fees.
- B. Affirm cities' right to promote the public welfare and prevent predatory practices by upholding local control, as permitted by current law.

SECTION TWO. THAT the City of Midland supports cities' authority to pass ordinances aimed at curtailing predatory payday and auto title business practices and ending the damaging cycle of debt and economic drain too often caused by these loans.

On a 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., 2012, by the following vote:

Council Members voting "AYE":

Council Members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 1/08/2013

TO: City Council / City Manager

FROM: Genora C. Young, PCED – Downtown Development Director

SUBJECT: Consider a resolution approving an Interlocal Cooperation Contract for the employment of a Downtown Development Coordinator ("Coordinator"); rescinding Resolution #2012-337.

Purpose: The purpose of this Agreement is to set forth the terms and conditions under which the City will employ a Downtown Development Coordinator and the Midland Development Corporation ("MDC"), Downtown Midland Management District ("DMMD") and Tax Increment Reinvestment Zone Board Number 1 ("TIRZ") will participate in the funding of said position in consideration of the mutual benefits that will accrue as a result of the Coordinator's services.

In conjunction with the execution of this Agreement, the MDC, DMMD and TIRZ, agree to participate in the funding of the City's employment of a Coordinator as follow:

- MDC \$33,000
- DMMD \$33,000
- TIRZ \$33,000

Each year during the term of this Agreement, on or before October 15, parties listed above agree to pay to the City the amount listed above in consideration of the City's employment of Coordinator and the work and services performed by Coordinator. The City agrees to utilize the funds obtained to create and maintain the Coordinator position, including, but not limited to, funding the Coordinator's salary and benefits, and all other costs and expenses reasonably associated with said position and the work and services of the position. The parties acknowledge and agree that the City will incur a proportionate share of costs under this Agreement, in an amount not less than \$33,000. Interlocal Cooperation Contract authorized by Chapter 791 of the Texas Government Code.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF
AN INTERLOCAL COOPERATION CONTRACT
BETWEEN THE CITY OF MIDLAND, THE MIDLAND
DEVELOPMENT CORPORATION (“MDC”), THE
DOWNTOWN MIDLAND MANAGEMENT DISTRICT
(“DMMD”) AND THE MIDLAND TAX INCREMENT
REINVESTMENT ZONE NUMBER ONE (“TIRZ”)
REGARDING THE CITY OF MIDLAND’S
EMPLOYMENT OF A DOWNTOWN DEVELOPMENT
COORDINATOR, AS AUTHORIZED BY CHAPTER 791
OF THE TEXAS LOCAL GOVERNMENT CODE; AND
RESCINDING RESOLUTION NO. 2012-337**

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of an Interlocal Cooperation Contract between the City of Midland, the MDC, the DMMD and the TIRZ regarding the City of Midland’s employment of a Downtown Development Coordinator;

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 Interlocal Cooperation Contract between the City of Midland, the MDC, the DMMD and the TIRZ regarding the City of Midland’s employment of a Downtown Development Coordinator. Said agreement is attached hereto and incorporated herein as Exhibit “A”.

SECTION TWO. That upon the City of Midland’s receipt of funds from the MDC, the DMMD and the TIRZ, pursuant to the terms of said contract, such funds shall be deposited into the General Fund (001) of the City of Midland.

SECTION THREE. That Resolution No. 2012-337 is hereby rescinded.

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., 2013, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**INTERLOCAL COOPERATION CONTRACT AS
AUTHORIZED BY CHAPTER 791 OF THE TEXAS
GOVERNMENT CODE**

THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS
COUNTY OF MIDLAND	§	

THIS AGREEMENT is made and effective the 9th day of January, 2013, by and between the City of Midland, Texas (“City”), the Midland Development Corporation (“MDC”), the Downtown Midland Management District (“DMMD”) and the Midland Tax Increment Reinvestment Zone Number One (“TIRZ”).

I. PURPOSE

The purpose of this Agreement is to set forth the terms and conditions under which the City will employ a Downtown Development Coordinator (“Coordinator”) and the MDC, DMMD and TIRZ will participate in the funding of said position in consideration of the mutual benefits that will accrue to each of the parties hereto as a result of the Coordinator’s services.

II. SERVICES TO BE PERFORMED BY THE CITY

The City agrees to employ a Downtown Development Coordinator who will perform the following services:

- 1) Attract new development and redevelopment opportunities to downtown Midland through the recruitment of developers, realtors, investors and other interested parties to aid in the rejuvenation of the downtown area.
- 2) Aid in the growth and expansion of current downtown Midland businesses through any means available including but not limited to incentive programs, establishment of business connections, and assistance in problem solving.

- 3) Serve as a liaison to the Downtown Development Consortium as well as other government entities related to downtown development issues and opportunities.
- 4) Coordinate the agreed upon incentives for development projects including infrastructure, funding, and other related elements.
- 5) Negotiates contracts and agreements with development partners for the establishment of new businesses in downtown Midland and other similar actions relevant to the invigoration of the downtown area.
- 6) Manage and supervise assigned staff.
- 7) Work with City staff to solve complications and problems that may interfere with downtown Midland development and redevelopment projects.
- 8) Develop, sponsor, and initiate various downtown Midland development promotional programs and campaigns.
- 9) Oversee the development of necessary and relevant reporting documents including economic impact analyses, business recruitment strategies, needs assessments, and other recruitment tools.
- 10) Seek out, apply for, and administer grants for downtown Midland revitalization projects.
- 11) Manage the operating budget for the Downtown Development division within the financial constraints established by the City Manager

The City agrees that the Coordinator will perform said services with the level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same type of services. The City represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described above.

III. OBLIGATIONS OF THE MDC, DMMD AND TIRZ

In conjunction with the execution of this Agreement, the MDC, DMMD and TIRZ, agree to participate in the funding of the City's employment of a Coordinator as follows:

MDC	\$33,000
DMMD	\$33,000
TIRZ	\$33,000

Each year during the term of this Agreement, on or before October 15, the parties listed above agree to pay to the City the amount listed above in consideration of the City's employment of Coordinator and the work and services performed by Coordinator. The City agrees to utilize the funds obtained hereunder to create and maintain the Coordinator position, including, but not limited to, funding the Coordinator's salary and benefits, and all other costs and expenses reasonably associated with said position and the work and services of the position. The parties hereto acknowledge and agree that the City will incur a proportionate share of costs under this Agreement, in an amount not less than \$33,000, as a result of the City employing the Coordinator.

Each of the parties listed above agrees to assist the City and the Coordinator to the extent reasonably requested by the City or Coordinator in connection with the Coordinator's work and services. Each of the parties listed above agrees to work with the other parties to this Agreement in connection with Coordinator's work and services, particularly as to work and services that relate to economic development in the downtown Midland area.

The parties acknowledge and agree that the costs and expenses associated with the Coordinator position shall be reviewed annually by the City; the parties further agree the

payment obligations of the MDC, DMMD and TIRZ, as described above, may be adjusted annually, as necessary, effective October 1, 2013 and each October 1 thereafter during the term of this Agreement (the “Annual Adjustment”). The City agrees to give the other parties not less than ninety (90) days written notice of any such Annual Adjustment. Any Annual Adjustment that does not increase the other parties’ then-current payment by more than five percent (5%) shall apply without the necessity of approval by the other parties and without the necessity of formal amendment of this Agreement.

IV. TERM

The primary term of this Agreement shall commence on January 9, 2013, and end on September 30, 2013. Thereafter, this Agreement shall automatically renew for additional one (1) year terms, from October 1 to September 30 of each year. Provided, however, each party hereto may terminate its participation in this Agreement as set forth in Section V.

V. TERMINATION

Each party to this Agreement may terminate its participation in the Agreement at will, for no or any reason, upon giving at least ninety (90) days written notice to the other parties. The parties to this Agreement understand and agree that it is in each party’s sole discretion to cancel its participation in the Agreement during the term of the Agreement without penalty. All work and services under this Agreement shall be suspended immediately with respect to the party terminating its participation in the Agreement. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice.

VI. ASSIGNMENT

The parties to this Agreement shall not assign this Agreement, in whole or in part, any such assignment or attempted assignment being void.

VII. DEFENSES NOT WAIVED

This Agreement shall not be construed as a waiver regarding the issues of governmental immunity, sovereign immunity, qualified or official immunity.

VIII. THIRD PARTY CLAIMS

Third party claims against parties shall be governed by the Texas Tort Claims Act or other appropriate statutes, or laws of the State of Texas.

IX. OTHER CONTRACTS

This Agreement supersedes any and all other contracts and agreements, whether oral or written, between the parties, regarding these matters contained herein, and contains all the covenants and agreements between said parties regarding said matter. Each party acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promises not contained herein shall be valid or binding.

X. SAVINGS CLAUSE

If any section, subsection, sentence, clause or phrase of this Agreement is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Agreement.

XI. AMENDMENTS

This Agreement may be amended or modified by the mutual agreement of the parties hereto in writing to be attached to and incorporated into this agreement.

XII. THIRD-PARTY BENEFICIARIES

This Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. Neither this Agreement, nor any term or provision hereof, nor any inclusion by reference, shall be construed as being for the benefit of any party not in signatory hereto.

XIII. ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, ALL PARTIES AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE AGAINST ANY OTHER PARTY, 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. ALL PARTIES SPECIFICALLY AGREE THAT IF A PARTY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), ALL PARTIES AGREE TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF

ATTORNEY'S FEES TO WHICH THEY MIGHT OTHERWISE BE ENTITLED.

All parties agree that this is the intentional relinquishment of a presently existing known right. All parties acknowledge that they understand all terms and conditions of the Agreement.

By execution of the Agreement, the parties hereby represent and warrant to the other parties that they have read and understood the Agreement.

XIV. 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 the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

XV. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership or fiduciary formal business relationship of any kind, and the rights, obligations and remedies of the parties shall be limited to those expressly set forth herein. It is expressly understood and that each party hereto shall be solely responsible for the acts and omissions of its officers, agents, employees; the doctrine of *respondeat superior* shall not apply as between any of the parties, and nothing herein shall be construed as creating a partnership or joint enterprise between any of the parties to this

Agreement. 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.

XVI. NOTICES

All notices under this Agreement shall be sent by U.S. mail, postage prepaid, addressed to such party as shown below. Any party may change the address below by sending written notice of such change to the other parties in the manner provided herein.

If to City: City Manager
 City of Midland
 P.O. Box 1152
 Midland, Texas 79702

If to MDC: Chairman
 Midland Development Corporation
 P.O. Box 1152
 Midland, Texas 79702

If to DMMD: Chairman
 Downtown Midland Management District
 P.O. Box 3483
 Midland, Texas 79702

If to TIRZ: Chairman
 Midland Tax Increment Reinvestment Zone No. 1
 300 N. Loraine
 Midland, Texas 79701

XVII. CONSIDERATION

The parties hereto agree this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is acknowledged by each party hereto.

XVIII. 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.

EXECUTED the day and year first written above.

[Signature page follows]

CITY OF MIDLAND, TEXAS

By _____
Courtney Sharp, City Manager

**MIDLAND DEVELOPMENT
CORPORATION**

By _____
Laura Roman, Chairman

ATTEST:

Amy M. Turner, City Secretary

**DOWNTOWN MIDLAND
MANAGEMENT DISTRICT**

By _____
W.L. Scooter Brown, Chairman

ATTEST:

Dan Rush, Secretary

ATTEST:

Robert Rendall, Secretary

**MIDLAND TAX INCREMENT
REINVESTMENT ZONE No. 1**

By _____
Mark T. Wellen, Chairman

ATTEST:

By _____
Bob Lanier, Secretary



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: David D. Beard, P.E. – City Engineer

SUBJECT: Consider a resolution authorizing staff to accept an offsite utility easement along the north side of I-20 between Terrell St. and Lamesa Rd. (District #2 – Love)

Purpose:

Consider a resolution authorizing staff to accept an offsite utility easement along the north side of I-20 between Terrell St. and Lamesa Rd.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

This purpose of this easement is for the construction of a water and wastewater main on the north side of I-20 that will serve Playa Del Pueblo Addition and allow for future development in the vicinity of Lamesa Rd. and I-20.

Attachments:

Barefoot 6/91, Ltd. Easement Agreement
Victor R. Cesena Easement Agreement
The Estates of Paul B. Handel Easement Agreement

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A 0.0916-ACRE UTILITY EASEMENT FROM VICTOR R. CESENA; AUTHORIZING THE ACCEPTANCE OF A 0.4769-ACRE UTILITY EASEMENT FROM THE ESTATE OF PAUL B. HANDEL; AUTHORIZING THE ACCEPTANCE OF A 0.2712-ACRE UTILITY EASEMENT FROM BAREFOOT 6/91, LTD.; SAID EASEMENTS BEING LOCATED IN SECTION 2, BLOCK 39, T-2-S, T&P RR CO. SURVEY, MIDLAND, MIDLAND COUNTY, TEXAS; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, the City Council finds it to be in the public interest to authorize the acceptance of three (3) utility easements located in Section 2, Block 39, T-2-S, T&P RR Co. Survey, Midland, Midland County, Texas, for the use and benefit of the public for utility purposes;

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

SECTION ONE. That the 0.0916-acre utility easement located in Section 2, Block 39, T-2-S, T&P RR Co. Survey, Midland, Midland County, Texas, is hereby accepted. A copy of said easement is attached hereto as Exhibit “A” and incorporated herein for all legal purposes.

SECTION TWO. That the 0.4769-acre utility easement located in Section 2, Block 39, T-2-S, T&P RR Co. Survey, Midland, Midland County, Texas, is hereby accepted. A copy of said easement is attached hereto as Exhibit “B” and incorporated herein for all legal purposes.

SECTION THREE. That the 0.2712-acre utility easement located in Section 2, Block 39, T-2-S, T&P RR Co. Survey, Midland, Midland County, Texas, is hereby accepted. A copy of said easement is attached hereto as Exhibit “C” and incorporated herein for all legal purposes.

SECTION FOUR. That the City Secretary is hereby authorized and directed to file said easements in the Deed Records of Midland County, Texas.

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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

UTILITY EASEMENT

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF MIDLAND

WHEREAS, Victor R. Cesena, hereinafter referred to as Grantor, whose address is 2126 Winnett Street, San Diego, California, 92114 is the owner of a certain tract of land lying and being situated in Midland County, Texas, and desires to dedicate to the use by the public a parcel of land lying and being situated in said tract;

NOW, THEREFORE, for and in consideration of TEN and NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby give, grant, and dedicate to the CITY OF MIDLAND, TEXAS, hereinafter referred to as City, whose mailing address is P.O. Box 1152, Midland, Texas 79702, for the use and benefit of the public for public utility purposes, including for the purposes of a sewer line, or for any other ancillary public use as usual and customary in connection therewith, a public utility easement over, under, above, across, along and through the following described tract of land lying and being situated in Midland County, Texas, to wit:

Being a 0.0916 acre tract of land and being more specifically described by metes and bounds in EXHIBIT which is attached hereto and incorporated herein for all purposes.

TO HAVE AND TO HOLD the above-described premises, together with all the rights and appurtenances thereto in anywise belonging unto the said public generally for the purposes hereinabove recited.

WITNESS THE EXECUTION HEREOF THIS 12 day of Oct, 2012.

GRANTOR:

Victor R. Cesena

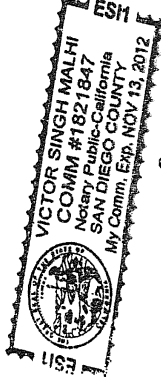
Attorney In Fact for CESENA
Victor R. Cesena

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

This instrument was acknowledged before me on the 12 day of Oct, 2012, by
MARCIA MARTINEZ CESENA (Attorney In Fact) for Victor R. CESENA

Notary Public, State of California

My Commission Expires: Nov 13, 2012

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Field Notes for a 20' wide Utility Easement

For a 0.0916 acre tract located in the southeast part of Section 2, Block 39, T-2-S, T&P R.R. Co. Survey, City of Midland, Midland County, Texas and being a 20' wide strip of land off the South side of a so called 2.69 acre tract to Victor Raul Cesena and wife Marcia Cesena described by deed as recorded in Vol. 1362, Pg. 169 of the Midland County Deed Records and being more fully described as follows;

Beginning at a found $\frac{1}{2}$ " diameter iron rod for the southeast corner of the said 2.69 acre tract and also being the southeast corner of the herein described tract in the North right-of-way line of Interstate Highway I-20,

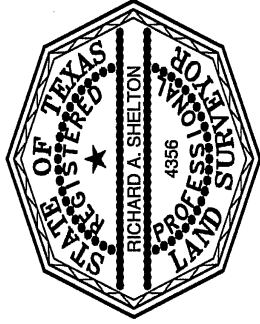
Thence S 75° 33' 27" W along the said right-of-way a distance of 199.45 feet to a point for the southwest corner of the said 2.69 acre tract,

Thence N 14° 26' 33" W along the West line of the said 2.69 acre tract a distance of 20.0 feet to a point for the northwest corner of the herein described tract,

Thence N 75° 33' 27" E along the North line of the herein described tract a distance of 199.46 feet to a point for the northeast corner of same in the East line of the said 2.69 acre tract,

Thence S 14° 25' 04" E along the East line of the said 2.69 acre tract a distance of 20.0 feet to the place of beginning and containing 0.0916 acres.

Bearings and distances are based on the Texas State Coordinate System, Central Zone, NAD 83.



Richard A. Shelton 6-26-12

Richard A. Shelton, RPLS 4356
City of Midland, Texas
432-685-7295

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Victor Raoul Ceseña, Principal, to Marcia Martinez Ceseña, agent:

**DURABLE POWER OF ATTORNEY
AND NOMINATION OF CONSERVATOR**

TO PERSON EXECUTING THIS DOCUMENT:

THIS IS AN IMPORTANT LEGAL DOCUMENT. IT CREATES A DURABLE POWER OF ATTORNEY. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS.

- 1. THIS DOCUMENT MAY PROVIDE THE PERSON YOU DESIGNATE AS YOUR ATTORNEY-IN-FACT WITH BROAD POWERS TO DISPOSE, SELL, CONVEY, AND ENCUMBER YOUR REAL AND PERSONAL PROPERTY.**
- 2. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH DECISIONS FOR YOU.**
- 3. THESE POWERS WILL EXIST FOR AN INDEFINITE PERIOD OF TIME UNLESS YOU LIMIT THEIR DURATION IN THIS DOCUMENT. THESE POWERS WILL CONTINUE TO EXIST NOTWITHSTANDING YOUR SUBSEQUENT DISABILITY OR INCAPACITY.**
- 4. YOU HAVE THE RIGHT TO REVOKE OR TERMINATE THIS DURABLE POWER OF ATTORNEY AT ANY TIME.**

TO WHOM IT MAY CONCERN:

Victor Raoul Ceseña, presently a resident of San Diego County, California, hereby executes this power of attorney with the following provisions. I hereby appoint Marcia Martinez Ceseña, presently residing in San Diego County, California, as my true and lawful attorney-in fact and to act in my name, place, and stead:

1. To manage, control, lease, sublease, and otherwise act concerning any real property that the principal may own, collect and receive rents or income therefrom; pay taxes,

RECORDING REQUESTED BY)
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Space above this line for recorder's use

Victor Raoul Ceseña, Principal, to Marcia Martinez Ceseña, agent:

**DURABLE POWER OF ATTORNEY
 AND NOMINATION OF CONSERVATOR**

TO PERSON EXECUTING THIS DOCUMENT:

THIS IS AN IMPORTANT LEGAL DOCUMENT. IT CREATES A DURABLE POWER OF ATTORNEY. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS.

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- 2. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH DECISIONS FOR YOU.**
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TO WHOM IT MAY CONCERN:

Victor Raoul Ceseña, presently a resident of San Diego County, California, hereby executes this power of attorney with the following provisions. I hereby appoint Marcia Martinez Ceseña, presently residing in San Diego County, California, as my true and lawful attorney-in fact and to act in my name, place, and stead:

1. To manage, control, lease, sublease, and otherwise act concerning any real property that the principal may own, collect and receive rents or income therefrom; pay taxes,

charges, and assessments on the same, repair, maintain, protect, preserve, alter, and improve the same; and do all things necessary or expedient to be done in the agent's judgment in connection with the property.

2. To purchase real property on the principal's behalf; to mortgage, pledge, or otherwise encumber such newly acquired property; to commit the resources of the principal with respect to purchase of such property; to do all acts and execute all documents necessary for the purchase of such property; and to otherwise generally deal in all respects and have all powers described in this power of attorney with respect to such property.

3. To manage and control all partnership interests owned by the principal and to make all decisions the principal could make as a general partner, limited partner, or both, and to execute all documents required of the principal as such partner, all to the extent that the agent's designation for such purposes is allowed by law and is not in contravention of any partnership or other agreement.

4. To purchase, sell, invest, reinvest, and generally deal with all stocks, bonds, debentures, warrants, partnership interests, rights, and securities owned by the principal.

5. To collect and deposit for the benefit of the principal all debts, interest, dividends, or other assets that may be due or belong to the principal, and to execute and deliver receipts and other discharges therefor; to demand, arbitrate, and pursue litigation on the principal's behalf concerning all rights and benefits to which the principal may be entitled; and to compromise, settle, and discharge all such matters as the agent considers appropriate under the circumstances.

6. To pay any sums of money that may at any time be or become owing from the principal, to sell, and to adjust and compromise any claims that may be made against the principal as the agent considers appropriate under the circumstances.

7. To grant, sell, transfer, convey, mortgage, deed in trust, pledge, and otherwise encumber and deal in all property, real and personal, that the principal may own; including but not limited to any real property described on any exhibit attached to this instrument including property acquired after execution of this instrument; to attach exhibits to this instrument that provide legal descriptions of any such property; and to execute such instruments as the agent deems proper in conjunction with all matters covered in this Paragraph 7.

8. To prepare and file all income and other federal and state tax returns that the principal is required to file; to sign the principal's name; hire preparers and advisors and pay for their services; and to do whatever is necessary to protect the principal's assets from assessments for income taxes. The agent is specifically authorized to receive confidential information; to receive checks in payment of any refund of taxes, penalties, or interest; to execute waivers (including offers of waivers) of restrictions on assessment or collection of tax deficiencies and waivers of notice of disallowance of claims for credit or refund; to execute consents extending

the statutory, period for assessment or collection of taxes; to execute closing agreements under Internal Revenue Code Section 7121, or any successor statute and to delegate authority or substitute another representative with respect to all above matters.

9. To deposit in and draw on any checking, savings, agency, or other accounts that the principal may have in any banks or savings and loan associations, and any accounts with securities brokers or other commercial institutions, and to establish and terminate all such accounts.
10. To invest and reinvest the principal's funds in every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not limited to, corporate obligations of every kind; preferred or common stocks; shares of investment trusts, investment companies, and mutual funds; mortgage participations; that, under the circumstances then prevailing (specifically including but not limited to the general economic conditions and the principal's anticipated needs) persons of skill, prudence, and diligence acting in a similar capacity and familiar with those matters would use in the conduct of an enterprise of a similar character and with similar aims, to attain the principal's goals; and to consider individual investments as part of an overall plan.
11. To have access to all safe deposit boxes in the principal's name or to which the principal is an authorized signatory; to contract with financial institutions for the maintenance and continuation of safe deposit boxes in the principal's name; to add to and remove the contents of all such safe deposit boxes; and to terminate contracts for all such safe deposit boxes.
12. To bring suit against any bank, savings and loan association, or other person or entity that fails or refuses to honor this power of attorney.
13. To make additions and transfer assets to any and all revocable living trusts of which the principal is a settlor.
14. To make direct payments to the provider for tuition and medical care for the principal's issue under Internal Revenue Code Section 2503(e) or any successor statute, that excludes such payments from gift tax liability.
15. To use any credit cards in the principal's name to make purchases and to sign charge slips on behalf of the principal as may be required to use such credit cards; and to close the principal's charge accounts and terminate the principal's credit cards under circumstances where the agent considers such acts to be in the principal's best interest.
16. To do all things and enter into all transactions necessary to provide for the principal's personal care and to maintain the principal's customary standard of living; to provide suitable living quarters for the principal; and to hire and compensate household, nursing, and other employees as the agent considers advisable for the principal's well being. The above shall specifically include but not be limited to the authority to pay the ongoing costs of maintenance of

11111

the principal's present and future residence, such as interest, taxes, and repairs; to procure and pay for clothing, transportation, medicine, medical care, food, and other needs; and to make arrangements, enter into contracts, and commit the principal's resources on the principal's behalf with respect to provision of residential care for the principal in a convalescent hospital, skilled nursing home, or other alternative residential facility.

17. Generally to do, execute, and perform any other act, deed, matter, or thing, that in the opinion of the agent ought to be done, executed, or performed in conjunction with this power of attorney, of every kind and nature, as fully and effectively as the principal could do if personally present. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers granted to the agent except where powers are expressly restricted.

18. Notwithstanding any other possible language to the contrary in this instrument, the agent is specifically NOT granted the following powers:

- (a) To use the principal's assets for the agent's own legal obligations, including but not limited to support of the agent's dependents;
- (b) To exercise any trustee powers under an irrevocable trust of which the agent is a settlor and the principal is a trustee; and
- (c) To exercise incidents of ownership over any life insurance policies that the principal owns on the agent's life.

19. Any third party from whom the agent may request information, records, or other documents regarding the principal's personal affairs may release and deliver all such information, records, or documents to the agent. The principal hereby, waives any privilege that may apply to release of such information, records, or other documents.

20. The agent's signature under the authority granted in this power of attorney may be accepted by any third party or organization with the same force and effect as if the principal were personally present and acting on the principal's own behalf. No person or organization who relies on the agent's authority under this instrument shall incur any liability to the principal, the principal's estate, heirs, successors, or assigns, because of reliance on this instrument.

21. This power of attorney shall apply to all presently owned and future acquired assets of the principal, and shall include the power to acquire any assets as described herein on the principal's behalf.

22. The principal's estate, heirs, successors, and assigns shall be bound by the agent's acts under this power of attorney.

23. This power of attorney shall not be affected by the principal's subsequent disability or incapacity.

24. The principal hereby ratifies and confirms all that the agent shall do, or cause to be done, by virtue of this power of attorney.

25. The principal declares that the principal understands the importance of this durable power of attorney, recognizes that the agent is granted broad power to hold, administer, and control the principal's assets, and recognizes that this durable power of attorney will become effective immediately on execution and will continue indefinitely until specifically revoked or terminated by death, even if the principal later becomes incapacitated.

26. If a conservatorship of the principal's person or estate, or both is deemed necessary, the principal hereby nominates Marcia Martinez Ceseña as conservator of the principal's person and estate.

On the appointment of a conservator of the principal's estate, this power of attorney shall terminate and the agent shall deliver the assets of the principal under the agent's control as directed by the conservator of the principal's estate.

IN WITNESS WHEREOF, the principal has signed this durable power of attorney on May 06, 2011.

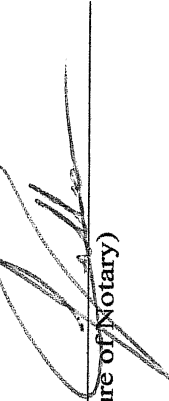


Victor Raoul Ceseña

On May 06, 2011 before me, Carlos Cedillo, a notary public, personally appeared Victor Raoul Ceseña, _____

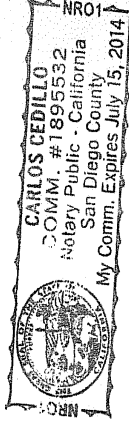
_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.



(Signature of Notary)

(SEAL)



NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVERS LICENSE NUMBER.

UTILITY EASEMENT

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF MIDLAND

WHEREAS, The Estate of Paul B. Handel, hereinafter referred to as Grantor, whose address is 3264 Dora Verdugo Drive, Valencia, California 91208, is the owner of a certain tract of land lying and being situated in Midland County, Texas, and desires to dedicate to the use by the public a parcel of land lying and being situated in said tract;

NOW, THEREFORE, for and in consideration of TEN and NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby give, grant, and dedicate to the CITY OF MIDLAND, TEXAS, hereinafter referred to as City, whose mailing address is P.O. Box 1152, Midland, Texas 79702, for the use and benefit of the public for public utility purposes, including for the purposes of a sewer line and a water line, or for any other ancillary public use as usual and customary in connection therewith, a public utility easement over, under, above, across, along and through the following described tract of land lying and being situated in Midland County, Texas, to wit:

Being a 0.4769-acre tract of land and being more specifically described by metes and bounds in EXHIBIT which is attached hereto and incorporated herein for all purposes.

TO HAVE AND TO HOLD the above-described premises, together with all the rights and appurtenances thereto in anywise belonging unto the said public generally for the purposes hereinabove recited.

WITNESS THE EXECUTION HEREOF THIS 14th day of December, 2012.

GRANTOR:

* Norma H. Handel
Norma ~~H~~. Handel

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES Orange *

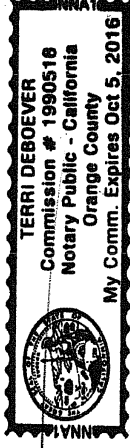
This instrument was acknowledged before me on the 14th day of December, 2012, by

Norma H. Handel

Terri DeRoche

Notary Public, State of California

My Commission Expires: 10/05/16



TRUSTEE FOR THE ESTATE OF PAUL B. HANDEL:

James DeRoche

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

This instrument was acknowledged before me on the ____ day of _____, 2012, by

Notary Public, State of California

My Commission Expires: _____

TO HAVE AND TO HOLD the above-described premises, together with all the rights and appurtenances thereto in anywise belonging unto the said public generally for the purposes hereinabove recited.

WITNESS THE EXECUTION HEREOF THIS _____ day of _____, 2012.

GRANTOR:

Norma B. Handel

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

This instrument was acknowledged before me on the _____ day of _____, 2012, by

Notary Public, State of California

My Commission Expires: _____

TRUSTEE FOR THE ESTATE OF PAUL B. HANDEL:

James DeRoche

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

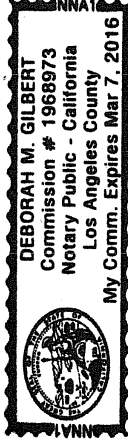
This instrument was acknowledged before me on the 11th day of December, 2012, by

James DeRoche

Deborah M. Gilbert

Notary Public, State of California

My Commission Expires: 3-7-2016



Field Notes for a 20' wide Utility Easement

For a 0.4769 acre tract located in the southeast part of Section 2, Block 39, T-2-S, T&P R.R. Co. Survey, City of Midland, Midland County, Texas and being a 20' wide strip of land off the South side and East side of a so called 5.71 acre tract to Paul B. Handel, Trustee, and Norma H. Handel, Trustee described by deed as recorded in Vol. 1446, Pg. 442 of the Midland County Deed Records and being more fully described as follows;

Beginning at a found $\frac{1}{2}$ " diameter iron rod for the southeast corner of the said 5.71 acre tract also being the southeast corner of the herein described tract and the northwest corner of the intersection of Lamesa Road and Interstate 20,

Thence S 75° 34' 56" W along the North right-of-way line of said Interstate 20 a distance of 398.86 feet to a found $\frac{1}{2}$ " diameter iron rod for the southwest corner of the said 5.71 acre tract,

Thence N 14° 25' 04" W along the West line of the said 5.71 acre tract a distance of 20.00 feet to a point for the northwest corner of the herein described tract,

Thence N 75° 34' 56" E along a North line of the herein described tract a distance of 318.60 feet to an angle point for the herein described tract,

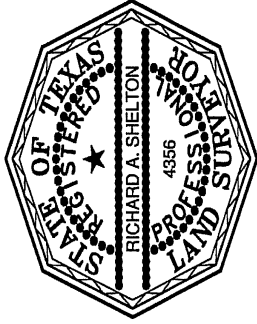
Thence N 40° 44' 51" E along the northwest line of the herein described tract a distance of 80.09 ft. to an angle point,

Thence N 09° 35' 21" W along a West line of the herein described tract a distance of 522.30 ft. to a point in the North line of the said 5.71 acre tract,

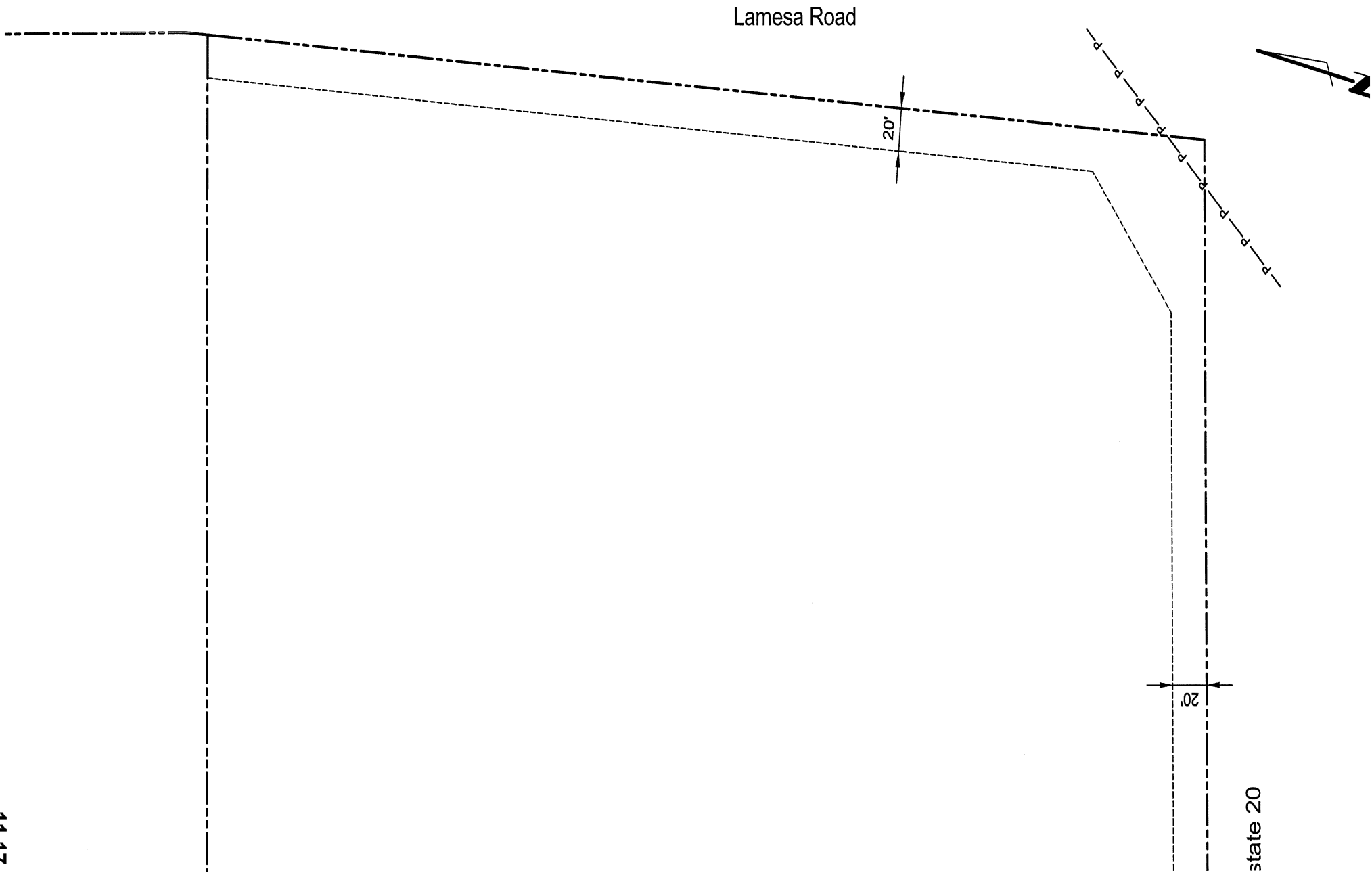
Thence N 75° 42' 36" E along the said North line a distance of 20.07 ft. to a point for the northeast corner of the said 5.71 acre tract in the West line of said Lamesa Road,

Thence S 09° 35' 21" E along the said East line of the said 5.71 acre tract and the West line of said Lamesa Road a distance of 588.24 feet to the place of beginning and containing 0.4769 acres.

Bearings and distances are based on the Texas State Coordinate System, Central Zone, NAD 83.



Richard A. Shelton 11-16-12
 Richard A. Shelton, RPLS 4356
 City of Midland, Texas
 432-685-7295



NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVERS LICENSE NUMBER.

UTILITY EASEMENT

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF MIDLAND

WHEREAS, Barefoot 6/91, Ltd., hereinafter referred to as Grantor, whose address is 2800 Callaway Dr., Midland, Texas 79707, is the owner of a certain tract of land lying and being situated in Midland County, Texas, and desires to dedicate to the use by the public a parcel of land lying and being situated in said tract;

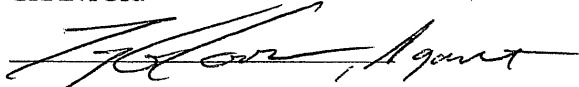
NOW, THEREFORE, for and in consideration of TEN and NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby give, grant, and dedicate to the CITY OF MIDLAND, TEXAS, hereinafter referred to as City, whose mailing address is P.O. Box 1152, Midland, Texas 79702, for the use and benefit of the public for public utility purposes, including for the purposes of a sewer line, or for any other ancillary public use as usual and customary in connection therewith, a public utility easement over, under, above, across, along and through the following described tract of land lying and being situated in Midland County, Texas, to wit:

Being a 0.2712-acre tract of land and being more specifically described by metes and bounds in EXHIBIT which is attached hereto and incorporated herein for all purposes.

TO HAVE AND TO HOLD the above-described premises, together with all the rights and appurtenances thereto in anywise belonging unto the said public generally for the purposes hereinabove recited.

WITNESS THE EXECUTION HEREOF THIS 6th day of December, 2012.

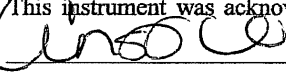
GRANTOR:



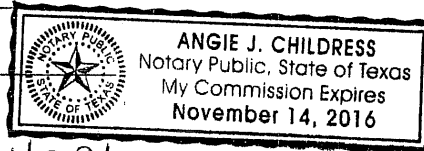
STATE OF TEXAS

COUNTY OF MIDLAND

This instrument was acknowledged before me on the 6 day of December, 2012, by



Notary Public, State of Texas



My Commission Expires: 11/14/2016

Field Notes for a 20' wide Utility Easement

For a 0.2712 acre tract located in the southeast part of Section 2, Block 39, T-2-S, T&P R.R. Co. Survey, City of Midland, Midland County, Texas and being a 20' wide strip of land off the South side of three adjacent tracts to Barefoot 6/91, Ltd. described in Vol. 2501, Pg. 195 and Vol. 2150, Pg. 388 Tracts 1 and 2 of the Midland County Deed Records and being more fully described as follows;

Beginning at a found $\frac{1}{2}$ " diameter iron rod for the southeast corner of Lot 1, Block 1, Playa Del Pueblo an addition to the City of Midland, Texas as recorded in Cabinet I, Page 121 of the Midland County Plat Records and also being in the North right-of-way line of U.S. Interstate Highway 20,

Thence N $14^{\circ} 26' 18''$ W along the East line of said Lot 1, Block 1 a distance of 20.00 ft. to a point in same for the northwest corner of the herein described tract,

Thence N $75^{\circ} 33' 27''$ E along the North line of the herein described tract a distance of 590.72 ft. to a point in the East line of said Tract 1,

Thence S $14^{\circ} 26' 33''$ E along the East line of said Tract 1 a distance of 20.00 ft. to a point for the southeast corner of said Tract 1 in the North right-of-way line of said U.S. Interstate Highway 20,

Thence S $75^{\circ} 33' 27''$ W along the said right-of-way line at 199.45 ft. pass a point for the southwest corner of said Tract 1 same being the southeast corner of said Vol. 2501, Pg. 195 and at 398.9 ft. pass a point for the southwest corner of said Vol. 2501, Pg. 195 same being the southeast corner of said Tract 2 in all a distance of 590.72 ft. to the place of beginning and containing 0.2712 acres.

Bearings and distances are based on the Texas State Coordinate System, Central Zone, NAD 83.



Richard A. Shelton 10.17.12
Richard A. Shelton, RPLS 4356
City of Midland, Texas
432-685-7295



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: David D. Beard, P.E. – City Engineer

SUBJECT: Consider a resolution authorizing staff to accept a sewer easement along the east side of Tradewinds Blvd. between Thomason Dr. and Champions Dr. (District #4 – Trost)

Purpose:

Consider a resolution authorizing staff to accept a sewer easement along the east side of Tradewinds Blvd. between Thomason Dr. and Champions Dr.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

The purpose of this easement is for the construction of a wastewater main on the east side of Tradewinds Blvd. to serve the new EOG building and future development along Tradewinds Blvd.

Attachments:

Sewer Easement Agreement

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE ACCEPTANCE OF
A 0.16-ACRE SEWER LINE EASEMENT LOCATED IN
THE REMAINDER OF LOT 1, BLOCK 6, WESTRIDGE
PARK ADDITION, SECTION 6, MIDLAND, MIDLAND
COUNTY, TEXAS; AND ORDERING RECORDATION
BY THE CITY SECRETARY**

WHEREAS, the City Council finds it to be in the public interest to authorize the acceptance of a 0.16-acre sewer line easement located in the remainder of Lot 1, Block 6, Westridge Park Addition, Section 6, Midland, Midland County, Texas, for the use and benefit of the public for utility purposes;

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

SECTION ONE. That the 0.16-acre sewer line easement located in the remainder of Lot 1, Block 6, Westridge Park Addition, Section 6, Midland, Midland County, Texas, is hereby accepted. A copy of said easement is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION TWO. That the City Secretary is hereby authorized and directed to file said easement in the Deed Records of Midland County, Texas.

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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SEWER LINE EASEMENT

**THE STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF MIDLAND §**

THAT **SBC, LP**, herein called "GRANTOR", for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) to GRANTOR in hand paid by the **CITY OF MIDLAND**, a Home Rule Municipal Corporation of Midland County, Texas, the receipt and sufficiency of which is hereby acknowledged and confessed, and for the further good and valuable consideration in benefits accruing and to accrue to the remainder of GRANTOR'S property, has by these presents GRANTED, BARGAINED, SOLD and CONVEYED and by these presents does GRANT, BARGIN, SELL and CONVEY unto the CITY OF MIDLAND, its legal representatives, successors and assigns, for the use of the public as a perpetual and permanent sewer line easement, the free and uninterrupted use, liberty of passage in, on, over, upon, along, under, and across all that property lying and being situated in the City of Midland, Midland County, Texas, and more particularly described in the attached Exhibit A.

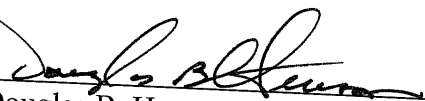
SO LONG AS THE CITY OF MIDLAND continues to use said property for the purposes herein stated, said easement includes, but is not limited to, the free and uninterrupted use, liberty and privilege of passage in, along, over, across, under, upon and against the hereinafter described land for the purpose of constructing, reconstructing, maintaining, repairing, cleaning and clearing said premises for the installation of one underground sewer line, together with the right of ingress, egress and regress for such purposes in, on, along, through and across all the property described in Exhibit A.

Buildings or like permanent structures shall not be erected, built, constructed or allowed to be erected, built or constructed in, upon, over, along or across the real estate described in Exhibit A and if such erection, building or construction does occur in violation of this prohibition, the CITY OF MIDLAND shall have the right to remove said building or structure from the aforesaid real estate.

TO HAVE AND TO HOLD the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging pepetually unto the CITY OF MIDLAND, its successors and assigns, for so long as the CITY OF MIDLAND uses the same for the purposes herein granted.

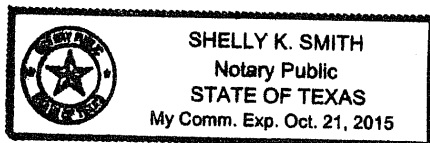
WITNESS THE EXECUTION OF THIS INSTRUMENT this 1st day of October, 2012.

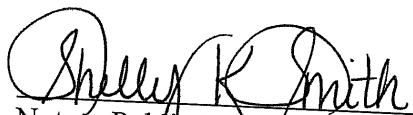
SBC, LP
By: SBC GP, LP
Its Sole General Partner

By: 
Douglas B. Henson, President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on October 1, 2012, by Douglas B. Henson, President of SBC GP, LLC, a Texas limited liability company and general partner of SBC, LP, a Texas limited partnership, on behalf of said limited liability company and limited partnership.




Notary Public in and for the State of Texas

My Commission Expires: _____

EXHIBIT A

PROPOSED 12' WIDE UTILITY EASEMENT

LEGAL DESCRIPTION OF A 0.16 ACRE TRACT LOCATED IN THE REMAINDER OF LOT 1, BLOCK 6, WESTRIDGE PARK ADDITION, SECTION 6, as recorded in Cabinet "F", Page 183, Plat Records, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

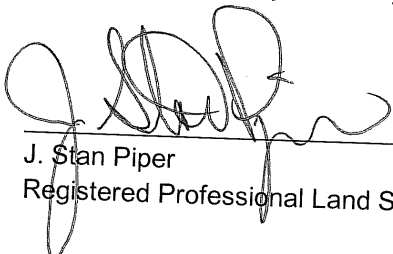
Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,689,968.51' and E= 1,732,019.21') a ½" iron rod with a plastic cap marked "PLS 1974" previously set at the Southwest corner of Lot 2, Block 6, Westridge Park Addition, Section 19, as recorded in Cabinet "I", Page 105, Plat Records of Midland County, Texas and the most Westerly Northwest corner of said Remainder of Lot 1, Block 6 and the Northwest corner of this tract, from whence the Southeast corner of Section 37, Block 40, T-1-S, bears S14°47'41"E a distance of 431.10 feet and N75°12'19"E, a distance of 1532.05 feet;

1. THENCE N59°15'58"E with the South line of said Lot 2, Block 6, a distance of 12.01 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the Northeast corner of this tract;
2. THENCE around a curve to the right 12 feet East of and parallel to the East right-of-way line of Tradewinds Boulevard and the West line of said Lot 1, Block 6, with a radius of 757.03 feet, a delta angle of 13°54'11", an arc length of 183.70 feet, and a chord length of 183.25 feet, which bears S21°16'16"E to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of tangency of this tract;
3. THENCE S14°19'10"E, 12 feet East of and parallel to said right-of-way line and the West line of said Lot 1, Block 6, a distance of 389.93 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the Southeast of this tract;
4. THENCE S75°40'50"W, a distance of 12.00 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the Southwest corner of this tract;
5. THENCE N14°19'10"W with said right-of-way line and the West line of said Lot 1, Block 6, a distance of 389.93 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of curvature of this tract;
6. THENCE around a curve to the left with said right-of-way line and the West line of said Lot 1, Block 6 with a radius of 745.03 feet, a delta angle of 13°51'46", an arc length of 180.26 feet, and a chord length of 179.82 feet, which bears N21°15'02"W to the **POINT OF BEGINNING**, having an area of 6,863 square feet or 0.16 Acres of Land.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combined grid factor of 0.9998958, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground September 18, 2012.


J. Stan Piper
Registered Professional Land Surveyor #1974

Prepared for:
Parkhill, Smith, and Cooper, Inc.
1700 West Wall St. Suite 100
Midland, TX 79701

PIPER SURVEYING, P.O. BOX 60432, MIDLAND, TX, 79711, 432-550-7810



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 1/8/2013

TO: City Council / City Manager

FROM: Price Robinson, Police Chief

SUBJECT: Consider a resolution to approve an Operating Certificate for a Taxicab Business

Purpose:

Consider a resolution to approve an Operating Certificate for a Taxicab Business

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No fiscal impact to the City of Midland

Discussion:

Abraham S. Khodiar has filed an application for an operating certificate for a taxicab business with the City Secretary's Office. The company will be operating three vehicles in Midland. Mr. Khodiar has passed the background investigation on criminal and driving record conducted by the Midland Police Department.

Therefore, we are requesting that the City Council consider a resolution granting a taxicab franchise to Metro Taxi.

The original application and all supporting documents are on file in the City Secretary's Office.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING AN OPERATING
CERTIFICATE FOR KHODIAR TRADE INVESTMENT
DBA METRO TAXI, TO OPERATE A TAXICAB
BUSINESS; SETTING FORTH CONDITIONS
ACCOMPANYING THE CERTIFICATE; AND
ESTABLISHING THE TERMS OF THE CERTIFICATE**

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

SECTION ONE. That the City Secretary is hereby authorized and directed to act on behalf of the City of Midland to grant to Khodiar Trade Investment dba Metro Taxi, an Operating Certificate for a taxicab business pursuant to Title V, Chapter 6 of the Midland City Code, the provisions of said certificate to be as set forth in Exhibit “A”, attached hereto and incorporated herein by reference.

SECTION TWO. Notwithstanding Section One, above, the City Secretary shall not issue the Operating Certificate set forth above unless and until:

- A. Khodiar Trade Investment dba Metro Taxi, has delivered to the City Secretary a current certificate of insurance indicating compliance with the insurance requirements set forth in Section 5-6-2(F) of the Midland City Code for all motor vehicles to be used as taxicabs under the Operating Certificate; and
- B. Khodiar Trade Investment dba Metro Taxi, has paid to the City the amount of the annual fee required under Section 5-6-2(G) of the City Code; and
- C. Khodiar Trade Investment dba Metro Taxi, has signed a copy of the Operating Certificate indicating acceptance of the provisions set forth therein.

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., 2013, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CITY OF MIDLAND OPERATING CERTIFICATE FOR TAXICAB BUSINESS

THIS OPERATING CERTIFICATE is issued to Abraham S. Khodiar (hereafter called "Operator") whose address is 2700 Windecker, Midland, Texas 79711, pursuant to Title V, Chapter 6 of the Midland City Code, for the purpose of granting to Operator the privilege of operating a taxicab business along, across, and over the public streets of the City of Midland, Texas, now laid out or dedicated, and all extensions thereof, subject to the following provisions and conditions:

1. Business Name: The name of the taxicab business operated pursuant to this certificate shall be Khodiar Trade Investment dba Metro Taxi.
2. Term: This certificate shall be valid and in effect for five years from the date of issuance indicated below, subject to earlier termination as set forth in the Midland City Code.
3. Suspension of Certificate for Non-Payment: This certificate shall be automatically suspended on March 1 of any year during the term of this certificate if Operator has not paid the annual fee required by Section 5-6-2(G) of the Midland City Code when due, and shall remain suspended until the annual fee is paid.
4. Compliance With All Laws: Operator must at all times operate the above-named taxicab business in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including, but not limited to, Title V, Chapter 6 and Title XIII, Chapter 2 of the Midland City Code, as amended from time to time, and this certificate may be revoked by the Midland City Council at any time for Operator's non-compliance with said laws, regulations, or ordinances.
5. Assignability and Transferability: This certificate is personal to the Operator named above and may not be assigned by sale or otherwise to any other person or entity. Any attempt to assign this certificate or any interest in this certificate shall be void and will serve as grounds for termination of this certificate by the City.
6. Airport Privileges: This certificate grants to the Operator the privilege of operating at Midland International Airport, provided that such operations shall not be permitted until Operator has complied with Section 5-6-8 of the Midland City Code.

ISSUED THIS ____ DAY OF _____, 2013.

Amy M. Turner, City Secretary
City of Midland, Texas

ACCEPTANCE

The Operator herein named accepts this Operating Certificate and agrees to abide by all its provisions and all applicable federal, state, and local laws, ordinances, and regulations, including, but not limited to, applicable provisions of the Midland City Code, as amended, and the regulations governing the charging of fares between the City of Midland and the City of Odessa.

Name: _____

Date: _____



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 1/8/2013

TO: City Council / City Manager

FROM: Morris Williams, Solid Waste Director

SUBJECT: Consider a resolution approving a contract for the Municipal Solid Waste Landfill Cell 7 Excavation and Liner Construction project.

Purpose:

Approval of a resolution approving a contract for the Municipal Solid Waste Landfill Cell 7 Excavation and Liner Construction project.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$5,772,510 is hereby appropriated from the Sanitation Fund (430) Unappropriated Fund Balance (5650) to the Sanitation Construction Fund (435) Utilities (300) Landfill Cell 7 Construction Project (8991).

Discussion:

Eight bids were received for the Municipal Solid Waste Landfill Cell 7 Excavation and Liner Construction project. We recommend awarding the total contract to R.E. Monks Construction Co., of Colorado Springs, Colorado.

Therefore please consider approval of a resolution awarding a contract for the total bid, including the additive alternate, for the Municipal Solid Waste Landfill Cell 7 Excavation and Liner Construction project to R.E. Monks Construction Co. for a total of \$5,772,510.

Attached is the recommendation letter from Parkhill Smith and Cooper, the R.E. Monks Construction Co. proposal, and the Midland MSW Cell 7 Contract.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH R.E. MONKS CONSTRUCTION COMPANY, LLC FOR THE LABOR, MATERIAL, EQUIPMENT, AND SUPERVISION NECESSARY FOR THE CONSTRUCTION OF CELL 7 EXCAVATION AND LINER CONSTRUCTION AT THE CITY OF MIDLAND LANDFILL; SAID CONTRACT TO BE FOR A TOTAL AMOUNT OF \$5,772,510.20; AND APPROPRIATING FUNDS

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a contract with R.E. Monks Construction Company, LLC for the labor, material, equipment, and supervision necessary for the construction of Cell 7 excavation and liner construction at the City of Midland Landfill;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with R.E. Monks Construction Company, LLC, for said project at a cost not to exceed \$5,772,510.20, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the sum of \$5,772,510.20 is hereby appropriated from the Sanitation Fund (430) Unappropriated Fund Balance (5650) to the Sanitation Construction Fund (435) Utilities (300) Landfill Cell 7 Construction Project (8991).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to R.E. Monks Construction Company, LLC for professional services pursuant to the terms of said contract from funds appropriated herein 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., 2013, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

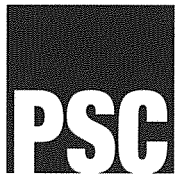
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Morris Williams, Director of Solid Waste

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



December 21, 2012

Mr. Morris Williams, Jr.
Director of Solid Waste
City of Midland
P.O. Box 1152
Midland, Texas 79707

Re: Midland Landfill, MSW Permit No. 1605B
Cell 7 Excavation and Liner Construction
Contractor Reference Verification & Recommendation

Dear Mr. Williams:

As requested, we have reviewed references provided by R.E. Monks Construction. The list of references provided was based on similar past projects. Contacts made and brief synopses of their comments are as follows.

- Mr. Tony Curcio, Walsh Environmental
 - Finished on time and handled any change orders responsibly
- Mr. Doug Sawyer, Allied Waste Systems of Arizona
 - On time and on budget
 - One of the best contractors to work with
 - Will let you know ahead of time if there is a problem with plans or specifications
- Ms. Nicole Bisacchi, Waste Management of Arizona
 - On budget and ahead of schedule
 - No problems occurred during construction

Additionally, R.E. Monks has completed numerous similar projects designed by PSC for municipalities in west Texas. Most recently, they completed a landfill excavation and liner project of similar size for the City of Lubbock in 2011.

The final Engineer's Opinion of Probable cost dated October 3, 2012 was \$6,126,470. The total contract amount proposed by R.E. Monks, including the additive alternate, was \$5,772,510. Based on discussions with R.E. Monks' references, their competitive bid proposal, and our past experience with this contractor, we recommend that the City of Midland award this project to R.E. Monks Construction.

Amarillo
El Paso
Las Cruces
Lubbock
Midland

Mr. Morris Williams, Jr.
City of Midland

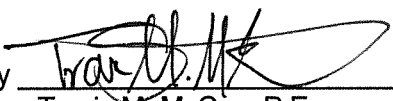
Page 2

December 21, 2012

If you have any questions or comments, call me at (806) 473-3607.

Sincerely,

PARKHILL, SMITH & COOPER, INC.

By 
Travis M. McCoy, P.E.
Project Manager

TMM/lf

\\Data1\Projects\2012\2870.12\CORRESP\LTR\recommendation.docx

cc: Ms. Jill Reed, P.E., City of Midland



City of Midland, Texas Municipal Waste Landfill

Cell 7 Excavation and Liner Construction



Submitted by
R.E. Monks Construction Company LLC
8355 Vollmer Road
Colorado Springs, Colorado 80908
www.remonks.com
December 20, 2012



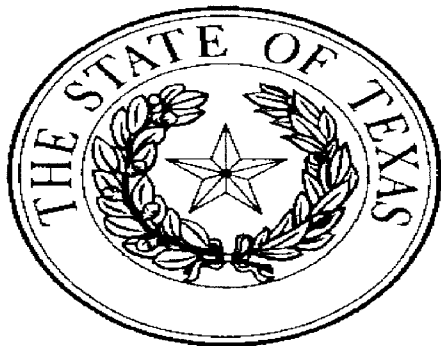
Office of the Secretary of State

Certificate of Fact

The undersigned, as Secretary of State of Texas, does hereby certify that the document, Application for Registration for R.E. MONKS CONSTRUCTION COMPANY, LLC (file number 800721079), a ARIZONA, USA, Foreign Limited Liability Company (LLC), was filed in this office on October 13, 2006.

It is further certified that the entity status in Texas is in existence.

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on September 28, 2012.



A handwritten signature in black ink, appearing to read "Hope Andrade".

Hope Andrade
Secretary of State

Phone: (512) 463-5555
Prepared by: SOS-WEB

Come visit us on the internet at <http://www.sos.state.tx.us/>
Fax: (512) 463-5709
TID: 10264

Dial: 7-1-1 for Relay Services
Document: 445685930005

BID BOND

THE STATE OF ~~TEXAS~~ §
COLORADO
COUNTY OF ~~MIDLAND~~ §
DENVER

SURETY NO. Not Applicable (Bid Bond)

KNOW ALL MEN BY THESE PRESENTS, THAT R.E. Monks Construction Company LLC
8355 Vollmer Road, Colorado Springs, CO 80908

(hereinafter called the Principal), as Principal, and Travelers Casualty and Surety Company of America
One Tower Square, Hartford, CT 06183

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

(\$-----5%-----), 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 Municipal Solid Waste Landfill, Cell 7 Excavation and Liner Construction, TCEQ MSW Permit No. 1605B
PSC Project #01287012

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
20th day of December, 2012.

R.E. Monks Construction Company, LLC

Principal

By [Signature]
Daniel R. Monks

Address 8355 Vollmer Road
Colorado Springs, CO 80908

Travelers Casualty and Surety Company of America

Surety

By [Signature]
Kevin W. McMahon, Attorney-In-Fact

Address One Tower Square
Hartford, CT 06183

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

FORMBIDBOND.FRM

REVISED: March 30, 2011



POWER OF ATTORNEY

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 St. Paul Fire and Marine Insurance Company
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company

Attorney-In Fact No. 225493

Certificate No. 005296301

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (therein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

J. R. Trojan, Susan J. Lattarulo, DiLynn Guern, Kevin W. McMahon, Mark Sweigart, Florietta Acosta, Tiffany McGonigle, Donald E. Appleby, Gloria C. Blackburn, Sarah Brown, Todd Bengford, and Lindsey Knickerbocker

of the City of Denver, State of Colorado, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 6th day of December, 2012.

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 St. Paul Fire and Marine Insurance Company
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company



State of Connecticut
 City of Hartford ss.

By:

Robert L. Raney, Senior Vice President

On this the 6th day of December, 2012, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
 My Commission expires the 30th day of June, 2016.



Marie C. Tetreault, Notary Public

58440-8-12 Printed in U.S.A.

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 20th day of December, 2012.

Kevin E. Hughes
Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

**EXHIBIT A
PROPOSAL**

December 20, 2012

TO: The Mayor and City Council
City of Midland
Midland, Texas

Gentlemen:

Pursuant to the foregoing Notice to Bidders, the undersigned Bidder hereby proposes to do all work and furnish all necessary superintendence, labor, machinery, equipment, tools, and materials and whatever else may be necessary to complete all work upon which he bids, as provided by the attached specifications, and binds himself on acceptance of his Proposal to execute a Contract and Bonds according to the accompanying forms, for performing and completing the said work within the time stated, and furnishing all required guarantees, for the following prices to-wit:

CELL 7 EXCAVATION AND LINER CONSTRUCTION

Item No.	Quantity & Unit	Description of Item and Unit Prices	Total Amount
1.	1 LS	Mobilization (3% max), complete, per lump sum: <u>One Hundred Sixty Four Thousand</u> _____ Dollars and <u>zero</u> Cents (\$ <u>164,000.00</u>)	<u>\$ 164,000.00</u>
2.	4,850 SY	Remove existing access road, complete, per square yard: _____ <u>Two</u> Dollars and <u>Eighty</u> Cents (\$ <u>2.80</u>)	<u>\$ 13,580.00</u>
3.	1 EA	Plug existing GWM Well 8, complete, per each: <u>Six Thousand Seven</u> <u>Hundred</u> Dollars and <u>zero</u> Cents (\$ <u>6,700.00</u>)	<u>\$ 6,700.00</u>
4.	2,615 LF	Remove existing pipeline, complete, per linear foot: _____ <u>Four</u> Dollars and <u>Twenty</u> Cents (\$ <u>4.20</u>)	<u>\$ 10,983.00</u>

01287012
10/12

PROPOSAL

EXHIBIT A - 1

Item No.	Quantity & Unit	Description of Item and Unit Prices	Total Amount
5.	1,650 LF	Remove existing litter fence, complete, per linear foot: _____ <u>Zero</u> Dollars and <u>Eighty</u> Cents (\$ <u>0.80</u>)	\$ <u>1,320.00</u>
6.	344,230 CY	Relocate borrow material, complete, per cubic yard: _____ <u>One</u> Dollars and <u>Fifty Eight</u> Cents (\$ <u>1.58</u>)	\$ <u>543,883.40</u>
7.	1,053,530 CY	Excavation, complete, per cubic yard: _____ <u>Two</u> Dollars and <u>Ten</u> Cents (\$ <u>2.10</u>)	\$ <u>2,212,413.00</u>
8.	12,720 CY	Embankment fill, complete, per cubic yard: _____ <u>Zero</u> Dollars and <u>Fifty</u> Cents (\$ <u>0.50</u>)	\$ <u>6,360.00</u>
9.	1,061,970 SF	Subgrade preparation - floor, complete, per square foot: _____ <u>Zero</u> Dollars and <u>Three</u> Cents (\$ <u>0.03</u>)	\$ <u>31,859.10</u>
10.	106,950 SF	Subgrade preparation - slope, complete, per square foot: _____ <u>Zero</u> Dollars and <u>Ten</u> Cents (\$ <u>0.10</u>)	\$ <u>10,695.00</u>
11.	1,058,530 SF	Geosynthetic clay liner - floor, complete, per square foot: _____ <u>Zero</u> Dollars and <u>Sixty</u> Cents (\$ <u>0.60</u>)	\$ <u>635,118.00</u>

01287012
10/12

PROPOSAL

EXHIBIT A - 2

Item No.	Quantity & Unit	Description of Item and Unit Prices	Total Amount
12.	112,670 SF	Geosynthetic clay liner - slope, complete, per square foot: _____ <u>Zero</u> Dollars and <u>Seventy</u> Cents (\$ <u>0.70</u>)	\$ <u>78,869.00</u>
13.	1,058,530 SF	Geomembrane liner - smooth, complete, per square foot: _____ <u>Zero</u> Dollars and <u>Fifty</u> Cents (\$ <u>0.50</u>)	\$ <u>529,265.00</u>
14.	112,670 SF	Geomembrane liner - textured, complete, per square foot: _____ <u>Zero</u> Dollars and <u>Fifty Eight</u> Cents (\$ <u>0.58</u>)	\$ <u>65,348.60</u>
15.	1,171,200 SF	Geomembrane drainage layer, complete per square foot: _____ <u>Zero</u> Dollars and <u>Fifty two</u> Cents (\$ <u>0.52</u>)	\$ <u>609,024.00</u>
16.	1,061,970 SF	Protective soil cover - floor, complete, per square foot: _____ <u>Zero</u> Dollars and <u>Twenty three</u> Cents (\$ <u>0.23</u>)	\$ <u>244,253.10</u>
17.	106,950 SF	Protective soil cover - slope, complete, per square foot: _____ <u>Zero</u> Dollars and <u>Thirty Seven</u> Cents (\$ <u>0.37</u>)	\$ <u>39,571.50</u>
18.	16,570 SF	Geotextile fabric, complete, per square foot: _____ <u>Zero</u> Dollars and <u>Seventy Five</u> Cents (\$ <u>0.75</u>)	\$ <u>12,427.50</u>

01287012
10/12

PROPOSAL

EXHIBIT A - 3

Item No.	Quantity & Unit	Description of Item and Unit Prices	Total Amount
19.	430 CY	Gravel drainage material, complete, per cubic yard: <u>One Hundred Two</u> Dollars and <u>Zero</u> Cents (\$ <u>102.00</u>)	\$ <u>43,860.00</u>
20.	1,170 LF	6-inch leachate collection pipe, complete per linear foot: <u>Ten</u> Dollars and <u>zero</u> Cents (\$ <u>10.00</u>)	\$ <u>11,700.00</u>
21.	1 LS	Sump and concrete access structure, complete, per lump sum: <u>Thirty Two Thousand</u> Dollars and <u>zero</u> Cents (\$ <u>32,000.00</u>)	\$ <u>32,000.00</u>
22.	7,760 SY	Paved access road, complete, per square yard: <u>Thirty Two</u> Dollars and <u>zero</u> Cents (\$ <u>32.00</u>)	\$ <u>248,320.00</u>
23.	1 LS	Site signage, complete, per lump sum: <u>One</u> <u>Thousand Four Hundred Fifty</u> Dollars and <u>zero</u> Cents (\$ <u>1,450.00</u>)	\$ <u>1,450.00</u>
24.	1 LS	Erosion control, complete, per lump sum: <u>Twenty</u> <u>One Thousand Seven Hundred Fifty</u> Dollars and <u>zero</u> Cents (\$ <u>21,750.00</u>)	\$ <u>21,750.00</u>
TOTAL BASE BID CELL 7 EXCAVATION AND LINER CONSTRUCTION BID ITEMS 1 - 24 INCLUSIVE			\$ <u>5,574,750.20</u>

01287012
10/12

PROPOSAL

EXHIBIT A - 4

Item No.	Quantity & Unit	Description of Item and Unit Prices	Total Amount
A-1	6,180 SY	Paved access road, complete, per square yard: <u>Thirty Two</u> Dollars and <u>Zero</u> Cents (\$ <u>32.00</u>)	\$ <u>197,760.00</u>
TOTAL ADDITIVE ALTERNATE BID PAVED ACCESS ROAD BID ITEM A-1			\$ <u>5,772,510.20</u>

The bidder is required to separate the cost of materials to be incorporated into this project. Such material costs are separated from the other costs so that the Bidder is a seller of such materials to the City. The Bidder shall be required to issue a resale certificate on such materials in lieu of paying the sales tax on such materials at the time of purchase. The City will provide the successful Bidder with a sales tax exemption certificate for such materials. The labor and materials charge shall be separated as follows:

MATERIALS	\$ <u>4,632,169.20</u>
LABOR	\$ <u>1,140,341.00</u>
TOTAL BID	\$ <u>5,772,510.20</u>

The undersigned Bidder hereby declares that he has visited the site of the work and has carefully examined the Plans, Specifications and Contract Documents pertaining to the work covered by the above bid, and he further agrees to commence work within ten (10) days after written notice to do so, and to complete all work within the consecutive calendar days framework noted in the Contract.

Bidder further agrees to pay as liquidated damages, the sum of \$1,105.00 for each consecutive calendar day thereafter as hereinafter provided in Paragraph 9 of the Contract.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

01287012
10/12

PROPOSAL

EXHIBIT A - 5

Bidder acknowledges receipt of the following addendum:

One

Two

R.E. Monks Construction Company LLC
CONTRACTOR

(Seal if Bidder is a
Corporation)

By 
Daniel R. Monks

8355 Vollmer Road
Colorado Springs, Colorado 80908

Address

Phone: (719) 495-3621

Attest: 

Victoria R. Wilcox

01287012
10/12

PROPOSAL

EXHIBIT A - 6



ADDENDUM NO: 1

TO: All Prospective Bidders

FROM: Travis McCoy, PE

PROJECT NAME: Midland MSW Landfill – Cell 7 Excavation and Liner Construction

PROJECT NO.: 01.2870.12

DATE: December 12, 2012

Attention of all Prospective Bidders/Plan Holders is directed to the following modifications to the referenced Project Manual and Drawings. This Addendum forms a part of, and shall be attached to the Project Manual, and modifies the original Project Manual dated October 2012 as noted below:

This Addendum consists of two (2) pages, Pre-Bid Meeting Minutes, Opinion of Probable Cost, Monitor Well 8A Installation Report

I. CHANGES TO DIVISION 0 – BIDDING REQUIREMENTS AND CONDITIONS OF THE CONTRACT:

A. CONTRACT

1. Page 10, Item #27. Add the following as Item #27 in Contract:

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

II. CHANGES TO DIVISION 1 – GENERAL REQUIREMENTS:

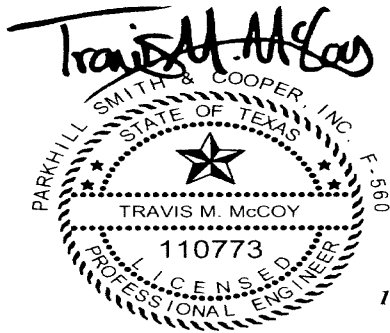
A. SECTION 01025 – MEASUREMENT AND PAYMENT

1. Paragraph 1.22 – revise to read as follows:

"Payment will be made for providing and installing the sump access structure as shown on the plans on a lump sum basis. Price shall include sump, sump access structure, **24-inch sump pipe**, 6-inch transducer pipe, 6-inch cleanout riser, 2-inch return pipe and valve and valve box, additional soil cover over pipes and all other appurtenances. Price shall include all material, labor, supplies, equipment and superintendence necessary."

END OF ADDENDUM NO. 1

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12/12/12

Respectfully submitted,

PARKHILL, SMITH & COOPER, INC.

By: Travis M. McCoy

***Receipt of this addendum shall be acknowledged by the Bidder, below and on the bid Proposal.
This entire addendum, or a copy thereof, shall be attached to the bid Proposal submitted.***

ACKNOWLEDGED:R.E. Monks Construction Company LLCBy: Daniel R. Monks



PRE-BID MEETING MINUTES

City of Midland
Municipal Solid Waste Landfill
Cell 7 Excavation and Liner Construction

TCEQ MSW Permit No. 1605B
PSC Project No. 01.2870.12

Midland City Hall – Basement Conference Room
December 11, 2012
2:00 pm

I. INTRODUCTIONS

- A. Owner
City of Midland
300 N. Loraine
Midland, Texas 79701
- B. Engineer
Mr. Travis McCoy, P.E.
Parkhill, Smith, & Cooper, Inc.
4222 85th Street
Lubbock, Texas 79423
(806) 473-3607

II. ADVERTISEMENT

- A. BID DATE AND LOCATION
Thursday, December 20, 2012 at 2:00 PM

City of Midland
Midland City Hall
300 N. Loraine
Midland, Texas 79701

III. SECTION 00101 – INFORMATION TO BIDDERS

- A. BID REQUIREMENTS
 - 1. Contractor's Proposal
 - a) All pricing items will be filled in or the bid will be rejected.
 - b) The bid must have an original signature or the bid will be rejected.
 - c) The bid form will not be changed or altered in any manner. The bid will not be qualified.
 - d) Changes may be made to the bid by email.

2. Bid Securities

- a) A five percent security will be submitted with the bid. The five percent will be based on the maximum amount of the bid including all additive alternates.
- b) The security must be in the form of a cashier's check, bond or combination of the two providing it equals five percent.
- c) Bonds will have an original signature and have a power of attorneys attached.
- d) Securities including cashier's checks will not be returned until the bid is fully let. This can take up to sixty days.

3. Other Bid Requirements

- a) Note that the Owner reserves the right to accept or reject any and all bids in accordance with State law.

IV. QUESTIONS, CLARIFICATIONS, AND CORRESPONDENCE

- A. All questions concerning the documents will be directed to the Engineer. Questions will not be addressed to City staff during the bid stage.
- B. All questions must be submitted at least ten days prior to the bid due date. All questions will be answered at least seven days prior to the bid due date.

V. OTHER PERTINENT ITEMS

- A. All insurance policies are required to be submitted by the successful Contractor and will not be waived for any reason.
- B. Electronic submittal process via Info Exchange. No hard copies of submittals will be accepted.

VI. QUESTIONS AND ANSWERS

Question 1: How deep is the monitoring well that needs to be removed?

Answer 1: The installation data sheet for the monitor well is attached.

Question 2: Can the existing pipelines be crossed with equipment?

Answer 2: Yes. However, do not locate any parking areas, staging areas, or storage areas over any pipeline.

Questions 3: Will cleanup be necessary for gas pipeline that is to be removed?

Answer 3: The gas pipeline has been purged, cleaned, and plugged by the owner of the pipeline.

Question 4: What is the nearest available water source?

Answer 4: The nearest city-owned water source is at the wastewater treatment plant.

Question 5: Will city permits be required?

Answer 5: City permits will not be required for this project.

Question 6: When will the project be awarded?

Answer 6: The project is tentatively scheduled for one of two January 2013 council meetings for approval.

Question 7: Will the plan holders list be available?

Answer 7: A copy of the plan holders list as of December 12, 2012 is included with these meeting minutes.

Question 8: Will the relocated borrow material be measured at its final position for quantity?

Answer 8: See specification Section 01025 – Measurement and Payment. Payment will be based on the in situ amount at the stockpile's current location.

Question 9: There is no bid item for the anchor trench. Should the contractor assume this item is incidental to the liner installation?

Answer 9: Construction of the anchor trench is considered incidental to all other items. No separate payment shall be made for this item.

Question 10: Is the on-site material for protective cover already 2"-minus or should the contractor assume the material needs to be screened? Does the material on site meet the requirements for hydraulic conductivity?

Answer 10: Material to be used for protective cover shall be tested in accordance with the project specification and with the facility's soil and liner quality control plan. Only passing material shall be used to construct the protective cover.

Question 11: Is an 18-degree bend enough to install the pump?

Answer 11: See specification Section 02250 – Leachate Collection Systems.

Question 12: The measurement and payment is based upon 12" sump while the plans show 24", can you please verify?

Answer 12: Specification Section 01025 – Measurement and Payment has been revised to correctly show a 24-inch riser pipe. The revised page is attached to these minutes.

Question 13: If waste is encountered during excavation will a change order be issued?

Answer 13: It is not anticipated that waste will be encountered during construction of this project. However, if waste is encountered it will be handled on a case-by-case basis as necessary.

Question 14: Will a job site trailer be required for this project?

Answer 14: No.

Question 15: Is a construction cost estimate available?

Answer 15: Yes, a construction cost estimate is available and attached to these minutes.

**PRE-BID
ATTENDANCE**

PROJECT NAME: Midland Cell 7 Excavation & Liner Construction

PROJECT NO.: 01.2870.12

DATE: December 11, 2012

TIME: 2:00 PM

LOCATION: Midland City Hall – Basement Conference Room

NAME	ORGANIZATION	OFFICE	CELL	EMAIL
------	--------------	--------	------	-------

MAURICIO JAGUAN	ONYX	432-5618900		MAURICIO@ONYXONLINE.COM
-----------------	------	-------------	--	-------------------------

JERRY HARRIS	ONYX	432-5618900		JERRY.HARRIS@ONYXONLINE.COM
DAVID HARRIS	ONYX	432-5618900		DAVID.HARRIS@ONYXONLINE.COM

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**City of Midland
Municipal Solid Waste Landfill
Cell 7 Excavation &
Liner Construction**

Final Opinion of Probable Cost

10/3/2012

ITEM	UNITS	QUANTITY	UNIT COST	TOTAL COST
Base Bid				
Mobilization (3% Max.)	LS	1	\$ 183,800.00	\$ 183,800.00
Remove Existing Access Road	SY	4,850	\$ 6.00	\$ 29,100.00
Plug Existing GWM Well 8	VF	65	\$ 15.00	\$ 980.00
Remove Existing Pipeline	LF	2,615	\$ 15.00	\$ 39,230.00
Remove Existing Litter Fence	LF	1,650	\$ 20.00	\$ 33,000.00
Relocate Borrow Material	CY	344,230	\$ 1.75	\$ 602,410.00
Excavation	CY	1,053,530	\$ 2.25	\$ 2,370,450.00
Embankment Fill	CY	12,720	\$ 2.50	\$ 31,800.00
Subgrade Preparation - Floor	SF	1,061,970	\$ 0.13	\$ 138,060.00
Subgrade Preparation - Slope	SF	106,950	\$ 0.16	\$ 17,120.00
Geosynthetic Clay Liner - Floor	SF	1,058,530	\$ 0.53	\$ 561,030.00
Geosynthetic Clay Liner - Slope	SF	112,670	\$ 0.57	\$ 64,230.00
Geomembrane Liner - Smooth	SF	1,058,530	\$ 0.52	\$ 550,440.00
Geomembrane Liner - Textured	SF	112,670	\$ 0.63	\$ 70,990.00
Geocomposite Drainage Layer	SF	1,171,200	\$ 0.51	\$ 597,320.00
Protective Soil Cover - Floor	SF	1,061,970	\$ 0.22	\$ 233,640.00
Protective Soil Cover - Slope	SF	106,950	\$ 0.30	\$ 32,090.00
Geotextile Fabric	SF	16,570	\$ 0.30	\$ 4,980.00
Gravel Drainage Material	CY	430	\$ 43.00	\$ 18,490.00
6-Inch Leachate Collection Pipe	LF	1,170	\$ 23.00	\$ 26,910.00
Sump and Concrete Access Structure	LS	1	\$ 20,000.00	\$ 20,000.00
Paved Access Road	SY	7,760	\$ 35.00	\$ 271,600.00
Site Signage	LS	1	\$ 5,000.00	\$ 5,000.00
Erosion Control	LS	1	\$ 7,500.00	\$ 7,500.00
Base Bid Subtotal				\$ 5,910,170.00
Additive Alternate No. 1				
Paved Access Road	SY	6,180	\$ 35.00	\$ 216,300.00
Additive Alternate No. 1 Subtotal				\$ 216,300.00
Construction Grand Total				\$ 6,126,470.00

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A. Monitor Well Data Sheet

Texas Water Commission
Municipal Solid Waste Division
SE 67

Permittee or Site Name: CITY OF MIDLAND
County: MIDLAND
Date of Monitor Well Installation: 8-15-94
Monitor Well: 1326W (EST DE 20 Longitude: 101.55.42.85 CH1073)
Monitor Well Groundwater: 31.9676 (CH1073)
Gradient: Upgradient Downgradient ☒ 101.9284

TDH Permit No.: 1605
Monitor Well I.D. No.: MW8A
Date of Monitor Well
Development: Super Tech. Guide 5
Monitor Well Driller
Name: R.H. Straub
License No.: 1326W

NOTE:

- (A) The information shown in the sketch below should be considered the minimum required for an installed ground-water monitor well.
(B) Report All Depths from Surface Elevation and all Elevations relative to Mean Sea Level.
(C) The minimum distance between the inside wall of the Bore Hole and the outside of the Well Casing shall be 3".
(D) Use Flush Screw Joint Casing only, 2" diameter or larger. Recommend 4" diameter minimum & Teflon Taping Casing Joints.
(E) Well development should continue until water is clear, and pH and conductivity are stable.

Geologist, Hydrologist or Engineer Supervising Well Installation: JOHN ANASTASIO

Static Water Level Elevation (with respect to MSL) after Well Development: 2659.91 depth 35.89

Name of Geologic Formation(s) in which Well is completed: CALICHE SS, TAN-RED fg, ifg.

Type of Locking Device: No 3 MASTER LOCK Type of Casing Protection: 8" STEEL

Concrete Surface Pad - Recommend steel reinforcement in the Surface Pad.

Surface Pad Dimensions:

5 ft. x 6 in. DIAMETER

Surface

Elevation: 2695.8

Top of Protective Collar Elevation: 2698.78

Top of Casing Elevation: 2698.31

Surveyor's Pin Elevation: 2696.29

Concrete Seal

Depth: 5 ft.

Casing Seal (Backfill)

Material: BENTONITE GROUT

Bentonite Seal

Filter Pack

Filter Pack Material: STERILIZED SAND
Sterilized Sand or Glass Beads

Bentonite Seal Top

Depth: 30.89 Elevation: 2664.91

Filter Pack Top

Depth: 33.89 Elevation: 2661.91

Well Screen

Top Depth: 35.89

Top Elevation: 2659.91

Type of Well Screen: Sch. 80 slot PVC

Screen Opening Size:

.020

Well Casing

Type: USE PVC

Size (diameter): 4 in.

Schedule or Thickness: Sch. 80

Bottom Cap (Depth: 57.89)

Bore Hole Diameter: 10 in.



ADDENDUM NO: 2

TO: All Prospective Bidders

FROM: Travis McCoy, PE

PROJECT NAME: Midland MSW Landfill – Cell 7 Excavation and Liner Construction

PROJECT NO.: 01.2870.12

DATE: December 17, 2012

Attention of all Prospective Bidders/Plan Holders is directed to the following modifications to the referenced Project Manual and Drawings. This Addendum forms a part of, and shall be attached to the Project Manual, and modifies the original Project Manual dated October 2012 as noted below:

This Addendum consists of three (3) pages plus attached Plan Holder's List.

I. CHANGES TO DIVISION 0 – BIDDING REQUIREMENTS AND CONDITIONS OF THE CONTRACT:

A. NONE

II. CHANGES TO DIVISION 1 – GENERAL REQUIREMENTS:

A. NONE

III. CHANGES TO DIVISIONS 2 THROUGH 16 (TECHNICAL SPECIFICATIONS):

A. SECTION 02245 – GEOMEMBRANE LINER

1. REVISE Paragraph 1.7.B to read as follows:

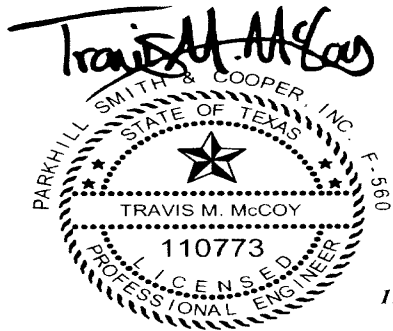
"B. Manufacturer: Furnish a written warranty on a pro-rata basis for a period of **20** years. The warranty shall be against manufacturing defects or workmanship and against deterioration due to ozone, ultraviolet or other normal weather aging. The warranty shall be limited to replacement of material only, and shall not cover installation."

IV. CHANGES TO DRAWINGS:

A. NONE

END OF ADDENDUM NO. 2

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12/17/12

Respectfully submitted,

PARKHILL, SMITH & COOPER, INC.

By: Travis M. McCoy

Receipt of this addendum shall be acknowledged by the Bidder, below and on the bid Proposal. This entire addendum, or a copy thereof, shall be attached to the bid Proposal submitted.

ACKNOWLEDGED:R.E. Monks Construction Company LLCBy: Daniel R. Monks

Daniel R. Monks

**RECORD OF PLANS AND SPECIFICATIONS**

PROJECT NAME: City of Midland MSWL – Cell 7
PROJECT MGR: Travis McCoy
PRE-BID DATE: 12/11/12
ESTIMATE:

PROJECT #: 01-2870-12
BID DATE: 12/20/12
DEP/REF: \$50 non-refundable
SHIP WEIGHT:

SET NO.	CONTRACTOR	GENERAL CONTRACTOR (Y/N)	ADDENDUM	DATE SENT	DATE RETURNED TO BIDDER	CK to ACCT
#1 (Midland) nf- 1	Jill Reed City of Midland 300 N. Loraine Midland, TX 79702 432-685-7278 jreed@midlandtexas.gov	N	12/12/2012	12/3/2012		
#2 (Midland) nf- 2	Travis McCoy PSC 4222 85th St Lubbock, TX 79423 806-473-2200 tmccoy@team-psc.com	N	12/12/2012	12/3/2012		
nf- 3	Kim McCallon McGraw Hill Dodge PlanRoom 3004 50th St Lubbock, TX 79413 806-794-2722 Kim_McCallon@mcgraw-hill.com	N	12/12/2012	12/3/2012		
nf- 4	Renea McWhorter AGC Planroom 3004 B 50th St Lubbock, TX 79413 806-797-8898 lubbockagc@nts-online.net	N	12/12/2012	12/3/2012		
#5 (LBK) nf- 5	Grant Cloud Onyx Contractors 1010 FM 1788 Midland, TX 79706 432-561-8900 grant@onyxcontractors.com	Y	12/12/2012	12/3/2012		
nf- 6	Jodi Sprinkle Benchmark Supply 101 South Garfield St Midland, TX 79701 432-682-6584 jodisprinkle@benchmarksupply.com	N	12/12/2012	12/4/2012		
nf- 7	Samantha Barker Midland AGC PlanRoom midlandagc3@nts-online.net	N	12/12/2012	12/3/2012		

CITY OF MIDLAND – Municipal Solid Waste Landfill – Cell 7 Excavation and Liner Construction

SET NO.	CONTRACTOR	GENERAL CONTRACTOR (Y/N)	ADDENDUM	DATE SENT	DATE RETURNED TO BIDDER	CK to ACCT
nf- 8	Paul Miller Delhur Industries 2443 West Hwy 176 Andrews, TX 79714 432-897-4301 nafis@delhur.com	Y	12/12/2012	12/3/2012		
nf- 9	Bryan Brooks Falcon Environmental Lining Systems 5200 Johnson Road Odessa, TX 79764 432-366-2611 falconels@aol.com	N	12/12/2012	12/7/2012		
nf- 10	Mike Brackney L D Kemp Excavating Co. 5409 Denton Highway Haltom City, TX 76148 817-371-6328 pmikebrack@swbell.net	N	12/12/2012	12/7/2012		
nf- 11	Don Effler BidClerk 312.432.7728 deffler@bidclerk.com	N	12/12/2012	12/11/2012		
nf-12	Russell Wells Texas Enviornmental Plastics 2500 Farrell Road Houston, TX 77073 281-821-7320 rwells@tepinc.net	N	12/12/2012	12/11/2012		
nf-13	Bob Trexler Geo-Synthetics 281-257-2405 bobt@geo-synthetics.com	N	12/12/2012	12/11/2012		
nf-14	Wade Fothergill RE Monks Construction 8355 Vollmer Road Colorado Springs, CO 80908 719-495-3621 Wade.fothergill@remonks.com	Y	12/12/2012	12/11/2012		
nf-15	Gary Willis Project Search 281-292-5393 garytwillis@sbcglobal.net	N	12/12/2012	12/11/2012		
nf-16	RBK Construction 4635 Minnesota Ave, NE Washington, DC 20019 202-436-5204 rbkconst@ghvalley.net	Y	12/12/2012	12/12/2012		
nf-17	Lisa Landin Longhorn Excavators 1625 Cottonwood School Rd Rosenberg, TX 77471 281-937-9700 lisa.landin@longhornexcavators.com	Y	12/12/2012	12/12/2012		

CITY OF MIDLAND – Municipal Solid Waste Landfill – Cell 7 Excavation and Liner Construction

SET NO.	CONTRACTOR	GENERAL CONTRACTOR (Y/N)	ADDENDUM	DATE SENT	DATE RETURNED TO BIDDER	CK to ACCT
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nf-19	Ranger Excavating 5222 Thunder Creek Road Austin, TX 78759 512-343-9613 wl@rangerex.com	Y	12/12/2012	12/12/2012		
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nf-21	Amber Gribler Rummel Construction 7520 E. Adobe Drive Scottsdale, AZ 85255 480-222-9922 agribler@rummelconstruction.com	Y	12/12/2012	12/13/2012		
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nf-24	Tony Banuelos ECA - Texas 12002 E. HWY 158 Gardendale, TX 79758 432-614-3001 tbanuelos@ECA-Texas.com	Y	12/14/2012	12/14/2012		

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.

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.

More information, additional forms, instructions and FAQs are available at: <http://www.ci.midland.tx.us/Purchasing/HB914.htm> and click the appropriate link.

A copy of the form is attached. A fill-in version is available from the above web-site.

For a current list of the City Elected Officials go to: <http://www.ci.midland.tx.us> and choose City Government from the left side bar, then click Mayor and Council.

For a current list of the City Management Staff go to: <http://www.ci.midland.tx.us> and choose City Government from the left side bar, then click City Manager's Office.

If you have previously submitted a form, it is NOT necessary to send another, unless the status has changed. If submitting due to change in previous status, please note change in status on the front of the form.

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

City of Midland

Attn: City Secretary

P. O. Box 1152

Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

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

OFFICE USE ONLY

Date Received

1 Name of person doing business with local governmental entity.

R.E. Monks Construction Company LLC

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 September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name each employee or contractor of the local governmental entity who makes recommendations to a local government officer of the governmental entity with respect to expenditures of money AND describe the affiliation or business relationship.

N/A

4 Name each local government officer who appoints or employs local government officers of the governmental entity for which this questionnaire is filed AND describe the affiliation or business relationship.

N/A

N/A

Adopted 11/02/2005

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor or other person doing business with local governmental entity

5 Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or other relationship. Attach additional pages to this Form CIQ as necessary.

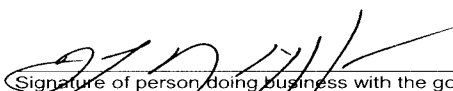
A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire? ☐ Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity? ☐ Yes ☐ No

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? ☐ Yes ☐ No

D. Describe each affiliation or business relationship.

6


Signature of person doing business with the governmental entity

R.E. Monks Construction Company LLC

Daniel R. Monks

December 20, 2012

Date

Adopted 11/02/2005

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/18/2012

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 Willis of Colorado, Inc. 2000 South Colorado Boulevard Tower II, Suite 900 Denver, CO 80222		CONTACT NAME: PHONE (A/C, No, Ext): 303 722-7776 FAX (A/C, No): 303-722-8862 E-MAIL ADDRESS:																						
INSURED R. E. Monks Construction Company, LLC 8355 Vollmer Rd. P.O. Box 25579 Colorado Springs, CO 80936		<table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A :</td> <td>Ins Co of the State of Pennsylv</td> <td>19429</td> </tr> <tr> <td>INSURER B :</td> <td>National Union Fire</td> <td>B6787</td> </tr> <tr> <td>INSURER C :</td> <td>Pinnacol Assurance</td> <td>41190</td> </tr> <tr> <td>INSURER D :</td> <td></td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A :	Ins Co of the State of Pennsylv	19429	INSURER B :	National Union Fire	B6787	INSURER C :	Pinnacol Assurance	41190	INSURER D :			INSURER E :			INSURER F :		
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COVERAGES		CERTIFICATE NUMBER:		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	ADD'L INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY CLAIMS-MADE ☒ OCCUR ☒ CG 2033 0704 ☒ CG 2037 0704 GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC	X	X	9612788	05/01/2012	05/01/2013	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$50,000 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	X	X	1707542	05/01/2012	05/01/2013	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ EXCESS LIAB DED ☒ RETENTION \$10000	X	X	BE23465113	05/01/2012	05/01/2013	EACH OCCURRENCE \$25,000,000 AGGREGATE \$25,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☒ Y ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	X	N/A	021417876	05/01/2012	05/01/2013	☒ WC STATUTORY LIMITS E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C		X		4139040	05/01/2012	05/01/2013	

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

The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Workers' Compensation. The Contractor 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.

CERTIFICATE HOLDER

City of Midland
 P.O. Box 1152
 Midland, TX 78702

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

Craig A. Merton

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POLICY NUMBER: 9612788

COMMERCIAL GENERAL LIABILITY
CG 20 37 07 04

Effective: 05/01/2012

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Only those Required by Written Contract	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II -- Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

Project Manual

City of Midland, Texas

Municipal Solid Waste Landfill

Cell 7 Excavation and Liner Construction

TCEQ MSW Permit No. 1605B

October, 2012

PSC Project # 01287012



Project Manual

City of Midland, Texas

Municipal Solid Waste Landfill

Cell 7 Excavation and Liner Construction

TCEQ MSW Permit No. 1605B



10/02/12

October, 2012

PSC Project # 01287012



ADVERTISEMENT

Sealed proposals addressed to Honorable Mayor and City Council will be received at the office of the City Secretary, City Hall, 300 N. Loraine, Midland, Texas 79701 until Thursday, December 20, 2012 at 2:00pm local time for City of Midland Municipal Solid Waste Landfill Cell 7 Excavation and Liner Construction.

Immediately following the closing time for receipt of bids, proposals will be publicly opened and read aloud at Midland City Hall. Any bid received after closing time will be returned unopened. Bids will be tabulated and presented to the City of Midland for action at a later date.

A pre-bid conference will be held on Tuesday, December 11, 2012 at Midland City Hall – Basement Conference Room at 2:00pm local time. Attendance by prospective Bidders is not mandatory.

Information for bidders, proposal forms, specifications and plans are on file at the office of Parkhill, Smith & Cooper, Inc., Consulting Engineers, 4222 85th Street, Lubbock, Texas, 79423.

Copies of the plans, specifications and contract documents may be secured at the office of Parkhill, Smith & Cooper, Inc., Consulting Engineers, 4222 85th Street, Lubbock Texas, 79423 (Phone 806-473-2200) and 1700 W. Wall, Suite 100, Midland, Texas, 79701 (Phone 432-697-1447) as follows:

1. Download documents (.pdf file extension format) from PSC's Info Exchange web site after registering as a plan holder with issuing PSC office. **There is no cost or deposit required for this option.**
2. One set of paper copies for a non-refundable deposit of \$50.00.
3. A digital copy (.pdf file extension format) upon a non-refundable deposit of \$20.00 per each CD.

Deposit shall be Company check or cashiers' check made payable to Parkhill, Smith & Cooper, Inc. No partial sets will be issued.



ADDENDUM NO: 2

TO: All Prospective Bidders

FROM: Travis McCoy, PE

PROJECT NAME: Midland MSW Landfill – Cell 7 Excavation and Liner Construction

PROJECT NO.: 01.2870.12

DATE: December 17, 2012

Attention of all Prospective Bidders/Plan Holders is directed to the following modifications to the referenced Project Manual and Drawings. This Addendum forms a part of, and shall be attached to the Project Manual, and modifies the original Project Manual dated October 2012 as noted below:

This Addendum consists of three (3) pages plus attached Plan Holder's List.

I. CHANGES TO DIVISION 0 – BIDDING REQUIREMENTS AND CONDITIONS OF THE CONTRACT:

A. NONE

II. CHANGES TO DIVISION 1 – GENERAL REQUIREMENTS:

A. NONE

III. CHANGES TO DIVISIONS 2 THROUGH 16 (TECHNICAL SPECIFICATIONS):

A. SECTION 02245 – GEOMEMBRANE LINER

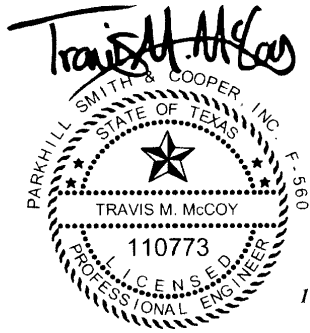
1. REVISE Paragraph 1.7.B to read as follows:

“B. Manufacturer: Furnish a written warranty on a pro-rata basis for a period of **20** years. The warranty shall be against manufacturing defects or workmanship and against deterioration due to ozone, ultraviolet or other normal weather aging. The warranty shall be limited to replacement of material only, and shall not cover installation.”

IV. CHANGES TO DRAWINGS:

A. NONE

END OF ADDENDUM NO. 2



12/17/12

Respectfully submitted,

PARKHILL, SMITH & COOPER, INC.

By: Travis M. McCoy

***Receipt of this addendum shall be acknowledged by the Bidder, below and on the bid Proposal.
This entire addendum, or a copy thereof, shall be attached to the bid Proposal submitted.***

ACKNOWLEDGED:R.E. Monks Construction Company LLCBy: Daniel R. Monks

Daniel R. Monks

**RECORD OF PLANS AND SPECIFICATIONS**

PROJECT NAME:	City of Midland MSWL – Cell 7	PROJECT #:	01-2870-12
PROJECT MGR:	Travis McCoy	BID DATE:	12/20/12
PRE-BID DATE:	12/11/12	DEP/REF:	\$50 non-refundable
ESTIMATE:		SHIP WEIGHT:	

SET NO.	CONTRACTOR	GENERAL CONTRACTOR (Y/N)	ADDENDUM	DATE SENT	DATE RETURNED TO BIDDER	CK to ACCT
#1 (Midland) nf- 1	Jill Reed City of Midland 300 N. Loraine Midland, TX 79702 432-685-7278 jreed@midlandtexas.gov	N	12/12/2012	12/3/2012		
#2 (Midland) nf- 2	Travis McCoy PSC 4222 85th St Lubbock, TX 79423 806-473-2200 tmccoy@team-psc.com	N	12/12/2012	12/3/2012		
nf- 3	Kim McCallon McGraw Hill Dodge PlanRoom 3004 50th St Lubbock, TX 79413 806-794-2722 Kim_McCallon@mcgraw-hill.com	N	12/12/2012	12/3/2012		
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#5 (LBK) nf- 5	Grant Cloud Onyx Contractors 1010 FM 1788 Midland, TX 79706 432-561-8900 grant@onyxcontractors.com	Y	12/12/2012	12/3/2012		
nf- 6	Jodi Sprinkle Benmark Supply 101 South Garfield St Midland, TX 79701 432-682-6584 jodisprinkle@benmarksupply.com	N	12/12/2012	12/4/2012		
nf- 7	Samantha Barker Midland AGC PlanRoom midlandagc3@nts-online.net	N	12/12/2012	12/3/2012		

Amarillo
El Paso
Las Cruces
Lubbock
Midland

\\Data1\Projects\2012\2870.12\BID-PROPOSAL PHASE\Bidders List.doc

4222 85th Street Lubbock, Texas 79423 806.473.2200 Fax 806.473.3500

CITY OF MIDLAND – Municipal Solid Waste Landfill – Cell 7 Excavation and Liner Construction

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nf-16	RBK Construction 4635 Minnesota Ave, NE Washington, DC 20019 202-436-5204 rbkconst@ghvalley.net	Y	12/12/2012	12/12/2012		
nf-17	Lisa Landin Longhorn Excavators 1625 Cottonwood School Rd Rosenberg, TX 77471 281-937-9700 lisa.landin@longhornexcavators.com	Y	12/12/2012	12/12/2012		

CITY OF MIDLAND – Municipal Solid Waste Landfill – Cell 7 Excavation and Liner Construction

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nf-24	Tony Banuelos ECA - Texas 12002 E. HWY 158 Gardendale, TX 79758 432-614-3001 tbanuelos@ECA-Texas.com	Y	12/14/2012	12/14/2012		



ADDENDUM NO: 1

TO: All Prospective Bidders

FROM: Travis McCoy, PE

PROJECT NAME: Midland MSW Landfill – Cell 7 Excavation and Liner Construction

PROJECT NO.: 01.2870.12

DATE: December 12, 2012

Attention of all Prospective Bidders/Plan Holders is directed to the following modifications to the referenced Project Manual and Drawings. This Addendum forms a part of, and shall be attached to the Project Manual, and modifies the original Project Manual dated October 2012 as noted below:

This Addendum consists of two (2) pages, Pre-Bid Meeting Minutes, Opinion of Probable Cost, Monitor Well 8A Installation Report

I. CHANGES TO DIVISION 0 – BIDDING REQUIREMENTS AND CONDITIONS OF THE CONTRACT:

A. CONTRACT

1. Page 10, Item #27. Add the following as Item #27 in Contract:

“27. PROMPT PAY ACT - The City and Contractor agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the “Prompt Pay Act”) does not waive governmental immunity.”

II. CHANGES TO DIVISION 1 – GENERAL REQUIREMENTS:

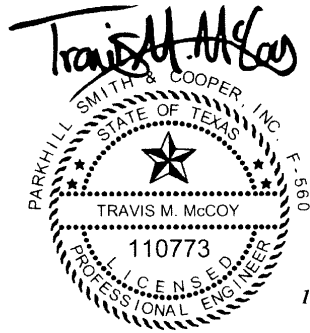
A. SECTION 01025 – MEASUREMENT AND PAYMENT

1. Paragraph 1.22 – revise to read as follows:

“Payment will be made for providing and installing the sump access structure as shown on the plans on a lump sum basis. Price shall include sump, sump access structure, **24-inch sump pipe**, 6-inch transducer pipe, 6-inch cleanout riser, 2-inch return pipe and valve and valve box, additional soil cover over pipes and all other appurtenances. Price shall include all material, labor, supplies, equipment and superintendence necessary.”

END OF ADDENDUM NO. 1

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Respectfully submitted,

PARKHILL, SMITH & COOPER, INC.

By: Travis M. McCoy

***Receipt of this addendum shall be acknowledged by the Bidder, below and on the bid Proposal.
This entire addendum, or a copy thereof, shall be attached to the bid Proposal submitted.***

ACKNOWLEDGED:

R.E. Monks Construction Company LLC

By: Daniel R. Monks

PRE-BID MEETING MINUTES

City of Midland
Municipal Solid Waste Landfill
Cell 7 Excavation and Liner Construction

TCEQ MSW Permit No. 1605B
PSC Project No. 01.2870.12

Midland City Hall – Basement Conference Room
December 11, 2012
2:00 pm

I. INTRODUCTIONS

- A. Owner
City of Midland
300 N. Loraine
Midland, Texas 79701
- B. Engineer
Mr. Travis McCoy, P.E.
Parkhill, Smith, & Cooper, Inc.
4222 85th Street
Lubbock, Texas 79423
(806) 473-3607

II. ADVERTISEMENT

- A. BID DATE AND LOCATION
Thursday, December 20, 2012 at 2:00 PM

City of Midland
Midland City Hall
300 N. Loraine
Midland, Texas 79701

III. SECTION 00101 – INFORMATION TO BIDDERS

- A. BID REQUIREMENTS
 - 1. Contractor's Proposal
 - a) All pricing items will be filled in or the bid will be rejected.
 - b) The bid must have an original signature or the bid will be rejected.
 - c) The bid form will not be changed or altered in any manner. The bid will not be qualified.
 - d) Changes may be made to the bid by email.

2. Bid Securities

- a) A five percent security will be submitted with the bid. The five percent will be based on the maximum amount of the bid including all additive alternates.
- b) The security must be in the form of a cashier's check, bond or combination of the two providing it equals five percent.
- c) Bonds will have an original signature and have a power of attorneys attached.
- d) Securities including cashier's checks will not be returned until the bid is fully let. This can take up to sixty days.

3. Other Bid Requirements

- a) Note that the Owner reserves the right to accept or reject any and all bids in accordance with State law.

IV. QUESTIONS, CLARIFICATIONS, AND CORRESPONDENCE

- A. All questions concerning the documents will be directed to the Engineer. Questions will not be addressed to City staff during the bid stage.
- B. All questions must be submitted at least ten days prior to the bid due date. All questions will be answered at least seven days prior to the bid due date.

V. OTHER PERTINENT ITEMS

- A. All insurance policies are required to be submitted by the successful Contractor and will not be waived for any reason.
- B. Electronic submittal process via Info Exchange. No hard copies of submittals will be accepted.

VI. QUESTIONS AND ANSWERS

Question 1: How deep is the monitoring well that needs to be removed?

Answer 1: The installation data sheet for the monitor well is attached.

Question 2: Can the existing pipelines be crossed with equipment?

Answer 2: Yes. However, do not locate any parking areas, staging areas, or storage areas over any pipeline.

Questions 3: Will cleanup be necessary for gas pipeline that is to be removed?

Answer 3: The gas pipeline has been purged, cleaned, and plugged by the owner of the pipeline.

Question 4: What is the nearest available water source?

Answer 4: The nearest city-owned water source is at the wastewater treatment plant.

Question 5: Will city permits be required?

Answer 5: City permits will not be required for this project.

Question 6: When will the project be awarded?

Answer 6: The project is tentatively scheduled for one of two January 2013 council meetings for approval.

Question 7: Will the plan holders list be available?

Answer 7: A copy of the plan holders list as of December 12, 2012 is included with these meeting minutes.

Question 8: Will the relocated borrow material be measured at its final position for quantity?

Answer 8: See specification Section 01025 – Measurement and Payment. Payment will be based on the in situ amount at the stockpile's current location.

Question 9: There is no bid item for the anchor trench. Should the contractor assume this item is incidental to the liner installation?

Answer 9: Construction of the anchor trench is considered incidental to all other items. No separate payment shall be made for this item.

Question 10: Is the on-site material for protective cover already 2"-minus or should the contractor assume the material needs to be screened? Does the material on site meet the requirements for hydraulic conductivity?

Answer 10: Material to be used for protective cover shall be tested in accordance with the project specification and with the facility's soil and liner quality control plan. Only passing material shall be used to construct the protective cover.

Question 11: Is an 18-degree bend enough to install the pump?

Answer 11: See specification Section 02250 – Leachate Collection Systems.

Question 12: The measurement and payment is based upon 12" sump while the plans show 24", can you please verify?

Answer 12: Specification Section 01025 – Measurement and Payment has been revised to correctly show a 24-inch riser pipe. The revised page is attached to these minutes.

Question 13: If waste is encountered during excavation will a change order be issued?

Answer 13: It is not anticipated that waste will be encountered during construction of this project. However, if waste is encountered it will be handled on a case-by-case basis as necessary.

Question 14: Will a job site trailer be required for this project?

Answer 14: No.

Question 15: Is a construction cost estimate available?

Answer 15: Yes, a construction cost estimate is available and attached to these minutes.

PRE-BID ATTENDANCE

PROJECT NAME: Midland Cell 7 Excavation & Liner Construction

PROJECT NO.: 01.2870.12

DATE: December 11, 2012

TIME: 2:00 PM

LOCATION: Midland City Hall – Basement Conference Room

[illegible]

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City of Midland
Municipal Solid Waste Landfill
Cell 7 Excavation &
Liner Construction



Final Opinion of Probable Cost

10/3/2012

ITEM	UNITS	QUANTITY	UNIT COST	TOTAL COST
Base Bid				
Mobilization (3% Max.)	LS	1	\$ 183,800.00	\$ 183,800.00
Remove Existing Access Road	SY	4,850	\$ 6.00	\$ 29,100.00
Plug Existing GWM Well 8	VF	65	\$ 15.00	\$ 980.00
Remove Existing Pipeline	LF	2,615	\$ 15.00	\$ 39,230.00
Remove Existing Litter Fence	LF	1,650	\$ 20.00	\$ 33,000.00
Relocate Borrow Material	CY	344,230	\$ 1.75	\$ 602,410.00
Excavation	CY	1,053,530	\$ 2.25	\$ 2,370,450.00
Embankment Fill	CY	12,720	\$ 2.50	\$ 31,800.00
Subgrade Preparation - Floor	SF	1,061,970	\$ 0.13	\$ 138,060.00
Subgrade Preparation - Slope	SF	106,950	\$ 0.16	\$ 17,120.00
Geosynthetic Clay Liner - Floor	SF	1,058,530	\$ 0.53	\$ 561,030.00
Geosynthetic Clay Liner - Slope	SF	112,670	\$ 0.57	\$ 64,230.00
Geomembrane Liner - Smooth	SF	1,058,530	\$ 0.52	\$ 550,440.00
Geomembrane Liner - Textured	SF	112,670	\$ 0.63	\$ 70,990.00
Geocomposite Drainage Layer	SF	1,171,200	\$ 0.51	\$ 597,320.00
Protective Soil Cover - Floor	SF	1,061,970	\$ 0.22	\$ 233,640.00
Protective Soil Cover - Slope	SF	106,950	\$ 0.30	\$ 32,090.00
Geotextile Fabric	SF	16,570	\$ 0.30	\$ 4,980.00
Gravel Drainage Material	CY	430	\$ 43.00	\$ 18,490.00
6-Inch Leachate Collection Pipe	LF	1,170	\$ 23.00	\$ 26,910.00
Sump and Concrete Access Structure	LS	1	\$ 20,000.00	\$ 20,000.00
Paved Access Road	SY	7,760	\$ 35.00	\$ 271,600.00
Site Signage	LS	1	\$ 5,000.00	\$ 5,000.00
Erosion Control	LS	1	\$ 7,500.00	\$ 7,500.00
Base Bid Subtotal				\$ 5,910,170.00
Additive Alternate No. 1				
Paved Access Road	SY	6,180	\$ 35.00	\$ 216,300.00
Additive Alternate No. 1 Subtotal				\$ 216,300.00
Construction Grand Total				\$ 6,126,470.00

A. Monitor Well Data Sheet

Texas Water Commission
Municipal Solid Waste Division
SE 67

Permittee or Site Name: CITY of MIDLAND

County: MIDLAND

Date of Monitor Well Installation: 8-15-94

Monitor Well: Latitude: 31.9678 Longitude: 101.53.42.25

Monitor Well Groundwater 31.9678 (NAD83) 101.9284

Gradient: Upgradient Downgradient ☒

TDH Permit No.: 1605

Monitor Well I.D. No.: MW8A

Date of Monitor Well

Development: PER Tech. Guide 5

Monitor Well Driller

Name: R.A. STRAUB

License No.: 13261W

NOTE:

- (A) The information shown in the sketch below should be considered the minimum required for an installed ground-water monitor well.
(B) Report All Depths from Surface Elevation and all Elevations relative to Mean Sea Level.
(C) The minimum distance between the inside wall of the Bore Hole and the outside of the Well Casing shall be 3".
(D) Use Flush Screw Joint Casing only, 2" diameter or larger. Recommend 4" diameter minimum & Teflon Taping Casing Joints.
(E) Well development should continue until water is clear, and pH and conductivity are stable.

Geologist, Hydrologist or Engineer Supervising Well Installation: JOHN ANASTASIO

Static Water Level Elevation (with respect to MSL) after Well Development: 2659.91 depth: 35.89

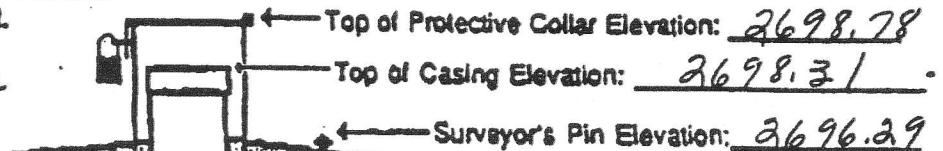
Name of Geologic Formation(s) in which Well is completed: CALICHE SS, TAN-RED fg, ifg.

Type of Locking Device: No. 3 MASTER padlock Type of Casing Protection: 8" STEEL

Concrete Surface Pad - Recommend steel reinforcement in the Surface Pad.

Surface Pad Dimensions: 5ft. x 6in. DIAMETER

Surface Elevation: 2695.8



Concrete Seal

Depth: 5ft.

Casing Seal (Backfill)

Material: BENTONITE grout

Bentonite Seal

Filter Pack

Filter Pack Material: 9/16" STERILIZED SAND

Well Screen

Top Depth: 35.89

Top Elevation: 2659.91

Type of Well Screen: Sch. 80 slot PVC

Screen Opening Size:

.020

Well Casing

Type: 1.5" PVC

Size (diameter): 4in.

Schedule or Thickness: Sch. 80

Bottom Cap (Depth: 57.89)

Bore Hole Diameter: 10in.

TABLE OF CONTENTS

DIVISION 0 - BIDDING REQUIREMENTS AND CONTRACT INFORMATION

00100	Instructions to Bidders.....	6
00220	Information Available to Bidders	1
	Contract (Provided by City of Midland)	12
	Exhibit A - Proposal	6
	Exhibit C - Bonding Requirements (Provided by City of Midland).....	1
	Exhibit D - Wage Scale (Provided by City of Midland)	2
	Bid Bond (Provided by City of Midland)	1
	Payment Bond (Provided by City of Midland)	2
	Performance Bond (Provided by City of Midland)	2
	Consideration of Location (Provided by City of Midland)	1
	Conflict of Interest Questionnaire (Provided by City of Midland).....	3

DIVISION 1 - GENERAL REQUIREMENTS

01010	Summary of Work	2
01019	Contract Considerations.....	2
01025	Measurement and Payment	6
01039	Coordination and Meetings.....	3
01090	Reference Standards	3
01300	Submittals	3
01356	Storm Water Pollution Prevention Measures	2
01400	Quality Control	3
01500	Construction Facilities and Temporary Controls	3
01560	Environmental Protection	5
01600	Material and Equipment	3
01700	Contract Closeout	4

DIVISION 2 - SITE WORK

02146	Groundwater Monitoring Well Abandonment.....	2
02200	Excavation and Earthwork.....	7
02240	Geosynthetic Clay Liner	8
02245	Geomembrane Liner	14
02246	Geotextile Fabrics.....	4
02247	Geocomposite Drainage Layer.....	5
02248	Gravel Drainage Material	3
02250	Leachate Collection Systems	3
02260	Protective Soil Cover	3
02500	Roadway Construction.....	6

DIVISION 3 - CONCRETE

03300 Cast-In-Place Concrete 12

DIVISIONS 4 - 16

Not Used

APPENDICES

APPENDIX A - Soil and Liner Quality Control Plan (SLQCP)

APPENDIX B - Soil Borings

SECTION 00100

INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8-A-2)(1990 Edition) have the meanings assigned to them in the General Conditions.

Certain additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

1.1 Bidder - one who submits a Bid directly to Owner as distinct from a sub-Bidder, who submits a bid to a Bidder.

1.2 Issuing Office - the office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

1.3 Successful Bidder - the lowest, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

2. COPIES OF BIDDING DOCUMENTS

2.1 Bidders may obtain complete sets of the Bid Documents as defined in the Request for Bids in the number and for the deposit sum stated therein. The deposit will be refunded to Bidders who submit a bona fide Bid and return the Bid Documents in good condition within ten days after receipt of Bids. The cost of replacement of missing or damaged documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the Bid Documents and the Bidder's deposit will be refunded.

2.2 Bidders shall use complete sets of Bid Documents in preparing Bids; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents.

2.3 In making copies of the Bid Documents available on the above terms, the Owner and the Architect do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant permission for any other use of the Bid Documents.

3. QUALIFICATIONS OF BIDDERS

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five (5) days after Bid opening upon Owner's request detailed written evidence such as financial data, previous experience, present commitments and other such data as may be called for. Each Bid must contain evidence of Bidder's qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the contract.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

4.1 It is the responsibility of each Bidder before submitting a Bid:

4.1.1 To examine thoroughly the Contract Documents and other related data identified in the Bidding Documents (including "technical data" referred to below);

4.1.2 To visit the site to become familiar with and satisfy Bidder as to the general, local and site conditions that may affect cost, progress, performance or finishing of the Work;

4.1.3 To consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work;

4.1.4 To study and carefully correlate Bidder's knowledge and observations with the Contract Documents and such other related data; and

4.1.5 To promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.

4.2 Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

4.3 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Contract documents due to differing or unanticipated conditions appear in Paragraphs 4.2 and 4.3 of the General Conditions.

4.4 Before submitting a Bid each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and finishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

4.5 On request, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder must fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests and studies.

4.6 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by Engineer is acceptable to Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

4.7 The provisions of 4.1 through 4.6, inclusive, do not apply to Asbestos, Polychlorinated biphenyls (PCBs), Petroleum, Hazardous Waste or Radioactive Material covered by Paragraph 4.5 of the General Conditions.

5. AVAILABILITY OF LANDS FOR WORK, ETC.

The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

6. INTERPRETATIONS AND ADDENDA

6.1 All questions about the meaning or intent of the Bidding Documents are to be directed to Engineer. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than ten (10) days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6.2 Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer.

7. BID SECURITY

7.1 Each Bid must be accompanied by Bid security made payable to Owner in an amount of five (5) percent of Bidder's maximum Bid price and in the form of a certified or bank check or a Bid Bond issued by a surety meeting the requirements of paragraph 5.1 of the General Conditions.

7.2 The Bid security of Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen (15) days after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the forty-sixth day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within seven (7) days after the Bid opening.

8. CONTRACT TIMES

The number of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the term "Contract Times" as defined in paragraph 1.12 of the General conditions) are set forth in the Agreement (or incorporated therein by reference to the attached Bid Form).

9. LIQUIDATED DAMAGES

Provisions for liquidated damages, if any, are set forth in the Agreement.

10. SUBSTITUTE AND "OR-EQUAL" ITEMS

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute of "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in paragraph 6.7 of the General Conditions and may be supplemented in the General Requirements.

11. NOT USED

12. BID FORM

12.1 The Bid Form is included with the Bidding Documents.

12.2 All blanks on the Bid Form must be completed by printing in black ink or by typewriter.

12.3 Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

12.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

12.5 All names must be typed or printed in black ink below the signature.

12.6 The Bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).

12.7 The address and telephone number for communications regarding the Bid must be shown.

12.8 Evidence of authority to conduct business as an out-of-state corporation in the state where the Work is to be performed shall be provided in accordance with Paragraph 3 above. State contractor license number, if any, must also be shown.

13. SUBMISSION OF BIDS

Bids shall be submitted at the time and place indicated in the Advertisement of Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Project title, "CELL 7 EXCAVATION AND LINER CONSTRUCTION" (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of Bidder and accompanied by the bid security and other required documents. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of the outer envelope.

14. MODIFICATION AND WITHDRAWAL OF BIDS

14.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

14.2 If, within twenty-four (24) hours after Bids are opened, any Bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

15. OPENING OF BIDS

Bids will be opened and (unless obviously non-responsive) read aloud publicly at the place where Bids are to be submitted. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids.

16. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

All Bids will remain subject to acceptance for forty-five (45) days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to that date.

17. AWARD OF CONTRACT

17.1 Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

17.2 In evaluation of Bids, Owner will consider the qualifications of Bidders, whether or not the Bids comply with the prescribed requirements, and such alternatives, unit prices and other data as may be requested in the Bid Form or prior to the Notice of Award.

17.3 Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipments proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

17.4 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

17.5 If the contract is to be awarded, Owner will give Successful Bidder a Notice of Award within forty-five (45) days after the day of the Bid opening.

18. CONTRACT SECURITY

Paragraph 5.1 of the General Conditions and the Supplementary Conditions set forth Owner's requirements as to performance and payment Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required performance and payment Bonds.

19. SIGNING OF AGREEMENT

When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within fifteen (15) days thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required bonds. Within ten (10) days thereafter Owner shall deliver one fully signed counterpart to Contractor.

20. SALES AND USE TAXES

Project is exempt from Texas State Sales and Use Taxes on materials only that will be incorporated in the Work. Said taxes shall not be included in the Contract Price. Refer to the Supplementary Conditions, SC-6.15.

21. RETAINAGE

Provisions concerning retainage are set forth in the Agreement.

22. FEDERAL WAGE REQUIREMENTS

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

SECTION 00220

INFORMATION AVAILABLE TO BIDDERS

PART 1 - GENERAL

1.1 INFORMATION

- A. Geotechnical Data
Geotechnical information is included in Appendix B.

1.2 RESPONSIBILITY

- A. Bidders are expected to examine the property survey and geotechnical data reports and then determine for themselves the validity of the information contained therein.
- B. Engineer and Owner assume no responsibility for variations of site information or subsoil quality or conditions.

PART 2 - PRODUCTS

Not Used.

PART 3 - EXECUTION

Not Used.

END OF SECTION



THE CITY OF MIDLAND

CONTRACT

Contract No.

THIS CONTRACT, effective the 2nd day of January, 2013, by and between the City of Midland, hereinafter referred to as the "Owner", and R.E. Monks Construction Company, LLC., hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 5,772,510.20 DOLLARS
2. **Scope of Work:** The Contractor shall perform all work described for labor, material, equipment and supervision necessary for the construction of Cell 7 Excavation and Liner Construction in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary
EXHIBIT B..... Intentionally Omitted
EXHIBIT C..... Bonding instructions for Public Works Contract of \$50,000 and more
EXHIBIT D..... Wage Scale
3. **Owner:** The words "Owner's Representative" or "representative" shall mean Morris Williams or his 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 the Owner to act in any particular capacity under this Contract.
4. **The Owner'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. Owner'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. Owner's representative will not be responsible for the Contractor's failure to perform the work in accordance with the contract.
5. **Contractor:** Unless otherwise stipulated, the Contractor 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. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

5.1. The Contractor 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 the Contractor'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. The Contractor 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 Owner to be done by the Contractor to accomplish any alteration or addition to the work as shown on the Specifications.

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

7. **Safety:** The Contractor 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: 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.

8.1. 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.

8.2. 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.

9. **Start of Work:** The Contractor 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 substantially complete such work no later than 240 calendar days after release to proceed.

If the Contractor should fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree as part of the consideration for the awarding of this contract, the Owner may withhold permanently from Contractor's total compensation, the sum of One Thousand One Hundred Five Dollars (\$1,105.00), not as a penalty but as liquidated damages for the breach of the contract as herein set forth for each calendar day that the Contractor shall be in default after the time stipulated for completing the work.

9.1. **TIME IS OF THE ESSENCE IN THIS CONTRACT.**

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

11. **Warranty:** Neither the final payment nor any provision in this contract shall relieve the Contractor 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. The Owner shall give notice of observed defects with reasonable promptness.

12. **Remedy:** The Owner 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 the Contractor to make payments promptly to subcontractors or for material or labor which the Owner may pay as an agent for the Contractor; or

12.4. Damages to another contractor or subcontractor.

When the above grounds to withhold payment are removed, or the Contractor provides a surety bond satisfactory to the Owner, which will protect the Owner in the amount withheld, payment shall 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 the Owner of any kind whatsoever.

14. **Wage Scale:** The Contractor 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. **Payment:** After all work is completed by the Contractor, and the Owner has inspected and approved that work, the Owner shall within thirty-one (31) days thereafter issue payment to the Contractor in the amount of the contract and subsequent verified Change Orders. The Owner shall be the final judge of when work is completed by the Contractor. 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.

16. **No Third Party Beneficiary:** The Owner'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.

17. **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.

18. **Sovereign Immunity:** By executing this contract the Owner is not waiving its right of sovereign immunity. The Owner is retaining its immunity from suit. The Owner is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

19. **Insurance**

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

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

Worker's Compensation: Statutory limits

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

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

The Business Automobile Liability insurance provided by Contractor 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 Contract.

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.

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 Worker's Compensation Insurance, shall name the City as an additional insured on a claims 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.

20. **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.

21. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISIONS, 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 TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR OWNER'S NEGLIGENCE.**

22. **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.

23. **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 respondeat 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.

24. **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, Contractor or his legal representative, shall give the City Manager, or any other reasonable official of the Owner, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred 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 Owner from any liability whatsoever. The Owner is under no obligation to provide notice to Contractor that Contractor's notice is insufficient. Owner 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, 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 if Owner has actual or constructive notice or knowledge of said claim or alleged damages. Contractor agrees that the requirements of this entire Contract are reasonable.

25. **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.

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

Contract No: Contract No.(file #)

OWNER, City of Midland

CONTRACTOR, R.E. Monks
Construction Company, LLC

Courtney B. Sharp, City Manager

Daniel R. Monks, President

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract #

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day 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 _____, 2013.

Notary Public, State of Texas

**EXHIBIT A
PROPOSAL**

December 20, 2012

TO: The Mayor and City Council
City of Midland
Midland, Texas

Gentlemen:

Pursuant to the foregoing Notice to Bidders, the undersigned Bidder hereby proposes to do all work and furnish all necessary superintendence, labor, machinery, equipment, tools, and materials and whatever else may be necessary to complete all work upon which he bids, as provided by the attached specifications, and binds himself on acceptance of his Proposal to execute a Contract and Bonds according to the accompanying forms, for performing and completing the said work within the time stated, and furnishing all required guarantees, for the following prices to-wit:

CELL 7 EXCAVATION AND LINER CONSTRUCTION

Item No.	Quantity & Unit	Description of Item and Unit Prices	Total Amount
1.	1 LS	Mobilization (3% max), complete, per lump sum: <u>One Hundred Sixty Four Thousand</u> Dollars and <u>Zero</u> Cents (\$ <u>164,000.00</u>)	<u>\$ 164,000.00</u>
2.	4,850 SY	Remove existing access road, complete, per square yard: <u>Two</u> Dollars and <u>Eighty</u> Cents (\$ <u>2.80</u>)	<u>\$ 13,580.00</u>
3.	1 EA	Plug existing GWM Well 8, complete, per each: <u>Six Thousand Seven Hundred</u> Dollars and <u>Zero</u> Cents (\$ <u>6,700.00</u>)	<u>\$ 6,700.00</u>
4.	2,615 LF	Remove existing pipeline, complete, per linear foot: <u>Four</u> Dollars and <u>Twenty</u> Cents (\$ <u>4.20</u>)	<u>\$ 10,983.00</u>

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10/12

PROPOSAL

EXHIBIT A - I

Item No.	Quantity & Unit	Description of Item and Unit Prices	Total Amount
5.	1,650 LF	Remove existing litter fence, complete, per linear foot: _____ _____ <u>Zero</u> _____ Dollars and <u>Eighty</u> Cents (\$ <u>0.80</u>)	\$ <u>1,320.00</u>
6.	344,230 CY	Relocate borrow material, complete, per cubic yard: _____ _____ <u>One</u> _____ Dollars and <u>Fifty Eight</u> Cents (\$ <u>1.58</u>)	\$ <u>543,883.40</u>
7.	1,053,530 CY	Excavation, complete, per cubic yard: _____ _____ <u>Two</u> _____ Dollars and <u>Ten</u> Cents (\$ <u>2.10</u>)	\$ <u>2,212,413.00</u>
8.	12,720 CY	Embankment fill, complete, per cubic yard: _____ _____ <u>Zero</u> _____ Dollars and <u>Fifty</u> Cents (\$ <u>0.50</u>)	\$ <u>6,360.00</u>
9.	1,061,970 SF	Subgrade preparation - floor, complete, per square foot: _____ _____ <u>Zero</u> _____ Dollars and <u>Three</u> Cents (\$ <u>0.03</u>)	\$ <u>31,859.10</u>
10.	106,950 SF	Subgrade preparation - slope, complete, per square foot: _____ _____ <u>Zero</u> _____ Dollars and <u>Ten</u> Cents (\$ <u>0.10</u>)	\$ <u>10,695.00</u>
11.	1,058,530 SF	Geosynthetic clay liner - floor, complete, per square foot: _____ _____ <u>Zero</u> _____ Dollars and <u>Sixty</u> Cents (\$ <u>0.60</u>)	\$ <u>635,118.00</u>

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10/12

PROPOSAL

EXHIBIT A - 2

Item No.	Quantity & Unit	Description of Item and Unit Prices	Total Amount
12.	112,670 SF	Geosynthetic clay liner - slope, complete, per square foot: _____ _____ <u>Zero</u> Dollars and <u>Seventy</u> Cents (\$ <u>0.70</u>)	\$ <u>78,869.00</u>
13.	1,058,530 SF	Geomembrane liner - smooth, complete, per square foot: _____ _____ <u>Zero</u> Dollars and <u>Fifty</u> Cents (\$ <u>0.50</u>)	\$ <u>529,265.00</u>
14.	112,670 SF	Geomembrane liner - textured, complete, per square foot: _____ _____ <u>Zero</u> Dollars and <u>Fifty Eight</u> Cents (\$ <u>0.58</u>)	\$ <u>65,348.60</u>
15.	1,171,200 SF	Geomembrane drainage layer, complete per square foot: _____ _____ <u>Zero</u> Dollars and <u>Fifty two</u> Cents (\$ <u>0.52</u>)	\$ <u>609,024.00</u>
16.	1,061,970 SF	Protective soil cover - floor, complete, per square foot: _____ _____ <u>Zero</u> Dollars and <u>Twenty three</u> Cents (\$ <u>0.23</u>)	\$ <u>244,253.10</u>
17.	106,950 SF	Protective soil cover - slope, complete, per square foot: _____ _____ <u>Zero</u> Dollars and <u>Thirty Seven</u> Cents (\$ <u>0.37</u>)	\$ <u>39,571.50</u>
18.	16,570 SF	Geotextile fabric, complete, per square foot: _____ _____ <u>Zero</u> Dollars and <u>Seventy Five</u> Cents (\$ <u>0.75</u>)	\$ <u>12,427.50</u>

01287012
10/12

PROPOSAL

EXHIBIT A - 3

Item No.	Quantity & Unit	Description of Item and Unit Prices	Total Amount
19.	430 CY	Gravel drainage material, complete, per cubic yard: <u>One Hundred Two</u> Dollars and <u>Zero</u> Cents (\$ <u>102.00</u>)	<u>\$43,860.00</u>
20.	1,170 LF	6-inch leachate collection pipe, complete per linear foot: <u>Ten</u> Dollars and <u>Zero</u> Cents (\$ <u>10.00</u>)	<u>\$11,700.00</u>
21.	1 LS	Sump and concrete access structure, complete, per lump sum: <u>Thirty Two Thousand</u> Dollars and <u>Zero</u> Cents (\$ <u>32,000.00</u>)	<u>\$32,000.00</u>
22.	7,760 SY	Paved access road, complete, per square yard: <u>Thirty Two</u> Dollars and <u>Zero</u> Cents (\$ <u>32.00</u>)	<u>\$248,320.00</u>
23.	1 LS	Site signage, complete, per lump sum: <u>One</u> <u>Thousand Four Hundred Fifty</u> Dollars and <u>Zero</u> Cents (\$ <u>1,450.00</u>)	<u>\$1,450.00</u>
24.	1 LS	Erosion control, complete, per lump sum: <u>Twenty</u> <u>One Thousand Seven Hundred Fifty</u> Dollars and <u>Zero</u> Cents (\$ <u>21,750.00</u>)	<u>\$21,750.00</u>
TOTAL BASE BID CELL 7 EXCAVATION AND LINER CONSTRUCTION BID ITEMS 1 - 24 INCLUSIVE			<u>\$5,574,750.20</u>

01287012
10/12

PROPOSAL

EXHIBIT A - 4

Item No.	Quantity & Unit	Description of Item and Unit Prices	Total Amount
A-1	6,180 SY	Paved access road, complete, per square yard: <u>Thirty Two</u> Dollars and <u>Zero</u> Cents (\$ <u>32.00</u>)	<u>\$197,760.00</u>
TOTAL ADDITIVE ALTERNATE BID PAVED ACCESS ROAD BID ITEM A-1			<u>\$5,772,510.20</u>

The bidder is required to separate the cost of materials to be incorporated into this project. Such material costs are separated from the other costs so that the Bidder is a seller of such materials to the City. The Bidder shall be required to issue a resale certificate on such materials in lieu of paying the sales tax on such materials at the time of purchase. The City will provide the successful Bidder with a sales tax exemption certificate for such materials. The labor and materials charge shall be separated as follows:

MATERIALS	<u>\$4,632,169.20</u>
LABOR	<u>\$ 1,140,341.00</u>
TOTAL BID	<u>\$ 5,772,510.20</u>

The undersigned Bidder hereby declares that he has visited the site of the work and has carefully examined the Plans, Specifications and Contract Documents pertaining to the work covered by the above bid, and he further agrees to commence work within ten (10) days after written notice to do so, and to complete all work within the consecutive calendar days framework noted in the Contract.

Bidder further agrees to pay as liquidated damages, the sum of \$1,105.00 for each consecutive calendar day thereafter as hereinafter provided in Paragraph 9 of the Contract.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

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10/12

PROPOSAL

EXHIBIT A - 5

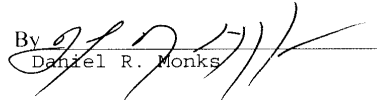
Bidder acknowledges receipt of the following addendum:

One

Two

R.E. Monks Construction Company LLC
CONTRACTOR

(Seal if Bidder is a
Corporation)

By 
Daniel R. Monks
8355 Vollmer Road
Colorado Springs, Colorado 80908

Address

Phone: (719) 495-3621

Attest: 
Victoria R. Wilcox

01287012
10/12

PROPOSAL

EXHIBIT A - 6

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/18/2012

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 Willis of Colorado, Inc. 2000 South Colorado Boulevard Tower II, Suite 900 Denver, CO 80222		CONTACT NAME: PHONE (A/C, No, Ext): 303 722-7776 FAX (A/C, No): 303-722-8862 E-MAIL ADDRESS:	
INSURED R. E. Monks Construction Company, LLC 8355 Vollmer Rd. P.O. Box 25579 Colorado Springs, CO 80936		INSURER(S) AFFORDING COVERAGE INSURER A: Ins Co of the State of Pennsylv INSURER B: National Union Fire INSURER C: Pinnacol Assurance INSURER D: INSURER E: INSURER F:	NAIC # 19429 B6787 41190

COVERAGES

CERTIFICATE NUMBER:

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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ CG 2033 0704 ☒ CG 2037 0704 GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC		X	9612788	05/01/2012	05/01/2013	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$50,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPIOP AGG \$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS		X	1707542	05/01/2012	05/01/2013	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ EXCESS LIAB DED ☒ RETENTION \$10000		X	BE23465113	05/01/2012	05/01/2013	EACH OCCURRENCE \$25,000,000 AGGREGATE \$25,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☒ Y/N ☒ N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		X	021417876	05/01/2012	05/01/2013	☒ WC STATUTORY LIMITS E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C			X	4139040	05/01/2012	05/01/2013	

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

The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Workers' Compensation. The Contractor 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.

CERTIFICATE HOLDER

CANCELLATION

City of Midland P.O. Box 1152 Midland, TX 78702	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>Craig A. Merten</i>
---	---

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POLICY NUMBER: 9612788

COMMERCIAL GENERAL LIABILITY
CG 20 37 07 04

Effective: 05/01/2012

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Only those Required by Written Contract	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

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, issued by a bank satisfactory to the Owner, 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 owner, must accompany the bidder's proposal, as a guaranty that the bidder will enter a contract and execute the required payment bond and guaranty in the forms provided within fifteen (15) days after notice of award of contract to him. Bids or proposals without the required bid guaranty will not be considered. All bid sureties and payment bonds shall name the City of Midland as Obligee.

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

BID BOND

THE STATE OF ~~TEXAS~~ §
COLORADO
COUNTY OF ~~MIDLAND~~ §
DENVER

SURETY NO. Not Applicable (Bid Bond)

KNOW ALL MEN BY THESE PRESENTS, THAT R.E. Monks Construction Company LLC
8355 Vollmer Road, Colorado Springs, CO 80908

(hereinafter called the Principal), as Principal, and Travelers Casualty and Surety Company of America
One Tower Square, Hartford, CT 06183

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

(\$-----5%-----), 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 Municipal Solid Waste Landfill, Cell 7 Excavation and Liner Construction, TCEQ MSW Permit No. 1605B
PSC Project #01287012

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
20th day of December, 2012.

R.E. Monks Construction Company, LLC

Principal

By

Daniel R. Monks

Address 8355 Vollmer Road

Colorado Springs, CO 80908

Travelers Casualty and Surety Company of America

Surety

By

Kevin W. McMahon, Attorney-in-Fact

Address One Tower Square

Hartford, CT 06183

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

FORMBIDBOND.FRM

REVISED: March 30, 2011



POWER OF ATTORNEY

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 St. Paul Fire and Marine Insurance Company
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company

Attorney-In Fact No. 225493

Certificate No. 005296301

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

J. R. Trojan, Susan J. Lattarulo, DiLynn Guern, Kevin W. McMahon, Mark Sweigart, Florietta Acosta, Tiffany McGonigle, Donald E. Appleby, Gloria C. Blackburn, Sarah Brown, Todd Bengford, and Lindsey Knickerbocker

of the City of Denver, State of Colorado, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 6th day of December, 2012.

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 St. Paul Fire and Marine Insurance Company
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company



State of Connecticut
 City of Hartford ss.

By:

Robert L. Raney, Senior Vice President

On this the 6th day of December, 2012, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
 My Commission expires the 30th day of June, 2016.



Marie C. Tetreault, Notary Public

58440-8-12 Printed in U.S.A.

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seals of said Companies this 20th day of December, 2012.


Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

EXHIBIT "D"

PREVAILING WAGE RATE SCHEDULE HEAVY CONSTRUCTION as of September 3, 2010 General Decision: TX100001

<u>Classification</u>	<u>Rate/hr</u>	<u>Fringes</u>
Air Tool Operator	9.05	
Asphalt Distributor Operator	10.46	
Asphalt Heater Operator	11.21	
Asphalt Paving Machine Operator	9.38	
Asphalt Raker	9.53	
Asphalt Shoveler	7.33	
Batching Plant Weigher	11.15	
Broom or Sweeper Operator	8.01	
Bulldozer Operator	10.88	
Carpenter	10.10	
Concrete Finisher-Paving	11.25	
Concrete Finisher Structures	10.03	
Concrete Paving Saw Operator	15.00	
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator	11.94	
Crusher, Screen Plant Operator	9.00	
Electrician	19.00	
Flagger	7.29	
Form Builder/Setter-Structures	10.01	
Form Setter - Paving & Curb	9.43	
Foundation Drill Operator, Truck Mounted	18.00	
Front End Loader Operator	10.04	
Laborer - Common	8.25	
Laborer Utility	9.62	
Mechanic	14.05	
Milling Machine Operator, Fine Grade	12.20	
Motor Grader Operator Rough	14.36	

<u>Classification</u>	<u>Rate/hr</u>	<u>Fringes</u>
Motor Grader Operator, Fine Grade	13.24	
Oiler	10.67	
Painter, Structures	11.00	
Pavement Marking Machine Operator	9.26	
Planer Operator	17.50	
Reinforcing Steel Setter, Paving	9.50	
Reinforcing Steel Setter, Structure	11.85	
Roller Operator, Pneumatic, Self Propelled	7.55	
Roller Operator, Steel Wheel, Flat Wheel/Tamping	8.66	
Roller Operator, Steel Wheel, Plant Mix Pavement	9.81	
Scraper Operator	7.78	
Servicer	8.22	
Slip Form Machine Operator	13.64	
Spreader Box Operator	10.07	
Tractor Operator, Pneumatic	8.58	
Traveling Mixer Operator	9.71	
Truck driver, lowboy-Float	11.42	
Truck driver, Single Axle, Heavy	11.00	
Truck driver, Single Axle, Light	7.55	
Truck driver, Tandem Axle, Semi-Trailer	9.02	
Wagon Drill, Boring Machine, Post Hole Driller Operator	8.86	
Welder	9.75	
Work Zone Barricade Servicer	8.64	

Welders – Receive rate prescribed for craft performing operation to which welding is incidental.

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 (29 CFR 5.5(a) 1(ii)).

PAYMENT BOND

STATE OF TEXAS §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

of the City of _____ County of _____,
and State of _____ as Principal, and _____

_____ (hereinafter called the Surety(s)), as Surety(s), 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____, to _____
_____;

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, 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.

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

PROVIDED further that this Payment Bond is submitted in compliance with Chapter 2253 of the Texas Government Code.

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 this contract, assignment thereof, or to the work to be performed thereunder.

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

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

(hereinafter called the principal(s)), as principal(s), and _____

_____,
(hereinafter called the Surety(s)), as Surety(s), are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), 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____, to furnish and deliver the following equipment:

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 copied at length herein, as well as the Principals 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 bidders, general and special conditions and other contract documents, including any addendums 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.

PROVIDED further that this Performance Bond is submitted in compliance with Chapter 2253 of the Texas Government Code.

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 effect its obligation on this Bond, and it does waive notice of any such change, extension of time, alteration or addition to the terms of this contract, assignment thereof, or to the work to be performed thereunder.

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

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:

Regina Stephenson
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 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.

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.

More information, additional forms, instructions and FAQs are available at: <http://www.ci.midland.tx.us/Purchasing/HB914.htm> and click the appropriate link.

A copy of the form is attached. A fill-in version is available from the above web-site.

For a current list of the City Elected Officials go to: <http://www.ci.midland.tx.us> and choose City Government from the left side bar, then click Mayor and Council.

For a current list of the City Management Staff go to: <http://www.ci.midland.tx.us> and choose City Government from the left side bar, then click City Manager's Office.

If you have previously submitted a form, it is NOT necessary to send another, unless the status has changed. If submitting due to change in previous status, please note change in status on the front of the form.

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

City of Midland

Attn: City Secretary

P. O. Box 1152

Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

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

OFFICE USE ONLY

Date Received

1 Name of person doing business with local governmental entity.

R.E. Monks Construction Company LLC

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 September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name each employee or contractor of the local governmental entity who makes recommendations to a local government officer of the governmental entity with respect to expenditures of money AND describe the affiliation or business relationship.

N/A

4 Name each local government officer who appoints or employs local government officers of the governmental entity for which this questionnaire is filed AND describe the affiliation or business relationship.

N/A

N/A

Adopted 11/02/2005

CONFLICT OF INTEREST QUESTIONNAIRE**For vendor or other person doing business with local governmental entity****5 Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.**

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or other relationship. Attach additional pages to this Form CIQ as necessary.

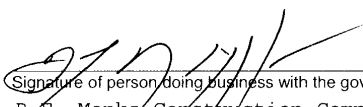
A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire? ☐ Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity? ☐ Yes ☐ No

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? ☐ Yes ☐ No

D. Describe each affiliation or business relationship.

6


Signature of person doing business with the governmental entity

R.E. Monks Construction Company LLC

Daniel R. Monks

December 20, 2012

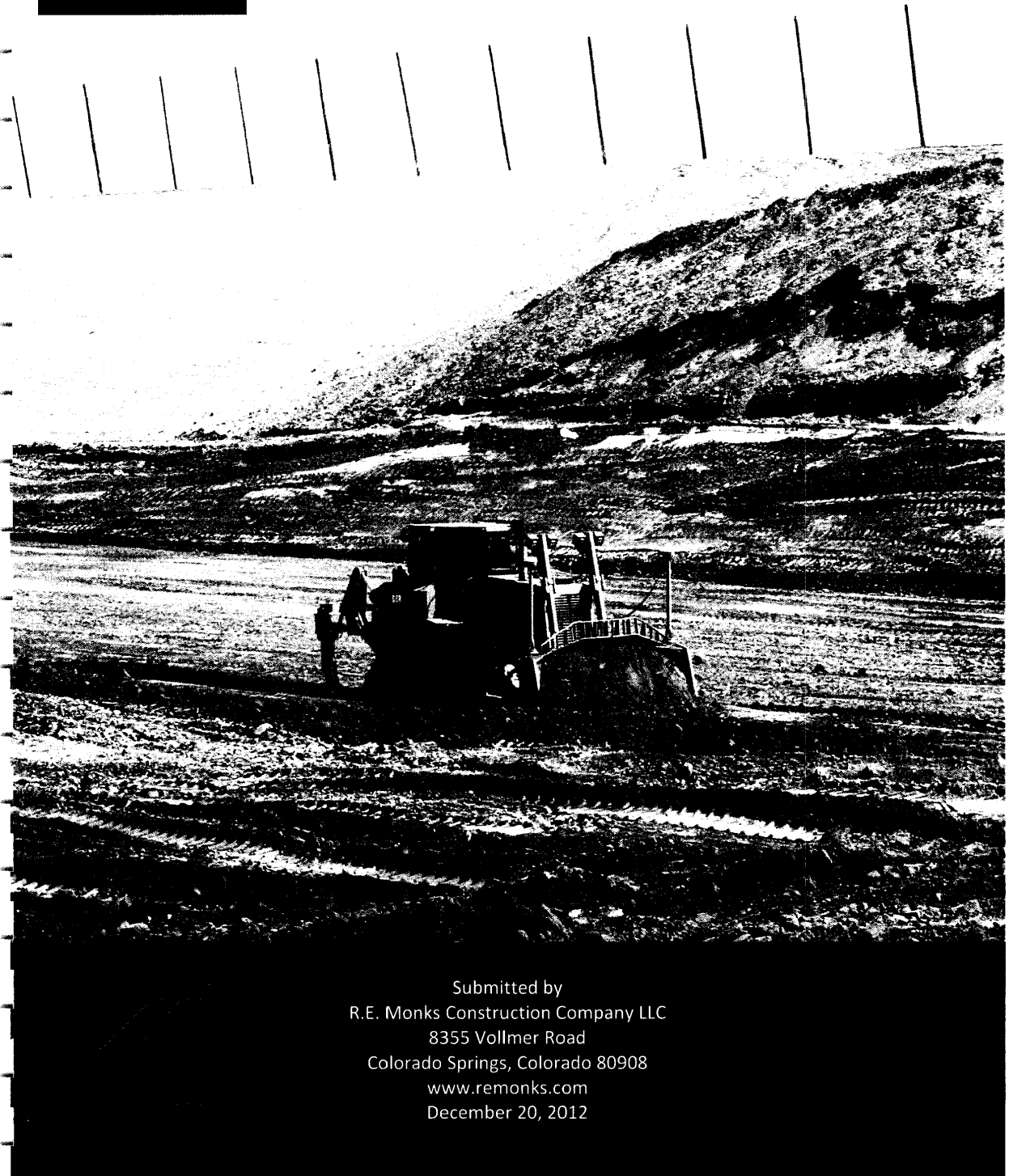
Date

Adopted 11/02/2005



City of Midland, Texas Municipal Waste Landfill

Cell 7 Excavation and Liner Construction



Submitted by
R.E. Monks Construction Company LLC
8355 Vollmer Road
Colorado Springs, Colorado 80908
www.remonks.com
December 20, 2012



Office of the Secretary of State

Certificate of Fact

The undersigned, as Secretary of State of Texas, does hereby certify that the document, Application for Registration for R.E. MONKS CONSTRUCTION COMPANY, LLC (file number 800721079), a ARIZONA, USA, Foreign Limited Liability Company (LLC), was filed in this office on October 13, 2006.

It is further certified that the entity status in Texas is in existence.

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on September 28, 2012.



A handwritten signature in black ink, appearing to read "Hope Andrade".

Hope Andrade
Secretary of State

Phone: (512) 463-5555
Prepared by: SOS-WEB

Come visit us on the internet at <http://www.sos.state.tx.us/>

Fax: (512) 463-5709
TID: 10264

Dial: 7-1-1 for Relay Services
Document: 445685930005

SECTION 01010

SUMMARY OF WORK

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Work covered by Contract Documents
- B. Contractor use of site.
- C. Owner occupancy.

1.3 WORK COVERED BY CONTRACT DOCUMENTS

- A. Identification: City of Midland, Texas, Municipal Solid Waste Landfill, Cell 7 Excavation and Liner Construction.
- B. Location: Midland, Texas Municipal Solid Waste Landfill, TCEQ MSW Permit No. 1605B.
- C. Verbal Summary: Without force or effect on requirements of the Contract Documents a brief description of the Project is as follows:
 - 1. Earthwork excavation, filling, and grading as shown on plans below existing grade. The topsoil from the excavated area is to be stock-piled on site. The area is shown on the plans. Contractor must segregate all clean topsoil from soil containing caliche or other materials into individual stockpiles.
 - 2. Subgrade preparation to the lines and grades shown on the plans.
 - 3. Reinforced Geosynthetic Clay Liner.
 - 4. 60 mil high density polyethylene liners, smooth and textured.
 - 5. Geocomposite drainage layer (dual geotextile).
 - 6. Polyethylene pipe, gravel and geotextile fabric.
 - 7. Construction Testing
 - 8. Protective Soil Cover placement.
 - 9. Erosion control.
 - 10. Access road.
 - 11. Liner Markers.
 - 12. Leachate Sump Access Structure.
 - 13. Removal of asphalt access road, litter fence, and pipeline.
 - 14. Abandonment and plugging of groundwater monitoring well.

1.4 CONTRACTOR USE OF SITE

- A. Limit use of site to allow Owner occupancy.
- B. Construction Operations will be limited to areas adjacent to construction site as designated by the Owner.

1.5 PROTECTION OF EXISTING UTILITIES AND STRUCTURES

- A. The Contractor shall exercise care to prevent damage to, and shall be liable for any damage to, and for maintenance and protection of such lines and structures as are shown on the drawings or otherwise brought to the attention of the Contractor. The Contractor shall not cut, remove, change or disturb any existing lines, except as provided by the plans and these specifications, without the express permission of the Owner of any such line. Utility adjustments or relocations will be accomplished by the Owner of each utility, except for water and sewer or as otherwise shown on the drawings.

1.6 OWNER OCCUPANCY

- A. The Owner will occupy the site during construction for the conduct of normal operations.
- B. Cooperate with Owner to minimize conflict, and to facilitate Owner's operations.
- C. Schedule the Work to accommodate this requirement.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

3.1 SOIL LINER QUALITY CONTROL PLAN (SLQCP)

- A. The technical project specifications contain requirements for liner system installation and testing. The Soil Liner Quality Control Plan (SLQCP) that is approved by the Texas Commission on Environmental Quality has also been included in the appendix of the project manual. The project shall be constructed and tested in accordance with the SLQCP. If there exists a discrepancy between the project technical specifications and the SLQCP, the SLQCP shall take precedence.

END OF SECTION

SECTION 01019

CONTRACT CONSIDERATIONS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Application for Payment.
- B. Change procedures.

1.3 RELATED SECTIONS

- A. Section 01300 - Submittals: Schedule of Values.
- B. Section 01600 - Material and Equipment: Product substitutions.

1.4 PROJECT DURATION

- A. Definitions
 - 1. Substantial Completion – The point at which the liner system has been satisfactorily installed and all related work complete.
 - 2. Final Completion – The point at which the Liner Evaluation Reports (LER) are accepted as complete by the TCEQ.
- B. Substantial Completion – Work associated with the project shall be substantially complete within 240 calendar days of Notice-to-Proceed.
- C. Final Completion – The duration of final completion is dependent upon the TCEQ's review of the LER. The balance of retainage will be held until the LER is accepted by the TCEQ.

1.5 APPLICATIONS FOR PAYMENT

- A. Submit four copies of each application to the Engineer.
- B. Payment Period: As defined in Owner-Contractor agreement.
- C. Waiver of liens from subcontractor.

1.6 CHANGE PROCEDURES

- A. The Engineer will advise of minor changes in the Work not involving an adjustment to Contract Sum/Price or Contract Time.
- B. Execution of Change Orders: Engineer will issue Change Orders for signatures of parties as provided in the General Conditions of the Contract.
- C. All Change Orders must be approved and signed by Owner. Do not commence with work included in a Change Order until it has been approved and signed by the Owner.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

SECTION 01025

MEASUREMENT AND PAYMENT

PART 1 - GENERAL

1.1 REQUIREMENTS

- A. The unit price or lump sum price bid on each item, as stated in the proposal, shall include furnishing all labor, superintendence, machinery, equipment, and materials necessary or incidental to complete the various items of work in accordance with the plans and specifications.
- B. All estimated quantities for unit price bid items stipulated in the bid proposal are approximate and are to be used only (a) as a basis for estimating the cost of the work and (b) for the purpose of comparing the bids submitted for the work. The actual amount of work done and materials furnished under unit price items may differ from the estimated quantities. The basis of payment for unit price work and materials will be the actual amount of work done and material furnished as measured by the Engineer.
- C. All measurements and payments will be based on completed and accepted work performed in strict accordance with the Drawings and Specifications and in accordance with contract bid prices. All incidental work and subsidiary items whether shown or not or listed for measurement or payment will not be paid for separately, but will be included in the payment for the bid items stated in the contract and shall be full compensation for all labor, equipment, materials, testing and incidentals necessary to perform the work in accordance with the Contract Documents.
- D. Cost of work or materials shown on the Drawings, called for in the Specifications and on which no separate payment is made, shall be included in the bid price for the various items for which they are associated. A claim by the Contractor for extra compensation for an item required but not shown on the Drawings or described in the Specifications will not be considered.
- E. It is anticipated that the interconnections between the various items of equipment and the control system will require coordination and in some cases interface devices such as, but not limited to, couplings, flanges, reducers, converters, conduit, relays, contacts, wiring, etc., will be required whether or not these items are shown on the Drawings. It is the General Contractor's responsibility to provide the necessary coordination and interface devices at no additional cost to the Owner.

1.2 MOBILIZATION/DEMOBILIZATION (BID ITEM 1)

Payment will be made for mobilizing and demobilizing all equipment, tools, insurance, bonds and all other job-related items to and from the job site. Price will be on a lump sum basis and shall include all equipment, labor, materials, superintendence and all incidentals necessary to become fully mobilized at the start of the project and demobilized when work is complete. Mobilization related expenses include Contractor's cost for the following: obtaining a construction staging area; obtaining storage areas for equipment and construction office facilities; obtaining and setting up construction office facilities; obtaining and paying for electric power required for construction; providing sanitary facilities for construction personnel; obtaining and paying for water needed for construction; providing and maintaining dust control over the project working area; and all other incidentals required for Contractor to complete mobilization. This bid item shall not exceed 3% of the contract price.

1.3 REMOVE EXISTING ASPHALT ROAD (BID ITEM 2)

Payment will be made for completely removing the existing asphalt road as shown on the plans and as specified on a per square yard basis. Price shall include all material, labor, equipment, and superintendence necessary to completely remove the asphalt road.

1.4 WELL ABANDONMENT (BID ITEM 3)

Payment will be made for plugging and abandoning existing groundwater monitoring well as shown on the plans and as specified on a per each basis. Price shall include all material, labor, equipment, and superintendence necessary to plug and abandon the well.

1.5 REMOVE EXISTING PIPELINE (BID ITEM 4)

Payment will be made for completely removing the existing underground pipeline as shown on the plans and as specified on a per linear foot basis. Price shall include all material, labor, equipment, and superintendence necessary to completely remove the pipeline. Price shall also include any required excavation, backfill, cutting, plugging and capping, and disposal.

1.6 REMOVE EXISTING LITTER FENCE (BID ITEM 5)

Payment will be made for completely removing the existing litter fence as shown on the plan and as specified on a per linear foot basis. Price shall include all material, labor, equipment, and superintendence necessary to completely remove the litter fence. Price shall also include cost to completely remove netting, guy wires, cables, and anchors. Posts shall be completely removed to full depth.

1.7 RELOCATE BORROW MATERIAL (BID ITEM 6)

Payment will be made for relocating above grade borrow material as shown on the plans and as specified on a per cubic yard basis. CONTRACTOR must provide survey control baseline survey prior to beginning work and finish survey measurements to verify amount of relocated borrow material for payment purposes.

1.8 EXCAVATION (BID ITEM 7)

Payment will be made for providing all labor, equipment, materials, supplies, etc., necessary to excavate the cell and drainage channels to the elevations and grades shown on the plans to receive the lining system, drainage channel and access road. Payment will be made for the total excavation on a per-cubic yard of excavation. CONTRACTOR must provide survey control baseline survey prior to beginning work and finish survey measurements to verify amount of excavation for payment purposes.

1.9 EMBANKMENT FILL (BID ITEM 8)

Payment will be made for providing all labor, equipment, materials, supplies, etc., necessary to fill the areas shown to receive the lining system, drainage channel, access road, and to construct the berms in accordance with the plans and specifications. Payment will be made for the actual measured cubic yardage of embankment fill. CONTRACTOR must provide survey control baseline survey prior to beginning work and finish survey measurements to verify amount of fill for payment purposes.

1.10 SUBGRADE PREPARATION (FLOOR) (BID ITEM 9)

Payment will be made for providing all labor, equipment, materials, supplies, etc., necessary to prepare the floor areas to receive the lining system and leachate collection system including all grading and compaction as shown on the plans and specifications. Payment will be made for total subgrade preparation on a per square foot basis of floor subgrade preparation.

1.11 SUBGRADE PREPARATION (SLOPES) (BID ITEM 10)

Payment will be made for providing all labor, equipment, materials, supplies, etc., necessary to prepare the slope areas, from toe of slope up to inside edge of anchor trench, to receive the lining system as shown on the plans. Payment will be made for total subgrade preparation on a per square foot basis of slope subgrade preparation.

1.12 REINFORCED GEOSYNTHETIC CLAY LINER (FLOOR) (BID ITEM 11)

Payment will be made for providing and installing reinforced GCL, including all labor, equipment, materials, supplies and superintendence necessary to install the reinforced GCL as shown on the plans. Price shall include cost of tie-in to existing liner. Payment will be made for the actual measured square footage of the liner installed and in place. Payment shall be made on the net quantity of floor surface area covered. No additional quantity will be paid for material overlap.

1.13 REINFORCED GEOSYNTHETIC CLAY LINER (SLOPE) (BID ITEM 12)

Payment will be made for providing and installing reinforced GCL, constructing and backfilling anchor trench, including all labor, equipment, materials, supplies and superintendence necessary to install the reinforced GCL as shown on the plans. Price shall include cost of tie-in to existing liner. Payment will be made for the actual measured square footage of the liner installed and in place up to the back edge of the anchor trench. Payment shall be made on the net quantity of surface area covered. No additional quantity will be paid for material overlap.

1.14 SMOOTH GEOMEMBRANE LINER (BID ITEM 13)

Payment will be made for providing and installing a 60-mil thick, smooth high density polyethylene liner including all labor, equipment, materials, supplies, etc., for complete installation. Price shall include cost of tie-in to existing liner. Payment will be made for the actual measured square footage of the liner installed and in place. No additional pay quantity will be made for the sacrificial membrane. Payment shall be made on the net quantity of surface area covered. No additional quantity will be paid for material overlap.

1.15 TEXTURED GEOMEMBRANE LINER (BID ITEM 14)

Payment will be made for providing and installing a 60-mil thick, textured high density polyethylene liner including all labor, equipment, materials, supplies, etc., for complete installation. Price shall include cost of anchor trench construction, compaction of backfill in anchor trench after liner installation and tie-in to existing liner. Payment will be made for the actual measured square footage of the liner installed and in place up to the back edge of the anchor trench. No additional pay quantity will be made for the sacrificial membrane. Payment shall be made on the net quantity of surface area covered. No additional quantity will be paid for material overlap.

1.16 DUAL GEOTEXTILE GEOCOMPOSITE DRAINAGE LAYER (BID ITEM 15)

Payment will be made for providing and installing the dual geotextile geocomposite drainage layer, including anchor trench and backfill. Price shall include tie-in to existing geocomposite layer, all materials, labor, supplies, equipment and superintendence to install dual geocomposite drainage layer as specified. Payment will be made for the actual measured square footage of the liner installed and in place. Payment shall be made on the net quantity of surface area covered. No additional quantity will be paid for material overlap.

1.17 PROTECTIVE SOIL COVER (FLOOR) (BID ITEM 16)

Contractor will place all protective soil on top of the floor liner system. Payment will be made for installation of soil cover material that is available on site. Price will include all labor, material, equipment and superintendence as necessary to install the soil. Payment will be made for actual measured square footage of the 2-foot thick protective floor cover up to toe of side slopes. Thickness shall be measured perpendicular to the prepared subgrade.

1.18 PROTECTIVE SOIL COVER (SLOPES) (BID ITEM 17)

Contractor will place all protective soil on top of the slope liner system including the soil berm along the edge liner as shown on the plans. Payment will include all labor, materials, equipment and superintendence as necessary to install the soil. Payment will be made for actual measured square footage of the 2-foot thick protective slope cover from toe of side slope up to outside edge of the anchor trench. Thickness shall be measured perpendicular to prepared subgrade.

1.19 GEOTEXTILE FABRIC (8 OZ) (BID ITEM 18)

Payment will be made for providing and installing 8oz geotextile fabric as shown on the plans on a per square foot basis. Price shall include all material, labor, supplies, equipment and superintendence necessary to install the geotextile fabric as specified. Payment shall be made on the net quantity of gravel surface area covered. No additional quantity will be paid for material overlap.

1.20 GRAVEL DRAINAGE MATERIAL (BID ITEM 19)

Payment will be made for providing and installing the gravel drainage material as shown on the plans on a per cubic yard basis. Price shall include all material, labor, supplies, equipment and superintendence necessary to install the gravel drainage material as specified.

1.21 6-INCH LEACHATE COLLECTION (BID ITEM 20)

Payment will be made for providing and installing the 6-inch high density polyethylene piping as shown on the plans on a per linear foot basis. This item includes all pipe along the landfill floor up to the collection sump. Pipe from the collection sump up the side slope to the top of slope is to be considered part of the sump (Bid Item #21). Price shall include all material, labor, supplies, equipment and superintendence necessary to install the 6-inch PE piping as specified.

1.22 SUMP ACCESS STRUCTURE (BID ITEM 21)

Payment will be made for providing and installing the sump access structure as shown on the plans on a lump sum basis. Price shall include sump, sump access structure, 12-inch sump pipe, 6-inch transducer pipe, 6-inch cleanout riser, 2-inch return pipe and valve and valve box, additional soil cover over pipes and all other appurtenances. Price shall include all material, labor, supplies, equipment and superintendence necessary.

1.23 ACCESS ROAD (BID ITEM 22)

Payment will be made for providing materials and constructing the access road as shown on the plans on a per square yard basis. Price shall include all material, labor, supplies, equipment and superintendence necessary to construct the road as specified. The top width of the HMAC portion of the roadway will be used for quantity measurement purposes. This measurement will include payment for all subgrade preparation, base course material, and installation, and HMAC material and installation.

1.24 SITE SIGNAGE (BID ITEM 23)

Payment will be made for providing and installing site signage as shown on the plans on a lump sum basis. Price shall include all material, labor, supplies, equipment and superintendence necessary to install the signage as specified.

1.25 EROSION CONTROL (BID ITEM 24)

Payment will be made for providing, installing and maintaining erosion control measures as shown on the plans on a lump sum basis and shall include the following: preparation of a formal Storm Water Pollution Prevention Plan (SW3P) by a Texas licensed professional engineer; submitting and obtaining approval of the formal SW3P from the required governing agencies; furnishing, installing, and maintaining the approved SW3P complete for the duration of the project; implementing and maintaining best management practices and good-housekeeping for control of drainage run-off over the project area; silt-fences; soil stabilization; hay-bales; and all other incidentals required for Contractor to complete and implement the SW3P requirements.

1.26 ADDITIVE ALTERNATE NO. 1 – PAVED ACCESS ROADS (BID ITEM A-1)

Payment will be made for providing materials and constructing the paved access road as shown on the plans on a per square yard basis. Price shall include all material, labor, supplies, equipment and superintendence necessary to construct the road as specified. The top width of the HMAC portion of the roadway will be used for quantity measurement purposes. This measurement will include payment for all subgrade preparation, base course material, and installation, and HMAC material and installation.

1.27 SURVEY

No separate payment will be made for construction survey as required for the project. This item shall be considered incidental to all other bid items.

1.28 CLEANING

The project shall be returned to pre-construction conditions. No additional payment will be made for cleaning. This item shall be considered incidental to all other bid items.

1.29 CONNECTION TO EXISTING LINER

No payment will be made for connection to existing liner system. This item shall be considered incidental to all other bid items.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

SECTION 01039

COORDINATION AND MEETINGS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Coordination.
- B. Field engineering.
- C. Site mobilization conference.
- D. Preinstallation meetings.

1.3 COORDINATION

- A. Coordinate scheduling, submittals, and Work of the various Sections of specifications to assure efficient and orderly sequence of installation of interdependent construction elements, with provisions for accommodating items installed later.
- B. Verify that utility requirements and characteristics of operating equipment are compatible with building utilities. Coordinate work of various Sections having interdependent responsibilities for installing, connecting to, and placing in service, such equipment.
- C. Coordinate space requirements and installation of mechanical and electrical work which are indicated diagrammatically on Drawings. Follow routing shown for pipes, ducts, and conduit, as closely as practicable; place runs parallel with line of building. Utilize spaces efficiently to maximize accessibility for other installations, for maintenance, and for repairs.
- D. In finished areas, except as otherwise indicated, conceal pipes, ducts, and wiring within the construction. Coordinate locations of fixtures and outlets with finish elements.
- E. Large Apparatus: Any large piece of apparatus which is to be installed in any space in the building, and which is too large to permit access through windows, doorways or shafts, shall be brought to the job by the Contractor involved and placed in the space before the enclosing structure is completed.
- F. Items which require electrical connections shall be coordinated with Division 16 for:
 - 1. Voltage.
 - 2. Phase.
 - 3. Ampacity.
 - 4. No. and size of wires.
 - 5. Wiring diagrams.
 - 6. Starter size, details and location.
 - 7. Control devices and details.
- G. Coordinate completion and clean up of Work of separate Section in preparation for Substantial Completion and for portions of work designated for Owner's occupancy.

1.4 FIELD ENGINEERING

- A. Control datum for survey is shown on Drawings.
- B. Provide field engineering services. Establish elevations, lines, and levels, utilizing recognized engineering survey practices.

1.5 SITE MOBILIZATION CONFERENCE

- A. Engineer will schedule a conference at the Project site prior to Contractor occupancy.
- B. Attendance Required: Engineer and Contractor's Project Manager, Jobsite Superintendent, and major subcontractors.
- C. Agenda:
 - 1. Submission of insurance certificates.
 - 2. Distribution of Contract Documents.
 - 3. Submission of list of Subcontractors, list of products, Schedule of Values, and progress schedule.
 - 4. Designation of personnel representing the parties in Contract and the Engineer.
 - 5. Procedures and processing of field decisions, submittals, substitutions, applications for payments, proposal request, Change Orders and Contract closeout procedures.
 - 6. Scheduling.
 - 7. Use of premises by Owner and Contractor.
 - 8. Owner's requirements and partial occupancy.
 - 9. Construction facilities and controls provided by Owner.
 - 10. Temporary utilities provided by Owner.
 - 11. Survey layout.
 - 12. Security and housekeeping procedures.
 - 13. Schedules and Coordination.
 - 14. Procedures for testing.
 - 15. Procedures for maintaining record documents.
 - 16. Requirements for start-up of equipment.
 - 17. Inspection and acceptance of equipment put into service during construction period.
- D. Engineer or his representative will record meeting minutes and distribute copies within three days after meeting to participants and those affected by decisions made.

1.6 BI-WEEKLY MEETINGS

- A. Biweekly meetings will be held at the work area on a day agreeable to all parties. At minimum, the meeting will be attended by the Contractor, major subcontractors and the Engineer. The purpose of the meeting is to:
 - 1. Review the work activity and location for the week.
 - 2. Discuss the Contractor's personnel assignment for the week.
 - 3. Review the previous week's activity.
 - 4. Review the work schedule.
 - 5. Discuss the possible problem areas and situations.
 - 6. Review of submittals schedule and status of submittals.
 - 7. Review of off-site fabrication and delivery schedules.
 - 8. Maintenance of progress schedule.
 - 9. Corrective measures to regain projected schedules.
 - 10. Planned progress during succeeding work period.
 - 11. Coordination of projected progress.

-
- 12. Maintenance of quality and work standards.
 - 13. Effect of proposed changes on progress schedule and coordination.
 - 14. Review status of “as-built” drawings prepared by Contractor to ascertain that Contractor is keeping “as-built” drawings CURRENT.
 - 15. Other business relating to Work.
- B. Engineer or his representative will record meeting minutes and distribute copies within three days after meeting to participants and those affected by decisions made.

1.7 PREINSTALLATION MEETING

- A. When required in individual specification Section, convene a preinstallation meeting at work site prior to commencing work of the Section.
- B. Require attendance of parties directly affecting, or affected by, work of the specific Section.
- C. Notify Engineer four days in advance of meeting date.
- D. Prepare agenda and preside at meeting.
 - 1. Review conditions of installation, preparation and installation procedures.
 - 2. Review coordination with related work.
- E. Engineer or his representative will record meeting minutes and distribute copies within three days after meeting to participants and those affected by decisions made.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

SECTION 01090

REFERENCE STANDARDS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Quality assurance.
- B. Schedule of references.

1.3 QUALITY ASSURANCE

- A. For products or workmanship specified by association, trade, or Federal Standards, comply with requirements of the standard, except when more rigid requirements are specified or are required by applicable codes.
- B. Conform to reference standard by date of issue current on date for receiving bids.
- C. Obtain copies of standards when required by Contract Documents.
- D. Should specified reference standards conflict with Contract Documents, request clarification from Engineer before proceeding.
- E. The contractual relationship duties and responsibilities of the parties in Contract nor those of the Architect shall not be altered from the Contract Documents by mention or inference otherwise in any reference document.

1.4 SCHEDULE OF REFERENCES

AASHTO	American Association of State Highway and Transportation Officials 444 North Capitol Street, N.W. Washington, DC 20001
ACI	American Concrete Institute Box 19150 Reford Station Detroit, MI 48219
AGC	Associated General Contractors of America 1957 E Street, N.W. Washington, DC 20006
AI	Asphalt Institute Asphalt Institute Building College Park, MD 20740

ANSI	American National Standards Institute 1430 Broadway New York, NY 10018
ASME	American Society of Mechanical Engineers 345 East 47th Street New York, NY 10017
ASTM	American Society for Testing and Materials 1916 Race Street Philadelphia, PA 19103
AWS	American Welding Society 550 LeJeune Road, N.W. Miami, FL 33135
AWWA	American Water Works Association 6666 West Quincy Avenue Denver, CO 80235
CDA	Copper Development Association 57th Floor, Chrysler Building 405 Lexington Avenue New York, NY 10174
CLFMI	Chain Link Fence Manufacturers Institute 1101 Connecticut Avenue, N.W. Washington, DC 20036
CRSI	Concrete Reinforcing Steel Institute 933 Plum Grove Road Schaumburg, IL 60195
IEEE	Institute of Electrical and Electronics Engineers 345 East 47th Street New York, NY 10017
NEC	National Electrical Code (by NFPA)
NECA	National Electrical Contractors Association 7315 Wisconsin Avenue Bethesda, MD 20814
NEMA	National Electrical Manufacturers' Association 2101 'L' Street, N.W. Washington, DC 20037

NSF	National Sanitation Foundation 3475 Plymouth Road P.O. Box 1468 Ann Arbor, MI 47106
NWMA	National Woodwork Manufacturers Association 205 W. Touhy Avenue Park Ridge, IL 60068
OSHA	Occupational Safety and Health Administration (U.S. Department of Labor) Government Printing Office Washington, D.C. 20402
PCA	Portland Cement Association 5420 Old Orchard Road Skokie, IL 60077
WRI	Wire Reinforcement Institute 8361 A Greensboro Drive McLean, VA 22102
WWPA	Western Wood Products Association 1500 Yeon Building Portland, OR 97204
W.W.P.A.	Woven Wire Products Association 2515 N. Nordica Avenue Chicago, IL 60635

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

SECTION 01300

SUBMITTALS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Submittal procedures.
- B. Resubmittal requirements.
- C. Construction progress schedules.
- D. Proposed products list.
- E. Proposed equipment list.
- F. Shop drawings.
- G. Product data.
- H. Manufacturers' instructions.
- I. Manufacturers' certificates.

1.3 RELATED SECTIONS

- A. Section 01400 - Quality Control: Manufacturers' field services and reports.
- B. Section 01700 - Contract Closeout: Contract warranty, manufacturer's certificates and closeout submittals.

1.4 SUBMITTAL PROCEDURES

- A. Transmit each submittal with Contractor's standard transmittal letter including Contractor's name, address and phone number.
- B. Identify Project, Contractor, Subcontractor or supplier; pertinent Drawing sheet and detail number(s), and specification Section number, as appropriate.
- C. Apply Contractor's stamp, signed or initialed certifying that review, verification of Products required, field dimensions, adjacent construction Work, and coordination of information, is in accordance with the requirements of the Work and Contract Documents.
- D. Schedule submittals to expedite the Project, and deliver to Engineer at his business address. Coordinate submission of related items.
- E. Identify variations from Contract Documents and Product or system limitations which may be detrimental to successful performance of the completed Work.
- F. Provide space for Contractor and Engineer review stamps.
- G. Distribute copies of reviewed submittals to concerned parties. Instruct parties to promptly report any inability to comply with provisions.

H. Format

1. Submit all submittals digitally using .PDF file extension. Each submittal shall be a single .PDF file including transmittal letter. Multiple files for the same submittal will not be accepted.
 2. Submittals in any other format, including .ZIP files, will be rejected.
 3. Hard copies will not be accepted.
 4. To ensure each page is legible, .PDF pages of drawings shall be the same size/scale as a hard copy. Where applicable, scale symbols should be provided to indicate scale. Illegible submittals will be rejected.
 5. Submittals will be uploaded to Engineer's Info Exchange website.
- I. The submittal procedures described in this Article applies to the Construction Progress Schedule, Products List, Shop Drawings, Product Data, Samples (actual samples to be submitted, not digital files), Design Data, Test Reports, Certificates, Manufacturer's Instructions and Field Reports, and any other type of submittal submitted to Engineer.

1.5 RESUBMITTAL REQUIREMENTS

- A. Revise initial submittal as required identifying all changes made since previous submittal and resubmit to meet requirements as specified.
- B. Mark as RESUBMITTAL.

1.6 CONSTRUCTION PROGRESS SCHEDULES

- A. Submit initial progress schedule in duplicate within 15 days after date established in Notice to Proceed for Engineer review.
- B. Revise and resubmit as required.
- C. Indicate submittal dates required for shop drawings, product data, samples, and product delivery dates.

1.7 PROPOSED PRODUCTS LIST

- A. Within 15 days after date of Notice to Proceed, submit complete list of major products proposed for use, with name of manufacturer, trade name, and model number of each product.
- B. For products specified only by reference standards, give manufacturer, trade name, model or catalog designation, and reference standards.

1.8 SHOP DRAWINGS

- A. Submit in a reproducible form.
- B. Submit the number of reproductions which Contractor requires, plus three copies which will be retained by Engineer.
- C. Drawing size shall be minimum 8 1/2 x 11 inches and maximum of 24 x 36 inches.

1.9 PRODUCT DATA

- A. Submit the number of copies which the Contractor requires, plus three copies which will be retained by the Engineer.
- B. Mark each copy to identify applicable products, models, options, and other data.
- C. Include recommendations for application and use, compliance with specified standards of trade associations and testing agencies.

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- D. Include notation of special coordination requirements for interfacing with adjacent work.
 - E. After review, distribute in accordance with Article on Procedures above and provide copies for Record Documents described in Section 01700 - Contract Closeout.

1.10 MANUFACTURER'S INSTRUCTIONS

- A. When specified in individual specification Sections, submit manufacturers' printed instructions for delivery, storage, assembly, installation, start-up, adjusting, and finishing, in quantities specified for Product Data.
- B. Identify conflicts between manufacturers' instructions and Contract Documents.

1.11 MANUFACTURER'S CERTIFICATES

- A. When specified in individual specification Sections, submit manufacturers' certificate to Engineer for review, in quantities specified for Product Data.
- B. Indicate material or product conforms to or exceeds specified requirements. Submit supporting reference data, affidavits, and certifications as appropriate.
- C. Certificates may be recent or previous test results on material or Product, but must be acceptable to Engineer.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

SECTION 01356

STORM WATER POLLUTION PREVENTION MEASURES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Where required, the Contractor shall develop a Storm Water Pollution Prevention Plan (SWPPP), file a Notice of Intent (NOI) and implement storm water pollution prevention measures shown on the drawings. The Contractor shall be responsible for any fines or penalties assessed by the appropriate regulatory agency for failure to make required inspections, failure to properly document those inspections, and/or failure to adequately implement and adjust the storm water pollution prevention measures where a SWPPP is implemented.

1.3 SUBMITTALS

- A. Inspection Reports.

1.4 EROSION AND SEDIMENT CONTROLS

- A. General
 - 1. Structural measures shall be implemented to divert flows from exposed soils, temporarily store flows, or otherwise limit run-off and the discharge of pollutants from exposed areas of the site. Structural practices shall be implemented in a timely manner during the construction process to minimize erosion and sediment run-off.
- B. Stabilized Ingress/Egress
 - 1. Stabilized access to and from the construction site shall be installed as soon as practical where a SWPPP is required.
 - 2. In all cases, Contractor shall ensure that any soil tracked off-site is cleaned from existing roads, alleys, and any adjacent properties as soon as possible. The Contractor or other responsible party shall check for any pollutants (mud, silt, sand, cement, construction materials, etc.) tracked or washed off-site and perform necessary clean-up measures at the end of each work day.
- C. Silt Fences/Diversion Berms
 - 1. Where necessary, the Contractor shall provide silt fences and/or diversion berms as a temporary structural practice to minimize erosion and sediment runoff. Silt fences and/or diversion berms shall be properly installed to effectively retain sediment immediately after completing each phase of work where erosion would occur in the form of sheet and rill erosion (e.g. clearing and grubbing, excavation, embankment, and grading).
- D. Sand/Gravel Bags
 - 1. The Contractor may provide sand/gravel bags as a temporary structural practice to minimize erosion and sediment runoff. Bags shall be properly placed to effectively retain sediment immediately after completing each phase of work (e.g., clearing and grubbing,

excavation, embankment, and grading) in each independent runoff area (e.g., after clearing and grubbing in an area between a ridge and drain, bags shall be placed as work progresses, bags shall be removed/replaced/relocated as needed for work to progress in the drainage area). Sand/gravel bags must remain in good condition, or they shall be replaced.

E. Site Stabilization

1. Contractor shall disturb the least amount of site area as possible.
2. Stabilization measures may include any of the following measures:
 - a. temporary or permanent seeding or sodding,
 - b. mulching,
 - c. geotextiles,
 - d. vegetative buffer strips,
 - e. paving.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

3.1 STORM WATER POLLUTION PREVENTION PLAN

NOTE: The limits of disturbance for this project will exceed 1.0 AC in size. Contractor to prepare and submit bid accordingly.

- A. A SWPPP is only required if the limits of disturbance exceed 1.0 AC.
- B. If limits of disturbance exceed 1 AC, the Contractor is responsible for meeting requirements of TPDES. (Contractor shall develop SWPPP, file a NOI and implement SWPPP measures).
- C. A completed Construction Site Notice form in accordance with the requirements of the State's general permit for storm water discharges from construction sites will be prepared by the Contractor (where a SWPPP is required).
- D. The SWPPP (where required) shall be continually updated as necessary to reflect current and changing conditions on site. Additional measures not specifically shown in the SWPPP may be used to control erosion from leaving the site.

END OF SECTION

SECTION 01400
QUALITY CONTROL

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Quality assurance and control of installation.
- B. Tolerances.
- C. References.
- D. Move-up requirements.
- E. Inspection and testing laboratory services.
- F. Manufacturer's Field Services.
- G. Examination.
- H. Preparation.

1.3 RELATED SECTIONS

- A. Section 01090 - Reference Standards.
- B. Section 01300 - Submittals: Submission of Manufacturers' Instructions and Certificates.
- C. Section 01600 - Material and Equipment: Requirements for material and product quality.

1.4 QUALITY ASSURANCE/CONTROL OF INSTALLATION

- A. Monitor quality control over suppliers, manufacturers, Products, services, site conditions, and workmanship, to produce Work of specified quality.
- B. Comply fully with manufacturers' instructions, including each step in sequence.
- C. Should manufacturers' instructions conflict with Contract Documents, request clarification from Engineer before proceeding.
- D. Perform work by persons qualified to produce workmanship of specified quality.
- E. Verify field measurements are as indicated on Shop drawing or as instructed by Manufacturer.

1.5 TOLERANCES

- A. Monitor fabrication and installation tolerance control of products to produce acceptable Work. Do not permit tolerances to accumulate.
- B. Comply with manufacturers' tolerances. Should manufacturers' tolerances conflict with Contract Documents, request clarification from Engineer before proceeding.
- C. Adjust products to appropriate dimensions; position before securing in place.

1.6 REFERENCES

- A. For products or workmanship specified by association, trade, or other consensus standards, comply with requirements of standard, except when more rigid requirements are specified or are required by applicable codes.
- B. Conform to reference standard by date of issue current on date of Contract Documents except where a specific date is established by Code.
- C. Obtain copy of standards when required by specification section.
- D. Neither contractual relationship, duties nor responsibilities of parties in Contract nor those of the Engineer shall be altered from Contract Documents by mention or inference otherwise in any reference document.

1.7 INSPECTION AND TESTING LABORATORY SERVICES

- A. Contractor will perform quality control testing as necessary on the liner system and other aspects of the project to ensure compliance with the project specifications.
- B. Owner will appoint, employ, and pay for services of an independent firm to perform inspection and quality assurance testing on general construction and the liner system.
- C. The independent firm will perform inspections, tests, and other services specified in individual specification Sections and as required by the Engineer.
- D. Reports will be submitted by the independent firm to the Engineer, in triplicate, indicating observations and results of tests and indicating compliance or non-compliance with Contract Documents.
- E. Retesting required because of non-conformance to specified requirements shall be performed by the same independent firm on instructions by the Engineer. **Payment for retesting will be charged to the Contractor.**

1.8 MANUFACTURERS' FIELD SERVICES

- A. When specified in individual specification Sections, require material or product suppliers or manufacturers to provide qualified staff personnel to observe site conditions, conditions of surfaces and installation, quality of workmanship, start-up of equipment, test, adjust, and balance of equipment as applicable, and to initiate instructions when necessary.
- B. Submit qualifications of observer to Engineer 30 days in advance of required observations. Observer subject to approval of Engineer.
- C. Report observations and site decisions or instructions given to applicators or installers that are supplemental or contrary to manufacturers' written instructions.
- D. Refer to Section 01300 - Submittals, Manufacturers' Field Reports article.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Verify existing site conditions and substrate surfaces are acceptable for subsequent Work. Beginning new Work means acceptance of existing conditions.
- B. Verify existing substrate is capable of structural support or attachment of new Work being applied or attached.
- C. Examine and verify specific conditions described in individual specification sections.

END OF SECTION

SECTION 01500

CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Temporary Utilities: Electricity, water, and sanitary facilities.
- B. Temporary Controls: Barriers, water control, protection of the Work, and security.
- C. Construction Facilities: Progress cleaning and removal of utilities.

1.3 RELATED SECTIONS

- A. Section 01700 - Contract Closeout: Final cleaning.

1.4 CONSTRUCTION ENTRANCE

- A. Contractor shall coordinate with Owner and use operations entrance for site ingress/egress.

1.5 TEMPORARY ELECTRICITY

- A. Contractor shall contact electric company to provide service for temporary power.
- B. Owner will not pay cost of energy used. Exercise measures to conserve energy.
- C. Provide power outlets for construction operations, with branch wiring and distribution boxes located as required by Contractor's operations. Provide flexible power cords as required.
- D. Provide main service disconnect and overcurrent protection at convenient location in conformance with National Electrical Code.

1.6 TEMPORARY WATER SERVICE

- A. Contractor shall provide temporary water service for all purposes (potable and nonpotable).
- B. Owner will not pay cost of water used. Exercise measures to conserve water.
- C. Contractor must provide a means at Contractor's expense to pump the water from the source and load water transport vehicles.

1.7 TEMPORARY SANITARY FACILITIES

- A. Provide and maintain required facilities and enclosures.
- B. Permanent building facilities shall not be used during construction operations. Maintain daily in clean and sanitary condition.

1.8 BARRIERS/TRAFFIC CONTROL

- A. Provide barriers to prevent unauthorized entry to construction areas to allow for Owner's use of site, and to protect existing facilities and adjacent properties from damage from construction operations and demolition.
- B. Furnish all necessary traffic control signs and flag personnel. The Contractor shall establish a parking area in a location approved by the engineer and Owner.

1.9 STORM WATER CONTROL

- A. Grade site to drain. Maintain excavations free of water.
- B. Protect site from puddling or running water. Provide water barriers as required to protect site from soil erosion.
- C. Protect all lining materials from water before, during, and after installation.

1.10 PROTECTION OF INSTALLED WORK

- A. Protect installed Work and provide special protection where specified in individual specification Sections.
- B. Provide temporary and removable protection for installed Products. Control activity in immediate work area to minimize damage.

1.11 SECURITY/WORKING HOURS

- A. Provide security and facilities to protect Work from unauthorized entry, vandalism, or theft. Cost for security shall be included in bid price.
- B. The normal hours of operation for the landfill are from 7:30 a.m. to 5:30 p.m. Monday - Saturday. The landfill is closed on Sundays and on holidays. The Contractor will be allowed to work beyond the landfill normal working hours of operation. The Contractor will be responsible for coordinating with the Owner and securing the site when doing so.

1.12 PROGRESS CLEANING

- A. Maintain areas free of waste materials, debris, and rubbish. Maintain site in a clean and orderly condition.
- B. Remove waste materials, debris, and rubbish from site and dispose on existing working face at intervals as required to maintain clean site.

1.13 REMOVAL OF UTILITIES, FACILITIES, AND CONTROLS

- A. Remove temporary above grade or buried utilities, equipment, facilities and materials as soon as permanent facilities can be utilized.
- B. Remove underground installations to a minimum depth of 2 feet. Grade site as indicated.
- C. Clean and repair damage caused by installation or use of temporary work.
- D. Restore existing facilities used during construction to original condition. Restore permanent facilities used during construction to specified condition.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

SECTION 01560

ENVIRONMENTAL PROTECTION

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 REFERENCES

- A. The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only.

CODE OF FEDERAL REGULATIONS (CFR)

29 CFR 1910-SUBPART G Occupational Health and Environmental Control

CORPS OF ENGINEERS (COE)

COE EP-1165-2-304

1976 Flood Plain Regulations for Flood Plain Management

1.3 DEFINITIONS

- A. Sediment: Soil and other debris that have eroded and have been transported by runoff water or wind.
- B. Solid Waste: Rubbish, debris, garbage, and other discarded solid materials resulting from industrial, commercial, and agricultural operations and from community activities.
- C. Rubbish: Combustible and noncombustible wastes such as paper, boxes, glass, crockery, metal, lumber, cans, and bones.
- D. Debris: Combustible and noncombustible wastes such as ashes and waste materials resulting from construction or maintenance and repair work, leaves, and tree trimmings.
- E. Chemical Wastes: This includes salts, acids, alkalies, herbicides, pesticides, organic chemicals, and spent products which serve no purpose.
- F. Sanitary Wastes: Sewage.
- G. Wastes characterized as domestic sanitary sewage: Garbage.
 - 1. Refuse and scraps resulting from preparation, cooking, dispensing, and consumption of food.
- H. Oily Waste: Petroleum products and bituminous materials.

1.4 ENVIRONMENTAL PROTECTION REQUIREMENTS

- A. Provide and maintain, during the life of the contract, environmental protection as defined. Plan for and provide environmental protective measures to control pollution that develops during normal construction practice. Plan for and provide environmental protective measures required to correct conditions that develop during the construction of permanent or temporary environmental features associated with the project. Comply with Federal, state, and local

regulations pertaining to the environment, including but not limited to water, air, and noise pollution.

B. Best Management Practices (BMP's)

1. Waste Materials: All waste materials, including construction debris, shall be collected and stored in a securely lidded metal dumpster. No construction material shall be buried on site. The transit dumpster shall comply with ordinance 18.52.010 (enclosure and removal of waste materials during construction.) The dumpster shall be emptied as necessary or as required by ordinance 9.04 (solid waste management) and the trash shall be hauled to a licensed landfill.
2. Hazardous Waste: At a minimum, any products in the following categories shall be considered hazardous: Paint, acids for cleaning masonry surfaces, cleaning solvents, asphalt products, chemical additives for spill stabilization, curing compounds and additives. In the event of a spill which may be hazardous, the Contractor shall take immediate action and contact the fire dept. and TCEQ.
3. Sanitary Waste: All sanitary waste shall be collected from the construction portable units as necessary or as required, chapter 18.08 (building code), by a licensed sanitary waste management contractor. All waste material shall be the responsibility of the Contractor.
4. Spill Prevention: The following practices shall be used to reduce the risk of spills or other accidental exposures of materials to storm water runoff.
 - a. Good Housekeeping
 - 1) Store only enough products required to do the job.
 - 2) Neatly store materials on-site in an orderly manner.
 - 3) Keep products in their original container.
 - 4) Do not mix substances with one another, unless otherwise recommended by the manufacturer.
 - 5) Use entire contents of a product before disposing the container.
 - 6) Follow manufacturer's recommendations for proper use and disposal.
 - b. Hazardous Products: Practices used to reduce risks:
 - 1) Keep products in their original container if at all possible.
 - 2) Retain original labels, product information and material safety data sheets (MSDS).
 - 3) Dispose surplus product in accordance with manufacturer's or local and state recommended methods.
 - c. Petroleum Products: All on-site vehicles shall be monitored for leaks and receive regular preventive maintenance to reduce the chance of spills. Petroleum shall be stored in tightly sealed containers which are clearly labeled. Any asphalt substances used on-site shall be applied according to the manufacturer's recommendation.
5. Spill Control Practices:
 - a. Manufacturer's recommended methods for spill cleanup shall be clearly posted and site personnel shall be made aware of the procedures.
 - b. Materials and equipment necessary for spill cleanup shall be kept in the material storage area on-site.
 - c. All spills shall be cleaned up immediately after discovery.
 - d. Spill area shall be well ventilated and appropriate clothing will be worn.
 - e. Any spill shall be reported to the appropriate governmental agency.
 - f. Measures shall be taken to prevent a spill from reoccurring.
6. Maintenance and Inspection Procedures: All pollution prevention measures shall be inspected at least once a month and following a storm event of 0.5 inches or more, best

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- management practices and pollution control procedures shall be inspected for adequacy. A record of the result of the inspections of the site shall be kept on site.
7. Remarks: Disposal areas, stockpiles, and haul roads shall be constructed in a manner that will minimize and control the amount of sediment that may enter receiving waters or streambeds. Construction staging areas and vehicle maintenance areas shall be constructed by the contractor in a manner to minimize the runoff of pollutants.
- C. Storm Water Pollution Prevention Plan (SWPPP)
1. The Contractor shall understand and sign the certification statement relating to the National Pollutant Discharge Elimination System (NPDES)
 2. The Contractor shall install erosion control measures as follows:
 - a. Silt fencing or temporary berms shall be installed prior to start of construction.
 - b. Temporary swales and desilting basins will be placed where necessary in order to convey stormwater run-off.
 - c. A stabilized construction entrance will be provided to help reduce vehicle tracking of sediments. The paved street adjacent to the site entrance will be swept daily to remove any excess mud. Dirt or rock tracked from the site.
 - d. The owner shall be responsible for insuring that all erosion control methods are inspected on a monthly basis or after every erodible rainfall (1/2" or more). Any necessary repairs or cleanup to maintain the effectiveness of the erosion control shall be made at that time.
 - e. A temporary berm shall be provided at the toe of slope and lot line at time of grading.
 3. The measures listed above are recommendations only. The Contractor shall make sure that the requirements of the NPDES are met.
- D. Perform a preconstruction survey of the project site with the Engineer assess existing environmental conditions in and adjacent to the site.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

3.1 PROTECTION OF NATURAL RESOURCES

- A. Preserve the natural resources within the project boundaries and outside the limits of permanent work. Restore to an equivalent or improved condition upon completion of work. Confine construction activities to within the limits of the work indicated or specified.
- B. Land Resources: Except in areas to be cleared, do not remove, cut, deface, injure, or destroy trees or shrubs without the Engineer's permission. Do not fasten or attach ropes, cables, or guys to existing nearby trees for anchorages unless authorized by the Engineer. Where such use of attach ropes, cables, or guys is authorized, the Contractor shall be responsible for any resultant damage.
 1. Protection: Protect existing trees which are to remain and which may be injured, bruised, defaced, or otherwise damaged by construction operations. Remove displaced rocks from uncleared areas. By approved excavation, remove trees with 30 percent or more of their root systems destroyed.

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2. Replacement: Remove trees and other landscape features scarred or damaged by equipment operations, and replace with equivalent, undamaged trees and landscape features. Obtain Engineer's approval before replacement.
 3. Temporary Construction: Remove traces of temporary construction facilities such as haul roads, work areas, structures, foundations of temporary structures, stockpiles of excess or waste materials, and other signs of construction. Grade temporary roads, parking areas, and similar temporarily used areas to conform with surrounding contours.
- C. Water Resources:
1. Oily Wastes: Prevent oily or other hazardous substances from entering the ground, drainage areas, or local bodies of water. Surround all temporary fuel oil or petroleum storage tanks with a temporary earth berm of sufficient size and strength to contain the contents of the tanks in the event of leakage or spillage.
- D. Fish and Wildlife Resources: Do not disturb fish and wildlife. Do not alter water flows or otherwise significantly disturb the native habitat adjacent to the project and critical to the survival of fish and wildlife, except as indicated or specified.

3.2 HISTORICAL AND ARCHAEOLOGICAL RESOURCES

- A. Carefully protect in-place and report immediately to the Engineer historical and archaeological items or human skeletal remains discovered in the course of work. Stop work in the immediate area of the discovery until directed by the Engineer to resume work. If historical and archaeological resources such as artifacts (stone tools), features (stone walls), deposits (sea shells and charcoal stained soil), human bones and other cultural remains are encountered, stop that portion of work and notify the Engineer immediately. Within thirty-six (36) hours the Owner will determine if a change pursuant to the Contract should be issued or to direct the Contractor to proceed without change. No adjustment in contract price or completion time will be allowed for delays that do not exceed thirty-six (36) hours from the time the Contractor is notified to stop work. The Owner retains ownership and control over historical and archaeological resources.

3.3 EROSION AND SEDIMENT CONTROL MEASURES

- A. Burnoff of the ground cover is not permitted.
- B. Borrow Areas: Manage and control borrow areas to prevent sediment from entering nearby streams or lakes. Restore areas, including those outside the borrow areas, disturbed by borrow and haul operations. Restoration includes grading, replacement of topsoil, and establishment of a permanent vegetative cover.
- C. Protection of Erodible Soils: Immediately finish the earthwork brought to a final grade, as indicated or specified. Immediately protect the side slopes and back slopes upon completion of rough grading. Plan and conduct earthwork to minimize the duration of exposure of unprotected soils.
- D. Temporary Protection of Erodible Soils: Mechanically retard and control the rate of runoff from the construction site. This includes construction of diversion ditches, benches, and berms to retard and divert runoff to protected drainage courses.

3.4 CONTROL AND DISPOSAL OF SOLID AND SANITARY WASTES

- A. Pick up solid wastes, and place in containers which are regularly emptied. Do not prepare, cook, or dispose of food on the project site. Prevent contamination of the site of other areas when handling and disposing of wastes. On completion, leave the areas clean. Control and dispose of waste.
- B. Disposal of Rubbish and Debris: Dispose of rubbish and debris in accordance with the requirements specified in area as directed by Owner. Rubbish may be disposed of in current landfill provided all rules for disposal are followed.
- C. Garbage Disposal: Place garbage in approved containers, and move to a pickup point or disposal area, where directed.

3.5 DUST CONTROL

- A. Contractor will be fully responsible for dust control along all haul roads and in the project area. Keep dust down at all times, including during nonworking periods. Sprinkle or treat, with dust suppressants, the soil at the site, haul roads, and other areas disturbed by operations.

END OF SECTION

SECTION 01600

MATERIAL AND EQUIPMENT

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Products.
- B. Transportation and handling.
- C. Storage and protection.
- D. Product options.

1.3 RELATED SECTIONS

- A. Section 01400 - Quality Control: Product quality monitoring.

1.4 PRODUCTS

- A. Products mean new material, components, and systems forming the Work. Does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work.
- B. Provide interchangeable components of the same manufacturer, for similar components.

1.5 PRODUCT DELIVERY, STORAGE AND HANDLING

- A. Delivery
 - 1. Deliver materials, products and equipment to the project site in undamaged condition in manufacturer's original, unopened containers or packaging, with identifying labels intact and legible.
 - 2. Promptly inspect shipments to assure that products comply with requirements, quantities are correct, and products are undamaged.
 - 3. Provide equipment and personnel to handle products by methods to prevent soiling, disfigurement, or damage.
 - 4. Arrange deliveries in accordance with the construction schedule and in ample time to facilitate inspection prior to installation to avoid unnecessary delays in the construction process.
- B. Storage
 - 1. Store and protect products in accordance with manufacturer's instructions, with seals and labels intact and legible. Store sensitive products in weather-tight, climate controlled enclosures.
 - 2. For exterior storage of fabricated products, place on sloped supports, above ground.
 - 3. Provide off-site storage and protection when site does not permit on-site storage or protection.

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4. Cover products subject to deterioration with impervious sheet covering. Provide ventilation to avoid condensation.
 5. Store loose granular materials on solid flat surfaces in a well-drained area. Provide cover to stockpile to prevent windblown contaminants from mixing with the stockpile. Granular materials shall not be stored on bare ground or asphalt surfaces.
 6. Provide equipment and personnel to store products by methods to prevent soiling, disfigurement, or damage.
 7. Arrange storage of products to permit access for inspection. Periodically inspect to verify products are undamaged and are maintained in acceptable condition.
 8. Materials, products and equipment may be stored off site in a bonded and insured warehouse approved by the Engineer and Owner. Pay all costs incurred for off-site storage facilities. Products properly stored in off-site storage facilities may be included in progress pay request with written approval of the Engineer.
- C. Handling
1. Handle materials, products and equipment in a manner prescribed by manufacturer or specified to protect from damage during storage and installation.

1.6 PRODUCT OPTIONS

- A. Products Specified by Reference Standards or by Description Only: Any product meeting those standards or description.
- B. Products Specified by Naming One or More Manufacturers: Products of manufacturers named and meeting specifications, no options or substitutions allowed.
- C. Products Specified by Naming One or More Manufacturers with a Provision for Substitutions: Submit a request for substitution for any manufacturer not named in accordance with the following article.

1.7 EQUIPMENT LIST

- A. Submit in accordance with Section 01300 - Submittals.

1.8 SUBSTITUTIONS

- A. Engineer will consider requests for substitutions only within 30 days after date established in Notice to Proceed.
- B. Substitutions may be considered when a product becomes unavailable through no fault of the Contractor.
- C. Document each request with complete data substantiating compliance of proposed Substitution with Contract Documents.
- D. A request constitutes a representation that the Bidder:
 1. Has investigated proposed product and determined that it meets or exceeds the quality level of the specified product.
 2. Will provide the same warranty for the Substitution as for the specified product.
 3. Will coordinate installation and make changes to other Work which may be required for the Work to be complete with no additional cost to Owner.

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- 4. Waives claims for additional costs or time extension which may subsequently become apparent.
 - 5. Will reimburse Owner and Engineer for review or redesign services associated with re-approval by authorities.
 - E. Substitutions will not be considered when they are indicated or implied on shop drawing or product data submittals, without separate written request, or when acceptance will require revision to the Contract Documents.
 - F. Substitution Submittal Procedure:
 - 1. Submit four copies of request for Substitution for consideration. Limit each request to one proposed Substitution.
 - 2. Submit shop drawings, product data, and certified test results attesting to the proposed product equivalence. Burden of proof is on proposer.
 - 3. The Engineer will notify Contractor, in writing, of decision to accept or reject request.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

SECTION 01700

CONTRACT CLOSEOUT

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Closeout procedures.
- B. Final cleaning.
- C. Adjusting.
- D. Hazardous materials affidavit.
- E. Project record documents.
- F. Operations and maintenance data.
- G. Warranties.
- H. Spare parts and maintenance materials.

1.3 RELATED SECTIONS

- A. Section 01500 - Construction Facilities and Temporary Controls: Progress cleaning.

1.4 CLOSEOUT PROCEDURES

- A. Submit written certification that Contract Documents have been reviewed, Work has been inspected and that Work is complete in accordance with Contract Documents and ready for Engineer's inspection.
- B. Provide submittals to Engineer that are required by governing or other authorities.
- C. Submit final Application for Payment identifying total adjusted Contract Sum, previous payments, and sum remaining due.

1.5 FINAL CLEANING

- A. Execute final cleaning prior to final inspection.
- B. Clean interior and exterior glass and surfaces exposed to view; remove temporary labels, stains and foreign substances, polish transparent and glossy surfaces, vacuum carpeted and soft surfaces.
- C. Clean equipment and fixtures to a sanitary condition.
- D. Replace filters of operating equipment.
- E. Clean debris from roofs, gutters, downspouts, and drainage systems.
- F. Clean site; sweep pave areas, rake clean landscaped surfaces.
- G. Remove waste and surplus materials, rubbish, and construction facilities from the site.
- H. Repair, patch and touch-up marred surfaces to match adjacent finishes.

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- I. Clean ducts, blowers and coils if air conditioning units were operated during construction.
 - J. Remove waste and surplus materials, rubbish, and construction facilities as directed by Engineer.

1.6 ADJUSTING

- A. Adjust operating products and equipment to ensure smooth and unhindered operation.

1.7 HAZARDOUS MATERIALS AFFIDAVITS

- A. Contractor, each subcontractor, and each material/product supplier to provide a notarized affidavit declaring that hazardous materials were not incorporated into construction of nor delivered to the Project.
- B. Hazardous materials include asbestos, lead polychlorinated biphenyl (PCB), prohibited termite eradication chemicals or any substance of any proportion determined or suspected by an agency of federal or state government to create a health hazard.
- C. Provide table of contents listing all affidavits in alphabetical order and assemble with metal prong binder in durable plastic presentation cover.
- D. Prepare binder cover with printed title "AFFIDAVITS OF NON-INCORPORATED HAZARDOUS MATERIALS", Title of Project, Project Address, Owner's Names, Address and Phone and date of Construction Completion.
- E. Provide two complete, identical binders of the aforementioned information in the prescribed format.
- F. Submit prior to final Application for Payment.

1.8 PROJECT RECORD DOCUMENTS

- A. Maintain on site, two sets of the following record documents; record actual revisions to the Work:
 - 1. Contract Drawings.
 - 2. Specifications.
 - 3. Addenda.
 - 4. Change Orders and other Modifications to the Contract.
 - 5. Reviewed shop drawings, product data, and samples.
- B. Store Record Documents separate from documents used for construction.
- C. Record information concurrent with construction progress.
- D. Specifications: Legibly mark and record at each Product section description of actual Products installed, including the following:
 - 1. Manufacturer's name and product model and number.
 - 2. Product substitutions or alternates utilized.
 - 3. Changes made by Addenda and Modifications.
- E. Record Documents and Shop Drawings: Legibly mark each item to record actual construction including:
 - 1. Measured depths of foundations in relation to finish first floor datum.
 - 2. Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
 - 3. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work.
 - 4. Field changes of dimension and detail.

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5. Details not on original Contract Drawings.
 6. Changes made by addenda and modification.
- F. Submit documents to Engineer with claim for final Application for Payment.

1.9 OPERATION AND MAINTENANCE DATA

- A. Submit one copy 15 days prior to final inspection, 8 ½ x 11 inch text pages, bound in three D-ring binders with durable plastic covers.
- B. This copy will be returned after final inspection, with Architect comments. Revise content of documents as required prior to final submittal.
- C. Submit two final volumes revised within ten days after final inspection.
- D. Prepare binder covers with printed title "OPERATION AND MAINTENANCE INSTRUCTIONS", title of project, and subject matter of binder when multiple binders are required.
- E. Internally subdivide the binder contents with permanent page dividers, logically organized as described below; with tab titling clearly printed under reinforced laminated plastic tabs.
- F. Contents: Prepare a Table of Contents for each volume, with each Product or system description identified, type on 24 pound white paper.
- G. Part 1: Directory, listing names, addresses, and telephone numbers of Architect, Contractor, Subcontractors, and major equipment suppliers.
- H. Part 2: Operation and maintenance instructions, arranged by system and subdivided by specification section. For each category, identify names, addresses, and telephone numbers of Subcontractors and suppliers. Identify the following:
 1. Significant design criteria.
 2. List of equipment.
 3. Parts list for each component.
 4. Operating instructions necessary for Owner to make full and efficient use of equipment including recommended maintenance and seasonal change-over procedures for HVAC systems.
 5. Maintenance instructions for equipment and systems.
 6. Maintenance instructions for finishes, including recommended cleaning methods and materials and special precautions identifying detrimental agents.
- I. Part 3: Project documents and certificates, including the following:
 1. Shop drawings and product data.
 2. Air and water balance reports.
 3. Certificates.
 4. Photocopies of warranties and bonds.

1.10 WARRANTIES

- A. Provide duplicate notarized copies.
- B. Execute and assemble documents from Subcontractors, suppliers, and manufacturers.
- C. Provide Table of Contents and assemble with metal prong binder in durable plastic presentation cover.
- D. Submit prior to final Application for Payment.
- E. For items of Work delayed beyond date of Substantial Completion, provide updated submittal within ten days after acceptance, listing date of acceptance as start of warranty period.

1.11 SPARE PARTS AND MAINTENANCE MATERIALS

- A. Provide products, spare parts, maintenance and extra materials in quantities specified in individual specification Sections.
- B. Deliver to project site and place in location as directed; obtain receipt prior to final payment.

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION

SECTION 02146

GROUNDWATER MONITORING WELL ABANDONMENT

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation, title or are used to establish criteria. The latest publication in use at the time of the executed contract shall be the one used on this project.

- A. AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)
 - 1. ASTM C150 – Standard Specification for Portland Cement
- B. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)
 - 1. Owner's MSW Permit
 - 2. 16 TAC §76.702 Texas Department of Licensing and Regulation (TDLR) Responsibilities of the Licensee and Landowner – Well Drilling, Completion, Capping and Plugging.
 - 3. 16 TAC §76.1004 – TDLR Technical Requirements – Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones.
 - 4. 30 TAC §330.421 Monitor Well Construction Specification.

1.3 SUMMARY

- A. These specifications describe the abandonment of groundwater monitor wells which are being taken out of service. Well abandonment and capping shall be performed by a qualified monitor well driller, licensed in the State of Texas, experienced specifically in the installation of groundwater monitor wells. For all wells that are to be plugged or abandoned, TCEQ requires any surface completion to be removed and the well filled from the bottom up to the ground surface with appropriate material.

1.4 REPORTS

- A. The Contractor is required to submit a description of plugging procedures, any information on the well, and all forms required by TCEQ or other agencies to the Owner and Engineer within 10 days after completion of monitor well plugging and abandonment. These forms required by TCEQ will be provided by the Engineer to the Contractor for completion.

PART 2 - PRODUCTS

2.1 WELL PLUG

- A. Cement Well Plug: A cement mixture shall be used to fill the entire well up to the ground surface. Cement shall conform with ASTM C150, Type I or II. The mixture shall be proportioned in the amount of 5.2 gallons of water to 94 pounds of cement. Water used shall be free of oil and other organic material.

PART 3 - EXECUTION

3.1 CONCRETE SEALING BLOCK REMOVAL

- A. All existing materials to be removed and disposed of under this item, including the concrete seal block, pump, bollards, and protective steel collar, shall be removed by the Contractor. The fate of the removed materials will be coordinated with the Owner. The Contractor is responsible for carefully removing any material the Owner plans to salvage or reuse. Disposal of any material removed that the Owner does not plan to keep for reuse is the responsibility of the Contractor.

3.2 WELL PLUGGING

- A. Cement Well Plug: If the cement plug is selected, the entire well shall be pressure filled with cement from the bottom of the well up to the proposed ground surface with a tremie pipe or other method approved by the Engineer. Plugging shall be done in a continuous manner to ensure that the well is filled in one operation.

END OF SECTION

SECTION 02200

EXCAVATION AND EARTHWORK

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation, title or are used to establish criteria. The latest publication in use at the time of the executed contract shall be the one used on this project.

- A. AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)
 - 1. ASTM D 698 – Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lb/ft).
 - 2. ASTM D 4318 – Standard Test Methods for Liquid Limit, Plastic Limit, and Plasticity of Soils.
 - 3. ASTM D 6938 – Standard Test Method for In-Place Density and Water Content of Soil and Soil-Aggregate.
- B. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
 - 1. TCEQ, 30 TAC Chapter 330 - Texas Commission on Environmental Quality, Municipal Solid Waste Regulation.

1.3 SECTION INCLUDES

- A. Earthwork shall include the following.
 - 1. Miscellaneous grading to repair erosion and proof rolling subgrades for geocomposite clay liner.
 - 2. General excavation and filling for those areas to new contours.
 - 3. Excavating for leachate collection system.
 - 4. Excavating and backfilling anchor trenches.

1.4 RELATED SECTIONS

- A. Section 02240 – Geosynthetic Clay Liner.
- B. Section 02245 – Geomembrane Liner.
- C. Section 02247 – Geocomposite Drainage Layer.
- D. Section 02248 – Gravel Drainage Material.
- E. Section 02250 – Leachate Collection System.

1.5 DEFINITIONS

- A. Backfill - A specified material used in refilling a cut, trench, over excavation or other excavation, placed at a specified degree of compaction.
- B. Compaction - The process of mechanically stabilizing a material by increasing its density at a controlled moisture condition. "Degree of Compaction" is expressed as a percentage of the maximum density obtained by the test procedure described in ASTM D 698 for general soil types abbreviated in this specification as "95 percent ASTM D 698 maximum density".
- C. Embankment - A "fill" having a top that is higher than adjoining ground.
- D. Excavation - Excavation consists of the removal of material encountered to subgrade elevations and the reuse or disposal of materials removed.
- E. Fill - Specified material placed at a specified degree of compaction to obtain an indicated grade or elevation.
- F. Hard Material - Weathered rock, dense consolidated deposits or conglomerate materials, (excluding manmade materials such as concrete) which are not included in the definition of "rock" but which usually require the use of heavy excavation equipment with ripper teeth or the use of jack hammers for removal.
- G. In Situ Soil - Existing in place soil.
- H. Lift - A layer (or course) of soil placed on top of a previously prepared or placed soil.
- I. Rock - Solid, homogeneous, interlocking crystalline material with firmly cemented, laminated, or foliated masses or conglomerate deposits, neither of which can be removed without systematic drilling and blasting, drilling and the use of expansion jacks or feather wedges, or the use of backhoe-mounted pneumatic hole punchers or rock breakers; also large boulders, buried masonry, or concrete other than pavement, exceeding 1 cubic yard in volume. Removal of "hard material" will not be considered rock excavation because of intermittent drilling and blasting that is performed merely to increase production.
- J. Soil - The surface material of the earth's crust resulting from the chemical and mechanical weathering of rock and organic material.
- K. Subgrade - The material in excavation (cuts) and fills (embankments) immediately below any subbase, base, liner, or other improvement. Also, as a secondary definition, the level below which work above is referenced.
- L. Subgrade - The uppermost surface of an excavation or the top surface of a fill or backfill immediately below geocomposite clay liner.
- M. Topsoil - In natural or undisturbed soil formations, the fine-grained, weathered material on the surface or directly below any loose or partially decomposed organic matter. Topsoil may be a dark-colored, fine, silty, or sandy material with a high content of well decomposed organic matter, often containing traces of the parent rock material. Gradation and material requirements specified herein apply to all topsoil references in this contract. The material shall be representative of productive soils in the vicinity.
- N. Unauthorized excavation consists of removing materials beyond indicated subgrade elevations or dimensions without direction by the Engineer. Unauthorized excavation, as well as remedial work directed by the Engineer, shall be at the Contractor's expense.
- O. Unsatisfactory Material - Existing, in situ soil or other material which can be identified as having insufficient strength characteristics or stability to carry intended loads in fill or embankment without excessive consolidation or loss of stability. Unsatisfactory materials also include man-made fills, refuse, frozen material, uncompacted backfills from previous construction, unsound rock or soil lenses, or other deleterious or objectionable material.
- P. Working Platform - A layer of compacted crushed rock or natural stone that replaces the in situ soil to provide a stable, uniform bearing foundation for construction equipment to facilitate further site construction.

1.6 DELIVERY AND STORAGE

- A. Deliver and store materials as needed in a manner to prevent contamination or segregation.

1.7 QUALITY ASSURANCE

- A. Codes and Standards: Perform earthwork complying with requirements of authorities having jurisdiction.

1.8 CRITERIA FOR BIDDING

- A. Base bids on the following criteria:
 - 1. Surface elevations as indicated.
 - 2. The character of the material to be excavated or used for subgrade is as indicated. Hard material shall not be considered as rock and removal of such material shall not give cause for a claim for additional compensation regardless of hardness or difficulty in removing. Rock as defined in the paragraph entitled, "Definitions," will not be encountered.
 - 3. Suitable backfill and fill material in the quantities required is available at the project site.
 - 4. Blasting will not be permitted. Remove material by drilling and use of expansion jacks or feather wedges, or the use of backhoe-mounted pneumatic hole punchers or rock breakers, or as approved by the Engineer.

PART 2 - PRODUCTS

2.1 REQUIRED EQUIPMENT

- A. Subgrade preparation for areas to receive GCL must include rolling with a self-propelled smooth drum roller.
- B. No equipment will be allowed within the limits of the lining system without prior approval from the Engineer. Submit all equipment to be used within the limits of the liner in accordance with Section 01300, Submittals including equipment weights, ground pressures, required lift thickness, etc.

PART 3 - EXECUTION

3.1 PREPARATION

- A. Protection and Restoration of Surfaces: Protect newly graded areas from traffic, erosion, and settlements. Repair and reestablish damaged or eroded slopes, elevations or grades and restore surface construction prior to acceptance. Protect existing streams, ditches and storm drain inlets from water-borne soil by means of straw bale dikes or filter fabric dams as needed. Conduct work in accordance with requirements specified in Section 01560, "Environmental Protection."
- B. Stockpile of Excavated Material: Stockpile excavated material where shown on plans and in such a manner that it will not obstruct the flow of runoff, streams, endanger a partly finished structure, impair the efficiency or appearance of facilities, or be detrimental to the completed work.

3.2 SURFACE PREPARATION

- A. Clearing: Brush, refuse, stumps, roots, and unmerchantable timber shall become the property of the Contractor and be removed as directed by the Engineer. Conduct work in accordance with requirements specified in Section 01560, "Environmental Protection."
- B. Stockpiling Topsoil: Strip approved topsoil from the site where excavation or grading is indicated and stockpile separately from other excavated material. Locate topsoil as shown on plans so that the material can be used readily for the finished grading. Protect and store in segregated piles until needed.
- C. Unsatisfactory Material: Remove organic matter, sod, muck, rubbish, and unsuitable soils under the limits of construction. Typical depth of removal of such unsuitable material will not be less than 12-inches.
- D. Protect structures, utilities, pavements, and other facilities from damage caused by settlement, lateral movement, undermining, washout, and other hazards created by earthwork operations.
- E. Provide erosion control measures to prevent erosion or displacement of soils.

3.3 DEWATERING

- A. Prevent surface water from entering excavations, from ponding on prepared subgrades, and from flooding Project site and surrounding area.
- B. Protect subgrades from softening and damage by rain or water accumulation.

3.4 GENERAL EXCAVATION

- A. Excavate to the indicated slopes, lines, depths and elevations. The Engineer will verify that the excavation has been performed in accordance with the Project Drawings. Stockpile excavated material in the area indicated on the Project Drawings. Prepare subgrade in accordance with paragraph 3.6, PREPARATION OF SUBGRADE AND COMPACTED BERMS, of this section.
- B. In the process of excavating over the existing lining system, it is unlikely that waste will be encountered. If waste is encountered, Contractor shall dispose of this waste on the active working face, as directed by the Owner, and cover any remaining exposed waste with a minimum of six (6) inches of clean soil of the same type as that used for the protective cover.
- C. Unclassified Excavation: Excavation is unclassified and includes excavation to required subgrade elevations regardless of the character of materials and obstructions encountered.
- D. Keep excavations free from water while construction is in progress. Notify the Engineer immediately in writing in the event that it becomes necessary to remove rock, hard material, or other material defined as unsatisfactory to a depth greater than indicated. Refill excavations cut below required subgrade elevations.

3.5 EXCAVATION FOR ANCHOR TRENCHES AND LEACHATE COLLECTION SYSTEM

- A. Excavate trenches to indicated slopes, lines, depths, and elevations. The Engineer shall verify that the trench has been constructed according to Project Drawings.
- B. Excavate anchor trenches to uniform widths as shown on Project Drawings. Excavate trench walls vertically from trench bottom to top, except rounded edges will be provided where liner materials enter anchor trenches so as to avoid sharp bends in the geosynthetic materials.
- C. If the trench is located in clay susceptible to desiccation, only the amount of trench required for one day of installation shall be excavated to minimize desiccation of trench soils.

3.6 PREPARATION OF SUBGRADE AND COMPACTED BERMS

- A. Fine-grade subgrade to smooth, uniform and compacted conditions, to elevations shown on Project Drawings. Remove all stones larger than 3/4-inch in diameter and any other objects which could damage overlying geosynthetic materials.
- B. Reconstruct subgrades damaged by freezing temperatures, frost, rain, accumulated water, or construction activities, as directed by the Engineer.
- C. Proof roll subgrade with self-propelled smooth drum roller or by methods acceptable to the Engineer to remove clods and non-uniform subgrade.
- D. Construct berms to the grades shown. Use suitable fill materials from on site as directed by the Owner and compact in loose lifts not to exceed 8-inches to 95% standard proctor density (ASTM D 698). Control the development of rills, repairing any that occur, and maintain the side slopes for the duration of the project.

3.7 UNAUTHORIZED EXCAVATION

- A. Fill unauthorized excavations as directed by the Engineer.

3.8 ANCHOR TRENCH BACKFILL

- A. The anchor trench shall be backfilled and compacted in loose lifts not to exceed 8-inches. Compaction shall be achieved using light, rubber-tired equipment or other light compaction equipment. Care shall be taken to prevent damage to the geosynthetic materials. At no time shall construction equipment come into direct contact with the geosynthetic clay liner, geomembrane or geonet. If damage occurs, it shall be repaired by the Contractor, in accordance with the specifications, prior to completion of backfilling.
- B. The anchor trench shall be compacted to 95% Maximum Dry Density as determined by ASTM D 698.

3.9 LEACHATE COLLECTION SYSTEM BACKFILL

- A. Excavate trenches for leachate collection and clean out lines to grades and cross sections shown on plans.
- B. Backfill with gravel drainage material in accordance with Section 02250, Leachate Collection Systems.

3.10 MOISTURE CONTROL

- A. Uniformly moisten or aerate subgrade or backfill layer before compaction to within $\pm 2\%$ of optimum moisture content or higher.
 - 1. Do not place backfill or fill material on surfaces that are muddy, frozen, or contain frost or ice.
 - 2. Remove and replace, or scarify and air-dry satisfactory soil material that is too wet to compact to specified density.
 - a. Stockpile or spread and dry removed wet satisfactory soil material.

3.11 GRADING

- A. General: Uniformly grade areas to a smooth surface, free from irregular surface changes. Comply with compaction requirements and grade to cross sections, lines, and elevations indicated. Provide a smooth transition between existing adjacent grades and new grades. Correct and control wind and water erosion.
- B. Site Grading: Grade to finished grades indicated within 0.10 foot. No rock will protrude above the finished grade elevation. Rock that protrudes will be removed below grade and the void backfilled and compacted to ASTM D 698 (95%). Grade areas to drain where possible. Existing grades which are to remain but are disturbed by the Contractor's operations shall be restored to preconstruction condition.
- C. Protection of Surfaces: Protect newly graded areas from traffic, erosion, and settlements that may occur and as required in the Section 01560 - Environmental Protection and as specified in paragraph 3.1.A of this Section entitled "Protection and Restoration of Surfaces." Repair or reestablish damaged grades, elevations, or slopes before work will be accepted.

3.12 FIELD QUALITY CONTROL

- A. The Contractor will allow the Engineer to inspect and test each subgrade and each fill or backfill layer. Do not proceed until test results for previously completed work verify compliance with requirements.
 - 1. Liner Subgrade: Proof roll to smooth surface such that no ruts or other surface indentions exceed one inch in depth.
 - 2. Trench Backfill: In each compacted initial and final backfill layer, perform at least one field in-place density test for each 150-feet or less of trench, but no fewer than two tests.
 - 3. Access Roadway: One in field density per 200 linear feet of roadway. Density requirement shall be 95% maximum dry density in accordance with ASTM D 698.
- B. When test results report that subgrades, fills, or backfills are below specified density, scarify and moisten or aerate, or remove and replace soil to the depth required, recompact and retest until required density is obtained.

3.13 PROTECTION

- A. Protecting Graded Areas: Protect newly graded areas from traffic, freezing, and erosion. Keep free of trash and debris.
- B. Repair and re-establish grades to specified tolerances where completed or partially completed surfaces become eroded, rutted, settled, or lose compaction due to subsequent construction operations or weather conditions.
 - 1. Scarify or remove and replace material to depth directed by the Engineer; reshape and recompact at optimum moisture content to the required density.
- C. Settling: Where settling occurs during the Project correction period, remove finished surfacing, backfill with additional approved material, compact, and reconstruct surfacing.
 - 1. Restore appearance, quality, and condition of finished surfacing to match adjacent work, and eliminate evidence of restoration to the greatest extent possible.

3.14 DISPOSAL OF SURPLUS AND WASTE MATERIALS

- A. Disposal: Transport surplus satisfactory soil to designated storage areas on the Owner's property. Stockpile or spread soil as directed by Engineer.
 - 1. Remove waste material, including unsatisfactory soil, trash, and debris, and dispose of it on the active face as directed by the Engineer.

END OF SECTION

SECTION 02240

GEOSYNTHETIC CLAY LINER

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Geosynthetic Clay Liner (GCL).
- B. Installation of GCL.

1.3 RELATED SECTIONS

- A. Section 02245 - Geomembrane Liner.
- B. Section 02246 - Geotextile Fabrics.
- C. Section 02247 - Geocomposite Drainage Layer.
- D. Section 02248 - Gravel Drainage Material.
- E. Section 02250 - Leachate Collection Systems.

1.4 REFERENCES

Applicable Publications: The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only. The latest publication in use at the time of the executed contract will be the one that governs this project.

- A. AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) STANDARDS
 1. ASTM D 4354 - Standard Practice for Sampling Geosynthesis for Testing.
 2. ASTM D 4632 – Standard Test Method for Determination of Water (Moisture) Content of Soils by Microwave Oven Heating.
 3. ASTM D 5261 – Standard Test Method for Measuring Mass per Unit Area of Geotextiles.
 4. ASTM D 5321 - Determining the Coefficient of Soil and Geosynthetic or Geosynthetic and Geosynthetic Friction by the Direct Shear Method.
 5. ASTM D 5887 - Test Method for Permeability of Geosynthetic Clay Liners.
 6. ASTM D 5890 - Test Method for the Free Swell of Bentonite Clay.
 7. ASTM D 5891 – Standard Test Method for Swell Index of Clay Mineral Component of Geosynthetic Clay Liners.
 8. ASTM D 5993 – Standard Test Method for Fluid Loss of Clay Component of Geosynthetic Clay Liners.
 9. ASTM D 6243 - Standard Test Method for Determining the Internal and Interface Shear Resistance of Geosynthetic Clay Liner by the Direct Shear Method.

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10. ASTM D 6496 - Standard Test Method for Average Bonding Peel Strength Between the Top and Bottom Layers of Needle-Punched Geosynthetic Clay Liners.
 11. ASTM D 6768 - Standard Test Method for Tensile Strength of Geosynthetic Clay Liners.
- B. OWNER
1. MSW Permit - Owner's TCEQ MSW Permit.
 2. Owner's Soil and Liner Quality Control Plan (SLQCP).
- C. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
1. TCEQ - Municipal Solid Waste Regulations, 30 TAC Chapter 330.

1.5 QUALITY ASSURANCE

- A. Manufacturing
1. The Manufacturer shall have at least four (4) years continuous experience in the manufacture of Geosynthetic Clay Liner (GCL) rolls and/or experience totaling 5,000,000 square feet of manufactured GCL. The manufacturer shall permit the Owner and the Engineer to visit the manufacturing plant.
- B. Installation
1. The installation contractor shall have successfully installed a minimum of 1,000,000 square feet of similar lining material in solid waste containment structures, and shall submit evidence of his ability and capacity to perform this work. The installation contractor can meet these criteria by teaming with a subcontractor who is identified in the bid along with the firm's experience.
 2. Installation shall be performed under the constant direction of a single Field Installation Supervisor who shall remain on site and be responsible, throughout the liner installation, for liner layout, patching, testing, repairs, and all other activities by the Installer. This Installation Supervisor shall have installed or supervised the installation of a minimum of 1,000,000 square feet of GCL.

1.6 SUBMITTALS

- A. Manufacturer
1. Quality control program and manual, or descriptive documentation.
 2. List of material properties and samples of GCL, including data pertaining to typical interface friction angles for the various products.
 3. A list documenting no less than five (5) completed facilities totaling a minimum of 5,000,000 square feet.
 4. Copy of quality control certificates in conformance with Sections 2.4 and the SLQCP.
- B. Installation Contractor
1. Certification that the Installation Supervisor for the installer has reviewed the Quality Assurance Plan, the Project Plans, and these specifications.
 2. A list of at least five (5) completed facilities, totaling a minimum of 1,000,000 square feet for which the Contractor has installed a GCL.
 3. Proposed Installation Panel layout identifying seams and details. Layout plan must be approved by the Engineer at least ten (10) days before materials are ordered. The panel layout must provide a numbering scheme to be used in quality control/assurance procedures and shall provide that:
 - a. Seams run up and down slopes.
 - b. Field seam lengths are to be minimized.
 - c. GCL shall not have any penetrations.

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4. Written certification that Installer is capable of performing all necessary construction testing as required by the TCEQ.
 5. Any proposed variance or deviation from these documents shall be submitted in writing by the Installer to the Engineer a minimum of seven (7) working days prior to the scheduled start of GCL installation and will be accepted / rejected by the Engineer prior to start of installation activities.

1.7 WARRANTY

- A. A written Warranty shall be obtained from the Manufacturer (for material) and the Installation Contractor (for workmanship). These documents shall warrant the quality of the in-place liner.
 1. Manufacturer: Furnish a written warranty on a pro rata basis for a period of five (5) years. The warranty shall be against manufacturing defects or workmanship and against deterioration due to ozone, ultraviolet or other normal weather aging. The warranty shall be limited to replacement of material only, and shall not cover installation.
 2. Installation Contractor: Furnish a written warranty that the entire lining installed to be free of defects in material and workmanship and installed pursuant to the Owner's "Soil and Liner Quality Control Plan" (SLQCP) for a period of 2-years following the date of the Certificate of Completion. The Contractor shall agree to make any repairs or replacements made necessary by defects in materials or workmanship which become evident during the 2-year warranty period.

1.8 DELIVERY, STORAGE AND HANDLING

- A. Transportation: The GCL rolls or panels shall be packaged individually, in relatively impermeable and opaque protective covers, and shipped by appropriate means so that no damage is caused. Tears in the protective covers shall be repaired immediately. Transportation shall be the responsibility of the Installer.
- B. Delivery: Off-loading and storage of the GCL rolls is the responsibility of the Installer. The Installer shall be responsible for replacing any damaged or unacceptable material at no cost to the Owner. No off-loading shall be done unless the Engineer is present. Damage during off-loading shall be documented by the Engineer and Installer. All damaged rolls must be separated from the undamaged rolls until the proper disposition of that material has been determined by the Owner's Representative. The Owner's Representative will be the final authority on determination of damage.
- C. On-Site Storage
 1. The GCL material shall be stored in accordance with the Manufacturer's recommendation, so as to be protected from puncture, dirt, grease, water, moisture, mud, mechanical abrasions, excessive heat, or other damage.
 2. The rolls shall be stored on a prepared surface (not wooden pallets). GCL's consisting of bentonite supported by geotextiles shall not be stacked more than four rolls high or as recommended by the manufacturer. GCL's consisting of bentonite supported by geomembranes shall not be stacked more than two rolls high or as recommended by the manufacturer.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. The GCL shall consist of natural sodium bentonite encapsulated between two polypropylene geotextiles.
- B. Accessory bentonite for seaming and detail work shall be the same material as in the GCL sheets and shall be as recommended by the manufacturer.
- C. Geotextiles will consist of woven or non-woven materials. At least one side of GCL shall be made of non-woven material.
- D. On slopes less than seven horizontal to one vertical (7:1), GCL shall be lightly reinforced by needle-punching or lock-stitching.
- E. On side slopes steeper than seven horizontal to one vertical (7:1), GCL shall be reinforced by either needle punching or lock-stitching for internal shear strength reinforcement.
- F. GCL to be installed on side slopes shall be comparable to GSE Bentoliner NSL or approved equal. GCL installed on floor area shall be comparable to GSE Bentoliner EC or approved equal.

2.2 RAW MATERIALS

- A. The GCL shall be manufactured of new, first-quality products and shall be manufactured specifically for the intended purpose.

2.3 ROLLS

- A. The GCL shall be supplied in rolls with a minimum width of 15 feet. Rolls in lengths greater than 125-feet may be 12-feet in width. Labels on each roll shall identify the following:
 - 1. Manufacturer.
 - 2. Product Identification.
 - 3. Roll Number.
 - 4. Roll Dimensions.
 - 5. Roll Weight.
- B. The roll length shall be maximized to provide the largest manageable sheet for the fewest field seams.
- C. Manufactured GCL sheets shall be constructed such that bentonite will not be displaced during transportation, storage and installation.

2.4 MANUFACTURER'S CERTIFIED TESTING

- A. Material Testing: Prior to use, the material shall be certified in writing by the manufacturer. The certificate must include roll identification number, testing procedure and test results. Report the following parameters:

TABLE 1 BENTONITE MATERIAL				
Property	Test Method	Value	Unit	Frequency
Free Swell	ASTM D 5890	24 min.	ml/2g	once every 50 tons
Fluid Loss	ASTM D 5891	18 max.	ml	once every 50 tons

TABLE 2 GEOTEXTILE MATERIAL (SLOPED AREAS)				
Property	Test Method	Value	Unit	Frequency
Woven Mass/Unit Area	ASTM D 5261	3.1 min	oz/yd ²	1/200,000 ft. ²
Nonwoven Mass/Unit Area	ASTM D 5261	6.0 min	oz/yd ²	1/200,000 ft. ²

TABLE 3 GEOTEXTILE MATERIAL (FLOOR AREAS)				
Property	Test Method	Value	Unit	Frequency
Woven Mass/Unit Area	ASTM D 5261	3.1 min	oz/yd ²	1/200,000 ft. ²
Nonwoven Mass/Unit Area	ASTM D 5261	3.0 min	oz/yd ²	1/200,000 ft. ²

TABLE 4 BENTONITE/GEOTEXTILE COMPOSITE MATERIAL (SLOPED AREAS)				
Property	Test Method	Value	Units	Frequency
Clay Mass/Unit Area	ASTM D 5993 (1)	0.75 min	psf	1/40,000 ft. ²
Permeability (5 psi)	ASTM D 5084	5.0x10 ⁻⁹ max	cm/sec	weekly
Grab Tensile Strength	ASTM D 4632	30	lbs/in	1/40,000 ft. ²
Peel Strength	ASTM D 6496	3.5	lbs/in	1/40,000 ft. ²
(1) Measured at 0% dry moisture content				

TABLE 5 BENTONITE/GEOTEXTILE COMPOSITE MATERIAL (FLOOR AREAS)				
Property	Test Method	Value	Units	Frequency
Clay Mass/Unit Area	ASTM D 5993 (1)	0.75 min	psf	1/40,000 ft. ²
Permeability (5 psi)	ASTM D 5084	5.0x10 ⁻⁹ max	cm/sec	weekly
Grab Tensile Strength	ASTM D 4632	30	lbs/in	1/40,000 ft. ²
Peel Strength	ASTM D 6496	1.0	lbs/in	1/40,000 ft. ²
(1) Measured at 0% dry moisture content				

- B. Quality Control Inspection: For needle-punched GCL, manufacturer must provide written certification that material is "needle free" by continuous inspections for the presence of broken needles using a metal detector.

2.5 SEAM OVERLAP

- A. Match lines shall be imprinted on both edges of the upper geotextile fabric for bentonite/geotextile GCLs as a means for providing quality assurance of the overlap being within manufacturer's recommendations. Lines shall be printed such that they are easily visible and at lap distances recommended by the manufacturer.
- B. An additional line 12-inches from the edge will be included for overlap in leachate collection lines. Sheets will be overlapped a minimum of 12 inches at leachate collection sumps.

2.6 QUALITY CONTROL SPECIFICATIONS

- A. Sample Selection - Upon delivery to the installation site, test samples shall be obtained by the Owner to verify conformance to project plans and specifications as well as manufacturer's certifications. Samples shall be taken from selected rolls by removing the protective cover and cutting a full width, three (3) feet long strip. One revolution of the GCL may be discarded before cutting the sample. The sample roll shall be rewrapped and stored with other rolls. The sample strips shall be identified by type, style, lot and roll number. The machine direction shall be noted with a waterproof marker.
- B. Conformance Testing: Samples shall be tested by Owner for conformance with the properties shown in Table 6, below:

TABLE 6 GCL ON SITE CONFORMANCE TESTS				
Property	Test Method	Value	Unit	Frequency
Permeability (5 psi)	ASTM D 5084	5.0×10^{-9} max	cm/sec	1/100,000 ft ²
Clay Mass/Unit Area	ASTM D 5993	0.75 min	psf	1/100,000 ft ²
Direct Shear (Internal)	ASTM D 5321	22 (2)	degrees	one
Direct Shear (Interface)	ASTM D 5321	22 (2)	degrees	(1)
(1) Once per interface type				
(2) Peak value				

- C. See Section 01300, SUBMITTALS for submittal information on direct shear requirements.

PART 3 - EXECUTION

3.1 PREPARATION

- A. Before placing GCL, the Contractor shall provide written documentation that the surfaces to receive GCL have been inspected and are acceptable for installation of the lining. Acceptable surface conditions shall be as described in Section 02200, EARTHWORK and in the SLQCP with no excessive cracking (defined as cracks at least 1-inch in depth and 12-inches in length).

3.2 ANCHOR TRENCH

- A. Anchor trenches shall be excavated as specified prior to liner system placement.

3.3 PLACEMENT

- A. Sheets will be placed in such a manner as to reduce field seams to a minimum.
- B. Proof-roll subgrade prior to GCL placement. In order to minimize subgrade degradation, GCL placement will commence within four (4) hours of proof-rolling.
- C. The Installer shall be responsible for the following:
 - 1. No equipment or tools shall damage the GCL by handling, trafficking, or other means.
 - 2. No personnel working on the GCL shall smoke, wear damaging shoes, or engage in other activities that could damage the GCL.
 - 3. The method used to unroll the panels shall not cause crimps or other damage to the GCL.
 - 4. The method used to place the panels shall minimize wrinkles. Wrinkles shall be identified as to proper location and compensation shall be identified on the Contractor's and Engineer's drawings. Ballast shall be used to prevent relocation of the compensating wrinkles by wind.
 - 5. Adequate loading (e.g., sand bags or similar items that will not damage the GCL) shall be placed to prevent uplift by wind (in case of high winds, continuous loading is recommended along edges of panels to minimize risk of wind flow under the panels).
 - 6. Direct contact with the GCL shall be minimized, i.e., the GCL in traffic areas is protected by geotextiles, excess geomembrane, or other suitable materials.
 - 7. No objects which would be potentially harmful to the GCL or overlying layers remain under, within or on top of the GCL (i.e., tools, needles, stones, etc.).
 - 8. Dragging of GCL material on subgrade will be avoided.
- D. Weather Limitations: GCL placement shall not be done during any precipitation or times of impending precipitation, when the relative humidity exceeds 80 percent, or in the presence of excessive winds, as determined by the installation supervisor. The GCL shall not be placed in the presence of surface moisture (e.g., dew, frost) or on ponded water. GCL which becomes hydrated prior to being covered must be replaced.
- E. Geosynthetic Liner Protection: GCL placement will be limited to that amount that can be installed and covered with geomembrane in one working day. GCL will not be left uncovered and exposed to the elements at the end of any day.
- F. Damaged Material Replacement: GCL which has become hydrated before being covered shall be removed and replaced.

3.4 FIELD SEAMING

- A. Seam Overlap & Bentonite Fillet: Seams shall be overlapped as recommended by the manufacturer. For bentonite/geotextile GCLs overlaps shall extend to the manufacturer's printed match line. A fillet of dry granular bentonite will be poured at a rate of 1/4 pound per linear foot, or as recommended by the manufacturer if the GCL has non-woven geotextile encasement, along the entire length of all overlap seams. Sheets will be overlapped a minimum of 12 inches at leachate collection sumps.

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- B. Seams on Slopes: Panels shall be oriented so that the long edges are parallel to the direction of maximum slope. Lateral field seams on side slopes will be avoided if at all possible. However, if extremely long side slopes (longer than the maximum length of roll that the GCL material is available or manufactured) are included in the project, seams along the face of the side slopes will be considered under the following circumstances:
1. If seams will be required across side slopes, the Design Engineer will be contacted by the product manufacturer during the bid phase of the project.
 2. In all cases, should lateral seams be required on side slopes, the manufacturers of the products, the installers of the products, the Contractor, the Geotechnical Professional and the Design Engineer will review the situation and make recommendations as to the integrity of the seaming method and the entire lining system as it relates to the lateral seams.
 3. GCL panels will be overlapped a minimum of three (3) feet with uppermost panel overlapping the lower panel. A water resistant adhesive will be applied in the overlapped areas.

3.5 SIDE SLOPES

- A. On side slopes, non-woven geotextile material will be placed facing down.

3.6 REPAIRS

- A. Any necessary repairs to the GCL shall be made by placing a patch of the same material extending at least one (1) foot beyond the flaw or damaged area. Granular bentonite shall be added to the overlapped area at a uniform rate of at least 1/4 pound per linear foot. Adhesive of the type approved by the manufacturer may be used to keep patches in place during placement of overlying materials.

3.7 LEACHATE COLLECTION SUMP AND DITCH LINING

- A. Sheets shall be overlapped at least one foot at leachate collection sumps and ditches. An extra layer of GCL material will be placed at the bottom of leachate collection sumps.

3.8 GCL ACCEPTANCE

- A. The Installer shall retain all ownership and responsibility for the GCL until acceptance by the Owner.
- B. The GCL shall be accepted by the Owner when all of the following conditions are met:
1. Installation is finished.
 2. Verification of the adequacy of all field seams and repairs is complete.
 3. Written certification, including "as built" drawing(s), is provided by the Installer to the Engineer.
 4. Documentation of completed installation, including all reports is complete.
 5. Acceptance of "Soil and Liner Evaluation Report" by the TCEQ.

END OF SECTION

SECTION 02245

GEOMEMBRANE LINER

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. High Density Polyethylene (HDPE) geomembrane liner (GML).
- B. Installation of HDPE GML.

1.3 RELATED SECTIONS

- A. Section 02240 - Geosynthetic Clay Liner.
- B. Section 02246 - Geotextile Fabrics.
- C. Section 02247 - Geocomposite Drainage Layer.
- D. Section 02248 - Gravel Drainage Material.
- E. Section 02250 - Leachate Collection Systems.

1.4 REFERENCES

Applicable Publications: The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only. The latest publication in use at the time of the executed contract will be the one that governs this project.

- A. AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) STANDARDS
 1. ASTM D 792 - Standard Test Methods for Density and Specific Gravity (relative density) of Plastics by Displacements.
 2. ASTM D 1004 – Standard Test Method for Tear Resistance of Plastic Film and Sheeting.
 3. ASTM D 1238 - Standard Test Method for Flow Rates of Thermoplastic by Extrusion Plastometer.
 4. ASTM D 3895 - Standard Test Methods for Oxidative-Induction Time of Polyolefins by Differential Scanning Calorimetry.
 5. ASTM D 4218 - Standard Test Method for Determination of Carbon Black Conduit in Polyethylene Compounds by the Muffle-Furnace Technique.
 6. ASTM D 4833 - Standard Test Method for Index Puncture Resistance of Geotextiles, Geomembrane, and Related Products.
 7. ASTM D 5199 - Standard Test Method for Measuring Nominal Thickness of Geotextile and Geomembranes.
 8. ASTM D 5397 - Standard Test Method for Evaluation of Stress Crack Resistance of Polyolefin Geomembranes using Notched Constant Tensile Load Test.
 9. ASTM D 5596 – Standard Test Method for Microscopic Evaluation of the Dispersion of Carbon Black in Polyolefin Geosynthetics.

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10. ASTM D 5721 – Standard Practice for Air-Oven Aging of Polyolefin Geomembranes.
 11. ASTM D 5885 – Standard Test Method for Oxidative Induction Time of Polyolefin Geosynthetics by High-Pressure Differential Scanning Calorimetry.
 12. ASTM D 5994 – Standard Test Method for Measuring Core Thickness of Textured Geomembrane.
 13. ASTM D 6392 – Standard Test Method for Determining the Integrity of Nonreinforced Geomembrane Seams Produced Using Thermo-Fusion Methods.
 14. ASTM D 6693 - Tensile Properties of Plastics.
 15. ASTM D 7466 – Standard Test Method for Measuring the Asperity Height of Textured Geomembranes.
- B. GEOSYNTHETIC INSTITUTE
1. GRI GM 13 - HDPE Liners.
- C. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
1. TCEQ, 30 TAC Chapter 330 - Texas Commission on Environmental Quality, Municipal Solid Waste Regulations.
- D. OWNER
1. MSW Permit - Owner's TCEQ MSW Permit.

1.5 QUALITY ASSURANCE

- A. Manufacturing: The Manufacturer shall have at least five (5) years continuous experience in the manufacture of HDPE geomembrane rolls and/or experience totaling 2,000,000 square feet of manufactured HDPE geomembrane. The manufacturer shall permit the Owner and the Engineer to visit the manufacturing plant.
- B. Installation
1. The installation contractor shall be the manufacturer or an approved contractor trained and licensed to install the manufacturer's geomembrane.
 2. Installation shall be performed under the constant direction of a single Field Installation Supervisor who shall remain on site and be responsible, throughout the liner installation, for liner layout, seaming, patching, testing, repairs, and all other activities by the Installer. This Installation Supervisor shall have installed or supervised the installation and seaming of a minimum of 2,000,000 square feet of HDPE geomembrane. Actual seaming shall be performed under the direction of a Master Seamer (who may also be the Installation Supervisor) who has seamed a minimum of 2,000,000 square feet of HDPE geomembrane, using the same type of seaming apparatus specified in the current project. This Installation Supervisor and/or Master Seamer shall be present whenever seaming is performed.

1.6 SUBMITTALS

- A. Manufacturer
1. Quality control program and manual, or descriptive documentation.
 2. List of material properties and samples of liner.
 3. A list documenting no less than 5 completed facilities totaling a minimum of 2,000,000 square feet.
 4. Certification that all resin used in the manufacture of geomembrane for this job meets the specifications.
 5. Copy of quality control certificates issued by the HDPE resin supplier.
 6. Copy of quality control certificates in conformance with Sections 2.2 and 2.5, and the SLQCP.

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7. Certification that the geomembrane and extrudate produced for this project have the same properties.
- B. Installation Contractor
1. Certification that both the Installation Supervisor for the installer and the Master Seamer have reviewed the Quality Assurance Plan, the Project Plans, and these specifications.
 2. Three (3) samples of factory seams, if applicable. In addition, the Contractor shall submit three field seam samples. The Contractor shall also provide a list of seam properties, minimum values (see section 2.4), and test methods employed.
 3. A list of at least 5 completed facilities, totaling a minimum of 2,000,000 square feet for which the Contractor has installed an HDPE geomembrane.
 4. Proposed Installation Panel layout identifying seams and details.
 - a. Layout plan must be approved by the Engineer at least 10 days before materials are ordered. The panel layout must provide a numbering scheme to be used in quality control/assurance procedures and shall provide that:
 - 1) Seams run up and down slopes.
 - 2) Field seam lengths are to be minimized.
 - 3) GML shall not have any penetrations.
 5. Written certification that Installer is capable of performing all necessary construction testing as required by the TCEQ.
 6. Any proposed variance or deviation from these documents shall be submitted in writing by the Installer to the Engineer a minimum of seven (7) working days prior to the scheduled start of geomembrane installation and will be accepted/rejected by the Engineer prior to start of installation activities.
- C. Materials: Submit samples as required in SLQCP.

1.7 WARRANTY

- A. A written Warranty shall be obtained from the Manufacturer (for material) and the Installation Contractor (for workmanship). These documents shall warrant the quality of the in-place liner.
- B. Manufacturer: Furnish a written warranty on a pro-rata basis for a period of 2 years. The warranty shall be against manufacturing defects or workmanship and against deterioration due to ozone, ultraviolet or other normal weather aging. The warranty shall be limited to replacement of material only, and shall not cover installation.
- C. Installation Contractor: Furnish a written warranty that the entire lining installed to be free of defects in material and workmanship and installed pursuant to the "Soil and Liner Quality Control Plan" (SLQCP) for a period of 2 years following the date of the Certificate of Substantial Completion. The Contractor shall agree to make any repairs or replacements made necessary by defects in materials or workmanship which become evident during the 2 year warranty period.

1.8 DELIVERY, STORAGE AND HANDLING

- A. Transportation: The geomembrane rolls or panels shall be packaged and shipped by appropriate means so that no damage is caused. Transportation shall be the responsibility of the Installer.

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- B. Delivery: Off-loading and storage of the geomembrane is the responsibility of the Installer. The Installer shall be responsible for replacing any damaged or unacceptable material at no cost to the Owner. No off-loading shall be done unless the Engineer is present. Damage during off-loading shall be documented by the Engineer and Installer. All damaged rolls must be separated from the undamaged rolls until the proper disposition of that material has been determined by the Owner's Representative. The Owner's Representative will be the final authority on determination of damage.
 - C. On-Site Storage
 - 1. The geomembrane shall be stored so as to be protected from puncture, dirt, grease, water, moisture, mud, mechanical abrasions, excessive heat, or other damage.
 - 2. The rolls shall be stored on a prepared surface (not wooden pallets) and should not be stacked more than two rolls high.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. The geomembrane shall be High-Density Polyethylene.
- B. Textured HDPE will have a coefficient of friction of GML to the geocomposite clay liner and geocomposite drainage layer of not less than 22°, as determined by third party conformance testing.

2.2 GEOMEMBRANE RAW MATERIALS

- A. The geomembrane shall be manufactured of new, first-quality resin and shall be compounded and manufactured specifically for the intended purpose. Carbon black (min 2% per ASTM D-4218) shall be added to the resin if the resin is not compounded for ultra-violet resistance. The resin manufacturer shall certify each batch for the properties shown in Tables 1 and 2.

2.3 ROLLS

- A. The geomembrane shall be supplied in rolls with a minimum width of 15 feet. Labels on each roll shall identify the thickness of the material, the length and width of the roll, batch and roll numbers, and name of manufacturer. The roll length shall be maximized to provide the largest manageable sheet for the fewest field seams
- B. The geomembrane rolls shall meet the properties shown on Table 1 for smooth membrane material, and Table 2 for textured membrane material.
Prior to use, the material shall be certified in writing by the manufacturer to meet the minimum physical properties shown on Tables 1 and 2. The certificate must include roll identification number, testing procedure and test results. Test results are required for every 100,000 square feet of material, every resin lot, or as required by SLQCP.

TABLE 1 TYPICAL PROPERTIES: 60 mil, Smooth Liner			
Property	Test Method	TEST RESULTS	
		Nominal ⁽¹⁾	Minimum ⁽²⁾
*Thickness (mils)	ASTM D 5199	60	54
*Sheet Density (g/cc)	ASTM D 1505		0.940
Melt Index (g/10 minutes)	ASTM D 1238		≤ 1.0
*Carbon Black Content, (%)	ASTM D 1603		2-3
*Carbon Black Dispersion	ASTM D 5596		(3)
TENSILE PROPERTIES:	ASTM D 638		
*Tensile Strength at Yield, ppi			126
*Tensile Strength at Break, ppi			228
*Elongation at Yield, %			12
*Elongation at Break, (2.0" G.L.)%			700
Tear Strength, lbs.	ASTM D 1004		42
Puncture Resistance, lbs.	ASTM D 4833		108
Stress Crack Resistance, hr.	ASTM D 5397		300
Oxidative Induction Time, mins.	ASTM D 3895		>100
SEAM PROPERTIES - Fusion Weld (4)	ASTM D 6392		
Shear Strength, ppi			120
Peel Strength, ppi			78
SEAM PROPERTIES - Extrusion Weld (4)	ASTM D 6392		
Shear Strength, ppi			120
Peel Strength, ppi			78
(1) Nominal values are average lot property values. (2) Minimum values, unless otherwise specified, are the average roll values as reported by the specified test method. (3) 9 of 10 Views in Categories 1 or 2 and 1 of 10 views in Category 3. (4) Seam properties to be field tested and tested by independent third party. See paragraph 2.4 of this section. * Denotes independent third party conformance test in addition to manufacturer's certification.			

TABLE 2 TYPICAL PROPERTIES: 60 mil, Textured Liner			
Property	Test Method	TEST RESULTS	
		Nominal (1)	Minimum (2)
*Thickness, mils	ASTM D 5994	60	54
*Sheet Density, g/cc	ASTM D 1505		0.940
Melt Index, g/10 minutes	ASTM D 1238		≤1.0
*Carbon Black Content, %	ASTM D 1603		2-3
*Carbon Black Dispersion	ASTM D 5596		(3)
TENSILE PROPERTIES	ASTM D 638		
*Tensile Strength at Yield, ppi.			126
*Tensile Strength at Break, ppi			90
*Elongation at Yield, %			12
*Elongation at Break (2.0" G.L.)%			100
Tear Strength, lbs.	ASTM D 1004		42
Puncture Resistance, lbs.	ASTM D 4833		90
Stress Crack Resistance, hr.	ASTM D 5397		300
Oxidative Induction Time, mins.	ASTM D 3895		>100
SEAM PROPERTIES - Fusion Weld (4)	ASTM D 6392		
Shear Strength, ppi			120
Peel Strength, ppi			78
SEAM PROPERTIES - Extrusion Weld (4)	ASTM D 6392		
Shear Strength, ppi			120
Peel Strength, ppi			78
(1) Nominal values are average lot property values. (2) Minimum values, unless otherwise specified, are the average roll values as reported by the specified test method. (3) 9 of 10 Views in Categories 1 or 2 and 1 of 10 views in Category 3. (4) Seam properties to be field tested and test by independent third party. See paragraph 2.4 of this section. (5) 9 of 10 Views in Categories 1 or 2 and 1 of 10 Views in Category 3. * Denotes independent third party conformance test in addition to manufacturer's certification.			

2.4 FIELD SEAMS

A. The field seams shall be tested as follows:

1. Shear seam specimens are 1 inch wide, with a grip separation of 4 inches plus the width of the seam. The seam is to be centered between the clamps. The grip separation rate is 2-ipm.
2. Both shear seam strength and peel tests shall be run on five replicate specimens. A break through the weld or at the weld-sheet interface shall be considered a Non-FTB (failure) in both seam strength (shear) and peel strength tests.
3. Approved field seaming processes are hot shoe fusion welding and extrusion welding.
4. Welding rods or beads used for extrusion welding shall be HDPE and the physical properties shall be the same as those of the resin used in the manufacture of the HDPE geomembrane.

2.5 QUALITY CONTROL SPECIFICATIONS

A. Raw Materials

1. Resin

- a. All resins for use in Geomembrane must pass a candidate pre-approval process before being eligible for use. Each incoming rail car shall be sampled by compartment with the following testing performed and compared to the manufacturer's specifications:

- 1) Density: ASTM D 792, Method B.
- 2) Melt Index: ASTM D 1238.

2. Additives

- a. All additives and concentrates must pass a candidate pre-approval process. All incoming materials are to be statistically sampled with the following testing performed and compared to the manufacturer's specifications:

- 1) Density: ASTM D 792, Method B.
- 2) Melt Index: ASTM D 1238.
- 3) Carbon Black Content: ASTM D 4218.

B. Finished Product: On-Line During Production

1. Inspection

- a. Performed on each roll.

1) Thickness

- (a) A full width sample shall be cut from the end of each roll, and thickness shall be checked across the entire sample.

2) Appearance

- (a) Constant monitoring of:
 - (1) Sheet surface appearance.
 - (2) Knife-cut edge.
 - (3) Folds, holes, creases, abrasions, or other damage.

2. Roll Identification

- a. The Q.C. Engineer controls all paperwork, including roll tags. Four tags per roll shall be used on the following:

- 1) Inside the core.
- 2) On the production roll sample.
- 3) On the roll surface.

3. Out-of-Spec. Material

- a. Any roll not meeting the specification for any of the above inspections shall be placed on hold.

C. Finished Product: Post Production

1. Sampling

- a. Test samples shall be obtained from the rolls of material to be delivered to the site for conformance testing. The samples shall be tested for the following requirements at the rates specified.

2. Testing Requirements - Resin

- a. Specific Gravity/Density

- 1) Test Method: ASTM D 792, Method B.
- 2) Test Frequency: Not less than 1 test per 100,000 square feet with not less than 1 test per resin lot.

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- b. Melt Flow Index
 - 1) Test Method: ASTM D 1238.
 - 2) Test Frequency: Not less than 1 test per 100,000 square feet with not less than 1 test per resin lot.
 - 3. Testing Requirements - Finished Product
 - a. Thickness
 - 1) Test Method: ASTM D 5994 (Textured), ASTM D 5199 (Smooth).
 - 2) Test Frequency: 1 per 100,000 ft.² and 1 test per resin lot.
 - b. Density
 - 1) Test Method: ASTM D 792, Method B.
 - 2) Test Frequency: Not less than 1 test per 200,000 lbs with not less than 1 test per resin lot.
 - 3) Minimum Number of Tests: 4.
 - c. Carbon Black Content
 - 1) Test Method: ASTM D 1603.
 - 2) Test Frequency: Not less than 1 test per 20,000 lbs with not less than 1 test per resin lot.
 - 3) Minimum Number of Tests: 4.
 - d. Carbon Black Dispersion
 - 1) Test Method: ASTM D 5596.
 - 2) Test Frequency: Not less than 1 test per 45,000 lbs with not less than 1 test per resin lot.
 - 3) Minimum Number of Tests: 4.
 - e. Tensile Properties
 - 1) Test Method: ASTM D 638.
 - 2) Test Frequency: Not less than 1 test per 20,000 lbs with not less than 1 test per resin lot.
 - 3) Minimum Number of Tests: 4.
 - f. Puncture Resistance
 - 1) Test Method: D 4833.
 - 2) Test Frequency: Not less than 1 test per 45,000 lbs with not less than one test per resin lot.
 - 3) Minimum Number of Tests: 4.
 - g. Tear Resistance
 - 1) Test Method: ASTM D 1004.
 - 2) Test Frequency: Not less than 1 test per 45,000 lbs with not less than 1 test per resin lot.
 - 3) Minimum Number of Tests: 4.
 - 4. Reporting
 - a. All results shall be logged into the batch file. Any testing that yields "out-of-spec" results shall be brought to the immediate attention of the Q.C. Manager. All material produced after the last sample meeting all specifications shall be retrieved and placed on hold.
- D. Finished Product: Laboratory Post-Production
- 1. Reporting
 - a. All results shall be logged into the batch file. These results shall be the official properties for that batch. Any batch that fails any specification shall be placed on hold for further evaluation.

PART 3 - EXECUTION

3.1 ANCHOR TRENCH

- A. The anchor trench shall be excavated as specified prior to liner system placement.

3.2 PLACEMENT

- A. The Installer shall be responsible for the following:
 - 1. No equipment or tools shall damage the geomembrane by handling, trafficking, or other means.
 - 2. No personnel working on the geomembrane shall smoke, wear damaging shoes, or engage in other activities that could damage the geomembrane.
 - 3. The method used to unroll the panels shall not cause scratches or crimps in the geomembrane and shall not cause indentations in the supporting soil greater than one inch deep or damage to the underlying geosynthetic clay liner.
 - 4. The method used to place the panels shall minimize wrinkles. Wrinkles shall be identified as to proper location and compensation shall be identified on the Contractor's and Engineer's drawings. Ballast shall be used to prevent relocation of the compensating wrinkles by wind.
 - 5. Adequate loading (e.g., sand bags or similar items that will not damage the geomembrane) shall be placed to prevent uplift by wind (in case of high winds, continuous loading is recommended along edges of panels to minimize risk of wind flow under the panels).
 - 6. Direct contact with the geomembrane shall be minimized, i.e., the geomembrane in traffic areas is protected by geotextiles, extra geomembrane, or other suitable materials.
- B. Weather Limitations
 - 1. Geomembrane deployment shall proceed between ambient temperatures of 32° F to 90° F. Below 40° F, preheat of the GML will be required.
 - 2. Geomembrane placement shall not be done during any precipitation, in the presence of excessive moisture (e.g., fog, rain, dew, frost) or in the presence of excessive winds, as determined by the Installation Supervisor.
- C. Geomembrane Protection
 - 1. Geomembrane will not be left exposed to weather for more than seven (7) consecutive calendar days.
- D. Factory Seam Quality Verifications
 - 1. The Engineer will require the Contractor to test up to 20% of factory fusion welds (non-destructive air pressure test and/or vacuum test) in the field to verify factory test results. Additional testing at the Installer's expense will be required if failed tests are obtained in the field.

3.3 FIELD SEAMING

- A. Seams shall be oriented parallel to the line of maximum slope, i.e., oriented down, not across the slope. In corners and odd-shaped geometric locations, the number of field seams shall be minimized.
- B. No base T-seam shall be closer than 5 feet from the toe of the slope. Seams shall be aligned with the least possible number of wrinkles and "fishmouths." If a fishmouth or wrinkle is found, it shall be relieved and cap-stripped.

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- C. Seam Overlap
1. Panels of geomembrane must have a finished overlap of a minimum of 4 inches for hot shoe fusion welding and 3 inches for extrusion welding, but in any event sufficient overlap shall be provided to allow peel tests to be performed on the seam.
 2. No solvent or adhesive may be used unless the product is approved by the Owners Representative. (Samples shall be submitted to the Design Engineer for testing and evaluation).
 3. The procedure used to temporarily bond adjacent panels together shall not damage the geomembrane; in particular, the temperature of hot air at the nozzle of any spot welding apparatus shall be controlled such that the geomembrane is not damaged.
- D. Seaming Equipment and Accessories
1. Approved equipment for field seaming are hot shoe fusion welders and extrusion welders.
 - a. Hot Shoe Welder, 110 Volt, 10 Amps.
 - b. Extrusion Welder, 220 Volt, 19 Amps.
 - c. High-speed, 10,000 rpm, 42 inch side grinder with 80-grit discs.
 - d. 7.5 KW Generator, single-phase with 110/220 Volt Outputs.
 - e. Power Cord, minimum S.O. type, 10 O.S.H.A. approved electrical cord with O.S.H.A. approved twist-type plugs and connections.
 - f. Seam Vacuum Tester for non-destructive seam and patch testing.
 - g. Field Tensiometer, capable of performing seam and peel adhesion tests for quantitative testing on-site.
- E. Test Seams
1. Field test seams shall be conducted on geomembrane liner to verify that seaming conditions are satisfactory. Test seams shall be conducted for each seamer at the beginning of each seaming period, at the Engineer's discretion, and at least once each 4 hours, for each seaming apparatus used that day.
 2. All test seams shall be made at a location selected by the Engineer in the area of the seaming and in contact with the subgrade. The test seam samples shall be 12-inches wide and 10 feet long for hot shoe welding and 4 feet long for extrusion welding with the seam centered lengthwise. Specimens 1 inch wide shall be cut from each opposite end of the test seam by the Engineer. The Engineer shall use a tensiometer provided by the Installer to test these specimens for shear and peel. If a test seam fails to meet field seam specifications, the seaming apparatus and/or seamer shall not be accepted and shall not be used for seaming until the deficiencies are corrected and two consecutive successful full test seams are achieved.
 3. At the very least, the peel adhesion and bonded shear strength must be 62% and 95%, respectively, of the strength of the parent material, but no less than 78 ppi and 120 ppi, respectively.
- F. Non-Destructive Seam Testing: The Installer shall non-destructively test all field seams over their full length. All test equipment, including but not limited to the following shall be furnished by the Installer:
1. Vacuum Box Testing
 - a. Equipment for testing single wedge fusion seams and extrusion seams shall be comprised of the following:
 - 1) A vacuum box assembly consisting of a rigid housing, a transparent viewing window, a soft rubber gasket attached to the bottom, port hole or valve assembly, and a vacuum gauge.
 - 2) A steel vacuum tank and pump assembly equipped with a pressure controller and pipe connections.

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- 3) A rubber pressure/vacuum hose with fittings and connections.
 - 4) A plastic bucket and wide paint brush.
 - 5) A soapy solution.
 - b. The following procedures shall be followed by the installer:
 - 1) Excess sheet overlap shall be trimmed away.
 - 2) Clean the window, gasket surfaces and check for leaks.
 - 3) Energize the vacuum pump and reduce the tank pressure to 5 psi.
 - 4) Wet a strip of geomembrane approximately 12 inches by 48 inches (length of box) with the soapy solution.
 - 5) Place the box over the wetted area and compress.
 - 6) Close the bleed valve and open the vacuum valve.
 - 7) Ensure that a leak tight seal is created.
 - 8) For a period of approximately 15 seconds, examine the geomembrane through the viewing window for the presence of soap bubbles.
 - 9) If no bubbles appear after 15 seconds, close the vacuum valve and open the bleed valve, move the box over the next adjoining area with a minimum 3 inches overlap and repeat the process.
 - 10) All areas where soap bubbles appear shall be marked and repaired and then retested.
 - c. The following procedures shall apply to locations where seams cannot be non-destructively tested, as determined by the Engineer:
 - 1) If the seam is accessible to testing equipment prior to final installation, the seam shall be non-destructively tested prior to final installation.
 - 2) If the seam cannot be tested prior to final installation, the seaming operations shall be observed by the Engineer for uniformity and completeness.
2. Air Pressure Testing (For Double Fusion Seam Only)
- a. The following procedures are applicable to those processes which produce a double seam with an enclosed space.
 - 1) Equipment for testing double fusion seams shall be comprised of the following:
 - (a) An air pump equipped with pressure gauge capable of generating and sustaining a pressure between 25 and 30 psi and mounted on a cushion to protect the geomembrane.
 - (b) A manometer equipped with a sharp hollow needle, or other approved pressure feed device.
 - b. The following procedures shall be followed by the Installer:
 - 1) Seal one end of the seam to be tested.
 - 2) Insert needle or other approved pressure feed device through the sealed end of the channel created by the double wedge fusion weld.
 - 3) Energize the air pump to verify the unobstructed passage of air through the channel.
 - 4) Seal the other end of the channel.
 - 5) Energize the air pump to a pressure of 30 psi, close valve, and sustain pressure for approximately 5 minutes.
 - 6) If loss of pressure exceeds 4 psi, or pressure does not stabilize, locate faulty area, repair and retest.
 - 7) Remove needle or other approved pressure feed device and seal.

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- G. Destructive Seam Testing: The Installer shall provide the Engineer with a minimum of one destructive test sample per 500 feet of seam length from a location specified by the Engineer. The Installer shall not be informed in advance of the sample location.
1. Sampling Procedure: In order to obtain test results prior to completion of liner installation, samples shall be cut by the Installer as the seaming progresses. A destructive test must be done for each welding machine used for seaming or repairs. Sampling times and locations shall be determined by the Engineer. The Engineer must witness the obtainment of all field test samples and the Installer shall mark all samples with their location roll and seam number. The Installer shall also record in written form the date, time, location, roll seam number, ambient temperatures, and pass or fail description. A copy of the information must be attached to each sample portion. All holes in the geomembrane resulting from obtaining the seam samples shall be immediately repaired. All patches shall be vacuum tested.
 2. Size and Disposition of Samples: The samples shall be 12 inches wide by 48 inches long with the seam centered lengthwise. The sample shall be cut into two equal length pieces, and given to the Engineer.
 3. Field Testing: The Installer shall cut six 1-inch wide replicate specimens from his sample and these shall be tested by the Engineer. The Installer shall test two specimens (four when possible for testing both tracks on dual-track fusion welded seams) for peel strength. All tests to be witnessed by the Engineer. To be acceptable, both test specimens must pass. Any specimen that fails through the weld or by adhesion at the weldsheet interface is a Non-FTB break and shall be considered a failure.
 4. Independent Laboratory Testing: The Engineer will package and ship all destructive seam samples to an independent testing Laboratory for determination and verification of all field shear and peel strengths. The test method and procedures to be used by the Independent Laboratory shall be the same used in field testing, where seam samples are 1-inch wide, and the grip separation rate is 2-ipm. The minimum passing criteria for independent laboratory testing are all three of the following:
 - a. All seam samples tested in the peel mode must fail in FTB.
 - b. At least four of five seam samples from each peel and shear determination must meet the minimum specified value.
 - c. The average value from all five seam samples from each peel and shear determination must meet the minimum specified value.
 - d. The above criteria apply to both tracks from each dual-track fusion welded seam before it is considered as passing. ALL FAILED LAB TESTS WILL BE PAID FOR BY THE INSTALLER.
 5. Archive Samples: The Installer will package and ship the remaining samples to the Engineer for archival. The samples shall include information that indicates where the sample was taken.
 6. Procedures for Destructive Test Failure: The following procedures shall apply whenever a sample fails the field destructive test.
 - a. The installer shall cap strip the seam between the failed location and any passed test location.
 - b. The installer can retrace the welding path to an intermediate location (at a minimum of 10 feet from the location of the failed test), at the Engineer's discretion, and take a small sample for an additional field test. If this test passes, then the seam shall be cap stripped between that location and the original failed location. If the test fails, then the process is repeated.
 - c. Over the length of seam failure, the Contractor shall either cut out the old seam, reposition the panel and reseam, or add a cap strip, as required by the Engineer.

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- d. After reseaming or placement of the cap strip, additional destructive field test(s) shall be taken within the reseamed area. The reseamed sample shall be found acceptable if test results are approved by the Engineer. If test results are not acceptable, this process shall be repeated until the reseamed length is judged satisfactory by the Engineer.
 - e. In the event that a sample fails a laboratory destructive test, then the above procedures shall be followed, considering laboratory tests exclusively.
 - f. The Engineer will document all actions taken in conjunction with destructive test failures.
- H. Defects and Repairs: All seams and non-seam areas of the geomembrane shall be inspected by the Engineer for defects, holes, blisters, undispersed raw materials, and any sign of contamination by foreign matter. Because light reflected by the geomembrane helps to detect defects, the surface of the geomembrane shall be clean at the time of inspection. The geomembrane surface shall be brushed, blown, or washed by the Installer if the amount of dust or mud inhibits inspection. The Engineer shall decide if cleaning of the geomembrane is needed to facilitate inspection.
- 1. Evaluation: Each suspect location in seam and non-seam areas shall be non-destructively tested as appropriate in the presence of the Engineer. Each location that fails the non-destructive testing shall be marked by the Engineer, and repaired accordingly.
 - 2. Repair Procedures:
 - a. Defective seams shall be restarted/reseamed as described in these specifications.
 - b. Small holes shall be repaired by extrusion cap welding. If the hole is larger than 3 inch, it shall be patched.
 - c. Tears shall be repaired by patching. Where the tear is on a slope or an area of stress and has a sharp end it must be rounded prior to patching.
 - d. Blisters, large holes, undispersed raw materials, and contamination by foreign matter shall be repaired by patches.
 - e. Surfaces of HDPE which are to be patched shall be abraded and cleaned no more than 15 minutes prior to the repair. No more than 10% of the thickness shall be removed.
 - f. Patches shall be round or oval in shape, made of the same geomembrane, and extend a minimum of 6 inches beyond the edge of defects. All patches shall be of the same compound and thickness as the geomembrane specified. All patches shall have their top edge beveled with an angle grinder prior to placement on the geomembrane. Patches shall be applied using approved methods only.
 - 3. Restart/Reseaming Procedures: The welding process shall restart by grinding the existing seam and rewelding a new seam. Welding shall commence where the grinding started and must overlap the previous seam by at least 2 inches. Reseaming over an existing seam without regrinding shall not be permitted.
 - 4. Verification of Repairs:
 - a. Each repair shall be non-destructively tested, except when the Engineer requires a destructive seam sample obtained from a repaired seam. Repairs that pass the non-destructive test shall be taken as an indication of an adequate repair. Failed tests indicate that the repair shall be repeated and retested until passing test results are achieved.
 - b. Recording of Results: daily documentation of all non-destructive and destructive testing shall be provided to the Engineer by the Installer. This documentation shall identify all seams that initially failed the test and include evidence that these seams were repaired and successfully retested.

3.4 GEOMEMBRANE ACCEPTANCE

- A. The Installer shall retain all ownership and responsibility for the geomembrane until acceptance by the Owner. The surface of the geomembrane shall not have striations, roughness, pinholes, or bubbles and shall be free of holes, blisters, undispersed raw materials, or any contamination by foreign matter; except that if in the opinion of the Engineer the blemish will not adversely affect properties and use of the geomembrane, the Engineer may accept the geomembrane after sufficient laboratory test data are provided to support such acceptance, and further, provided all such testing is done at the sole expense of the Installer.
- B. The geomembrane liner shall be accepted by the Owner when all of the following conditions are met:
 - 1. Installation is finished.
 - 2. Verification of the adequacy of all field seams and repairs, including associated testing, is complete.
 - 3. Written certification, including "as built" drawing(s), is provided by the Installer to the Engineer.
 - 4. Documentation of completed installation, including all reports is complete.
 - 5. Acceptance of "Geomembrane Liner Evaluation Report" by the TCEQ.

END OF SECTION

SECTION 02246

GEOTEXTILE FABRICS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Geotextile Fabric Specification.
- B. Geotextile Fabric Installation.

1.3 RELATED SECTIONS

- A. Section 02245 - Geomembrane Liner.
- B. Section 02247 - Geocomposite Drainage Layer.
- C. Section 02248 - Gravel Drainage Layer.
- D. Section 02250 - Leachate Collection Systems.

1.4 REFERENCES

- A. AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) STANDARDS
 1. ASTM D 3776 – Standard Test Method for Mass Per Unit Area (Weight) of Fabric.
 2. ASTM D 3786 - Standard Test Method for Bursting Strength of Textile Fabrics – Diaphragm Bursting Strength Test Method.
 3. ASTM D 4354 - Standard Practice for Sampling of Geosynthetics for Testing.
 4. ASTM D 4355 - Standard Test Method for Deterioration of Geotextiles from Exposure to Light, Moisture, and Heat in a Xenon Arc Type Apparatus.
 5. ASTM D 4491 - Standard Test Methods for Water Permeability of Geotextiles by Permittivity.
 6. ASTM D 4533 - Standard Test Method for Trapezoidal Tearing Strength of Geotextiles.
 7. ASTM D 4751 - Standard Test Method for Determining Apparent Opening Size of a Geotextile
 8. ASTM D 4833 - Standard Test Method for Index Puncture Resistance of Geotextiles, Geomembranes, and Related Products
 9. ASTM D 5034 - Standard Test Method for Breaking Strength and Elongation of Textile Fabrics (Grab Test).
 10. ASTM D 5035 - Standard Test Method for Breaking Force and Elongation of Textile Fabrics (Strip Method)
 11. ASTM D 5199 - Standard Test Method for Measuring the Nominal Thickness of Geosynthetics.
 12. ASTM D 5261 - Standard Test Method for Measuring Mass per Unit Area of Geotextile.

1.5 SUBMITTALS

- A. Shop Drawings and Product Data
 - 1. Manufacturer's product data.
 - 2. Manufacturer's Installation Instructions.
- B. Manufacturer's Certification
 - 1. Manufacturer must certify that all geotextile fabric has been inspected and that no broken needles are present in each roll of material.
- C. Contractor's Experience Record
 - 1. Indicate experience of installing manufacturer's product.
 - 2. Provide at least 5 reference names with recent telephone numbers on past municipal solid waste landfill projects.

1.6 QUALITY ASSURANCE

- A. Manufacturer:
 - 1. Certify that the company has at least 5 years experience.
 - 2. Certify upon job completion that fabric was installed in accordance with manufacturer's recommendations and in conformance to the contract specifications.
- B. Contractor
 - 1. Certify experience exceeds 2,000,000 square feet of fabric in the past 5 years.

1.7 PACKAGING AND STORAGE

- A. Rolled on a cardboard core and wrapped in plastic with sealed ends.
- B. Material will be covered to block sunlight.
- C. Store material in a manner to avoid contact with soil.

PART 2 - PRODUCTS

2.1 GEOTEXTILE FABRIC

- A. Nonwoven fabric.
- B. Acceptable Material.
 - 1. Polypropylene.

2.2 GEOTEXTILE COMPONENTS

- A. Geotextile Filter. Encompass gravel drainage material for leachate collection system.

2.3 GEOTEXTILE FILTER SPECIFICATIONS

Property	Unit	Test Method	Frequency	Minimum Average Roll Value
*Fabric Weight	oz/yd ²	ASTM D-5261	1 per 100,000 ft ²	8.0 oz
*Grab Tensile Strength	lbs	ASTM D-5034 ASTM D-5035	1 per 100,000 ft ²	220
*Grab Elongation	%	ASTM D-5034 ASTM D-5035	1 per 100,000 ft ²	50
*Puncture Strength	lbs	ASTM D-4833	1 per 100,000 ft ²	120
*Permittivity	Sec ⁻¹	ASTM D-4491	1 per 100,000 ft ²	1.30
*Denotes independent third party conformance test in addition to manufacturer's certification.				

PART 3 - EXECUTION

3.1 EQUIPMENT

- A. All equipment, tools and machines used in the performance of the work shall be subject to approval prior to commencement of work. The equipment shall be maintained in satisfactory working condition at all times.

3.2 CONSTRUCTION INSPECTION

- A. The Contractor shall conduct a visual inspection of each panel or sheet as it is unrolled. The Engineer shall be notified of any damage.

3.3 GEOTEXTILE PLACEMENT

- A. Material will be placed in the locations shown on the plans. Placement shall be conducted by experienced and trained personnel, including supervisors, foreman, and skilled laborers who are qualified and approved by the manufacturer of the geotextile. All placement shall be in strict accordance with the geotextile manufacturers recommendations. The placement shall be performed to provide a complete sheet without holes, tears, excessive wrinkles, creases, or other imperfections.

3.4 FIELD SEAMS

- A. Geotextile fabric may be placed by overlapping the edges a minimum of 18-inches or by sewing a 2-inch to 4-inch overlapped seam. The contractor shall replace any geomembrane liner that is damaged as a result of the sewing process.

3.5 BALLAST

- A. To protect installation from excessive wind, all geotextile fabric in place must be protected by ballasting the fabric with weighted sandbags. Sandbags must be placed as fabric is installed and not removed until gravel drainage material is ready to be placed.

3.6 REPAIRS

- A. Repairs to damaged geotextile fabric will be made in accordance with the geotextile manufacturers recommendations.

END OF SECTION

SECTION 02247

GEOCOMPOSITE DRAINAGE LAYER

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Dual Geotextile/high density polyethylene (HDPE) drainage geonet geocomposite specification.
- B. Geocomposite installation.

1.3 RELATED SECTIONS

- A. Section 02245 - Geomembrane Liner.
- B. Section 02250 - Leachate Collection Systems.

1.4 REFERENCES

- A. AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) STANDARDS
 1. ASTM D 413 – Standard Test Methods for Rubber Property-Adhesion to Flexible Substrate.
 2. ASTM D 1238 - Standard Test Methods for Melt Flow Rates of Thermoplastic by Extrusion Plastometer.
 3. ASTM D 1505 – Standard Test Method for Density of Plastics by the Density-Gradient Technique.
 4. ASTM D 1603 - Standard Test Methods for Carbon Black in Olefin Plastics.
 5. ASTM D 3776 - Standard Test Methods for Mass Per Unit Area (Weight) of Fabric.
 6. ASTM D 3786 - Standard Test Methods for Bursting Strength of Textile Fabrics – Diaphragm Bursting Strength Testing Method.
 7. ASTM D 4355 - Standard Test Method for Deterioration of Geotextiles by Exposure to Light, Moisture and Heat in a Xenon Arc Type Apparatus.
 8. ASTM D 4491 - Standard Test Methods for Water Permeability of Geotextiles by Permitting.
 9. ASTM D 4533 - Standard Test Methods for Trapezoidal Tearing Strength of Geotextiles.
 10. ASTM D 4632 - Standard Test Method for Breaking Load and Elongation of Geotextiles.
 11. ASTM D 4716 - Standard Test Method for Determining the (In-Place) Flow Rate Per Unit Width and Hydraulic Transmissivity of a Geosynthetic Using a Constant Thread.
 12. ASTM D 4751 - Standard Test Method for Determining Apparent Opening Size of a Geotextile.
 13. ASTM D 4833 - Standard Test Method for Index Puncture Resistance of Geomembranes, and Related Products.

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14. ASTM D 5034 - Standard Test Method for Breaking Strength and Elongation of Textile Fabrics (Grab Test)
 15. ASTM D 5035 - Standard Test Method for Breaking Force and Elongation of Textile Fabrics (Strip Method)
 16. ASTM D 5199 - Standard Test Method for Measuring the Nominal Thickness of Geosynthetics.

1.5 SUBMITTALS

- A. Shop Drawings and Product Data
 1. Manufacturer's product data.
 2. Manufacturer's Installation Instructions.
- B. Manufacturer's Certification
 1. Manufacturer must certify that all geotextile geocomposite has been inspected and that no broken needles are present in each roll of material.
- C. Contractor's Experience Record
 1. Indicate experience of installing manufacturer's product.
 2. Provide at least 5 reference names with recent telephone numbers on past municipal solid waste landfill projects.

1.6 QUALITY ASSURANCE

- A. Manufacturer:
 1. Certify that the company has at least 5 years experience.
 2. Certify upon job completion that geocomposite was installed in accordance with manufacturer's recommendations and in conformance to the contract specifications.
- B. Contractor
Certify experience exceeds 2,000,000 square feet of geocomposite in the past 5 years.

1.7 MANUFACTURER'S CERTIFICATION

- A. Manufacturer shall submit certification indicating material delivered meets project specifications.
- B. Heat-bonded HDPE drainage geonet/dual geotextile geocomposite will be supplied in rolls which are tagged as follows:
 1. Manufacturer's name.
 2. Product Identification.
 3. Lot Number.
 4. Roll Number.
 5. Dimensions of Roll.

1.8 STORAGE

- A. Material shall be wrapped in plastic with sealed ends.
- B. Material will be covered to block sunlight.
- C. Store material in a manner to avoid contact with soil.

PART 2 - PRODUCTS

2.1 TYPE

- A. Dual Geotextile/Geonet Geocomposite comparable to GSE Fabrinet (200 mil. 8 oz/sy) or approved equal.

2.2 GENERAL

- A. Manufacturing Procedure: Supplied geonet/geotextile geocomposite shall be manufactured by heat bonding geotextile to both sides of geonet. No glue, adhesive, or other foreign substance shall be permitted. No product exhibiting burned through geotextiles shall be permitted.
- B. Manufacturing Requirements: Supplied geonet/geotextile geocomposite shall be manufactured to exhibit a bond between the HDPE drainage net and the geotextile, or geotextiles, which shall be greater than that between soil and the geotextile (average peel strength shall be • 1 lb. per inch per ASTM D-413). Peel strength shall be tested a minimum of once every 50,000 square feet of material manufactured.

2.3 HDPE DRAINAGE GEONET CORE

- A. Manufacture Information: HDPE drainage geonet core shall be made by continuous extrusion of a web, forming the geometry required to provide the specified Transmissivity as a homogeneous three-dimensional structure. The resin shall be selected to provide an optimum combination of strength, environmental resistance and resistance to the high compressive loads that might reduce transmissivity. Geonet shall contain stabilizers to prevent ultraviolet light degradation.
- B. HDPE Drainage Geonet Core Properties: HDPE drainage geonet core shall be no less than 7.5 linear feet wide. Other than listed material properties, core material shall meet or exceed the following properties:

Property	Test Method	Frequency	Minimum Value	Units
*Carbon Black Content (Range)	ASTM D1603	1 per 100,000 ft ²	2-3	%
*Unit Weight (Nominal)	ASTM D3776 (Option C)	1 per 100,000 ft ²	0.94	g/cm ³
*Tensile Strength MD (Range)	ASTM D5034 ASTM D5035	1 per 100,000 ft ²	45	lbs/in
*Transmissivity @10,000 psf (Min)	ASTM D4716	1 per 100,000 ft ²	2 x 10 ⁻³	m ² /sec
*Denotes independent third party conformance test in addition to manufacturer's certification.				

- C. Geotextile Fabric Properties: Geotextile fabric bonded to drainage geonet shall be a nonwoven, needle punched polyester or polypropylene fabric. All geotextile shall conform to the following properties:

Property	Test Method	Frequency	Minimum Value	Units
*Unit Weight (MARV)	ASTM D5261	1 per 100,000 ft ²	8.0	oz/yd ²
*Grab Tensile (MARV)	ASTM D4632	1 per 100,000 ft ²	220	lbs
*Puncture Resistance	ASTM D4833	1 per 100,000 ft ²	120	lbs
*Permittivity	ASTM D4491	1 per 100,000 ft ²	1.3	sec ⁻¹
MARV = Minimum Average Roll Value				
*Denotes independent third party conformance test in addition to manufacturer's certification.				

- D. Complete Geocomposite Properties:

Property	Test Method	Frequency	Minimum Value	Units
*Transmissivity	ASTM D4716	1 per 100,000 sf	1x10 ⁻⁴	m ² /sec
*Ply Adhesion	ASTM D7005	1 per 100,000 sf	1.0	lbs/in
*Denotes independent third party conformance test in addition to manufacturer's certification.				

PART 3 - EXECUTION

3.1 GENERAL

- A. Exhibit care in keeping the geocomposite free of debris and clean prior to installation. If not free from soil and debris, clean just prior to installation.
1. Dual Geotextile Geocomposite shall be placed over the entire lined area.

3.2 FIELD SEAMS

- A. Field Seams shall be parallel to maximum slope direction.
- B. When deploying, adjacent rolls may be butted net to net or overlapped and upper layer of geotextile heat tacked every 4-to-5 linear feet or sewn. If butted, net should be secured with plastic ties provided by the manufacturer approximately every 4-to-5 linear feet along the roll length. If overlapped, 1 tie every 5 linear feet is sufficient. No metallic ties shall be used. Horizontal seams shall be tied at 1 linear foot intervals.
- C. After securing net, geotextile can be overlapped, overlapped and heat tacked every 4-to-5 linear feet, or sewn. Where sewn, geotextile overlap, beyond edge of HDPE Geonet, before sewing, shall exhibit a minimum average roll value of 6 inches. Geocomposite shall not be welded to geomembrane.

3.3 PLACING

- A. Contractor shall handle geocomposite in a manner which will ensure against damage in any form. Install over geomembrane liner keeping tension on geocomposite; and position by hand, if necessary, to minimize wrinkles.
- B. Geocomposite shall not be placed across slope (in horizontal direction).

3.4 BALLAST

- A. Care shall be taken to avoid wind problems. Weight with sand bags, or equivalent, during installation and do not remove weight materials until cover material is in place.

3.5 DAMAGE TO GEOMEMBRANE LINER

- A. Any damage to the GML will be repaired by the Contractor at Contractor's expense in accordance with Section 02245 - Geomembrane Liner.

3.6 GEOCOMPOSITE MATERIAL PROTECTION

- A. Contractor will take measures to protect the completed geocomposite and liner system after installation is complete. Protective soil cover must be placed within 14 calendar days of geocomposite installation.

END OF SECTION

SECTION 02248

GRAVEL DRAINAGE MATERIAL

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Gravel Drainage Material.
- B. Drainage Material Installation.

1.3 RELATED SECTIONS

- A. Section 02245 - Geomembrane Liner.
- B. Section 02246 - Geotextile Fabrics.
- C. Section 02247 - Geocomposite Drainage Layer.
- D. Section 02250 - Leachate Collection Systems.

1.4 REFERENCES

Applicable Publications: The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only. The latest publication in use at the time of the executed contract will be the one that governs this project.

- A. AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) STANDARDS:
 - 1. ASTM C 33 – Standard Test Methods for Specification for Concrete Aggregates.
 - 2. ASTM C 88 – Standard Test Method for Soundness of Aggregates by Use of Sodium Sulfate or Magnesium Sulfate.
 - 3. ASTM C 131 – Standard Test Method for Resistance of Degradation of Small Size Coarse Aggregates by Abrasion and Impact in the Los Angeles Machine.
 - 4. ASTM C 136 – Standard Test Method for Sieve Analysis of Fine and Course Aggregates.
 - 5. ASTM D 75 – Standard Test Method for Sampling Aggregates.
 - 6. ASTM D 2434 – Standard Test Method for Permeability of Granular Soils (Constant Head).
 - 7. ASTM D 2487 - Standard Practice for Classification of Soils for Engineering Purposes.
 - 8. ASTM D 4373 – Standard Test Method for Rapid Determination of Carbonate Content of Soils.

1.5 QUALITY ASSURANCE

- A. Contractor must provide written certification that the drainage gravel meets or exceeds the performance requirements of this specification.
- B. Contractor must provide all necessary documentation as specified.

1.6 SUBMITTALS

- A. The following information must be obtained and submitted by the Contractor in accordance to Section 01300, "Submittals".
1. Gravel Material to be used. Minimum five gallon bucket.
 2. Gradation Results.
 3. Soundness and Loss Test Results.
 4. Permeability Test Results.
 5. Calcium Carbonate Contents.

PART 2 - PRODUCTS

2.1 GRAVEL

- A. Gravel shall consist of clean, sound, hard, durable, round particles of stone or gravel per ASTM C-33. The gravel shall be free of silt and clay as defined by ASTM D2487, vegetable matter, and other objectionable materials or coatings.
- B. Gravel Quality
1. Crushed materials will not be acceptable.

Property	Test Method	Maximum Loss %
Soundness	ASTM C88	18

- C. Gradation
1. The gravel should meet the gradation requirements of ASTM D448 size numbers 467, 57, 67, or 7. The maximum gravel size shall not exceed two-inches. Gradation may be adjusted to meet or exceed permeability requirements.
- D. Permeability: 1.0×10^{-2} cm/sec or higher. (ASTM D-2434 @ Field Density.)
- E. Calcium Carbonate: Not to exceed 15% by mass in accordance with ASTM D 3042.
- F. The gravel shall be tested for gradation (ASTM D422) at a minimum of one test per 3,000-cubic yards or per lined area.

PART 3 - EXECUTION

3.1 GENERAL

- A. Gravel drainage material must be placed in a manner to prevent damage to the underlying geotextile fabric, geomembrane or geocomposite clay liner. Any damage to the geotextile fabric, geomembrane or geocomposite clay liner will be repaired or replaced in accordance with the specifications at the expense of the Contractor.

3.2 PLACEMENT

- A. Gravel drainage material will be placed in accordance with Section 02250 - Leachate Collection Systems.
- B. Gravel around leachate pipe shall be done in a manner to prevent deflection or loading of the pipe.

3.3 COMPLETION

- A. Following gravel installation, the gravel will be covered with the encompassing geotextile fabric so that the ends of the geotextile fabric overlap at least 18-inches, as shown on the plans.

3.4 THICKNESS VERIFICATION

- A. The required thickness of drainage materials will be verified by surveyed methods on an established grid system with not less than one verification point per 5,000 square feet of area.

END OF SECTION

SECTION 02250

LEACHATE COLLECTION SYSTEMS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Polyethylene (PE) Pipe Material.
- B. Polyethylene (PE) Pipe Installation.

1.3 RELATED SECTIONS

- A. Section 02245 - Geomembrane Liner.
- B. Section 02246 - Geotextile Fabrics.
- C. Section 02247 - Geocomposite Drainage Layer.
- D. Section 02248 - Gravel Drainage Material.

1.4 REFERENCES

- A. AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) STANDARDS
 - 1. ASTM D 1248 – Standard Specification for Polyethylene Plastics Molding Extrusion Materials for Wire and Cable.
 - 2. ASTM D 2487 – Standard Practice for Classification of Soils for Engineering Purposes.
 - 3. ASTM D 2837 – Standard Test Method for Obtaining Hydrostatic Design Basis for Thermoplastic Pipe Materials or Pressure Design Basis for Thermoplastic Pipe Products.
 - 4. ASTM D 3350 – Standard Specification for Polyethylene Plastics Pipe and Fittings Materials.
- B. AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS
 - 1. M 252 – Standard Specification for Corrugated Polyethylene Drainage Pipe.

1.5 SUBMITTALS

- A. Shop Drawings and Product Data
 - 1. Provide piping layout with all bends, tees, elbows, etc.
 - 2. Pipe manufacturer's data.
 - 3. Pipe Manufacturer's Installation Data.
- B. Manufacturer's Certification
 - 1. Manufacturer must certify that the materials supplied meet all the requirements of these specifications.
- C. Contractor's Experience Record
 - 1. Indicate past experience installing manufacturer's product.

1.6 QUALITY ASSURANCE

- A. Manufacturer
 - 1. Certify that the company has manufactured this product for at least five years.
 - 2. Certify material meets or exceeds these requirements specified herein.
- B. Contractor
 - 1. Provide experience record for installing manufacturer's product. Minimum five years experience.

1.7 FIELD MEASUREMENTS

- A. Verify that field measurements are as indicated on the shop drawings.

1.8 HANDLING OF PIPE

- A. Pipe shall be stored on clean, level ground to prevent undue scratching or gouging of the pipe. If the pipe must be stacked for storage, such stacking should be done in accordance with the pipe manufacturer's recommendations. The handling of the pipe should be done in such a manner that it is not damaged by dragging over sharp objects or cut by chokers or lifting equipment.
- B. Joined segments of pipe shall be handled so as to avoid damage to the pipe or joining system. When lifting sections of pipe, chains or cable type chokers should be avoided. Nylon slings are preferred. Spreader bars should be used when lifting long fused sections. Care should be exercised to avoid cutting or gouging the pipe.

1.9 REPAIR OF DAMAGED SECTIONS

- A. Segments of pipe having cuts or gouges in excess of 10% of the wall thickness of the pipe should be cut out and removed. The undamaged portions of the pipe shall be rejoined using one of the methods identified below as approved by the specifying engineer.

PART 2 - PRODUCTS

2.1 POLYETHYLENE PIPE

- A. Must be ASTM D-1248, Type III, Class C, Grade P-34, Category 5.
- B. PPI rating of PE-3408.
- C. Cell Classification: ASTM D 3350, 345434C.
- D. Hydrostatic Design Basis shall not be less than 1600 psi (11.03 MPA) as per ASTM D-2837.
- E. Minimum Standard Dimension Ratio (SDR): 11.

2.2 FITTINGS

- A. Type: Same as pipe.
- B. Bends: Only long radius bends acceptable.
- C. Dissimilar Pipe Connections: Connections between corrugated pipe and smooth heat fusion pipe shall be made with flange adaptors and slip-on metal flanges. Metal flanges shall be cast or ductile iron. Bolts and nuts shall be stainless steel.

PART 3 - EXECUTION

3.1 INSTALLATION

- A. Place a 6-inch thick layer of gravel on top of the geotextile material across the entire length and width of trench.
- B. Do not drive heavy vehicles or equipment on top of the material to avoid damage to geomembrane liner.
- C. Using hand held mechanical tampers, carefully consolidate the material.
- D. Place the pipe in the center of the trench and place gravel.
- E. Place gravel under the haunches of the pipe in 2-inch lifts followed by hand held mechanical compaction up to the springline of the pipe.
- F. Above the springline, lifts of gravel may be 4-inches thick, followed by hand held mechanical compaction.
- G. After gravel is placed to full depth, cover the top with the geotextile fabric, overlapping a minimum of 18-inches.

3.2 PIPE JOINING

- A. Sections of polyethylene pipe should be joined into continuous sections on the job site using manufacturer's recommended methods.
- B. The joining method shall be the heat fusion method performed in strict accordance to the manufacturer's recommendations.
- C. The heat fusion equipment used should be capable of meeting all conditions recommended by the pipe manufacturer, including but not limited to, temperature requirements, alignment and fusion pressures.
- D. All bends, tees, and fittings may be shop made in accordance with manufacturers recommendations.

3.3 PIPE JOINING CORRUGATED POLYETHYLENE PIPE

- A. Sections of corrugated polyethylene pipe shall be placed into continuous sections on the job site using manufacturer's recommended methods.
- B. Pipe shall be joined using manufacturer's coupling pieces and ties.

END OF SECTION

SECTION 02260

PROTECTIVE SOIL COVER

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. Protective Soil Cover Specification.
- B. Protective Soil Cover Installation.

1.3 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

- A. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:
 - 1. TCEQ, 30 TAC Chapter 330 - Texas Commission on Environmental Quality, Municipal Solid Waste Regulations.
- B. OWNER:
 - 1. MSW Permit - Owner's TCEQ MSW Permit.

1.4 WEATHER LIMITATION

- A. Protective soil cover shall be constructed when the atmospheric temperature is above 35 degrees F. When the temperature falls below 35 degrees F, the Contractor shall protect all areas of completed protective soil cover by approved methods against detrimental effects of freezing. Areas of completed protective soil cover damaged by freezing, rainfall, or other weather conditions shall be corrected to meet specified requirements. Protective soil cover placement shall not occur on rainy days or when rain is imminent.

1.5 SUBMITTALS

- A. Submit list of all equipment proposed for use in placing and maintaining protective cover. No equipment will be allowed within the limits of the liner system without approval of the Engineer.
- B. Submit in accordance with Section 01300, Submittals, including equipment weight, ground pressure information, required lift thickness information, etc. Unapproved equipment operating on the floor of the liner system or the side slopes will not be allowed.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Material used is a coarse sand that is stockpiled on site near the project limits. All material shall be free of debris and rocks larger than 2 inches in diameter.

2.2 EQUIPMENT

- A. Tracked equipment used to place soil cover on the horizontal portion of the liner system must be low ground pressure type (5.0 psi maximum track pressure).
- B. Equipment that exerts ground pressures of higher than 5.0 psi on the lining system will not be approved unless contractor can certify that these conditions can be met with a specific lift thickness of protective cover. Submit calculations to document the certification.
- C. Only low ground pressure equipment (< 5.0 psi) equipment will be allowed on the sideslope of the lining system. Submit list of equipment to be used on the sideslopes, including equipment weights, ground pressures, required lift thicknesses, etc. for Engineer approval prior to placing equipment on the sideslopes. It will be Contractor's responsibility to demonstrate that equipment used on the sideslopes will not damage the liner or cause a "sliding" failure.

PART 3 - EXECUTION

3.1 STOCKPILING MATERIAL

- A. If necessary, materials shall be stockpiled in the manner and at locations designated. Prior to stockpiling, the storage sites shall be cleared, drained, and leveled by the Contractor. Approved material available from excavation or grading shall be stockpiled in the manner and at locations designated.

3.2 GRADE CONTROL

- A. The finished and completed protective soil cover shall conform to the grades, lines, cross sections, and dimensions shown.

3.3 LAYER THICKNESS

- A. The completed thickness of the protective soil cover shall be as indicated. Protective soil cover will be placed such that the top surface, during spreading operations, is a minimum of 2-feet above the geocomposite material. Thickness shall be measured perpendicular to the subgrade.

3.4 COMPACTION

- A. Compaction control is not required; however, it should be stable for construction and disposal equipment.

3.5 THICKNESS CONTROL

- A. The thickness of the select-material subbase course shall be measured at intervals providing at least one measurement for each 5,000 square feet or major fraction thereof of protective soil cover. The thickness measurement shall be made by survey. The Contractor will provide survey control during construction. The Owner will provide final thickness survey after Contractor notifies owner protective soil cover has been placed and ready for verification survey by Owner. Any areas of inadequate thickness requiring a resurvey will be done at Contractor's expense.

3.6 HYDRAULIC CONDUCTIVITY

- A. Pre-construction and conformance testing for protective cover soils will include minimum hydraulic conductivity with minimum conformance testing frequency of one analysis per 100,000 square feet of cover surface area. Hydraulic conductivity shall be no less than 1×10^{-4} cm/sec.

3.7 PLACEMENT

- A. Contractor will take measures to protect the completed liner system after installation is complete. No portion of the liner system will remain exposed for more than fifteen (15) days after installation is complete and the system has been accepted by the Owner and the Engineer.
- B. Place the protective cover material with machinery that, in the opinion of the Engineer, will not damage any portion of the liner system or leachate collection system or cause "sliding" of the lining system or any part of the system. Equipment used to place the protective cover must not exert a ground pressure load greater than 5-psi on the liner or leachate collection system and must be approved by the Engineer prior to utilization on the system.

3.8 MAINTENANCE

- A. The protective soil cover shall be maintained in a satisfactory condition until accepted.

END OF SECTION

SECTION 02500

ROADWAY CONSTRUCTION

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SUMMARY

- A. The Contractor shall furnish all labor, materials and equipment necessary to perform the work as specified and in the locations shown on the drawings. It shall consist of grading and compacting necessary to bring the surface of the finished grade to the cross sections and grades shown on the plans.
 - 1. Grades shall be established and maintained by the Contractor. In establishing the grades, due allowances shall be made for existing improvements, proper drainage, and adjoining property rights.
 - 2. Paving work shall not begin until all related excavation work has been completed.
 - 3. Paving work shall consist of asphalt pavement or caliche surface as shown on plans.
 - 4. The same material used as flexible base under the asphalt pavement shall be used for the caliche roads.

1.3 APPLICABLE PUBLICATIONS

The publications listed below for a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only.

- A. American Society for Testing and Materials (ASTM):
 - 1. ASTM C 131 Standard Test Method for Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine.
 - 2. ASTM D 698 Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lb/ft³).
 - 3. ASTM D 2027 Standard Specification for Cutback Asphalt (Medium-Curing Type).
 - 4. ASTM D 2172 Standard Test Methods for Quantitative Extraction of Bitumen from Bituminous Paving Mixtures.
 - 5. ASTM D 2950 Standard Test Methods for Density of Bituminous Concrete in Place by Nuclear Methods.
 - 6. ASTM D 6938 Standard Test Method for In-Place Density and Water Content of Soil and Soil-Aggregate by Nuclear Methods (Shallow Depth).
 - 7. ASTM E 329 Standard Specification for Agencies Engaged in Construction Inspection and/or Testing.
- B. American Association of State Highway and Transportation Officials (AASHTO):
 - 1. AASHTO T 180 Moisture-Density Relations of Soils.
 - 2. AASHTO T 230 Determining Degree of Pavement Compaction of Bituminous Aggregate Mixture.
 - 3. AASHTO T 30 Mechanical Analysis of Extracted Aggregate.

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- C. Texas Department of Transportation (TxDOT)
1. "Standard Specifications for Construction of Highways, Streets and Bridges, 1993."

1.4 TESTING

- A. Subgrade Testing:
1. Each 6-inch lift of compacted subgrade material will be tested in accordance with ASTM D 698, and shall meet or exceed 95% density ($\pm 2\%$ optimal moisture).
 2. The top of the subgrade shall be of such smoothness that when tested with a 16-foot straight-edge, it shall not show any deviation in excess of 2 inches, or shall not be more than 0.1 foot from true grade as established by grade hubs or pins. Any deviation in excess of these amounts shall be corrected as directed by the Engineer.
- B. Flexible Base/Caliche Surface Testing:
1. Material used in the construction of the flexible base course for asphalt paving or as a caliche surface course will be tested in 6-inch lifts per ASTM D 698, and shall meet or exceed 95% density ($\pm 2\%$ optimal moisture).
 2. Owner's testing agency shall take one test for each 250 linear feet of road, using nuclear methods as defined in ASTM D 6938.
 3. Thickness Tests: Measure thickness of base course at intervals such that there will be a depth measurement for at least each 500 square yards of completed base or surface course. Make depth measurements by test holes, at least 3 inches in diameter, through the base or surface course. Where base course deficiency is more than 1/2-inch, correct by scarifying, adding mixture of proper gradation, reblading, and recompacting. Where the measured thickness is more than 1/2-inch thicker than indicated, consider it as the indicated thickness plus 1/2 inch for determining the average. The average thickness is the average of the depth measurements and shall not under-run the thickness indicated.
 4. Smoothness Tests: Test with a straight-edge, applied parallel with and at right angles to the center line of the paved area. Correct deviations in the surface in excess of 3/8-inch by loosening, adding or removing material, reshaping, watering and compacting. The smoothness requirements specified herein apply only to the top layer when multiple courses are constructed.
- C. Asphalt testing shall be performed by a qualified independent testing laboratory to be selected by the Owner.
1. Testing for asphalt conformance shall be done in accordance with ASTM E 329. The following tests shall be performed and results submitted to the Engineer:
 - a. A temperature check on the surface course for each load of asphalt during paving by a technician from a qualified testing laboratory. Temperature during placement shall be in the range of 260° to 325°F.
 - b. Density on compaction, 97% of laboratory compacted density.
 - c. Thickness corings for every 250 linear feet of pavement.
 - d. Extraction test of one coring from the surface course for each 250 linear feet of road.
 - e. Marshall stability of not less than 1,300. Test for each 250 tons of bituminous concrete.
- D. Only passing tests as required under this section shall be paid for by the Owner. The Contractor shall pay for all other tests. Results of the tests shall be forwarded in report form to the Architect. All paving disturbed as a result of corings shall be replaced and repaired by the Contractor at his expense.

1.5 ASPHALT DESIGN MIX

- A. The job mix formula together with the test data shall be furnished to the Engineer for approval not less than 10 days in advance of the placement of the material. Testing shall have been accomplished not more than one year prior to date of material placement. The job mix formula shall indicate the percentage passing for each specified sieve size and the percent asphalt to be used for each asphalt concrete mixture.
- B. Mixture Properties
Gradation of mineral aggregate shall be specified. Percentage of bituminous material provided in the bituminous mixtures shall be within the limits specified. Mixtures shall have the following physical properties:

TEST PROPERTY	VALUES
Stability (50 Blows)	Not less than 1,300 pounds
Flow (0.01 inch)	Not more than 16 nor less than 8
Percent Air Void	Not less than 3 nor more than 8 for binder course; not less than 3 nor more than 5 for wearing course.
Percent Voids in Mineral Aggregates	See TxDOT Item 340

- C. Quantity of Bituminous Material
Mix asphalt cement with aggregates or corresponding mixes in the following proportions:

TABLE II	
ASPHALT CEMENT PERCENT BY WEIGHT OF TOTAL MIX	
Binder Course	Wearing Course
4 to 8	4 to 7

- D. Asphalt pavement must generally comply with TxDOT requirements as noted in this specification section 1.03.A.3, as noted below:
1. Wearing Surface, Type C mix, TxDOT Item 340.
 2. Asphalt Stabilized Base, TxDOT Item 340. (No reclaimed asphalt allowed.)

1.6 WEATHER LIMITATIONS

- A. Apply prime and tack coats only when ambient temperature is above 50° F., and when temperature has not been below 35° F. for 12 hours immediately prior to application. Do not apply during rainy weather or when base is wet or contains an excess of moisture.
1. Construct asphalt concrete surface course only when atmospheric temperature is above 40° F. and base is dry.
 2. Base course may be placed when air temperature is above 30° F., and rising.

PART 2 - MATERIALS

2.1 FLEXIBLE BASE/CALICHE SURFACE

- A. The flexible base or caliche surface course aggregate shall consist of sound, durable particles of crushed stone, crushed gravel, or caliche. It shall be the responsibility of the Contractor to

obtain materials that will meet the grade and smoothness requirements specified herein after all compaction and proof rolling operations have been completed. Coarse aggregate shall be angular particles of uniform density. The coarse aggregate shall have a percentage of wear not to exceed 45 when tested by ASTM Test Method C-131. The fine aggregate shall be angular particles produced by crushing stone that meets the requirements for wear and soundness specified for coarse aggregate. Caliche shall comply with the requirements of TxDOT as defined in, Section 1.3.A.3 of this specification. Caliche shall meet TxDOT Item 247.2 - Flexible Base, Type "C", Grade 4. The gradation of the flexible base shall be of the following:

1. Sieve Designation	Percentage by Weight Retained Square Mesh Sieve
1-3/4"	0
No. 4	40-75
No. 40	60-85

2. The portion of the aggregate passing the No. 40 sieve shall be either nonplastic or shall have a liquid limit not greater than 40 and a plasticity index not greater than 12.

2.2 ASPHALT STABILIZED BASE

- A. Asphalt Stabilized Base (ASB) shall consist of aggregate and asphalt cement mixed hot in a mixing plant in accordance with TxDOT requirements defined in Section 1.3.A.3 of this specification. ASB shall meet the TxDOT specification Item 340. Reclaimed asphalt pavement will not be allowed in the mix.

2.3 ASPHALT

- A. All paving work and materials shall conform generally to all requirements of this specification Section 1.3.A.3.

2.4 BITUMINOUS PRIME COAT

- A. The specifications for the bituminous materials are:
1. Cutback Asphalt MC-30.
 2. Blotter Material (Sand).

2.5 BITUMINOUS SURFACE (ASPHALT)

- A. The asphaltic materials shall be:
1. Asphalt cement, viscosity grade AC-10.
 2. Emulsified asphalt, grade RS-2h.
 3. Cationic asphalt emulsion, grade CRS-2h.

2.6 BITUMINOUS TACK COAT

- A. Tack coat shall be Grade MC-70, or SS-1 asphalt, emulsion asphalt. Emulsified asphalt shall comply with the requirements of this specification Section 1.3.A.3.

PART 3 - EXECUTION

3.1 GENERAL

- A. The Contractor shall verify that the subgrades have been shaped to true line and elevations and that all drainage facilities and underground utilities are complete.

3.2 SUBGRADE

- A. Paving shall be done in dry weather when subgrade is stable. Ground moisture shall not be sealed under paving.
- B. Scarify all cut areas and areas to receive fill material to a minimum depth of 6 inches, and disc or blade until material is free of large clods. The scarified soil will then be moisture conditioned to not less than 2 percent below optimum moisture content and then compacted and tested as specified in section 1.4. The pavement subgrade shall be reworked and recompacted immediately prior to placing the pavement system.
- C. All boulders, organic materials, soft clay, spongy or yielding material shall be removed and replaced with material which will provide the specified compaction. All submerged stumps, roots or other perishable matter encountered in preparation of the subgrade shall be removed to a depth of not less than two feet below subgrade.
- D. After the subgrade has been compacted to the specified density, the area shall be fine graded to a tolerance of 0.1 foot from the grades shown or indicated on the drawings.
- E. The Paving Contractor shall verify that the subgrades have been shaped to true line and elevations and that all drainage facilities and underground utilities are complete.

3.3 BASE COURSE/CALICHE SURFACE COURSE

- A. The base shall be constructed in accordance with all terms included in these Specifications.
- B. The mixed materials shall be placed on the subgrade or subbase in layers of uniform thickness. The spreader shall contain a hopper, an adjustable screen and be so designed that there will be uniform, steady flow of material from the hopper. The spreader shall be capable of laying material without segregation across the full width of the lane to a uniform thickness and to a uniform loose density. Each compacted layer of material shall be 6" or less in thickness. If the material thickness exceeds 6", it shall be placed so that when compacted they will be true to the grades required with the least possible disturbance. Where the base course is constructed in more than one layer, the previously constructed layers shall be cleaned of loose and foreign matter by sweeping with power sweepers, power brooms, or hand brooms, as directed. The water content of the material shall be maintained during the placing period at the optimum percentage (+ 2%) as determined by AASHTO T-180. Such adjustments in placing procedures or equipment shall be made as may be directed to obtain true grades, or minimize segregation and degradation, to reduce accelerate loss or gain of water, and to insure a satisfactory base course or caliche surface course.
- C. The surface of the base course shall be finished by blading or with automated equipment especially designed for this purpose and by rolling with a steel-wheeled roller. In no case shall thin layers of materials be added to the top layer of the base course or caliche surface course in order to meet the grade.

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- D. After construction is completed, maintain the base course or caliche surface course throughout, except where portion of the succeeding course is under construction thereon. Maintenance includes drainage, rolling, shaping, and watering, as necessary, to maintain the course in proper condition. Correct deficiencies in thickness, composition, construction, smoothness, and density, which develop during the maintenance, to conform to the requirements specified herein. Maintain sufficient moisture by light sprinkling with water at the surface to prevent a dusty condition.

3.4 BITUMINOUS PRIME COAT

- A. Apply primer to base course at a minimum rate of 0.25 gallons per square yard and not more than 0.35 gallons per square yard.
- B. Allow prime coat to cure 48 hours without being disturbed.

3.5 ASPHALT PAVEMENT

- A. Construct asphalt concrete surface course only when atmospheric temperature is above 40°F, and when base is dry.
 - 1. The required density shall be attained before the plant mix, after having been placed at 260° – 325° F, reaches a temperature of 150°F.
 - 2. Rolling shall start as soon as the hot-mix material can be compacted without displacement. Rolling shall continue until thoroughly compacted and all roller marks have disappeared to 97% of laboratory-compacted density. On areas too small for the roller, a vibrating plate compactor or hand tamper shall be used to achieve thorough compaction.
 - 3. Construct hot-plant mix bituminous concrete surface course over prepared base course in accordance with this specification Section 1.3.A.3.

3.6 CLEANING UP

- A. Remove all surplus materials, rubble, cartons, and other debris. Remove caliche materials from adjacent surfaces and leave job in neat, clean condition.

END OF SECTION

SECTION 03300

CAST-IN-PLACE CONCRETE

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, Construction Contract, and Division 1 - General Requirements apply to work of this section.

1.2 SECTION INCLUDES

- A. This section of the specifications covers all of the work required for constructing the sump access structure.
- B. Concrete for this project shall conform to the requirements of this section. The Contractor shall furnish all materials, equipment, tools, labor, superintendence, and incidentals necessary to perform the work in accordance with the drawings and these specifications.

1.3 REFERENCES

The latest editions of the following specifications and references govern work of this section and constitute minimum requirements. Where specific requirements in this section of the Specifications are more stringent, they shall supersede the corresponding requirements of these Referenced Specifications.

AMERICAN CONCRETE INSTITUTE (ACI)

ACI 301	Specifications for Structural Concrete Buildings
ACI 301	Manual of Standard Practice for Detailing Reinforced Concrete Structures
ACI 318	Building Code Requirements for Reinforced Concrete
ACI 347	Recommended Practice for Concrete Formwork
ACI 613	Recommended Practice for Concrete Formwork
ACI 614	Recommended, Practice for Measuring, Mixing, and Placing Concrete
ACI Comm.	Selection and Use of Aggregates for Concrete 621
SP-7 ACI	Manual of Concrete Inspection
ACI 305R	Hot Weather Concreting

AMERICAN SOCIETY FOR TESTING MATERIALS (ASTM)

ASTM A-82	Cold Drawn Steel Wire for Concrete Reinforcement
ASTM A-615	Deformed and Plain Billet-Steel Bars for Concrete Reinforcement
ASTM A-616	Rail-Steel Deformed and Plain Bars for Concrete Reinforcement
ASTM A-706	Low-Alloy Steel Deformed Bars for Concrete Reinforcement
ASTM C-31	Making & Curing Concrete Compression and Flexure Test Specimens in the Field.
ASTM C-33	Concrete Aggregates
ASTM C-39	Compressive Strength of Molded Concrete Cylinders
ASTM C-40	Organic Impurities In Fine Aggregates for Concrete

ASTM C-42	Standard Method of Obtaining and Testing Drilled Cores and Sawed Beams of Concrete.
ASTM C-94	Standard Method of Obtaining and Testing Drilled Cores and Sawed Beams of Concrete
ASTM C-136	Standard Method of Test for Sieve or Screen Analysis of Fine and Coarse Aggregate
ASTM C-138	Standard Method of Test for Weight per Cubic Foot, Yield and Air Content (Gravimetric) of Concrete
ASTM C-143	Standard Method of Test for Slump of Portland Cement Concrete
ASTM C-150	Standard Specification for Portland Cement
ASTM C-171	Sheet Material for Concrete Curing
ASTM C-172	Standard Method of Sampling Fresh Concrete
ASTM C-173	Air Content of Freshly Mixed Concrete by the Volumetric Method
ASTM C-192	Standard Method of Making and Curing Concrete Compression and Flexure Test Specimens in the Laboratory
ASTM C-231	Standard Method of Test for Air Content of Freshly Mixed Concrete by the Pressure Method
ASTM C-260	Air-Entraining Admixture for Concrete
ASTM C-309	Liquid Membrane-Forming Compounds for Curing Concrete
ASTM C-494	Chemical Admixtures for Concrete
ASTM C-618	Fly Ash and Raw or Calcined Natural Pozzolan for use as a Mineral Admixture in Portland Cement Concrete

PORTLAND CEMENT ASSOCIATION (PCA)

Design and Control for Concrete Mixtures

AMERICAN WELDING SOCIETY (AWS)

AWS D12.1 Recommended Practices for Welding Reinforcing Steel, Metal Inserts and Connections in Reinforced Concrete Construction

U.S. ARMY CORPS OF ENGINEERS

CRD C-572 Specification of Water Stops

TEXAS DEPARTMENT OF TRANSPORTATION

Standard Specifications for Construction of Highways, Streets and Bridges

LATEST EDITION OF EACH OF THE ABOVE GOVERNING STANDARDS SHALL APPLY

1.4 RELATED SECTIONS

- A. Excavation or filling for concrete structures and other miscellaneous concrete work shall conform to the lines and grades as shown on the plans or as established in the field and shall be as specified in Section 02200 – Excavating and Earthwork.

1.5 SUBMITTALS

- A. Product Data: For each type of manufactured material and product indicated.
 - 1. Fiber reinforcement.
 - 2. Admixtures
 - 3. Curing materials.
- B. Design Mixes: For each concrete mix. Include alternate mix designs when characteristics of materials, project conditions, weather, test results, or other circumstances warrant adjustments. Submitted compressive test results must be less than 6 months old.
 - 1. Indicate amounts of mix water to be withheld for later addition at Project site.

1.6 QUALITY ASSURANCE

- A. Installer Qualifications: An experienced installer who has completed concrete Work similar in material, design, and extent to that indicated for this Project and whose work has resulted in construction with a record of successful in-service performance.
- B. Manufacturer Qualifications: A firm experienced in manufacturing ready-mixed concrete products complying with ASTM C 94 requirements for production facilities and equipment.
 - 1. Manufacturer must be certified according to the National Ready Mixed Concrete Association's Certification of Ready Mixed Concrete Production Facilities.
- C. Testing Agency Qualifications: An independent testing agency, acceptable to authorities having jurisdiction, qualified according to ASTM C 1077 and ASTM E 329 to conduct the testing indicated, as documented according to ASTM E 548.
 - 1. Personnel conducting field tests shall be qualified as ACI Concrete Field Testing Technician, Grade 1, according to ACI CP-1 or an equivalent certification program.

PART 2 - PRODUCTS

2.1 CEMENT

- A. Portland cement shall conform to the latest revisions of A.S.T.M. Designation C-150, Type II, and shall be of an approved brand. Only one brand of cement will be permitted in any one structure. Plant tests and certificates of conformity with the specification shall be furnished with each carload of cement.

2.2 FINE AGGREGATE

- A. Fine aggregate shall consist of hard, strong, durable and uncoated particles of natural sand, washed and screened. The aggregate shall be free from injurious amounts of clay, soft or flaky materials, loam or organic impurities and the grading shall conform to the following:

Percentage Passing Square Openings

<u>No. 4</u>	<u>No. 16</u>	<u>No. 50</u>	<u>No. 100</u>	<u>No. 200</u>
95-100	45-70	15-30	3-8	0-3

-
- B. Fineness modulus shall not vary more than plus or minus 0.20 from that of approved sample, which shall be between 2.20 and 2.90.

2.3 COARSE AGGREGATE

- A. Coarse aggregate shall consist of hard, tough, durable and uncoated particles of washed and screened gravel or crushed stone. It shall be free of vegetation, soft, friable, thin, or elongated particles.
- B. Maximum size of coarse aggregate shall be governed by the conditions of placement of the concrete and shall not be greater than 3/4 of the distance between reinforcing bars. In no case shall the maximum size be greater than 2 inches. All aggregates shall be approved before use.

2.4 WATER

- A. Water shall be clean, clear, free from oil, acid or organic matter and free from injurious amounts of alkali, salts, or other chemicals.

2.5 FORMS

- A. The forms shall be of wood or metal and shall be of sufficient strength to support the concrete without bulging between supports and sufficiently water tight to hold the concrete mortar. The forms shall be constructed such that the finished concrete shall be of the form and dimensions shown on the plans. All form work for exposed surfaces shall be of such material and so constructed as to produce a smooth, even surface when the concrete is placed. All forms shall be oiled before use. In general, wall forms may be removed after the concrete has been in place for 24 hours. All exposed edges shall have a 3/4-inch chamfer whether or not shown on the details. Immediately upon removal of the forms, any honeycombed sections shall be repaired as directed.

2.6 CONCRETE MIX

- A. Class "A" concrete shall contain not less than 5.5 sacks of cement per cubic yard. No more water shall be used than is required to produce a workable mix and in no case will the water content exceed 5.0 gallons per sack of cement. The proportioning of the constituents of the concrete shall be such as to produce a dense, and workable mixture, and the mix shall be approved before any concrete is placed.
- B. The minimum 28 day compressive strength for Class A concrete shall be 4000 psi.
- C. Pipe embedment concrete shall contain not less than 4 sacks of cement per cubic yard. No more water than 8 gallons of water per sack of cement shall be used. The proportioning of the constituents of the concrete shall be such as to produce a dense and workable mixture, and the mix shall be approved before any concrete is placed.
- D. Cement Stabilized Backfill for backfill stabilization shall contain a minimum 2 sacks of cement per cubic yard. No more water than 10 gallons per sack of cement shall be used.

2.7 EXPANSION JOINTS

- A. Where pre-molded expansion joint material is shown on the plans such material shall be ½ inch or 3/4 –inch Bituminous type preformed joint filler, AASHTO M-33 as shown on the drawings. Contractor shall submit on proposed expansion joint material and submit documentation that certifies it meets AASHTO M-33 requirements.

PART 3 - EXECUTION

3.1 MIXING

- A. All aggregates shall be accurately weighed or measured by volume. The concrete shall be mixed in an approved batch mixer equipped with an accurate water measuring tank, and shall be mixed for one and one half minutes after all materials are in the mixer. "Ready Mixed" or "Transit Mix" concrete may be used. If used, it shall conform to these specifications and the "Standard Specifications for Ready Mixed Concrete", A.S.T.M. Serial Designation C 94.
- B. Each mixer and agitator shall have attached thereto in a prominent place, a metal plate or plates on which are plainly marked, for the various uses for which the equipment is designed, the capacity of the drum or container in terms of the volume of mixed concrete and the speed of rotation of the mixing drum, blades or paddles. Stationary mixers shall be equipped with an acceptable timing device that will not permit the batch to be dispatched until the specified mixing time is elapsed. Truck mixers, shall be equipped with means by which the number of revolutions of the drum blades, or paddles may be readily verified.
- C. The mixer, when loaded to capacity, shall be capable of combining the ingredients of the concrete within the specified time into a thoroughly mixed and uniform mass and of discharging the concrete with a satisfactorily degree of uniformity. No mixer or agitator shall be used if the results of slump tests of individual samples taken at approximately the one quarter, and the three quarter points of the placement differ by more than 2-inches. Mixers and agitators shall be inspected frequently for changes in condition due to accumulations of hardened concrete or mortar, or to wear of blades.
- D. Truck mixers shall have adequate water supply and metering devices. No water can be added to the concrete after the initial mixing without the permission of the Engineer.
- E. After mixing, the concrete shall be transported to the forms in a manner which will prevent separation or segregation of the aggregates and shall be placed without undue delay. It shall be deposited as nearly as practicable in its final position in order to avoid rehandling or flowing of the concrete. As the concrete is placed, it shall be vibrated by means of a vibrator of the type which is submerged in the concrete.
- F. Mixing at mixing speed shall begin immediately after all ingredients are in the mixer. For complete mixing in the truck each batch shall be mixed not less than 70 or more revolutions of the drum. For partial mixing in the truck each batch shall be mixed not less than 50 nor more than 100 revolutions of the drum. Mixing speed shall be as designated by the manufacturer. All revolutions after the prescribed mixing time shall be at agitating speed. The agitating speed shall be not less than one nor more than four revolutions per minute. The drum shall be kept in continuous motion from the time mixing is started until the discharge is completed.

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- G. The maximum time interval between the introduction of the mixing water to the cement and aggregates, and the placing of the concrete in the forms shall not exceed the following:

AIR OR CONCRETE TEMPERATURE (Whichever is Higher)	MAXIMUM TIME
90 degrees F. or above (Air Only)	45 minutes
75 degrees F. to 89 degrees F.	60 minutes
35 degrees F. to 74 degrees F.	90 minutes

- H. Concrete shall not be placed when the ambient temperature is less than 40 degrees Fahrenheit and falling, but may be placed if the temperature is 40 degrees Fahrenheit and rising. Concrete shall not be placed when the temperature will drop below 35 degree Fahrenheit within 24 hours after placement as projected by the National Weather Service unless properly protected. The temperature of the concrete at the time of placement in the forms shall not be less than 50 degrees Fahrenheit nor more than 90 degrees Fahrenheit. When placing concrete in freezing weather, means shall be provided for keeping the concrete at a temperature of at least 50°F for not less than 72 hours after placing or until the concrete has thoroughly hardened. Concrete shall not be placed when weather conditions are unsuitable for such work.

3.2 TRANSPORTING

- A. Concrete shall be handled from the mixer to the place of final deposit in a manner that will prevent segregation and when practicable, shall be deposited in its final position without re-handling or flowing. All equipment used in transporting concrete shall be maintained in a clean condition. Concrete shall not be delivered from hoists, by spout, by trough, or dumped into carts with a free fall of more than 4 feet. Every precaution shall be taken to prevent separation or loss of ingredients while transporting the concrete. Runways for carts or buggies shall not bear upon the reinforcing or fresh concrete. Pumping and conveying of concrete shall be done only after approval by the Engineer and with equipment that will insure a continuous flow without segregation.

3.3 PLACING

- A. Concrete shall not be placed until all reinforcement is securely and properly fastened in its correct position. Form ties shall be checked and re-tightened where necessary. Forms and reinforcement shall be inspected and approved by the Engineer prior before beginning placement of concrete. All embedded items shall be in place and clean-out openings closed before such inspection. A procedure for inspection of forms reinforcing, inserts, etc., prior to all concrete placement will be instituted and coordinated by the Engineer. At least 24 hours prior to concrete placement the Contractor shall submit an inspection sheet to the Engineer. The inspection sheet, to be developed shall show the location and quantity of concrete to be placed, the time and date schedule for placement and shall be signed by the Contractor's representative. Signing of this sheet will certify that all of the items necessary have been inspected, and that the area is ready for final review by the Engineer. If the Engineer determines that the corrections are excessive, the placement should be rescheduled and the Engineer notified 12 hours before scheduled placement after the corrections are made. A representative of the Engineer will be on the job during the

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- placement of concrete and concrete shall not be placed unless the Engineer or his representative is present.
- B. Concrete shall be placed in a manner that will prevent segregation, thoroughly embed all reinforcement and fixtures, fill all angles in the forms and prevent formation of aggregate pockets or honeycomb. Placement in walls columns or other deep forms shall be done through openings in the forms, spaced at frequent intervals, or through tremies so that the free fall shall not exceed 4 feet. Points of depositing the concrete shall be spaced so that the concrete surfaces can be kept level without using vibrators or other equipment to cause it to flow into place.
 - C. Concrete shall be placed with the aid of approved mechanical vibrating equipment. Vibration shall be applied to the concrete and shall be of sufficient intensity and duration to cause flow or settlement of the concrete, thoroughly compacting, and complete embedment of reinforcement and fixtures. Supplemental forking and spading by hand may be required to secure dense uniform surfaces and complete filling of corners and angles.
 - D. Excessive spading or vibrating causing undue water gain or segregation will not be permitted. If moderate working causes excessive water gain the mix shall be adjusted. Excess water shall be removed when it appears. When concrete in floors or slabs are deposited on the ground, the subgrade shall be thoroughly compacted and moistened before placement. A grill tamp shall be used on floor slabs. Completed sections shall conform to the details on the contract drawings and the concrete shall be dense, uniform and free of aggregate pockets or honeycomb.
 - E. Concrete in vertical walls shall be placed in continuous horizontal layers approximately 18 inches in depth. Not more than one hour shall elapse between the placing of successive layers of concrete in any portion of a structure included in a continuous placement.
 - F. The contractor shall adhere to the requirements ACI 306 and ACI 605 for cold and hot weather concreting respectively.
 - G. Concrete shall generally not be placed during high winds with blowing dust that will contaminate the surface and cause entrapment of sand and dust particles in the finished surfaces.

3.4 SLUMP

- A. The slump of all concrete shall be between 3 and 6 inches with the condition of placement governing the slump to be used. In all cases the Engineer shall specify the slump to be used prior to placement. When a 3 inch slump is specified, the allowable tolerance shall be 1/2 inch. When the specified tolerance is greater than 3 inches the tolerance shall be 1 inch. In general flat work will require a slump of approximately 3" and concrete for vertical members, i.e. walls columns, etc. shall be 5 inches. Slump for concrete to be added to CMU units shall be 6 inches.

3.5 WEATHER

- A. Mixed concrete from plant shall be transported in truck mixers. The elapsed time from the addition of cementitious material to the mix until the concrete is deposited in place at the work site shall not exceed 90 minutes when the concrete is hauled in truck mixers. Retempering concrete by adding water or by other means will not be permitted. With transit mixers additional water may be added to the batch materials and additional mixing performed to increase the slump to meet the specified requirements provided the addition of water is performed within 45 minutes after the initial mixing operations and provided

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- the water/cementitious ratio specified in the approved mix design is not exceeded and approved by the Engineer
- B. No concrete shall be mixed, placed or finished when the natural light is insufficient, unless an adequate and approved artificial lighting system is operated.
- C. Cold Weather
1. Unless authorized in writing by the Engineer; mixing and concreting operations shall be discontinued when a descending air temperature in the shade and away from artificial heat reaches 40 degrees Fahrenheit and shall not be resumed until an ascending air temperature in the shade and away from artificial heat reaches 35 degrees Fahrenheit.
 2. The aggregate shall be free of ice, snow and frozen lumps before entering the mixer. The temperature of the mixed concrete shall not be less than 50 degrees Fahrenheit at the time of placement. Concrete shall not be placed on frozen material nor shall frozen aggregates be used in the concrete.
 3. When concreting is authorized during cold weather, water and/or the aggregates may be heated to not more than 150 degrees Fahrenheit. The apparatus used shall heat the mass uniformly and shall be arranged to preclude the possible occurrence of overheated areas which might be detrimental to the materials.
- D. Hot Weather: During periods when the maximum daily air temperature exceeds 90 degrees Fahrenheit, the Contractor shall perform all concrete placement during the night time hours unless temperature controls are implemented and approved by the Engineer. During the periods of hot weather when the maximum daily air temperature exceeds 85 degrees Fahrenheit the following precautions shall be taken.
1. The forms and/or the underlying surface shall be sprinkled with water immediately before placing the concrete. The concrete shall be placed at the coolest temperature practicable and in no case shall the temperature of the concrete when placed exceed 90 degrees Fahrenheit. The aggregates and/or mixing water shall be cooled as necessary to maintain the concrete temperature at or not more than the specified maximum. If concrete temperature exceeds 95 degrees Fahrenheit as measured in accordance with ASTM C 1064, it shall be rejected.
 2. The finished surfaces of the newly laid concrete surface shall be kept damp by applying a water-fog or mist with approved spraying equipment until the concrete surface is covered by the curing medium. If necessary wind screens shall be provided to protect the concrete from an evaporation rate in excess of 0.2 pounds per square feet per hour as determined in accordance with Figure 2.1.5 in ACI 305R, Hot Weather Concreting, which takes into consideration relative humidity, wind velocity, and air temperature. When conditions are such that problems with plastic cracking can be expected and particularly if any plastic cracking begins to occur, the Contractor shall immediately take such additional measures as necessary to protect the concrete surface. Such measures shall consist of wind screens, more effective fog sprays and similar measures commencing immediately behind the concrete placement. If these measures are not effective in preventing plastic cracking concreting operations shall be immediately stopped.

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3. The Contractor shall submit a Hot Weather Concrete Construction Plan and have it reviewed by the Engineer 30 calendar days prior to concrete placements when the ambient temperature exceeds 85 degrees Fahrenheit. This plan shall conform to ACI 305R and other requirements specified herein and shall include, but not be limited to the demonstration of how the concrete temperature during batching and mixing will be kept below 90 degrees Fahrenheit, how the concrete will be protected from the rapid evaporation of surface moisture, the proper use of water reducers with re-dosing charts and procedures, and curing procedures.
 4. Concrete placement shall be limited to night time hours when the average daily air temperature is or is forecasted to exceed 90 degrees Fahrenheit.
- E. Protection of Concrete from Plastic Cracking
1. The finished surfaces of the newly laid concrete shall be kept damp by applying a water-fog or mist with approved spraying equipment until the concrete is finished and is covered by the curing medium. When the evaporation rate is less than 0.2 pounds per square foot per hour, one (1) coat of liquid concrete curing compound shall be applied at a minimum rate of one hundred (150) square feet per gallon. When the evaporation rate is from 0.2 to 0.4 pounds per square foot per hour, one (1) coat of liquid concrete curing compound shall be applied, at a minimum rate of one hundred (100) pounds per square feet per gallon. When the evaporation rate is greater than 0.4 but less than 0.6 pounds per square foot per hour, two (2) coats of liquid concrete curing compound shall be applied each coat at one hundred (100) square feet per gallon. When the evaporation rate is 0.6 pounds per square foot per hour, concreting operations shall be terminated or not be initiated. The evaporation rates shall be determined in accordance with Figure 305R which takes into consideration relative humidity, wind velocity and air temperature.
 2. The forms and/or the underlying surface shall be sprinkled with water immediately before placing the concrete. The concrete shall be placed at the coolest temperature practicable and in no case shall the-temperature of the concrete when placed exceed ninety (90) degrees Fahrenheit. The aggregates and/or mixing water shall be cooled as necessary to maintain the concrete temperature at or not more than the specified maximum. Chilled water shall be used to ensure the concrete temperature is below ninety (90) degrees Fahrenheit.
 3. When conditions are such that problems with plastic cracking can be expected and particularly if any plastic cracking begins to occur, the Contractor shall immediately take such additional measures as necessary to protect the concrete surface. Such measures shall consist of the requirements as shown in Table 3. If these measures are not effective in preventing plastic cracking, concreting operations shall be immediately stopped, and all Portland cement concrete that is cracked, shall be removed and replaced by the Contractor at no additional cost to the Owner.

3.6 FINISHING

- A. Exposed Vertical Surfaces: Such surfaces shall have all tie rod holes filled, fins and rough edges removed and all defects removed or patched. Following this the surfaces shall be rubbed with carborundum stones and clean, clear water until a smooth surface, uniform in color and texture has been obtained. This finishing shall be done as soon as is practical after removal of forms.
- B. Unexposed Vertical SURFACES: Such surfaces shall be finished as specified for exposed vertical surfaces except that no rubbing will be required.

3.7 EMBEDDED ITEMS

- A. All bolts, pipe, pipe sleeves, inserts or other fixtures required by the plans or these specifications to be embedded in the concrete, shall be set accurately in place and maintained in such positions during concreting operations.

3.8 TESTS

- A. Test certificates for cement shall be furnished as specified in Item 4.1 above. The Contractor shall furnish results of tests made by a competent commercial laboratory on each material source he proposed to use before start of construction and material shall not be shipped until such results have been examined by the Engineer and the source of material approved. Laboratory mix designs and conformation cylinders will not be required for this project. However, the proposed mix for each class of concrete shall be submitted to the Engineer for approval prior to placing any concrete. The cost of all pre-construction tests shall be borne by the Contractor. Additional test certificates shall be furnished on the aggregate if the material source is changed.
- B. Seven day and twenty-eight day compressive tests shall be conducted on all cylinders. A set of 4 cylinders shall be taken for each placement of fifty cubic yards, or portion thereof.

3.9 REINFORCING

- A. Bar Reinforcing: Except where plain bars are specifically shown on the plans, all bar reinforcing shall be deformed bars. The deformed bar reinforcing shall conform to the requirements of ASTM A-615 Grade 60. Plain steel bars including 1/4 inch diameter bars shall conform to the requirements of ASTM A-307, grade 60. Weldable reinforcing bars shall conform to ASTM-A-706.
- B. Welded Wire Fabric: Welded wire fabric shall be as designated on the drawings and shall conform to the requirements of the Texas State Department of Transportation "Standard Specifications for Construction of Highways, Streets and Bridges" Item 440.2 Materials.
- C. Storing Reinforcing: Reinforcing stored at the site shall be protected from accumulation of grease, mud, or other foreign matter and from rust producing conditions. Bars shall be free from loose flaky rust, scale, oil, mud or structural defects when incorporated in the structures.
- D. Fabrication and Placing: Reinforcement shall be accurately fabricated to the dimensions and shapes shown on the plans in accordance with the ACI Manual of Standard Practice unless variations are specifically shown on the plans.
- E. Reinforcement shall be accurately placed and adequately supported by concrete, metal or other approved chairs, spacers, or ties and shall be secured against displacement. Reinforcement shall be placed in specified positions within the following tolerances:
- F. Depth in structural slabs, flexural members, walls and columns: $\pm 1/4$ inch.
- G. Longitudinal location of bends and ends of bars: ± 2 inches except that the required concrete cover at ends of members shall not be reduced.
- H. Unless noted otherwise on the Contract Drawings, the concrete cover for reinforcing shall be in accordance with the requirements of the ACI Building Code Requirements for Reinforced Concrete (ACI 318).
- I. Splices shall be made as shown on the Contract Drawings by lapping the bars the required amount and securely wiring them together. Where details of splices are not shown or where unanticipated splices are required, they shall be made in a location approved by the

Engineer and the length of lap shall be as required by the ACI Building Code Requirements for Reinforced Concrete (ACI 318).

- J. Reinforcing bars partially embedded in concrete shall not be field bent, except as indicated on the Contract Documents or permitted by the Engineer.
- K. Torch cutting of reinforcing bars will not be allowed.
- L. Mats of wire fabric shall overlap each other sufficiently to maintain a uniform strength and shall be fastened securely at the ends and edges.

3.10 JOINTS

- A. Construction and expansion joints shall be constructed at the locations and in accordance with the details shown on the drawings. If it becomes necessary to stop placement of concrete between joints, or if the Contractor desires for his own convenience to construct joints other than those shown, such joints shall be made only at locations approved by the Engineer and all such joints shall be constructed in accordance with the plans and specifications.
- B. All horizontal joints shown on the plans shall be made truly horizontal and chamfered. Vertical joints shall be truly vertical.
- C. Before concreting operations are resumed at any construction joint, or wherever fresh concrete is to be bonded to hardened concrete, the surface of the hardened concrete shall be cut or chipped to remove laitance and expose aggregate. The surface of the concrete shall be thoroughly cleaned, saturated, then sloshed with a coating of neat cement grout against which the fresh concrete shall be placed before the grout has attained initial set. Care shall be taken to insure that the first layer of new concrete contains sufficient mortar for adequate bond.
- D. All joints shall be constructed in a workman like manner with joints truly vertical or horizontal, as required, and at right angles to the axis of the member in which the joint occurs. Expansion joint material shall be accurately positioned and nailed onto existing concrete to the lines and dimensions shown on the drawings so that the expansion joint material is accurately held in place during placement of new concrete.

3.11 CURING AND PROTECTING

- A. All concrete shall be cured by applying a liquid membrane coating to all exposed surfaces, provided the materials and method of application are first approved by the Engineer. The coating shall conform to A.S.T.M. Designation C-309. Care shall be taken to prevent mechanical injury to concrete work during the curing period and until the work is accepted. Any work damaged prior to acceptance shall be repaired to the satisfaction of the Engineer.
- B. All concrete work shall be protected until such time as it has set up sufficiently to prevent damage by vandals.
- C. Suitable means shall be provided to prevent concrete from freezing for not less than 72 hours after placing. Any concrete damaged by freezing shall be removed and replaced by the Contractor at his expense. The addition of any admixture of chemicals to the concrete to prevent freezing shall not be allowed, unless specifically approved by the Engineer.

3.12 DEFECTIVE WORK

- A. Any defective work disclosed after the forms have been removed shall be immediately removed and replaced. If any dimensions are deficient, or if any section is not constructed to the proper grade, or if the surface of the concrete is bulged, uneven, or shows honeycomb, which in the opinion of the Engineer cannot be repaired satisfactorily, the entire section shall be removed and replaced at the expense of the Contractor.

3.13 FORMWORK REMOVAL

- A. Forms may be removed only upon approval by the ENGINEER. In general, removal of wall forms within 24-hours. Adequate re-shoring shall be placed when forms are removed and backfilling is begun, and shall remain in place until the design 28 day compressive strength is attained. The attained strength shall be determined from standard test cylinders molded, cured and broken in accordance with ASTM C31. The strength of the concrete shall be assumed to be the average strength of the two cylinders tested. If the Contractor wishes to determine the strength of the concrete prior to the 28 day tests, the Contractor shall bear the cost as well as the responsibility of obtaining additional cylinders as well as the tests.
- B. It shall be the responsibility of the Contractor, in all form removal, to prevent damage or marring of the concrete surfaces.

3.14 BACKFILLING

- A. Backfill behind and adjacent to all concrete work shall be made from good quality topsoil. This material shall be free from organic material such as leaves, grass, roots and other unsuitable materials and free of rocks or stones. The Contractor shall provide a smooth, even slope between the existing ground and the top of curb or other concrete structure.
- B. Care shall be taken during the backfill and cleanup process not to scrape, chip, crack or otherwise damage the concrete including tire marks from equipment or trucks. Any damaged concrete will be removed and replaced at the expense of the Contractor.

END OF SECTION

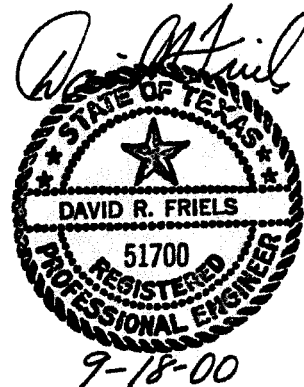
APPENDIX A

SOIL AND LINER QUALITY CONTROL PLAN (SLQCP)

**CITY OF MIDLAND LANDFILL
MIDLAND COUNTY, TEXAS
TNRCC PERMIT NO. 1605-B**

**SITE DEVELOPMENT PLAN PART III
ATTACHMENT 10
SOILS AND LINER QUALITY CONTROL PLAN**

Prepared for
City of Midland
September 2000



Prepared by
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Project 794606

CONTENTS

1	INTRODUCTION	1-1
1.1	Purpose	1-1
1.2	Definitions	1-1
2	CONSTRUCTION QUALITY ASSURANCE FOR SUBGRADE AND GENERAL FILL	2-1
2.1	Subgrade	2-1
2.2	General Fill	2-2
2.3	Surveying	2-2
3	CONSTRUCTION QUALITY ASSURANCE FOR SOIL LINER	3-1
4	GEOSYNTHETIC CLAY LINER	4-1
4.1	Delivery	4-1
4.2	Conformance Testing	4-1
4.3	Installation	4-1
4.3.1	Subgrade Preparation	4-2
4.3.2	Deployment	4-2
4.3.3	Protection	4-3
4.4	Repairs	4-3
4.5	Documentation	4-4
5	CONSTRUCTION QUALITY ASSURANCE FOR GEOMEMBRANE LINERS	5-1
6	CONSTRUCTION QUALITY ASSURANCE FOR GEOCOMPOSITE	6-1
6.1	Delivery	6-1
6.2	Quality Control Testing	6-1
6.3	Installation	6-1
6.3.1	Surface Preparation	6-1
6.3.2	Deployment	6-2
6.4	Repairs	6-2

CONTENTS (Continued)

7	CONSTRUCTION QUALITY ASSURANCE FOR PIPING	7-1
7.1	Delivery	7-1
7.2	Quality Control Testing	7-1
7.3	Installation	7-2
7.3.1	Surface Preparation	7-2
7.3.2	Deployment	7-2
8	CONSTRUCTION QUALITY ASSURANCE FOR DRAINAGE AGGREGATE	8-1
8.1	Materials	8-1
8.2	Testing	8-2
9	CONSTRUCTION QUALITY ASSURANCE FOR GEOTEXTILES	9-1
9.1	Delivery	9-1
9.2	Quality Control Testing	9-1
9.3	Installation	9-1
9.3.1	Surface Preparation	9-1
9.3.2	Deployment	9-2
9.4	Repairs	9-2
10	CONSTRUCTION QUALITY ASSURANCE FOR PROTECTIVE COVER	10-1
10.1	Materials	10-1
10.2	Quality Assurance Testing	10-1
10.3	Installation	10-1
11	LINERS CONSTRUCTED BELOW GROUNDWATER	11-1
11.1	Applicability	11-1
11.2	Seasonal High Water Elevations	11-1
11.3	Excavation Below the Groundwater Level	11-1
11.4	Control of Seepage During Construction	11-2
11.5	Required Ballast Thickness	11-2
12	REPORTS ACCEPTABILITY DETERMINATION	12-1

CONTENTS (Continued)

APPENDIX A

Liner Construction and Testing Handbook

APPENDIX B

Seasonal High Groundwater Elevations

APPENDIX C

Interface Shear Test Results

APPENDIX D

Liner / LCS Detail Drawing

TABLES

4-1 Standard Tests on GCL Material

5-1 Required Contractor's Quality Control Testing for Geomembranes

1 INTRODUCTION

1.1 Purpose

This Soils and Liner Quality Control Plan (SLQCP) has been prepared to provide the Owner, Design Engineer, Construction Quality Assurance Professional of Record, the Contractor, and the Geosynthetics Contractor the means to govern the construction quality and to satisfy the environmental protection requirements. This document conforms to the current Texas Natural Resource Conservation Commission (TNRCC) Municipal Solid Waste Rules (MSWR) and the current TNRCC Liner Construction and Testing Handbook.

The City of Midland incorporates by reference the current version of the "Liner Construction and Testing Handbook" (LCTH) published in accordance with §330.6 Municipal Solid Waste Regulations (30 Texas Administrative Code, Chapter 330) as a part of the permit Soils and Liner Quality Control Plan (SLQCP) for the Midland Landfill. The LCTH specifically addresses soil liners and flexible membrane liners and does not cover leachate collection systems. Therefore, additional sections have been included to supplement the LCTH. A copy of the latest revision, dated July 1, 1994, of the LCTH is included as Appendix A.

1.2 Definitions

Whenever the terms listed below or in the TNRCC Liner Construction and Testing Handbook are used, the intent and meaning shall be interpreted as indicated.

Construction Quality Assurance Professional of Record (POR)

The POR is an authorized representative of the owner and has overall responsibility for construction quality assurance and confirmation that the facility was constructed in general accordance with plans and specifications approved by the permitting agency. The POR will be registered as a Professional Engineer in Texas or an engineering geologist certified by the American Institute of Professional Geologists (AIPG) with a registered specialty in Engineering Geology. Experience and education should include geotechnical engineering, engineering geology, soil mechanics, geotechnical laboratory testing, construction quality assurance, quality control testing, and hydrogeology. The POR will show competency and experience in certifying like installations, be approved by the permitting agency, and be presently employed by or practicing as a geotechnical engineer

or as an engineering geologist in a recognized geotechnical/environmental engineering organization. The credentials of the POR will meet or exceed the minimum requirements of the permitting agency.

The POR may also be known as or referred to as the Construction Quality Assurance (CQA) Engineer, Resident Project Representative, the Geotechnical Quality Control/Quality Assurance Professional (GQCP), or the Geotechnical Professional (GP).

Any references to monitoring, testing, or observations to be performed by the POR should be interpreted to mean the POR or CQA monitors working under the POR's direction.

Conformance Tests

These are tests of materials which are conducted prior to installation on the project. Conformance test samples are samples either submitted or obtained specifically for conformance testing.

Construction Tests

These are tests of materials or constructed products that occur during construction.

Construction Quality Assurance Monitors

These are representatives of the POR who work under direct supervision of the POR. The CQA monitor is responsible for quality assurance monitoring and performing on-site tests and observations. The CQA monitor is on site full time during construction and reports directly to the POR. Any references to monitoring, testing, or observations to be performed by the POR should be interpreted to mean the POR or CQA monitors working under the POR's direction. The CQA monitor performing daily QA/QC observation and testing shall be NICET - certified in geotechnical engineering technology at level 2 or higher for soils and geomembrane testing; or have a minimum of four years of directly related experience; or be a graduate engineer or geologist with one year of directly related experience.

Contract Documents

These are the official set of documents issued by the owner. The documents include bidding requirements, contract forms, contract conditions, specifications, contract drawings, addenda, and contract modifications.

Contract Specifications (Specifications)

These are the qualitative requirements for products, materials, and workmanship upon which the contract is based.

Contractor

This is the person or persons, firm, partnership, corporation, or any combination, private or public, who, as an independent contractor, has entered into a contract with the owner, and who is referred to throughout the contract documents by singular number and masculine gender.

Design Engineer

These individuals or firms are responsible for the design and preparation of the project construction drawings and specifications. Also referred to as "designer" or "engineer."

Geomembrane

See Flexible Membrane Liner (FML) in the TNRCC Liner Construction and Testing Handbook. Geomembrane liner (GL) and FML are used interchangeably.

Geosynthetics Contractor

This individual is also referred to as the "contractor," and is the person or firm responsible for geosynthetic installation. This definition applies to any person installing geosynthetic clay, geomembrane, geocomposite, or geotextile, even if not his primary function.

Seasonal High Water Table

The highest measured or calculated water level in an aquifer during investigations for a permit application and/or any groundwater characterization studies at a site. The seasonal high water table is determined from a compilation of the highest measured water level from each applicable monitor well and piezometer screened in the aquifer.

Nonconformance

This is a deficiency in characteristic, documentation, or procedure that renders the quality of an item or activity unacceptable or indeterminate. Examples of non-conformance include, but are not limited to, physical defects, test failures, and inadequate documentation.

Operator

The organization that will operate the disposal unit (i.e., City of Midland).

Operator's Representative

This is the person that is an official representative of the operator responsible for planning, organizing, and controlling the design and construction activities.

Panel

This is a unit area of the geomembrane (FML) that will be seamed in the field.

Quality Assurance

This is a planned and systematic pattern of procedures and documentation to ensure that items of work or services meet the requirements of the contract documents. Quality assurance includes documentation of quality control. Quality assurance activities will be performed by the POR, the CQA monitor, and independent laboratories.

Quality Control

These actions provide a means to measure and regulate the characteristics of an item or service to comply with the requirements of the contract documents. Quality control will be performed by the contractor or his suppliers.

2 CONSTRUCTION QUALITY ASSURANCE FOR SUBGRADE AND GENERAL FILL

2.1 Subgrade

Subgrade refers to a surface that is exposed after stripping topsoil, filling low areas, or excavating to establish the grade directly beneath the liner system.

Prior to beginning liner construction, the subgrade area will be stripped to a depth sufficient to remove all loose surface soils or soft zones within the exposed excavation. The liner subgrade area will be proof-rolled with heavy rubber tired construction equipment or a heavy compactor to detect soft zones or areas subject to pumping. Areas of soft soils will be recompacted and areas subject to pumping will be undercut to firm material and backfilled with suitable compacted earth fill.

Because the subgrade consists of in situ dense sand or caliche and unacceptable areas are expected to be infrequent and relatively small, visual examination of the subgrade preparation and documentation by the POR (or CQA monitor) will generally be sufficient to evaluate its suitability as a foundation for the soil or geosynthetic clay (GCL) liner. Typical criteria that may be used for this evaluation include:

- No rutting or pumping under construction traffic or during proofrolling
- No seepage over a period of time of at least one week
- No softening of the excavation surface
- No softness or sheen within secondary features
- No water accumulation in shallow test probes

Physical testing may also be used to evaluate the prepared subgrade or fill placed in large areas if considered desirable by the CQA monitor.

The CQA monitor will approve the prepared subgrade prior to the placement of soil or GCL liner or structural fill. Approval will be based on proof rolling observations, a review of test information, if applicable, and monitoring of the subgrade preparation.

2.2 General Fill

General fill material will be used in the establishment of proper subgrade elevations and in the construction of perimeter embankments. General fill will be placed in uniform lifts which do not exceed 8 inches in loose thickness and are compacted to at least 90 percent of standard Proctor (ASTM D 698) at a moisture content ranging from two percentage points below optimum to three percentage points above optimum (-2 to +3).

2.3 Surveying

Surveys will be conducted to verify the lines and grade of the liner system. A survey grid will be established with a minimum of one point per 5,000 square feet of surface area for thickness verification of the various liner components. The allowable vertical tolerance for the finished subgrade is + or - 0.2 feet or as approved by the engineer.

The survey will be used to establish as-built information and verify that the:

- Subgrade (bottom of liner system) complies with design grades and does not extend below the approved permit grades (within accepted construction tolerances)
- Individual components meet the minimum thickness requirements at each of the grid points
- Top of liner, protective cover, and leachate collection system (LCS) trenches comply with the design grades
- Coordinates of the constructed cell

3 CONSTRUCTION QUALITY ASSURANCE FOR SOIL LINER

City of Midland has adopted the current version of the "Liner Construction and Testing Handbook" (LCTH), published by the TNRCC, as a part of the SLQCP. Soil liner construction quality assurance is addressed in the LCTH. A copy of the latest version of the LCTH is included as Appendix A.

4 GEOSYNTHETIC CLAY LINER

4.1 Delivery

The Geosynthetic Clay Liner (GCL) shall be shipped in rolls which are wrapped individually in relatively impermeable and opaque protective covers. The rolls may be stacked only as allowed by manufacturer's recommendations. The GCL rolls must be stored above ground and protected from moisture.

4.2 Conformance Testing

The GCL shall consist of sodium bentonite contained between geotextiles or adhered to a geomembrane. A certificate of analysis for each clay lot shall be submitted as part of the quality control documentation. The finished GCL must have a permeability no greater than 5×10^{-9} cm/sec (test method ASTM D5084 or GR1 GCL-2), have a free swell (test method ASTM D5890) of at least 24 ml/2g, and a fluid loss (test method ASTM D5891) no greater than 18 ml. The manufacturer shall provide recommended seaming procedures and supporting test documentation showing the GCL seams are no more permeable than the GCL itself at a confining pressure anticipated in the field.

GCL testing shall be performed by the manufacturer and the third-party independent laboratories. The POR will review the manufacturer's certification (quality control certificate) and verify that the GCL meets the values given in the plans or specifications for those tests listed in Table 4-1.

4.3 Installation

All installation of GCL shall be monitored continuously during construction by the POR or CQA Monitor. All references to the POR in this section shall mean the POR and/or the CQA Monitor under his direct supervision. The installer shall provide a panel layout plan which will be reviewed by the POR prior to any material deployment.

4.3.1 Subgrade Preparation

The subgrade surface shall be relatively smooth and free of foreign and organic material, sharp objects, exposed soil or aggregate particles greater than 1 inch, or other deleterious materials. GCL will not be placed over a wet subgrade or ponded water.

Prior to GCL installation, the POR will verify the following:

- The finish grades have been verified by the surveyor.
- The subgrade has been sprayed with water (if dry) and proof-rolled with a minimum of two passes of heavy, rubber tired construction equipment or a heavy compactor.
- The subgrade surface has been rolled with a smooth drum roller to provide a uniform surface that does not contain materials which could damage the GCL or adjacent layer.

4.3.2 Deployment

Equipment used to deploy GCL over soil shall not cause excessive rutting of the subgrade. GCL placed over geosynthetics shall be placed by hand or using light equipment with low contact pressure rubber tires. Deployed GCL panels should contain no folds or excessive slack. Generators, gasoline or solvent cans, tools, or supplies shall not be placed directly on GCL. Installation personnel shall not smoke or wear damaging shoes when working on GCL.

GCL on sidewalls shall not be unrolled perpendicular to the slope. GCL should be anchored at the top of the slope and then unrolled downslope to prevent wrinkles and folds. Horizontal seams shall not be allowed on slopes except where the roll length is less than the slope length as specified herein.

The POR shall observe the GCL as it is deployed for thin spots, or other panel defects. The POR shall record all defects and the disposition of the defects (panel rejected, patch installed, etc.). All repairs are to be made in accordance with the specifications at the discretion of the POR. The POR shall verify that only panels which can be covered in one day are deployed and that the GCL panels are not placed during wet, rainy weather. In accordance with the construction specifications, the POR shall also verify the following:

- Proper GCL deployment techniques.
- Proper overlap.

- Seams are constructed per manufacturer's recommendations.
- Defects are patched and overlapped properly.
- On sidewalls, the GCL is anchored at the top and then unrolled.

On occasion where the manufactured roll length is less than the slope length (i.e., length from anchor trench to 5 feet past the toe) it will be necessary to have end laps. Horizontal seams may be used only on the sidewalls where a full roll length is too short to extend from the anchor trench to 5 feet past the toe of the slope. Horizontal seams are to be constructed as follows:

- Horizontal seams will be located in the lower half of the slope
- There will be a minimum overlap of 3 feet, shingled in the down slope direction
- Seams will be staggered; i.e., the horizontal seams will be at least 20 feet apart for any two adjacent panels

The POR shall observe the GCL for premature hydration. All GCL that has prematurely hydrated shall be removed and replaced with new GCL. These observations will be documented in the Geosynthetic Clay Liner Evaluation Report (GCLER) or Geomembrane Liner Evaluation Report (GLER). Premature hydration occurs when the GCL is saturated prior to placement of the cover or drainage aggregate. A typical guide for premature hydration would be material that is displaced under normal foot traffic.

4.3.3 Protection

Construction equipment on the GCL (or composite liner system) shall be minimized to reduce the potential for damage or puncture. The POR shall verify that small equipment such as generators are placed on scrap geomembrane material (rub sheets). The POR shall verify that the GCL is not displaced while overlying materials are being placed.

4.4 Repairs

Repairs shall be constructed in accordance with the manufacturer's recommendations. Repairs shall extend at least 12 inches beyond the extent of damage.

4.5 Documentation

GCL installation will be documented in a GCLER. The GCLER may be submitted as a separate document upon completion of the installation of geosynthetics, or combined with the GLER and submitted upon completion of protective cover installation.

Table 4-1

Standard Tests on GCL Material

Tester	Test	Type of Test	Standard Test Method	Frequency of Testing
Supplier or GCL Manufacturer	Bentonite	Free Swell	ASTM D5890	per 50 tons and every truck or railcar
		Fluid Loss	ASTM D5891	per 50 tons and every truck or railcar
	GCL Product	Clay Mass/Unit Area @ 0% moisture	ASTM D5993	per 40,000 ft ²
		Grab Tensile Strength	ASTM D4632	per 200,000 ft ²
		Bentonite Moisture Content	ASTM D 2216 or D 4643	per 40,000 ft ²
		Permeability (1)	GRI GCL-2 or ASTM D5084	Per week for each production line
	Geomembrane	Mass per Unit Area	ASTM D 1505 or ASTM D 5261	per 100,000 ft ²
		Thickness	ASTM D 5199 or ASTM D 5994	per 200,000 ft ²
		Tensile Properties	ASTM D 638	per 200,000 ft ²
Independent Laboratory	GCL Product	Clay Mass/Unit Area @ 0% moisture	ASTM D5993	per 100,000 ft ²
		Permeability (1)	GRI GCL-2 or ASTM D5084	per 100,000 ft ²
		Interface Shear (2)	ASTM D 5321	per GCL/adjoining material type and GCL Internal Shear ⁽¹⁾

(1) Not required for geomembrane backed GCL, but manufacturer certification must be provided.

(2) Interface shear testing is applicable for slopes steeper than 7H:1V, but will not be required for any cell utilizing the same materials that were used for a previous cell if test results for these materials are available and were satisfactory. Test samples shall be hydrated unless a geomembrane is installed on both sides of the GCL. Test results developed for construction of the Pit 3, Phase 1 liner are provided in Appendix C.

5 CONSTRUCTION QUALITY ASSURANCE FOR GEOMEMBRANE LINERS

City of Midland has adopted the current version of the "Liner Construction and Testing Handbook" (LCTH), published by the TNRCC, as a part of the SLQCP. Construction Quality Assurance for Geomembrane liners (GL) is addressed in the LCTH. A copy of the latest revision of the LCTH is included as Appendix A.

The LCTH includes a requirement for manufacturer's quality control test and third party conformance test of geomembrane materials to be conducted in accordance with NSF 54. Subsequent to publication of the LCTH, NSF 54 has been replaced with GRI GM13. Therefore, geomembrane testing will be conducted in accordance with GRI GM13 and as outlined in Table 5-1. Oven aging testing is not required unless the installed geomembrane panels will be exposed to sun and weather without protective cover for longer than a six-month period.

**Table 5-1
Required Contractor's Quality Control Testing Submittals for
Geomembranes**

Test	Type of Test	Standard Test Method	Frequency of Testing (Minimum)
Resin	Specific Gravity/Density	ASTM D 792, Method A or ASTM D 1505	Per 100,000 SF and every resin lot
	Melt Flow Index	ASTM D 1238	Per 100,000 SF and every resin lot
Manufacturer's Quality Control	Thickness	ASTM D 5199 (smooth) or D5994 (textured)	Per Roll of Geomembrane
	Specific Gravity/Density	ASTM D 1505/D 792	Per 200,000 pounds
	Carbon Black Content	ASTM D 1603	Per 20,000 pounds
	Carbon Black Dispersion	ASTM D 5596	Per 45,000 pounds
	Tensile Properties	ASTM D 638 / Type IV	Per 20,000 pounds
	Tear	ASTM D 1004	Per 45,000 pounds
	Puncture	ASTM D 4833	Per 45,000 pounds
	Stress Crack Resistance	D 5397	Per GRI-GM 10
	Oxidative Induction Time	D 3895 or D 5885	Per 200,000 pounds
	Oven Aging @ 85°	D 5721 and D 3895 or D 5885	Per each formulation

6 CONSTRUCTION QUALITY ASSURANCE FOR GEOCOMPOSITE

6.1 Delivery

The drainage geocomposite shall be shipped in rolls which are wrapped with protective covering. Each roll shall be marked with the manufacturers name, lot number, roll number, and roll dimensions. The rolls shall be protected from mud, soil, dirt, dust, debris, cutting, or impact forces. Damaged rolls shall be rejected and removed from the site or stored at a location separate from accepted rolls.

6.2 Quality Control Testing

The drainage geocomposite manufacturer (or supplier) shall conduct quality control testing and certify that all materials delivered to the site comply with project specifications. The material certifications shall be reviewed by the POR to verify that the geocomposite meets the values given in the plans or specifications. Third party conformance testing will not be required.

6.3 Installation

All installation of geocomposite shall be monitored continuously during construction by the CQA Monitor working under the direct supervision of the POR.

6.3.1 Surface Preparation

Prior to geocomposite installation, the CQA Monitor shall verify the following:

- Lines and grades have been verified by the surveyor.
- Debris, soil, and other materials have been removed from the geomembrane surface.
- The underlying geomembrane installation, including all required documentation, has been completed for the area being covered.

- If placed directly on clay liner, the surface does not contain stones that could damage the geocomposite or the geomembrane.

6.3.2 Deployment

During deployment of the geocomposite, the CQA Monitor shall verify the following:

- Disposition of any defects (panel rejected, patch installed, etc.) All repairs are to be made in accordance with the specifications.
- That equipment used to deploy the geocomposite does not damage the geocomposite or underlying geomembrane.
- That people working on the geocomposite do not smoke, wear shoes that could damage the geocomposite, or engage in activities that could damage the geocomposite or underlying geomembrane.
- That the geocomposite is anchored to prevent movement by the wind.
- That the geocomposite remains free of contaminants such as soil, grease, fuel, etc.
- That the geocomposite is relatively free of tension, stress, folds, wrinkles, or creases.
- That adjacent rolls of geocomposite are overlapped, tied, and seamed in accordance with the specifications or manufacture's recommendations.

6.4 Repairs

Holes or tears in the drainage geocomposite shall be repaired by placing a geocomposite patch extending 2 feet beyond the edges of the hole or tear and tying the patch every 6 inches or heat bonding the geotextiles. A hole only in the upper geotextile shall be patched with a piece of geotextile in a similar manner, except the patch should be heat bonded to the underlying geotextile.

7 CONSTRUCTION QUALITY ASSURANCE FOR PIPING

7.1 Delivery

The POR will verify that upon delivery, the pipe and pipe fittings are in compliance with the requirements of the construction specifications. Stacking or insertion of the other construction materials onto or into the pipe and pipe fittings shall be prohibited. The contractor shall use pliable straps, slings, or rope to lift the pipe. The contractor shall use at least two support points when lifting pipe sections greater than 20 feet in length.

7.2 Quality Control Testing

Prior to the installation of pipe, the pipe manufacturer will provide a quality control certificate for each lot or batch of pipe delivered. The quality control certificate will be signed by a responsible party employed by the pipe manufacturer. The quality control certificate will include:

- Property data sheet including all specified properties, measured using test methods indicated in the specifications, or equivalent.
- A certification that property values given in the property data sheet are minimum values and are guaranteed by the pipe manufacturer.

The POR or the CQA Monitor shall verify that:

- The property values certified by the pipe manufacturer meet all of the specifications.
- The measurements of properties by the pipe manufacturer are properly documented and that the test methods used are acceptable.
- Pipe perforations are the correct size and spacing according to the project specifications and are in compliance with the filter requirements for the drainage aggregate to be used as given in Section 8.

7.3 Installation

All installation of pipe shall be monitored continuously during construction by the POR or CQA Monitor working under the direct supervision of the POR.

7.3.1 Surface Preparation

Prior to pipe installation, the CQA Monitor shall verify the following:

- Lines and grades have been verified by the surveyor.
- The pipe trenches are free of any deleterious material that may damage the pipe or underlying geomembrane or may clog the pipe.

7.3.2 Deployment

During pipe and fitting installation, the POR shall verify that:

- Pipes and fittings are not broken, cracked, or otherwise damaged or unsatisfactory.
- Prior to fusing (if required), the pipe installer will provide a fusion surface area which is clean and free of moisture, dust, dirt, debris of any kind, and foreign material. Prior to gluing (if required), the pipe and fittings are clean and dry.
- Pipe and fittings are being installed in accordance with specifications, manufacturer's recommendations, and accepted practices.
- People and equipment utilized to install the pipe do not damage the pipe or any other component of the liner system.
- Bedding has been placed for the pipe in accordance with project plans and specifications.

8 CONSTRUCTION QUALITY ASSURANCE FOR DRAINAGE AGGREGATE

8.1 Materials

Granular drainage material around the leachate collection pipes will consist of durable particles of natural gravel, crushed stone or expanded shale light weight aggregate. The material shall be free of conspicuous amounts of clay or other unsuitable materials. The aggregate shall have a loss of mass due to calcium carbonate of less than 15 percent in accordance with JLT-S-105-89 or ASTM D 3042 modified to use a solution of hydrochloric acid having a pH of 5. The drainage aggregate shall meet ASTM D 448, size number 467, 57, 67, or 7. Drainage materials not complying with the above gradations may also be approved by the POR if demonstrated to have a hydraulic conductivity of at least 1×10^{-2} cm/sec. The drainage aggregate gradation shall conform to the filter requirements consistent with the perforations in the leachate collection pipe. At a minimum, the drainage aggregate will meet the following criteria:

For circular holes:

$$\frac{\text{85 Percent Size of Filter Material}}{\text{Hole Diameter}} > 1.7$$

For slots:

$$\frac{\text{85 Percent Size of Filter Material}}{\text{Slot Width}} > 2.0$$

Aggregate (sand or gravel) may also be used as an alternate to the geocomposite drainage layer. The aggregate will have a minimum hydraulic conductivity of 1×10^{-2} cm/sec. If the aggregate includes particles greater than $\frac{3}{8}$ inch size, the geomembrane will be protected by geotextile prior to placing the drainage layer. The material will be placed and spread with low ground pressure equipment that will not damage the underlying geomembrane. Under no circumstances shall there be less than 12 inches of material between the spreading equipment and the geomembrane.

8.2 Testing

The coarse aggregate shall be tested for gradation (ASTM D 422) at a minimum of 1 test per 3,000 cubic yards or per lined area. The aggregate shall be free of organics, clay, foreign objects, or other deleterious materials. The physical characteristics of the aggregate shall be evaluated through visual observation and laboratory classification testing before construction and visual observation during construction. The coarse aggregate may be sampled more frequently at the discretion of the CQA monitor. The test results for the coarse aggregate used in leachate collection system will be included in the GLER.

9 CONSTRUCTION QUALITY ASSURANCE FOR GEOTEXTILES

9.1 Delivery

Geotextile shall be shipped in rolls that are wrapped in opaque covers. Each roll shall be marked with the manufacturer's name, lot number, roll number, and roll dimensions. Materials shall be stored in a location that will protect the rolls from precipitation, mud, dirt, dust, puncture, cutting, or any other damaging conditions. Damaged rolls shall be rejected and removed from the site or stored at a location separate from accepted rolls.

9.2 Quality Control Testing

The geotextile manufacturer shall conduct quality control testing and certify that the materials delivered to the site comply with project specifications. The material certification shall be reviewed by the POR and accepted for the project prior to placement of any of the material.

9.3 Installation

All installation of geotextile shall be monitored continuously during construction by the CQA Monitor.

9.3.1 Surface Preparation

Prior to geotextile installation, the CQA Monitor shall verify the following:

- Lines and grades have been verified by the surveyor.
- Debris, soil, dust, and other materials are removed from the surface being prepared for geotextile deployment.
- That all geomembrane defects have been repaired.
- That required destructive and nondestructive testing of the geomembrane and seams have been completed.

9.3.2 Deployment

During geotextile placement, the CQA Monitor shall verify the following:

- Defects are repaired in accordance with the specifications.
- That equipment used does not damage the geotextile.
- That people working on the geotextile do not smoke, wear shoes that could damage the geotextile, or engage in activities that could damage the geotextile.
- That the seams are overlapped in accordance with the specifications.
- That seams are continuously sewn or heat bonded in accordance with the specifications and consistent with the manufacturer's recommendations.

9.4 Repairs

Repair procedures include:

- Patching - used to repair holes, tears, and large defects
- Removal - used to replace areas with large defects where the preceding method is not appropriate

If located on a slope, a panel with a defect, hole, or tear, which exceeds 10 percent of the width of the panel, shall be removed and replaced. Otherwise, a patch with a minimum 12-inch overlap in all directions shall be heat bonded or sewn in place.

10 CONSTRUCTION QUALITY ASSURANCE FOR PROTECTIVE COVER

10.1 Materials

The protective cover shall consist of soil or a soil aggregate mixture that is free of organics, large angular rocks, foreign objects, or other deleterious materials that could damage the underlying geosynthetics. The protective cover material shall have a hydraulic conductivity of at least 1×10^{-4} cm/sec or chimney drains may be used. Chimney drains, when used, will be constructed by extending the gravel in the LCS trench and sump through the protective cover. The minimum width of aggregate (at the top of the chimney) will be at least 1.5 feet, and at all points across the trench there will be a minimum of 2 feet of gravel or soil over the geomembrane. Chimney drains will be constructed over the sumps by extending the chimney from the trench laterally across the sump. Where it is necessary for hauling or compacting equipment to travel directly over the trenches, the chimney drain will be interrupted for approximately 20 feet and the aggregate will be covered with at least 2 feet of soil.

10.2 Quality Assurance Testing

If chimney drains are not used to provide flow paths to the LCS, soil testing must be conducted to verify that the hydraulic conductivity of protective cover soil is at least 1×10^{-4} cm/sec. Hydraulic conductivity tests shall be conducted at a minimum frequency of 1 test for each 100,000 square feet of cover surface area (horizontal projection). Testing of protective cover will not be required if chimney drains are used.

10.3 Installation

All installation of protective cover shall be monitored continuously during construction by the CQA Monitor.

Drainage aggregates and protective cover shall be placed in lifts using low ground pressure equipment as shown below.

Equipment Ground Pressure (psi)	Minimum Lift Thickness (in.)
<4	12
4 - 8	18
8 - 16	24
>16	36

During installation of the protective cover, the CQA Monitor shall verify the following:

- The protective cover layer is spread using low ground pressure equipment.
- The protective cover is spread with a minimum of 12 inches of soil between the spreading equipment and the installed geosynthetics. Under no circumstances shall construction equipment come in direct contact with the installed geosynthetics.
- Protective cover placed on slopes shall be spread by pushing up the slope.
- The thickness of the protective cover has been verified with surveying procedures of a minimum of 1 survey point per 5,000 square feet with a minimum of 2 survey points regardless of size.
- That underlying geosynthetic installations are not damaged during placement operations.

11 LINERS CONSTRUCTED BELOW GROUNDWATER

11.1 Applicability

Liners that are constructed below groundwater may experience uplift from the hydrostatic force of the groundwater. In such cases, appropriate groundwater control measures will be implemented until adequate ballast has been placed.

The analyses, design, and construction of any liner constructed below groundwater will be accomplished in accordance with TAC 330.203 and the latest TNRCC Guidance Document (which at this time is the *Liners Constructed Below the Seasonal High Water Table*, April 1997).

11.2 Seasonal High Water Elevations

A Seasonal High Groundwater Elevation Map has been developed using water level data representing the highest recorded water levels at the various monitoring wells across the landfill site and is included in Appendix B. The current Seasonal High Groundwater Elevation Map shall be used to evaluate and design the liners for short-term and long-term stability. Prior to construction of a new cell, the map will be updated by checking groundwater elevations from all monitoring events subsequent to the date of the last revision.

The current Seasonal High Groundwater Elevation Map will be submitted with each GCLER or GLER along with an evaluation of the need for soil ballast to overcome hydrostatic pressure on the bottom of the liner.

11.3 Excavation Below the Groundwater Level

A Sectorized Fill Layout which shows permitted excavation contours has been included for reference in Appendix B. Based on the current Seasonal High Groundwater Elevation Map, the liner subgrade will be above the seasonal high groundwater levels and groundwater will not be encountered during the excavation of any future cells. During construction, the subgrade must be kept at a surface-dry condition to provide a firm and unyielding subgrade for construction of the soil liner system. If seepage is encountered, construction measures as discussed below in Section 11.4 will be employed.

11.4 Control of Seepage During Construction

The base of the proposed excavation has been designed to fall within the caliche strata above the highest expected groundwater level. Isolated soft spots or wet zones, if encountered, will be over-excavated and sealed with low-permeability materials before commencing liner system construction. It is not anticipated that mechanical dewatering techniques will be required.

The POR shall observe the liner subgrade to confirm that the liner system will not undergo uplift from hydrostatic forces during construction. Among other criteria to be used, the subgrade shall be free of seepage and rutting and there should be no soft or wet areas. Additionally, the POR will periodically observe and evaluate the liner system construction to verify that no failure of the liner system due to uplift has occurred.

11.5 Required Ballast Thickness

As noted above, it is not anticipated that additional ballast will be required for the liner system in any of the future cells since the excavations will not extend below the current seasonal high water level, and the groundwater levels have generally been decreasing during the monitoring period. If, however, groundwater elevations change and an isolated area requires ballast in excess of the permitted protective cover (or LCS aggregate), ballast will be provided by additional soil protective cover and documented in the GLER.

12 REPORTS ACCEPTABILITY DETERMINATION

All field and laboratory sampling and testing of components of the liner or geomembrane and its construction must be under the direct supervision of a POR or his qualified representative. Any completed lined area that fails to meet the minimum specified conditions of the required tests for a liner or geomembrane must be reworked or replaced to achieve the required results. Inability to achieve the required results through reworking shall be cause for rejection of the area in question. All reworked areas shall be retested to prove adequacy to meet all the applicable requirements.

In accordance with §330.206(b), no area may be used for the receipt of solid waste until the Commission has given confirmation of its acceptance of the required liner evaluation report(s) (i.e., SLER and GLER or GCLER), or fourteen days from the date(s) of arrival of the GLER or GCLER at the Municipal Solid Waste Division, TNRCC have lapsed.

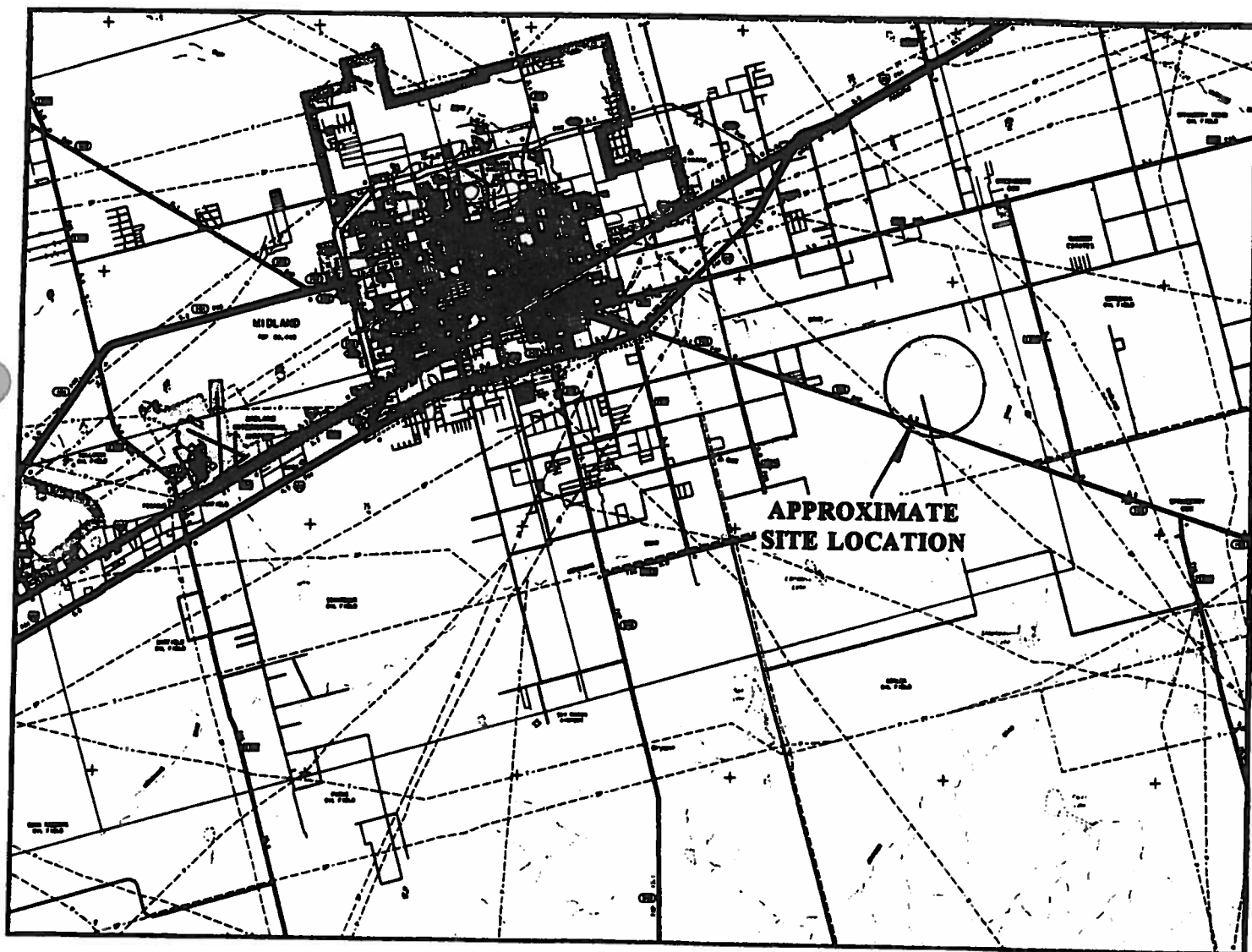
APPENDIX B

SOIL BORINGS

PART III
ATTACHMENT 4
APPENDIX 6
TRINITY ENGINEERING TESTING CORPORATION REPORT (1995)
CITY OF MIDLAND SOLID WASTE LANDFILL NO. 1605-B
MIDLAND COUNTY, TEXAS

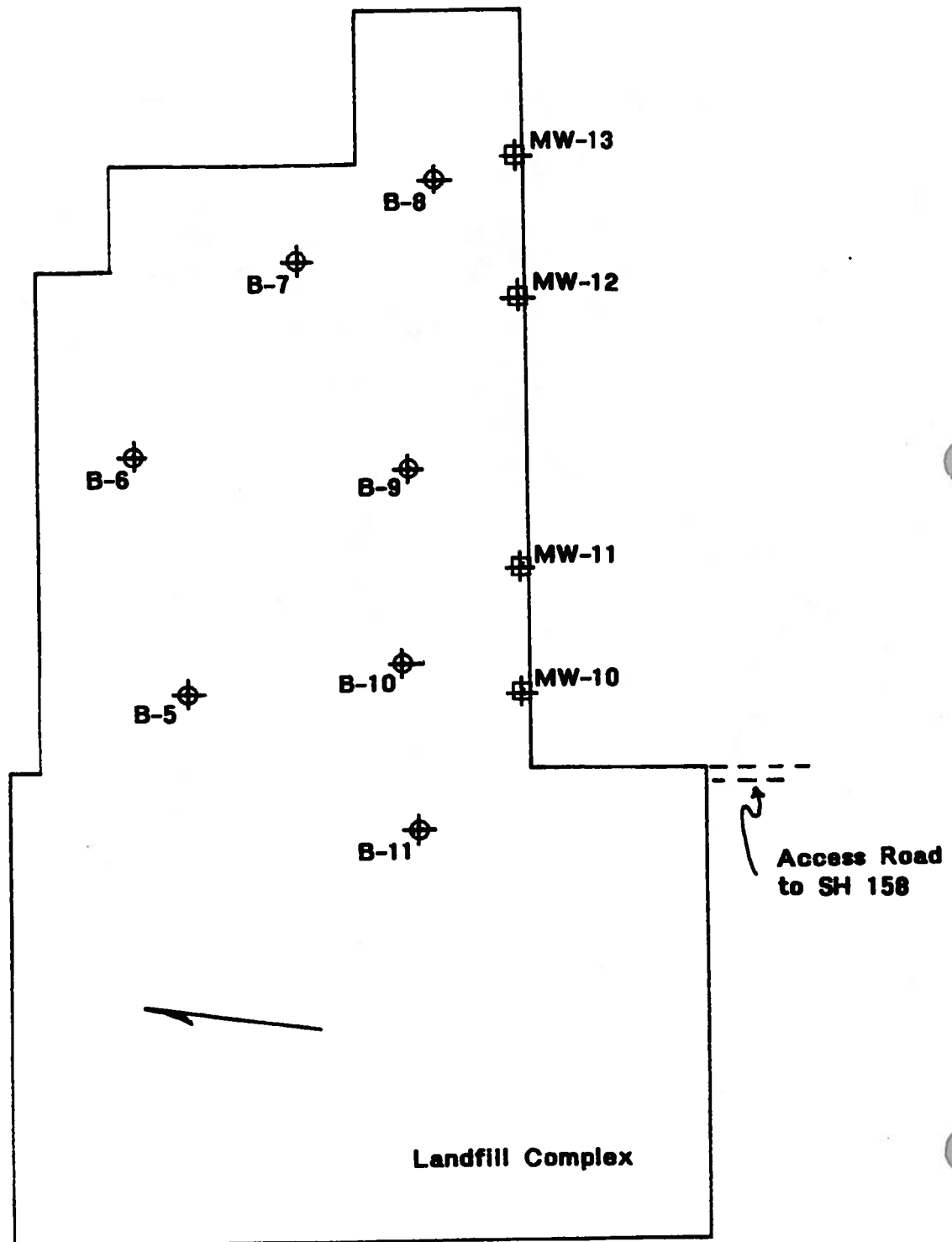
Municipal Solid Waste Landfill No. 1605
City of Midland, Texas

SITE VICINITY MAP



Municipal Solid Waste Landfill No. 1605
City of Midland, Texas

APPROXIMATE BORING LOCATIONS



Municipal Solid Waste Landfill No. 1605
City of Midland, Texas

SUMMARY OF SOIL CLASSIFICATION TEST RESULTS

<u>Boring Number</u>	<u>Depth in feet</u>	<u>Liquid Limit %</u>	<u>Plasticity Index %</u>	<u>% Passing 200-mesh Sieve</u>	<u>Natural Moisture Content %</u>	<u>Classification</u>	<u>Material Description</u>
HDR-5	10.0-11.5	23	5	30.6	6.6	SC-SM	Red-Tan SILTY CLAYEY SAND
HDR-5	20.0-21.5	28	6	31.1	13.4	SC-SM	White-Tan SILTY CLAYEY SAND
HDR-5	30.0-30.4	NP*	NP*	27.1	4.9	SM	Red SILTY SAND
HDR-5	55.0-56.5	NP*	NP*	8.7	19.0	SP-SM	Tan SILTY SAND
HDR-5	65.0-66.5	22	4	5.3	18.6	SP-SC	Tan POORLY-GRADED SAND
HDR-6	10.0-11.5	50	19	18.2	16.2	SM	Tan SILTY SAND with Gravel
HDR-6	15.0-16.5	47	12	22.6	20.6	SM	Tan SILTY SAND with Gravel
HDR-6	25.0-25.2	73	50	49.9	20.1	SC	Pink CLAYEY SAND
HDR-6	50.0-50.5	NP*	NP*	10.3	16.8	SP-SM	Tan SAND with Silt
HDR-7	15.0-16.5	NP*	NP*	13.8	10.6	SM	Red-Tan SILTY SAND
HDR-7	20.0-21.5	22	7	35.1	15.5	SC-SM	Red-Tan SILTY CLAYEY SAND
HDR-7	25.0-26.5	26	14	48.5	16.8	SC	Tan-White CLAYEY SAND
HDR-7	30.0-31.5	24	10	38.9	18.4	SC	Tan-White CLAYEY SAND
HDR-7	50.0-51.0	26	1	16.7	22.7	SM	Tan-White SILTY SAND

*Non-plastic

**Municipal Solid Waste Landfill No. 1605
City of Midland, Texas**

SUMMARY OF SOIL CLASSIFICATION TEST RESULTS (cont'd)

<u>Boring Number</u>	<u>Depth in feet</u>	<u>Liquid Limit %</u>	<u>Plasticity Index %</u>	<u>% Passing 200-mesh Sieve</u>	<u>Natural Moisture Content %</u>	<u>Classi- fication</u>	<u>Material Description</u>
HDR-7	80.0-80.8	30	11	12.3	15.2	SC	White-Tan CLAYEY SAND
HDR-8	15.0-16.5	32	20	43.6	19.2	SC	Tan CLAYEY SAND
HDR-8	25.0-26.5	NP*	NP*	4.2	34.3	SW	Tan SAND
HDR-8	60.0-61.5	32	15	39.4	27.0	SC	Tan CLAYEY SAND
HDR-9	5.0-6.5	47	29	41.7	14.8	SC	Red-Tan CLAYEY SAND
HDR-9	35.0-35.2	61	28	27.3	38.5	SM	Tan-White SILTY SAND
HDR-9	40.0-41.5	23	7	31.5	27.2	SC-SM	Red-Tan SILTY CLAYEY SAND
HDR-9	55.0-56.5	30	12	4.3	20.1	SP	Red-Tan SAND
HDR-10	10.0-11.5	23	5	30.6	6.6	SC-SM	White-Tan SILTY CLAYEY SAND
HDR-10	25.0-25.9	29	NP*	21.2	11.2	SM	White-Tan SILTY SAND with Gravel
HDR-10	45.0-45.6	29	9	12.8	24.3	SC	Pink-White CLAYEY SAND with Gravel
HDR-11	5.0-6.5	20	3	30.5	6.5	SM	Red-Brown SILTY SAND
HDR-11	25.0-25.4	24	1	18.6	7.9	GM	White-Pink CLAYEY SAND
HDR-11	40.0-41.5	19	NP*	31.9	14.4	SM	Tan SILTY SAND

*Non-plastic

**Municipal Solid Waste Landfill No. 1605
City of Midland, Texas**

SUMMARY OF SOIL CLASSIFICATION TEST RESULTS (cont'd)

<u>Boring Number</u>	<u>Depth in feet</u>	<u>Liquid Limit %</u>	<u>Plasticity Index %</u>	<u>% Passing 200-mesh Sieve</u>	<u>Natural Moisture Content %</u>	<u>Classi- fication</u>	<u>Material Description</u>
HDR-11	50.0-51.3	NP*	NP*	27.7	18.5	SM	Pink-Tan SILTY SAND
HDR-11	60.0-61.5	22	3	15.7	19.7	SM	Pink-Tan SILTY SAND
MW-10	5.0-6.5	19	3	34.6	4.7	SM	Orange-Brown SILTY SAND
MW-10	15.0-15.4	32	10	39.6	8.9	SC	White-Tan CLAYEY SAND
MW-10	55.0-56.5	25	8	37.7	20.2	SC	Tan CLAYEY SAND
MW-11	10.0-11.5	33	9	36.7	13.7	SM	White-Tan SILTY SAND
MW-11	25.0-26.5	30	7	29.4	11.5	SC-SM	White-Tan SILTY CLAYEY SAND
MW-12	15.0-15.5	28	15	36.2	8.9	SC	Tan CLAYEY SAND
MW-12	35.0-36.5	37	8	22.7	15.0	SM	Tan SILTY SAND with Gravel
MW-12	50.0-50.4	23	9	21.9	24.2	SC	Tan CLAYEY SAND
MW-13	10.0-11.5	22	8	35.4	8.1	SC	Red-Tan CLAYEY SAND
MW-13	20.0-21.5	NP*	NP*	20.3	3.2	SM	Tan SILTY SAND
MW-13	25.0-25.5	23	6	33.4	7.3	SC-SM	White-Tan SILTY CLAYEY SAND
MW-13	40.0-41.5	NP*	NP*	26.7	12.6	SM	White-Tan SILTY SAND
MW-13	45.0-45.9	26	4	28.0	14.4	SM	White SILTY SAND
MW-13	65.0-66.5	42	23	44.3	25.0	SC	Tan CLAYEY SAND

*Non-plastic

Municipal Solid Waste Landfill No. 1605
City of Midland, Texas

SUMMARY OF UNIT DRY WEIGHT, MOISTURE CONTENT,
AND UNCONFINED COMPRESSION RESULTS

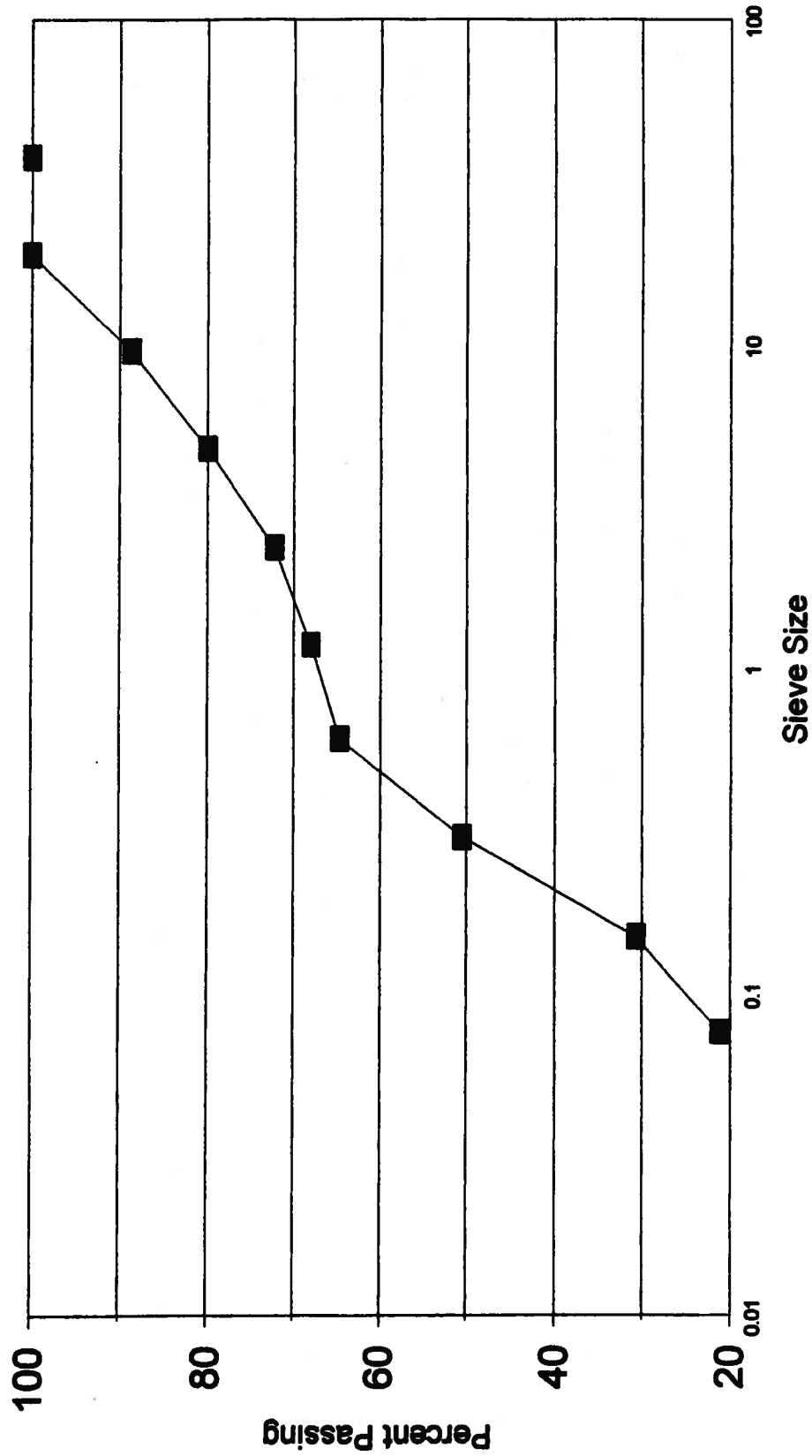
<u>Boring Number</u>	<u>Depth in feet</u>	<u>Unit Dry Weight, pcf*</u>	<u>Natural Moisture Content, %</u>	<u>Air Voids, %</u>	<u>Q_u, tsf**</u>	<u>Material Description</u>
HDR-5	72.5	130.6	8.5	3.0	45.8	Red SHALE
HDR-7	84.0	---	---	---	16.0	Red-Brown SHALE
HDR-10	75.0	---	---	---	8.9	Red SHALE
MW-10	45.0	---	---	---	34.3	Tan-White SANDSTONE
MW-11	45.0	---	---	---	50.8	Pink SANDY LIMESTONE

*pounds per cubic foot

**tons per square foot

Sieve Analysis Plot

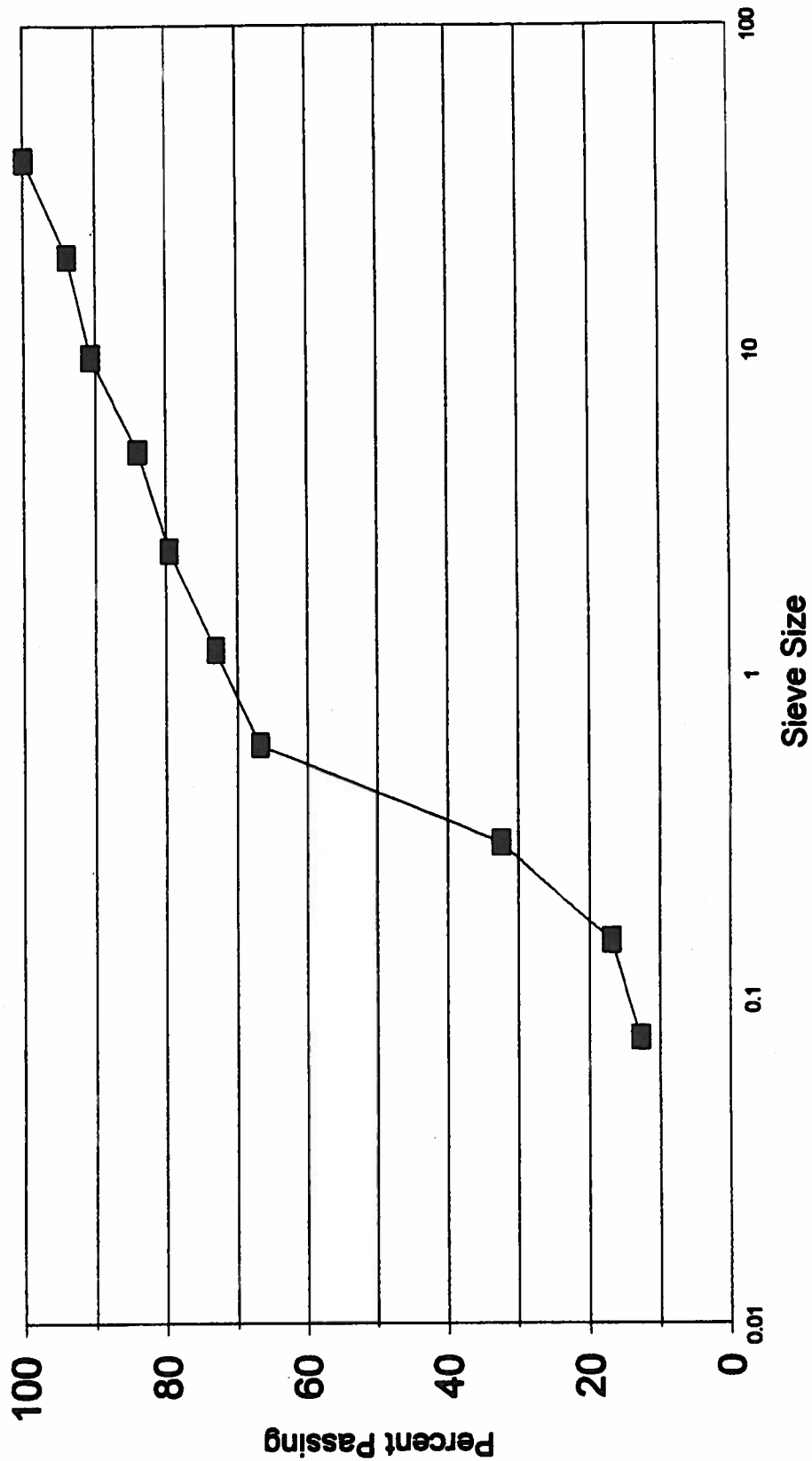
City of Midland Landfill



■ B-10, 25.0-25.9'

Sieve Analysis Plot

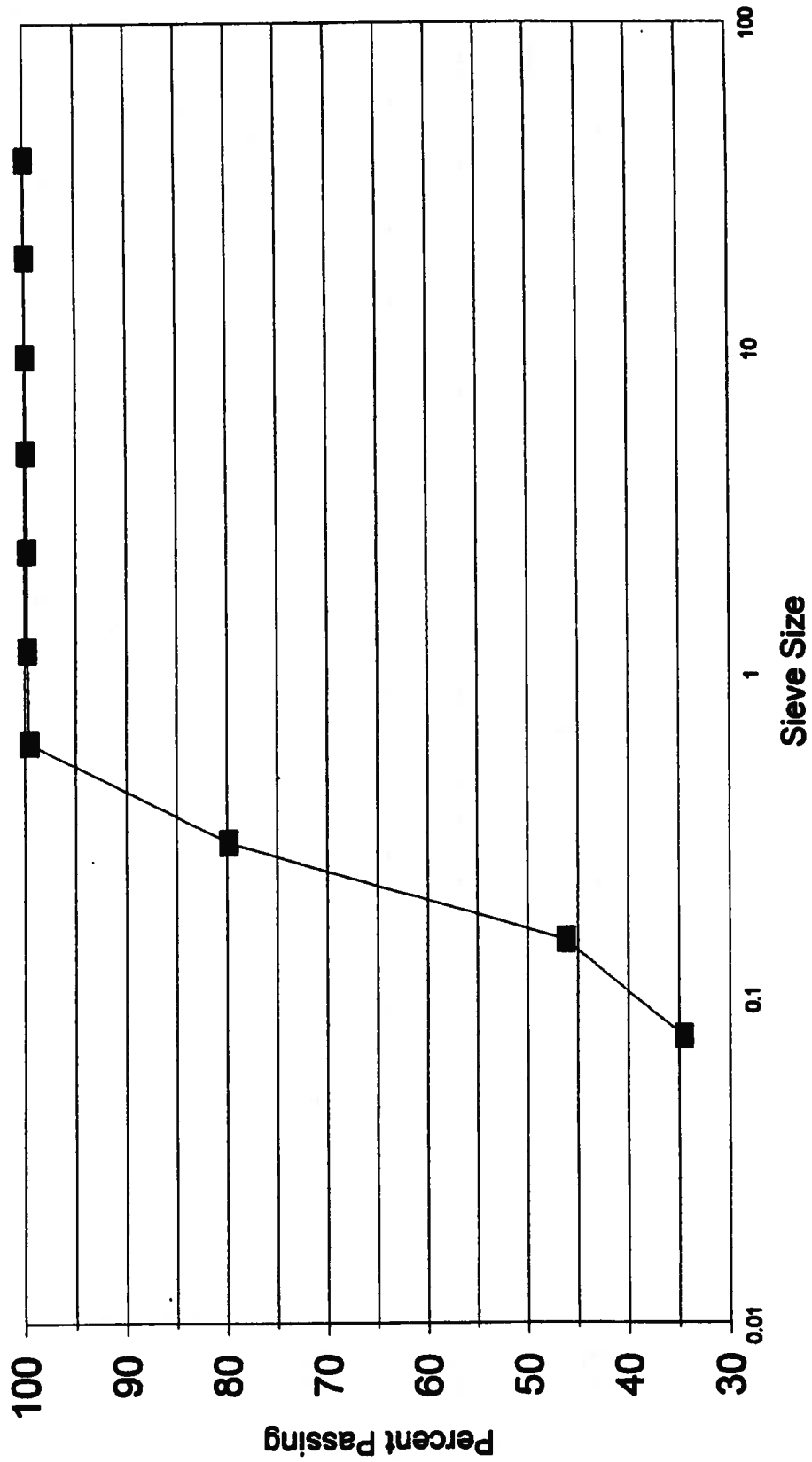
City of Midland Landfill



—■— B-10, 45.0-45.7'

Sieve Analysis Plot

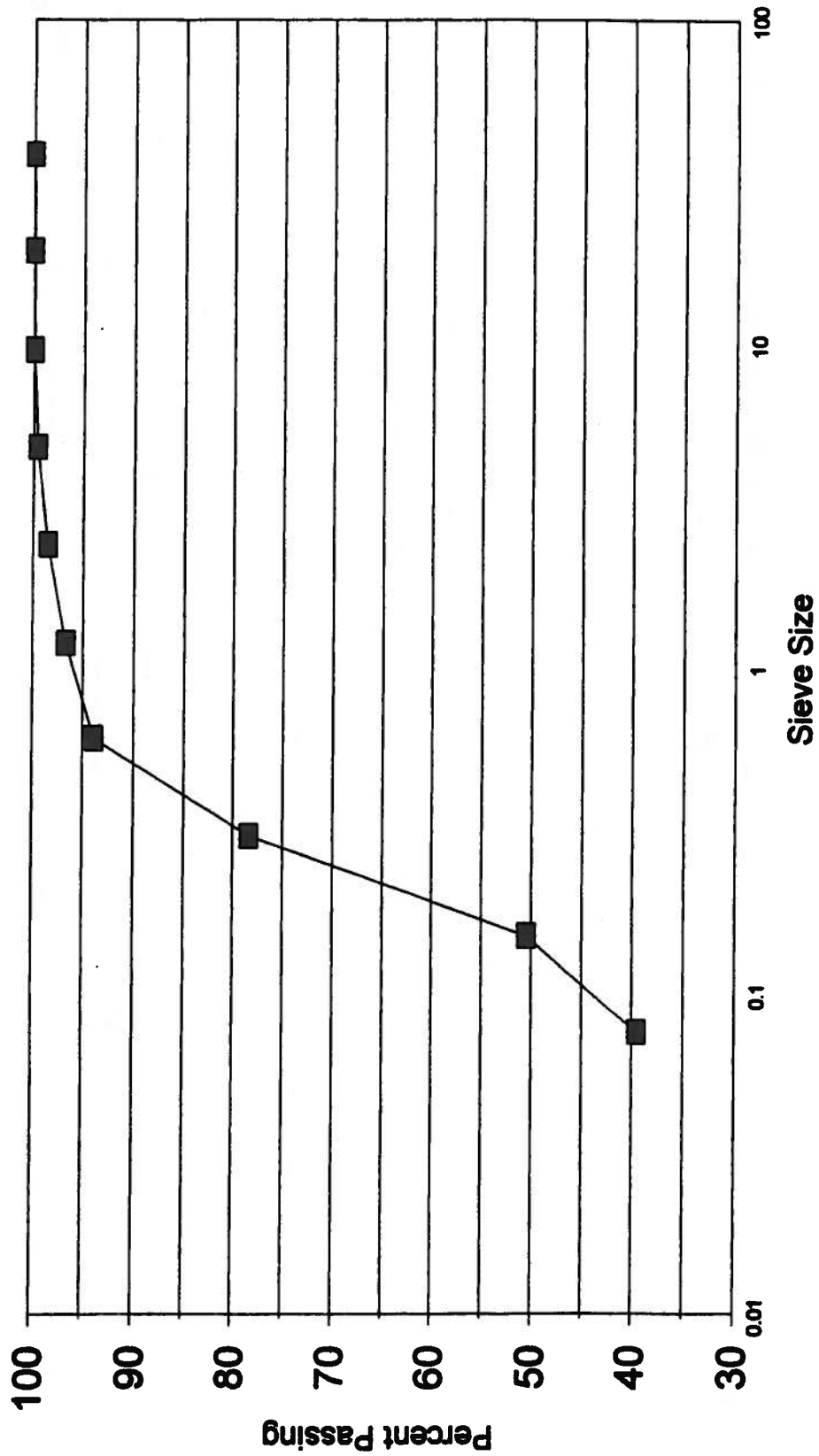
City of Midland Landfill



■ MW-10, 5.0-6.5'

Sieve Analysis Plot

City of Midland Landfill

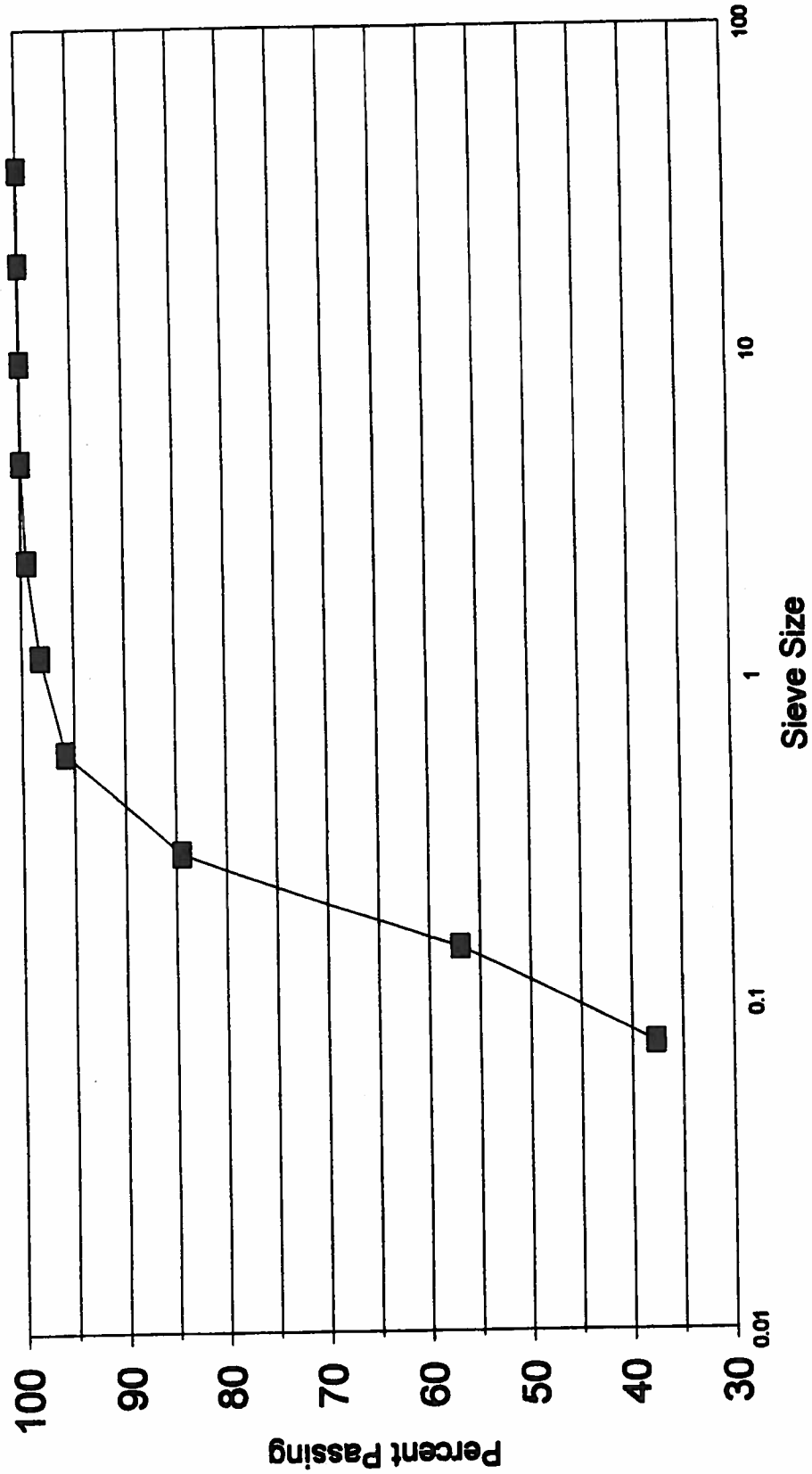


■ MW-10, 15.0-15.5'



Sieve Analysis Plot

City of Midland Landfill



■ MW-10, 55.0-56.5'

EXPLANATION OF SYMBOLS AND TERMS USED ON LOGS OF BORINGS

DEPTH FEET	SYMBOL	SAMPLE	N-BLOWS PER FOOT	MATERIAL DESCRIPTION	CORE DRILLED	CORE RECOVERED	ELEV.	DEPTH SCALE
				undisturbed push tube sample				
			3.5...	pocket penetrometer test				
				disturbed sample				
5	(See Symbols Below)	X	15....	split spoon sample and standard penetration blow count				
				wash boring, no sample recovery				
10				Texas cone penetration.....TCP Test 100 Blows=3"				
					5.0'	4.0'		
15				NX-size core sample				

TYPICAL SOIL AND ROCK SYMBOLS

	Well-Graded Gravel (GW)		Silty Sand (SM)		Shale		Limestone
	Poorly-Graded Gravel (GP)		Clayey Sand (SC)		Sandy Shale		Shaley Limestone
	Silty Gravel (GM)		Silt (ML)		Weathered Shale		Weathered Limestone
	Clayey Gravel (GC)		Lean Clay (CL)		Sandstone		Dolomite
	Well-Graded Sand (SW)		Elastic Silt (MH)		Conglomerate		Fill Material
	Poorly-Graded Sand (SP)		Fat Clay (CH)		Caliche		Asphaltic Concrete

DEGREE OF WEATHERING

- Unweathered .. Rock in its natural state without visible sign of decomposition or discoloration
- Slightly Weathered Slight discoloration without visible sign of decomposition
- Weathered Complete discoloration with zones of slightly decomposed rock
- Severely Weathered Complete discoloration and decomposition, approaching soil texture and appearance

SOIL STRUCTURE

- Calcareous Containing calcium carbonate
- Slickensided ... The presence of planes of weakness having a slick and glossy appearance
- Fissured Breaks along definite planes of fracture with little resistance to fracturing
- Laminated Alternating thin layers or lenses of varying material or color
- Interbedded ... Alternating layers of varying material

The Log of Boring is a representation of the subsurface materials at the specific boring location and within the depth explored. The transition between strata may be gradual and variations in material types and depths between borings can be expected. Water level observations represent those conditions at the time of exploration and may vary with time and location on the site.

EXPLANATION OF SYMBOLS AND TERMS USED ON LOGS OF BORINGS

DEPTH FEET	SYMBOL	SAMPLE	N-BLOWS PER FOOT	MATERIAL DESCRIPTION	CORE DRILLED	CORE RECOVERED	ELEV.	DEPTH SCALE
				undisturbed push tube sample				
			3.5...	pocket penetrometer test				
				disturbed sample				
5			15....	split spoon sample and standard penetration blow count				
				wash boring, no sample recovery				
10				Texas cone penetration.....TCP Test 100 Blows=3"				
					5.0'	4.0'		
15				NX-size core sample				

TYPICAL SOIL AND ROCK SYMBOLS

	Well-Graded Gravel (GW)		Silty Sand (SM)		Shale		Limestone
	Poorly-Graded Gravel (GP)		Clayey Sand (SC)		Sandy Shale		Shaley Limestone
	Silty Gravel (GM)		Silt (ML)		Weathered Shale		Weathered Limestone
	Clayey Gravel (GC)		Lean Clay (CL)		Sandstone		Dolomite
	Well-Graded Sand (SW)		Elastic Silt (MH)		Conglomerate		Fill Material
	Poorly-Graded Sand (SP)		Fat Clay (CH)		Caliche		Asphaltic Concrete

DEGREE OF WEATHERING

Unweathered	.. Rock in its natural state without visible sign of decomposition or discoloration
Slightly Weathered	 Slight discoloration without visible sign of decomposition
Weathered	 Complete discoloration with zones of slightly decomposed rock
Severely Weathered	 Complete discoloration and decomposition, approaching soil texture and appearance

SOIL STRUCTURE

Calcareous	 Containing calcium carbonate
Slickensided	... The presence of planes of weakness having a slick and glossy appearance
Fissured	 Breaks along definite planes of fracture with little resistance to fracturing
Laminated	 Alternating thin layers or lenses of varying material or color
Interbedded	... Alternating layers of varying material

The Log of Boring is a representation of the subsurface materials at the specific boring location and within the depth explored. The transition between strata may be gradual and variations in material types and depths between borings can be expected. Water level observations represent those conditions at the time of exploration and may vary with time and location on the site.

LOG OF BORING

Project: City of Midland Landfill

Location: Midland, Texas

Date: 08-30-95 Type: Core

SFC Elev. : 2,694.9

Boring No. HDR10

DEPTH FEET	SYMBOL	SAMPLE	TEST RESULTS	MATERIAL DESCRIPTION	CORE		LL	PI	% -200 SOIL CLASS.	
					DRILLED	RCVRD				
5		X	39	Red - Brown CLAYEY SAND, fine grained, quartz						
10		X	19	Pink SILTY SAND, fine grained, calcareous						
15		X	40	White - Tan SILTY SAND, fine to coarse grained, calcareous, some gravel			23	5	30.6	SC-SM
20		X	58							
25		X	50	= 5 1/2"						
30		X	50	= 5 1/2"			29	NP	21.2	SM
35		X	50	= 4"						
40				Pink SANDSTONE	4.5'	0.9'				
45				Tan - White SANDY LIMESTONE with Chert						
				▽ Water Surface 08-30-95						
				Pink - White SANDY LIMESTONE with Chert	5.0'	1.5'				
				Continued						



LOG OF BORING

Project: City of Midland Landfill

SFC Elev. : 2

Location: Midland, Texas

Date: 08-30-95 **Type:** Core

Boring No. HDR10

DEPTH FEET	SYMBOL	SAMPLE	TEST RESULTS	MATERIAL DESCRIPTION	CORE		LL	PI	% -200 SOIL CLASS.	
					DRILLED	RCVRD				
			50	= 1" Pink - White SANDY LIMESTONE with Chert	4.5'	1.0'				
50			50	= 3 1/2"	4.5'	0'				
55			38	Pink - White SAND with Gravel, coarse, calcareous and quartz						
60			60							
65			46							
70			32							
75										
			50	= 3.5" Red SHALE	5.0'	4.5'				
80										
Total Depth of Boring = 80.0 Feet										
Note: The boring was advanced to 40.0 feet below the ground surface without using drilling fluid and groundwater was encountered at that depth.										



LOG OF BORING

Project: City of Midland Landfill

SFC Elev. : 2,697.3

Location: Midland, Texas

Date: 09-28-95 **Type:** Core

Boring No.: MW10

DEPTH FEET	SYMBOL	SAMPLE	TEST RESULTS	MATERIAL DESCRIPTION	CORE		LL	PI	% -200 SOIL CLASS.	
					DRILLED	RCVRD				
5		X	8	Brown SILTY SAND, fine grained, quartz						
5		X	21	Orange - Brown SILTY SAND, fine grained, quartz			19	3	34.6	SM
10		X	32	White - Tan CLAYEY SAND, fine grained calcareous						
15		X	50				32	10	39.6	SC
20		X	50							
25		X	50							
30		X	50	= 1" Tan SILTY SAND, fine grained, calcareous						
35		X	50	Tan - White SILTY SAND, fine grained, calcareous						
40			50	Tan White SANDSTONE with Chert, calcareous						
45										
				Continued						



Trinity
Engineering Testing
Corporation

LOG OF BORING

Project: City of Midland Landfill

SFC Elev. : 2,600

Location: Midland, Texas

Date: 09-28-95 Type: Core

Boring No. MW10

DEPTH FEET	SYMBOL	SAMPLE	TEST RESULTS	MATERIAL DESCRIPTION	CORE		LL	PI	% -200 SOIL CLASS.	
					DRILLED	RCVRD				
50				Tan - White SANDSTONE with Chert, calcareous	5.0'	0'				
			50	= 1/2"						
55			65	Tan CLAYEY SAND, coarse to fine grained, calcareous and quartz			25	8	37.7	SC
60			50							
			50							
65			50							
			50	= 4"						
Total Depth of Boring = 68.5 Feet										
Note: The boring was advanced to 40.5 feet below the ground surface without using drilling fluid and groundwater was encountered at that depth.										



**Trinity
Engineering Testing
Corporation**

LOG OF BORING

Project: City of Midland Landfill

SFC Elev. : 2,692.2

Location: Midland, Texas

Date: 09-27-95 **Type:** Core

Boring No. MW11

DEPTH FEET	SYMBOL	SAMPLE	TEST RESULTS	MATERIAL DESCRIPTION	CORE		LL	PI	% -200 SOIL CLASS.	
					DRILLED	RCVRD				
		X	16	Red - Brown SILTY SAND, fine grained, quartz						
5		X	14	Orange - Brown SILTY SAND, fine grained, quartz						
10		X	23	White - Tan SILTY SAND, fine grained, quartz and calcareous						
15		X	45							
20		X	50							
25		X	50 = 3"							
30		X	50 = 2"	Tan SANDY LIMESTONE with Chert						
35		X	50 = 2"							
40		X	50 = 3 1/2"							
45		X								
				Continued						

▽ Water Surface
09-27-95

4.5' 2.5'



Trinity
Engineering Testing
Corporation

LOG OF BORING

Project: City of Midland Landfill

SFC Elev. : 2,69

Location: Midland, Texas

Date: 09-27-95 **Type:** Core

Boring No. MW11

DEPTH FEET	SYMBOL	SAMPLE	TEST RESULTS	MATERIAL DESCRIPTION	CORE		LL	PI	% -200 SOIL CLASS.	
					DRILLED	RCVRD				
				Pink SANDY LIMESTONE	5.0'	0.5'				
50										
		X	50	= 5"						
55				Pink - Tan SILTY SAND, fine to coarse grained, quartz and calcareous						
		X	53							
60										
		X	67							
			50	= 5"						
Total Depth of Boring = 63.0 Feet										
Note: The boring was advanced to 36.0 feet below the ground surface without using drilling fluid and groundwater was encountered at that depth.										



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider second reading of an ordinance on a request by Midland Habitat for Humanity for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development.

Purpose:

Consider second reading of an ordinance on a request by Midland Habitat for Humanity for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Midland Habitat for Humanity wishes to construct single-family homes on these lots on the north side of Cloverdale Road. However, the dimensions of this property are not conducive to residential development, and 39 individual driveways onto Cloverdale Road would increase traffic congestion. Habitat has developed a site plan whereby six short cul-de-sac streets would extend northward from Cloverdale Road and provide access to Cloverdale Road. However, the minimum lot sizes do not meet the 1F-3 District regulations. The staff finds that the proposed site plan is an innovative way to put this land into productive use and to provide needed housing. This ordinance is now ready for second and final reading consideration.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 14-26, BLOCK 43, LOTS 14-26, BLOCK 44, AND LOTS 14-26, BLOCK 45, GREENWOOD ADDITION, THIRD, FOURTH AND FIFTH, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED C-3, COMMERCIAL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTH SIDE OF CLOVERDALE ROAD, BETWEEN SOUTH JACKSON STREET AND SOUTH WEBSTER STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned C-3, Commercial District, and it shall be used as a Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as

follows:

Lots 14-26, Block 43, Lots 14-26, Block 44, and Lots 14-26, Block 45, Greenwood Addition, Third, Fourth and Fifth, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this property shall be subject to the regulations of the 1F-3, One-Family Dwelling District, except as otherwise stated below.
2. That the size, depth and area of the lots, along with the location of cul-de-sac streets, alleys and parking pad locations, shall conform to the conditions shown on Exhibit "A", which is attached hereto and incorporated herein.
3. That a final plat must be approved prior to the construction of any residence on this property.
4. That all off-street parking shall be located so that vehicles parked on the pads do not extend into the adjacent public right-of-way.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland,

Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; 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., 2013, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

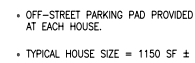
APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

- BUILDING FOOTPRINT, PARKING AND LANDSCAPING SHOWN ARE FOR ILLUSTRATIVE PURPOSES ONLY. FINAL SITE DESIGNS TO BE REVIEWED BY THE CITY OF MIDLAND PRIOR TO ISSUING BUILDING PERMITS.
- SHADED AREAS DENOTED BY TO BE PAVED.
- SHADED AREAS DENOTED BY TO BE GRAVE.
- SHADED AREAS DENOTED BY TO BE CONCRETE.
- SHADED AREAS DENOTED BY TO BE IRRIGATED & LANDSCAPED INCLUDING TREES OR SHRUBS – WHICH MAY BE ENHANCED BY OTHER LANDSCAPE MATERIALS.
- SHADED AREAS DENOTED BY ARE BUILDINGS.
- SHADED AREAS DENOTED BY ARE SCREEN WALLS.
- BUILDING SETBACK LINE - - - - -
- MAXIMUM NUMBER OF RESIDENTIAL UNITS SHALL NOT EXCEED 54.

 PARKHILL SMITH & COOPER
$$1'' = 30'$$

PLANNING AND ZONING COMMISSION MINUTES

November 05, 2012

3:30 p.m.

Z-12-038 - Hold a public hearing and consider a request by **Midland Habitat for Humanity** for a *zone change* from C-3, Commercial District to PD, Planned District for a Housing Development on Lots 14 through 26, Block 43, Lots 14 through 26, Block 44, and Lots 14 through 26, Block 45, Greenwood Addition, Third, Fourth & Fifth, City and County of Midland, Texas. (Generally located on the north side of Cloverdale Road, between S. Jackson Street and S. Webster Street.)

Renee Franks representing Parkhill, Smith and Cooper, 1700 W. Wall St., Midland, Texas, stated that in 20 years she has had about three people approach her who wanted to develop the property. She stated Parkhill, Smith and Cooper came up with something very clever to develop the area and wanted to reiterate it was a really great use for the property and urged the approval of the commission.

Senior Planner Jim Compton gave an overview of the request for zone change. Staff recommends approval subject to conditions A through D.

Vice Chairman Gatten opened the public hearing.

James Jordan, 2100 E. California, Midland, Texas, stated he was in favor of the project but was asking for a curb from California to Cloverdale. Vice-Chairman Gatten stated the Commission was only required to address the items on the agenda and informed Mr. Jordan he was welcomed to contact the Development Services Department regarding the curb.

With no one else wishing to speak in favor or in opposition Vice-Chairman Gatten closed the public hearing.

A motion for approval the proposed request for zone change subject to condition A through D made by Commissioner York; seconded by Commissioner Wolf. The motion carried by the following vote: AYE: Gatten, Wilton, York, Wolf and Watkins. NAY: None. ABSTAIN: None. ABSENT: Ferguson, Norris, Lanning and Woodruff.

PLANNING AND ZONING COMMISSION

November 5, 2012

CASE: Z-12-038.

REQUEST: Hold a public hearing and consider a request for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development.

APPLICANT/OWNER: Midland Habitat for Humanity.

REPRESENTATIVE: Parkhill, Smith and Cooper.

LEGAL DESCRIPTION: Lots 14-26, Block 43; Lots 14-26, Block 44; Lots 14-26, Block 45, Greenwood Addition, Third, Fourth and Fifth, City and County of Midland, Texas.

LOCATION: North side of Cloverdale Road, between, S. Jackson Street and S. Webster Street.

DETAILS OF REQUEST:

1. Cloverdale Road is classified as a collector street; east of Fairgrounds Road it is designated FM 307. The subject property was platted in the early 1950's. While the lotting pattern suggests this land may have been intended for single-family development, the lot depth of 188 would suggest otherwise. City records seem to indicate that the C-3 District zoning classification was approved when the land was annexed in 1954, but has since remained vacant. Midland Habitat for Humanity has acquired this property and desires to develop it with single-family homes. We have received a preliminary plat that illustrates the proposed street and lot pattern, which is also scheduled on the November 5th agenda. A change in the lot pattern is desired because most homeowners do not desire to have a lot much more than 110-120 feet deep. Based on the current lot pattern, this additional rear lot area would likely be wasted. In order to maximize the use of available land, the applicant has designed a site plan, Exhibit A, in which the lot and street sizes are identical to the preliminary plat. There are six proposed cul-de-sac lots extending north from Cloverdale Road, and each cul-de-sac has six lots. Therein lies the basis for a planned district request. The 1F-3 District requires a minimum lot width of 50 feet, a minimum lot depth of 100 feet, and a minimum lot area of 5,500 square feet. (The Planning Commission is authorized to approve a plat with 90-foot deep lots, provided the minimum lot width and area

for the respective district are still met.) The proposed lot dimensions shown on Exhibit A do not meet the minimum requirements of the 1F- District. Without support of the zone change request, the Planning and Zoning Commission cannot consider the associated preliminary plat.

SURROUNDING ZONING AND LAND USE:

2. The land north of this property is zoned 1F-3 District and MF-2 District. It is platted in a manner consistent with single-family development, and developed in a similar manner. The land to the east is zoned C-3 District, and is vacant except for a small, non-conforming mobile home park. The area to the south is located outside the City limit, and is developed with a variety of industrial uses. The land to the west is owned by MISD, and is the location of the Bunche Early Childhood Center.

ANALYSIS:

3. The lot depths range from 50 feet to 85 feet. All of the lots have at least 40 feet of street frontage, which is a requirement for having a driveway curb cut. As shown on the Lot Layout Detail, none of the homes will have a garage; instead there will be a parking pad for two vehicles on each lot. These pads will be deep enough to avoid parked vehicles from extending into the right-of-way. The proposed front yard setback is 20 feet, except along the actual cul-de-sac, where the setback is 15 feet. These dimensions conform to the 1F-3 District regulations. In order to avoid having parked vehicles from extending into the public right-of-way and blocking sidewalks, the parking pads for lots abutting a cul-de-sac are not directly in front of the homes, but are off-set to the side of the lots.

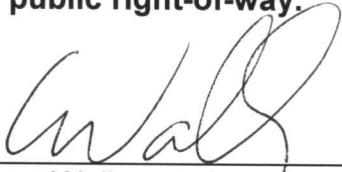
This proposal cannot be referred to as "standard" single-family development. However, the C-3 District zoning has been in place for many years, but has not attracted any commercial development, despite the fact that water and sanitary sewer lines are close by. Further, the high volume of traffic on Cloverdale Road is not conducive to single-family development facing the roadway. For these reasons, combined with the high demand for housing is sufficient basis for the staff to support this proposal.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development, subject to the following conditions:

- A. **The development of this property shall conform to the regulations of the 1F-3, One-Family Dwelling District, except as otherwise stated below.**

- B. The width and depth of these residential lots shall conform to the conditions shown on the attached Exhibit A.
- C. A final plat, conforming to the conditions shown on Exhibit A, must be approved before any development can occur on this property.
- D. All off-street parking pads illustrated on Exhibit A shall provide a minimum depth of 20 feet to avoid parked vehicles from extending into the adjacent public right-of-way.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A

Case Number: Z-12-038

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Midland Habitat for Humanity (432) 686-8877

Applicant Name

(Phone/e-mail)

PO Box 2555

Midland, TX 79702

Address

Zip Code

Midland Habitat for Humanity

(432) 686-8877

Property Owner Name

(Phone/e-mail)

PO Box 2555

Midland, TX 79702

Address

Zip Code

Parkhill, Smith & Cooper, Inc.

(432) 697-1447

Representative Name

(Phone/e-mail)

1700 W. Wall, Suite 100

Midland, TX 79701

Address

Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Lots 14-26, Block 43, Lots 14-26, Block 44, and Lots 14-26, Block 45, Greenwood Addition to the City of Midland, TX

PRESENT ZONE: C3

REQUESTED ZONE: PD-HD

(List by tracts if more than one district is requested)

Reason for Zone Change Request: Better design for single family homes

Present Use of Property: Vacant

Proposed Use of Property: Single, Family Homes

How will zone change affect the public health, safety and welfare? Will make design better for homes

Describe how conditions affecting the property have changed since present zoning designation: Habitat for Humanity is now ready to develop the property into single family homes.

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes x No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: _____

x

Site Plan in digital format .pdf and .jpg: _____

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

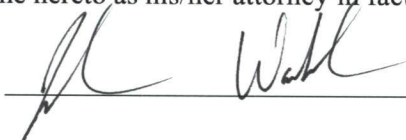
Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

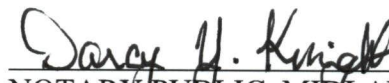
Before me, the undersigned authority, on this day personally appeared

John M. Walsh, EIT who, being by me duly sworn, upon oath says: That (s)he is authorized by Habitat for Humanity, 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.

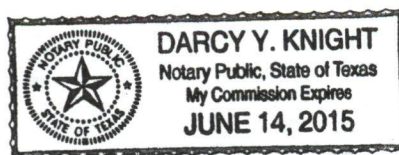


Authorized Agent (signature)

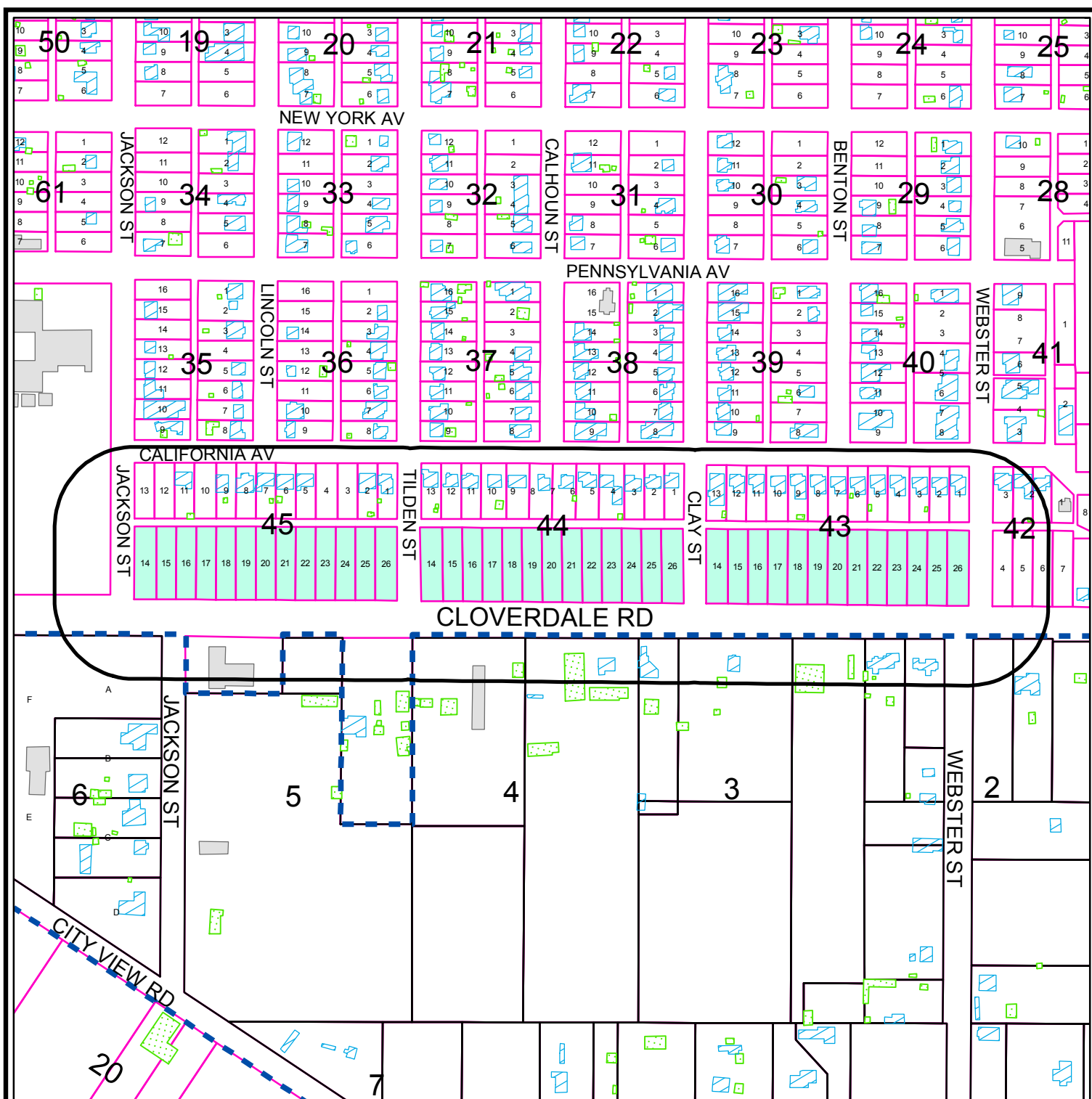
Subscribed and sworn to before me, this 14th day of September, 20 12, to certify which witness my hand and seal of office.


NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>DS</u>	Date: <u>9/14/12</u>
Assigned: _____	
For: _____	On: _____



****Application will not be considered for scheduling until reviewed by a planner.****



200 FOOT SELECTED CITY PROPERTY OWNERS

Z - 12 - 038

Scale: 1" = 350'

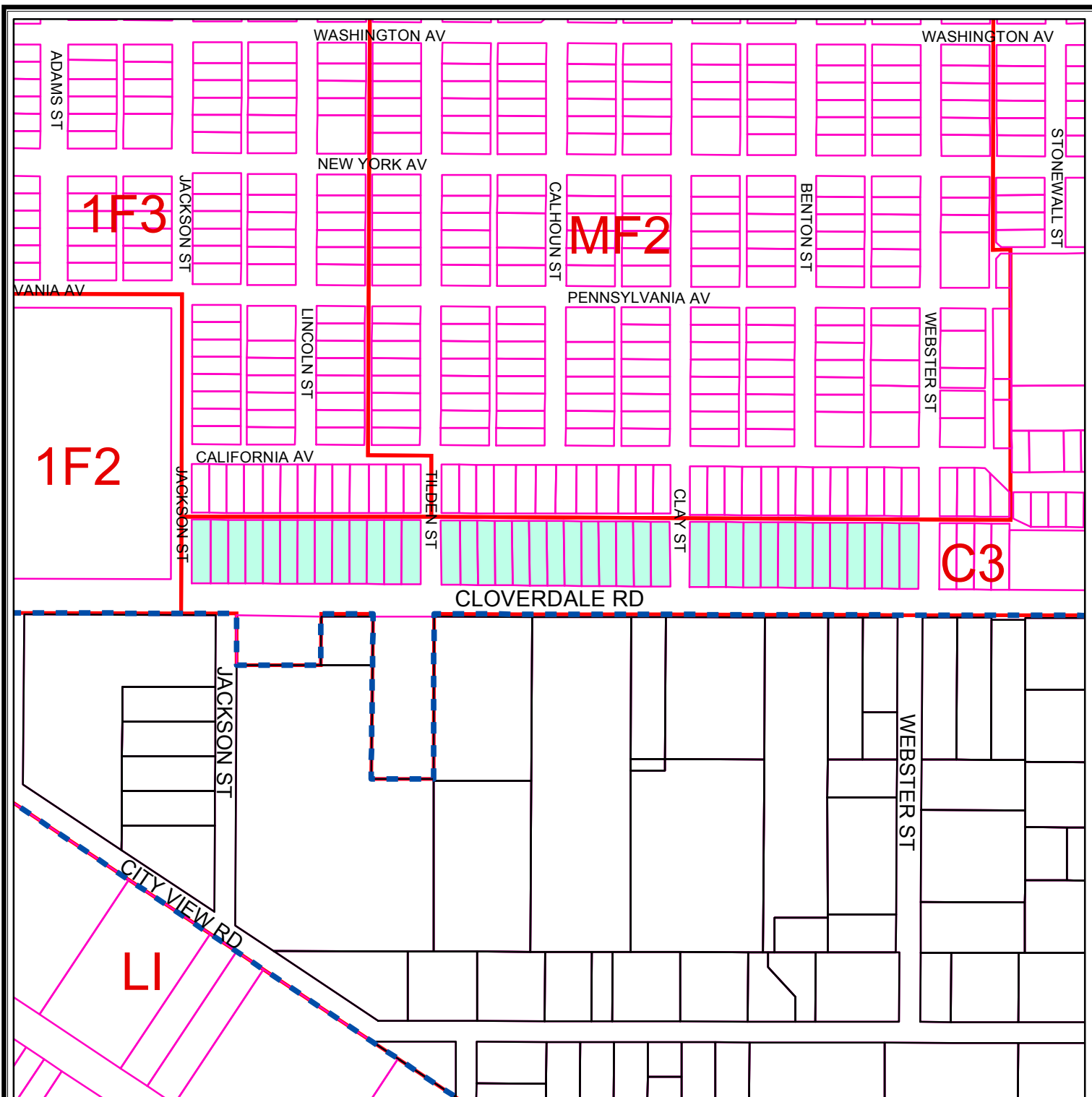
Consider a request for a zone change from C-3, Commercial District, to PD, Planned District for a Housing Development on Lots 14 thru 26, Block 43, Lots 14 thru 26, Block 44 and Lots 14 thru 26, Block 45, Greenwood Addition, Third, Fourth & Fifth, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 038

Scale: 1" = 400'

Consider a request for a zone change from C-3, Commercial District, to PD, Planned District for a Housing Development on Lots 14 thru 26, Block 43, Lots 14 thru 26, Block 44 and Lots 14 thru 26, Block 45, Greenwood Addition, Third, Fourth & Fifth, City and County of Midland, Texas.

LEGEND

- ZONING
- CITY LIMITS
- CITY PARCELS
- COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider second reading of an ordinance on a request by Chris Vore for a Zone Change from C-3, Commercial District to PD, Planned District for a Housing Development.

Purpose:

Consider second reading of an ordinance on a request by Chris Vore for a Zone Change from C-3 District to Planned District for a Housing Development.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The applicant is proposing to construct apartments on this five-acre tract, in two phases. Three site plans are provided, one showing a plan view, one showing elevation views and one elevation with a planned color scheme. The City Council unanimously approved this request on December 18, 2012, with a site plan showing a brick wainscot five feet above grade. This ordinance is now ready for second and final reading consideration.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 5.00-ACRE TRACT OUT OF LAND OUT OF BLOCKS 84 AND 85, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED C-3, COMMERCIAL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE WEST SIDE OF FAIRGROUNDS ROAD, SOUTH OF GOLF COURSE ROAD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned C-3, Commercial District, and it shall be used as a Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as

follows:

A 5.00-acre tract out of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas, said tract is more specifically described by metes and bounds in Exhibit “D”, which is attached hereto and incorporated herein.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of this property shall be subject to the regulations of the MF-1, Multiple-Family Dwelling District, except as otherwise stated below.
2. That the development of this property with apartments shall conform to the conditions shown on Exhibits “A”, “B” and “C”, which are attached hereto and incorporated herein. Exhibit “C” represents a general color pallet for building exterior.
3. That the maximum building height shall not exceed three stories or 50 feet.
4. That the maximum density allowed shall not exceed 20 dwelling units per acre.
5. That no R-panel material shall be allowed in the exterior building materials.
6. That a minimum six-foot-tall wooden fence shall be constructed around the perimeter of this property. Said fence may be constructed in two phases, coinciding with the apartment construction.
7. That before the area identified as “Phase 2” on Exhibit “A” is developed, a site plan must be approved in the same manner as a zone change.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of

Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; 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., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

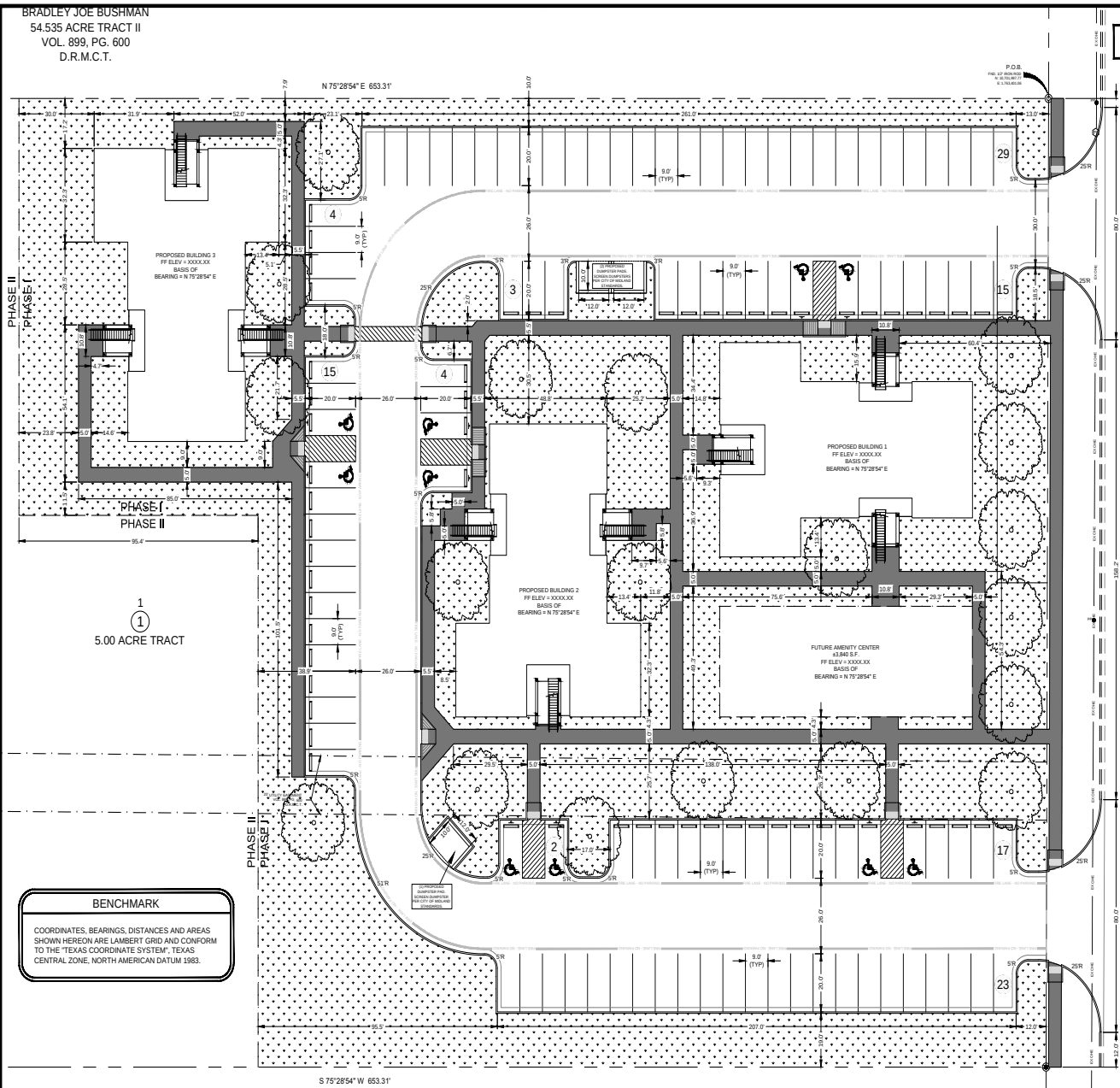
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

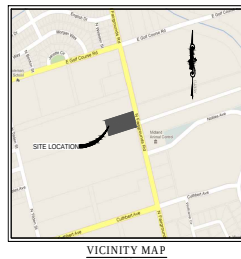
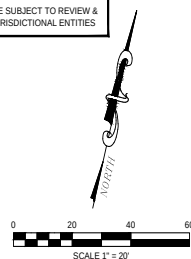
TITLE: /CIVIL DRAWINGS/2011-1547/PRELIMINARY PLANS/2011-1547.DWG

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Know what's below.
Call before you dig.

FAIRGROUNDS ROAD (VARIABLE R.O.W.)



1. ALL DIMENSIONS SHOWN ARE TO FACE OF CURB UNLESS NOTED OTHERWISE.
2. ALL PROPOSED SIDEWALKS ARE TO BE 5.0' UNLESS NOTED OTHERWISE.

TOTAL LAND AREA:	217,769.60 S.F. (5,000 AC)
PHASE 1 LAND AREA:	118,666.59 S.F. (2,725 AC)
PHASE 2 LAND AREA:	99,102.01 S.F. (2,275 AC)
CURRENT ZONING:	C-3 (COMMERCIAL) **REZONE TO PD REQUIRED
TOTAL PARKING PROVIDED:	112
HANDICAP PARKING PROVIDED:	10
HANDICAP PARKING REQUIRED:	3
PHASE 1 LANDSCAPE PERCENTAGE:	39.6%
PHASE 1 UNIT DENSITY:	19.8 UNITS / ACRE

[illegible]

COMMUNITY NUMBER	PANEL NUMBER	SUFFIX	DATE OF FIRM	FIRM ZONE	BASE FLOOD ELEVATION
48329C	93	F	9/16/2006	ZONE X	n/a
ZONE X - AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.					

NO SCREEN FENCE IS CURRENTLY PROPOSED AROUND THE EXTERIOR BOUNDARY OF THE PROPERTY. TYPICAL SCREENING WILL BE PROVIDED AROUND THE DUMPSTER LOCATIONS PER CITY OF MIDLAND STANDARDS.

THE CITY OF MIDLAND'S MASTER DRAINAGE PLAN ACCOUNTS FOR DEVELOPED FLOW CONDITIONS AT THIS SITE LOCATION. FLOW CAPACITY OF FAIRGROUNDS ROAD SHOULD BE EVALUATED TO CONFIRM THE STREET CAN PROPERLY CONVEY INCREASED RUN-OFF FROM THE PROPOSED DEVELOPMENT AS WELL AS CONFIRM A DETENTION BASIN IS NOT REQUIRED.

- LOT AREA: 118,667 sf
- TOTAL STRUCTURE FOOTPRINT: 18,843 sf
- REQUIRED LANDSCAPE AREA: 19,965 sf
- PROVIDED LANDSCAPE AREA: 46,992 sf

BUILDING SETBACK DISTANCES OF 20 FEET FROM THE
PROPERTY LINE WILL BE OBSERVED ALONG
FAIRGROUNDS ROAD FRONTAGE.

PROVIDED	
• 102	REGULAR PARKING
• 10	HANDICAP PARKING
• 112	TOTAL PARKING

- 1 TREE FOR EVERY 30 LINEAR FOOT STREET
- 1 TREE FOR EVERY 15 PARKING SPACES
- 333 LF FAIRGROUNDS ROAD: 11 TREES (06 SHOWN)
- 112 PARKING SPACES: 08 TREES (13 SHOWN)
- TOTAL REQUIRED: 19 TREES
- TREES SHOWN: 19 TREES
- PAID INTO TREE FUND: 00 TREES

REFER TO ARCHITECT'S BUILDING ELEVATION PLAN

A 26' WIDE FIRE LANE HAS BEEN PROVIDED AT THE FRONT OF ALL BUILDINGS. THE FIRE LANE WILL BE IDENTIFIED BY PAINTED STRIPES AND CURBS PER THE CITY OF MIDLAND'S REQUIREMENTS.

- 5' SIDEWALK TO BE PLACED UP TO THE PROPERTY LINE FOR PEDESTRIAN ACCESS TO AND FROM FAIRGROUNDS ROAD.
- 5' SIDEWALK TO BE PLACED IN THE INTERIOR OF THE PROPERTY.

SITE PLAN
SUNRISE AT FAIRGROUNDS APARTMENTS
PHASE 1
N. FAIRGROUNDS RD.
MIDLAND, TEXAS

WEST COMPANY

OF MIDLAND, INC.
ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2184
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 697-0855 • FAX (432) 607-2065

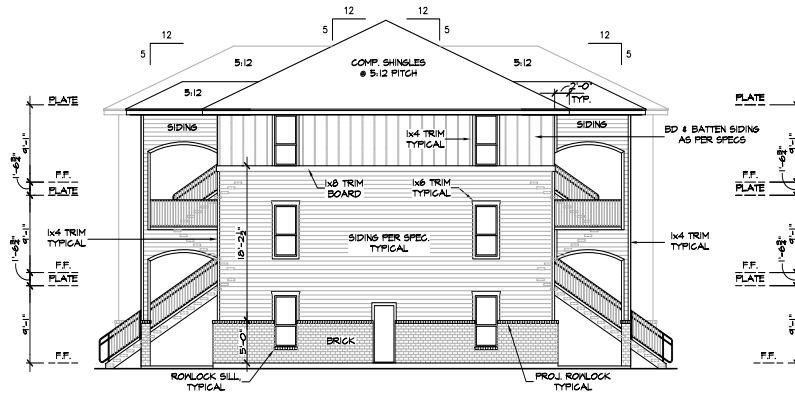
PRELIMINARY NOT APPROVED
FOR CONSTRUCTION

PROJECT NUMBER: 2012-1370

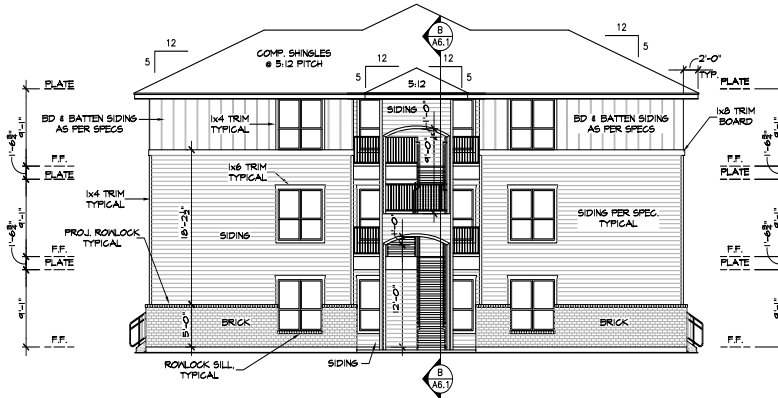
SHEET C40 OF 8



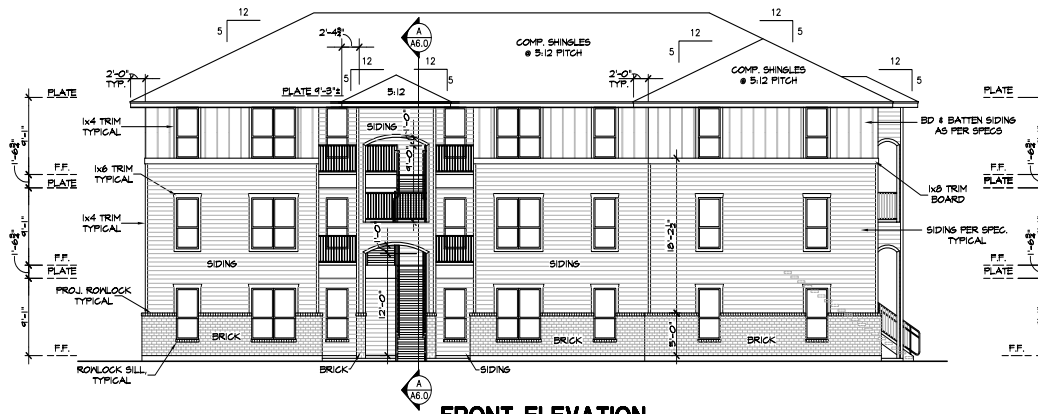
REAR ELEVATION



LEFT ELEVATION



RIGHT ELEVATION



FRONT ELEVATION

BUILDING EXTERIOR ELEVATIONS
Scale: 1/8" = 1'-0"

DANZE & DAVIS
ARCHITECTS, INC.
4701 Spicewood Springs Road, Suite 200 Phone 512.343.0714 Fax 512.343.0718
WWW.DANZE-DAVIS.COM

SUNRISE AT FAIRGROUND
APARTMENTS

NOT FOR
REGULATORY
APPROVAL
PERMITTING OR
CONSTRUCTION
8-20-12

Job No. C2809

DRAWN BY: L&Z
DATE: .
CHKD. BY: .
REVISED: .

A4.0

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Sunrise at Fairgrounds Apartments

FAIRGROUNDS ROAD
MIDLAND, TX



FRONT ELEVATION



FRONT ELEVATION
SUNRISE AT FAIRGROUNDS

© 2012 DANZE & DAVIS ARCHITECTS, INC

- (c) A detached accessory structure under 200 square feet in area shall adhere to subparagraph (b) or meet all of the following requirements:
 - i. The maximum height shall be nine feet;
 - ii. No signage or label shall be allowed; and
 - iii. The structure must be screened from the public right-of-way by a solid fence with a minimum height of six feet; details on the proposed screening fence shall be submitted for the review and approval of the Planning Division Manager.
- 2. *Exterior materials and color.* The use of metal arch buildings (Quonset hut or similar style) is hereby prohibited. All other buildings constructed of pre-engineered metal (R-Panel or similar style), non-decorative exposed concrete block, or wood-siding shall comply with the following:
 - (a) In the AE through MF-2 Districts, O-1, O-2, NS, LR-1, LR-2, and C-1 Districts, and in the IP-2 and IP-3 Districts located at the Midland International Airport;
 - i. At least 75 percent of the primary and secondary elevations, excluding doors and windows, of all buildings to which these standards apply shall be finished in one or more of the materials listed in subparagraph c;
 - ii. The elevation opposite the primary elevation shall be exempt from the building material restrictions, except when said elevation is adjacent to a public street.
 - (b) In the LR-3, C-2, and BP Districts, and in the IP-2 and IP-3 Districts, except those located at the Midland International Airport:
 - i. At least 75 percent of the primary elevation and at least 30 percent of the secondary elevations, excluding doors and windows, of all buildings to which these standards apply shall be finished in one or more of the materials listed in subparagraph c;
 - ii. The elevation opposite the primary elevation shall be exempt from the building materials restrictions, except when said elevation is adjacent to a public street.
 - (c) Allowed materials:
 - i. Architectural metal panels (i.e. metal composite materials and composite metal cladding);
 - ii. Brick, natural stone, cast stone, rock, marble, granite, glass block or glass curtain walls, tile;
 - iii. Stucco or plaster;
 - iv. Synthetic stucco, i.e. Exterior Insulation Finish System (EIFS) or equivalent product;
 - v. Cellulose fiber-reinforced cement building board products, i.e. Hardi-Board or equivalent product; or

- vi. Split-face concrete block, integrally-colored concrete block, poured-in-place concrete, and pre-cast concrete. Concrete products shall have an integral color or a color coating or be textured;
- vii. The use of metal for roofing.
- (d) Use of color: The use of a single color and use of dark or neon colors, except for accent, should be avoided.
- (e) Compatibility: The site shall be developed in a manner that will not interfere with the property rights of others nor diminish the enjoyment of property in the general neighborhood. Building materials, colors, and design details should be compatible with the character and scale of an area or should contribute to the establishment of a positive character and scale for the area.

C. *Site planning and design.*

1. *Pedestrian scale:*

- (a) Open space should be concentrated at areas of significant activity, rather than dispersed into small areas of low impact or on the periphery of the site.
- (b) Special lighting, distinctive paving materials, landscaping benches and other street furniture should be used to enhance the pedestrian scale.

2. *Screening and buffering:*

- (a) When a commercial structure is adjacent to property that is either zoned for or developed with residential uses, compatibility must be enhanced through the use of additional setbacks and/or buffering. A buffer may consist of solid fencing, landscaping, or berms.
- (b) A screening fence shall have a minimum height of six feet and shall consist of either brick, masonry, wood, or a combination thereof.
- (c) Exterior trash enclosures, storage areas, service yards, and mechanical equipment, both rooftop and ground, must be completely screened using the same materials, color and/or style as the primary building. The use of wooden or vinyl fences or chain link fences with slats for rooftop equipment screening is prohibited.
- (d) Multi-story buildings must be stepped back to preserve the scale of the adjacent low rise structures.
- (e) All buildings should be oriented so that utilitarian areas, such as loading docks and service bays, are located away from highly visible portions of the site or are appropriately screened.

D. *Parking Lots and Access.*

- 1. The site plan shall be designed to provide safe separation of pedestrian and vehicular traffic.



110 West Louisiana Avenue
Suite 110
Midland, Texas 79701
T: 432.687.0865
F: 432.687.0868
www.team-west.com



FIELD NOTES of 5.00 acres, more or less, with a 333.33 foot frontage on the Easterly most portion of this Tract of Land out of the S/2 of Block 84, and the N/2 of Block 85, East Midland Addition, an addition to the City of Midland, Midland County, Texas, according to the map or plat thereof of record in Volume 1, Page 52, Deed Records of Midland County, Texas; said tract being more particularly described by metes and bounds as follows:

BEGINNING at (N:10,701,997.77, E:1,763,401.06) a 1/2" Iron Rod with cap marked "Howell RPLS 280" found in the East line of the Bradley Joe Bushman Tract II as recorded in Volume 899, Page 600 of the Deed Records of Midland County, Texas, and in the Westerly right-of-way line of Fairgrounds Road, having a 107.5' public right-of-way as recorded in Cabinet "B", Page 324 of the Plat Records of Midland County, Texas, for the Northeast corner of this tract;

THENCE S 14°20'39" E with the Westerly line of said Fairgrounds Road and the Easterly line of said Bushman Tract II a distance of 333.33 feet to a 1/2" Iron Rod with red plastic cap marked "West Co Midland" set for the Southeast corner of this tract;

THENCE S 75°28'54" W in and across said Bushman Tract II a distance of 653.31 feet to a 1/2" Iron Rod with red plastic cap marked "West Co Midland" set for the Southwest corner of this tract;

THENCE N 14°20'39" W in and across said Bushman Tract II a distance of 333.33 feet to a 1/2" Iron Rod with cap marked "Howell RPLS 280" found for the Northwest corner of this tract;

THENCE N 75°28'54" E in and across said Bushman Tract II a distance of 653.31 feet to the POINT OF BEGINNING;

Subject tract containing a total of 5.00 acres (217,768.6 ft²).

Note: All Bearings, Distances and Coordinates Shown Hereon are Relative to the Texas State Plane Coordinate System, Texas Central Zone, North American Datum of 1983.



[Handwritten signature and date 12/10/12]

EXHIBIT D

T:\Civil Drawings\2012\2012-1081\EXHIBITS\2012-1081 FIELD NOTES.docx

PLANNING AND ZONING COMMISSION MINUTES

November 05, 2012

3:30 p.m.

Z-12-039 – Hold a public hearing and consider a request by **Chris Vore** for a *zone change* from C-3, Commercial District to PD, Planned District for a Housing Development on a 5.00-acre tract of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas. (Generally located on the west side of N. Fairgrounds Road, approximately 950 feet south of E. Golf Course Road.)

Andrew Mellen, West Company of Midland, 110 W. Louisiana Avenue, representing the applicant. He stated there were two phases to the project with 54 units in the first phase. There is an amenity that you will notice slip up into two phases. There were 54 units in this first phase. There is an amenity and fencing that his clients would like to build during the second phase.

Senior Planner Jim Compton gave an overview of the request for zone change. He stated it was unknown if phase II would be built. Staff requested the addition of Exhibit J stating the word future be removed from exhibit A.

Vice-Chairman Gatten opened the public hearing

With no one wishing to speak in favor or in opposition Vice-Chairman Gatten closed the public hearing.

Mr. Mellen stated they did not have the means to build the amenities in the first phase. He stated that in this market he did not see the second phase not happening.

John Dunn, 701B Technology Circle, Midland, Texas stated they could take the future amenities off the plan as they had no plans to build during phase one. Intentions were to build three buildings and get them leased. He was not planning on advertising the amenity center and was certain the buildings would lease out. Commission Gatten asked Mr. Dunn if he was asking the commission to withdraw that part of the proposal or if he was asking the Commission to consider it? Mr. Dunn stated he would like the Commission to consider it during the second phase, as he had not intention on building it during the first phase. s Or are you asking the Commission we don't see a problem with anyone needing a pool or office right away. Commissioner Gatten asked about the fencing and Mr. Mellon stated he miss spoke and the applicant was willing to build the fence

during the first phase. Concern on density. Willing to build a fence for phase one.

Discussion ensued regarding the amenity center and the wording on the application. Planning Division Manager Walker stated some concern regarding a leasing office but was pleased to hear the fence would be constructed. He stated if the Commission felt comfortable writing in that the amenities building would be during phase two than the staff would not object.

Planning Division Manager Walker stated he would be willing to work with the developer from now until the next City Council Meeting and would be willing to make changes and be flexible. He stated he would e-mail the Commission on what they agreed on.

After further discussion a motion for approval of the proposed request for zone change subject to condition A through H made by Commissioner Wilton; seconded by Commissioner Watkins. The motion carried by the following vote: AYE: Wilton, York, Wolf and Watkins. NAY: Gatten. ABSTAIN: None. ABSENT: Ferguson, Norris, Lanning and Woodruff.

PLANNING AND ZONING COMMISSION

November 5, 2012

CASE: Z-12-039.

REQUEST: Hold a public hearing and consider a request for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development.

APPLICANT/OWNER: Chris Vore.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: A 5.0-acre tract out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas.

LOCATION: West side of Fairgrounds Road, approximately 1,100 feet south of Golf Course Road.

DETAILS OF REQUEST:

1. The subject property is zoned C-3 District and is current vacant. The applicant wishes to construct an apartment complex on a 5.0-acre tract of land. Before this can occur, a zone change is needed, and site plans must be approved before a building permit can be approved. The applicant has provided Exhibits A, B and C to satisfy this requirement. We have already received a Sketch Plan Application, which initiated the platting process. Details of this proposal are as follows:
 - A. The Planned District will be subject to regulations of the MF-1 District, except that the applicant is requesting a density from 16 to 20 dwelling units per acre.
 - B. Access is provided at two separate driveways on Fairgrounds Road. No perimeter screening fence is shown on the exhibits.
 - C. The maximum building height is three stories, not to exceed 50 feet.
 - D. The first of two Phases includes 54 dwelling units. Phase 2 will require a second site plan review process.
 - E. Total parking provided is 112, whereas 108 spaces are required.
 - F. A 26-foot wide fire lane is provided.

SURROUNDING ZONING AND LAND USE:

2. This property is located in a large C-3 District, a portion of which is developed with an oil field pipe yard. A sanitary sewer line runs east/west through this site. We recommend that the location be identified on the site plan. The area to the east is zoned 2F District, which is vacant, and 1F-2 District, which is partially developed with single-family homes. The land to the north is developed with a retirement center and a landscape business. East, across Fairgrounds Road is a vacant mobile home park that has lost its former non-conforming statues.

ANALYSIS:

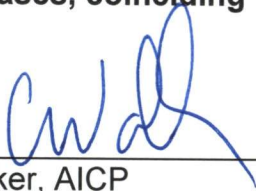
3. The Comprehensive Plan recommends that apartments be located adjacent to arterial streets, such as Fairgrounds Road. Please refer to the attached Exhibit A, which is a plan view of this proposal. Access to the site is provided by two driveways, which is preferred by the Fire Department. The distance between the two driveways exceeds the 170-foot spacing required by the Traffic Code. The 26-foot wide driving aisle, which is U-shaped, meets the Fire Department requirements. The Zoning Code specifies a minimum front yard building setback of 20 feet, a minimum side yard of 15 feet, and a minimum rear yard of 20 feet. The building setbacks shown on Exhibit A meet or exceed these requirements. Exhibit B illustrates front, side and rear elevation views of a typical apartment building. The buildings are three stories tall, with a hip roof covered in composition shingles. Beginning at ground level, exterior building materials include a five-foot tall brick wainscot, non-descript horizontal siding and finally, non-descript board and batten vertical siding. Board and batten siding describes a particular design rather than specific materials. Metal R-panel meets this description. Provided that metal is excluded, the staff has no objection to the list of exterior materials. Exhibit C is a color rendering of the long side of one of the apartment buildings. We are satisfied with the general palette of colors shown on Exhibit C.

We discussed with the applicant the lack of a screening fence. We were advised that although once the apartments are built and producing income, a screening fence is planned. However, the staff recommended that a screening fence be included as a condition of this planned district. The applicant then agreed to construct a six-foot tall solid wooden fence around the perimeter of the property. We are satisfied with this additional condition.

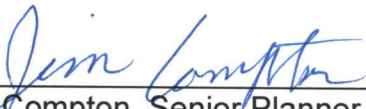
STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from C-3 District to PD, Planned District for a Housing Development on the subject property. Further, we recommend approval of the construction of apartments on this property, subject to the satisfaction of the following conditions:

- A. That the development of apartments on this property shall conform to the conditions shown on Exhibits A, B and C in all respects, except as otherwise stated below.
- B. The maximum building height shall not exceed three standard stories or 50 feet.
- C. The combined maximum density for Phases 1 and 2 shall not exceed 20 dwelling units per acres.
- D. A minimum of 108 parking spaces shall be provided for Phase 1.
- E. The minimum driving aisle width shall be 26 feet.
- F. No R-panel materials shall be included in the description of "board and batten" as it appears on Exhibit B.
- G. The location of the existing east/west sewer line that crosses this property must be identified on Exhibit A.
- H. Exhibit C shall be used only for the purpose of establishing the general color palette for the apartments.
- I. A minimum six-foot tall wooden screening fence shall be constructed around the perimeter of this property. Said fence may be constructed in two phases, coinciding with the apartment construction.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B and C

Case Number: Z-12-039

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

WEST COMPANY OF MIDLAND - ANDREW MELLEN, PE 432-682-0588 andrew@team-west.com

Applicant Name

(Phone/e-mail)

110 W. LOUISIANA, STE. 250

MIDLAND, TEXAS

79701

Address

Zip Code

CHRIS VORE

432-352-9203

Property Owner Name

(Phone/e-mail)

7 WARWICK

ODESSA, TEXAS

79765

Address

Zip Code

WEST COMPANY OF MIDLAND - ANDREW MELLEN, PE

432-682-0588

andrew@team-west.com

Representative Name

(Phone/e-mail)

110 W. LOUISIANA, STE. 250

MIDLAND, TEXAS

79701

Address

Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately.

EAST MIDLAND ADDITION- A 5.0 ACRE TRACT OF LAND OUT OF BLOCKS 83, 84, N/2 OF BLOCK 85, & N/2 OF BLOCK 86. LOCATED IN SECTION 25, BLOCK 39, T-1-S, T&P RR Co. SURVEY, MIDLAND COUNTY, TEXAS

PRESENT ZONE: _____ REQUESTED ZONE: _____

(List by tracts if more than one district is requested)

Reason for Zone Change Request: TO BUILD APARTMENTS

Present Use of Property: RAW LAND

Proposed Use of Property: MULTI-FAMILY

How will zone change affect the public health, safety and welfare? THIS WILL ADD HOUSING TO MIDLAND

Describe how conditions affecting the property have changed since present zoning designation:
N/A

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes x No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: _____

Site Plan in digital format .pdf and .jpg: _____

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

Andrew L. Melton Jr. who, being by me duly sworn, upon oath says: That (s)he is authorized by Chris Vore, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L. Melton Jr.

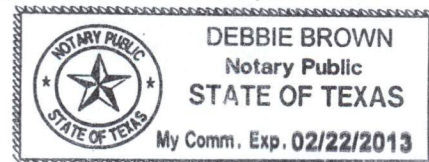
Authorized Agent (signature)

Subscribed and sworn to before me, this 16th day of October, 20 12, to certify which witness my hand and seal of office.

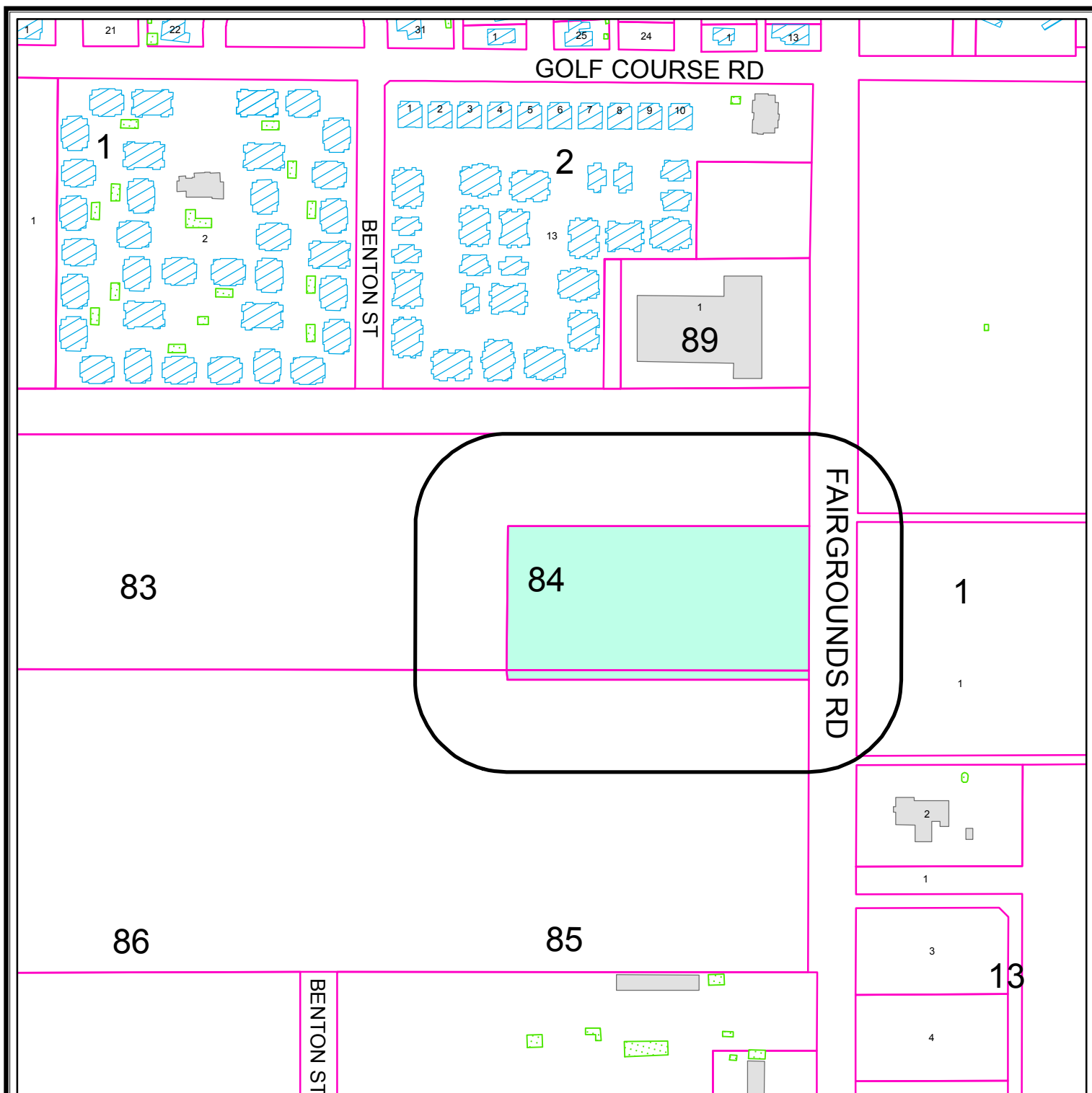
Debbie Brown

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>WJ</u>	Date: <u>10/16/12</u>
Assigned: <u>JC</u>	
For: <u>Pt 2</u>	On: <u>11/5/12</u>



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

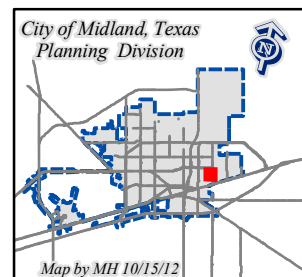
Z - 12 - 039

Scale: 1" = 300'

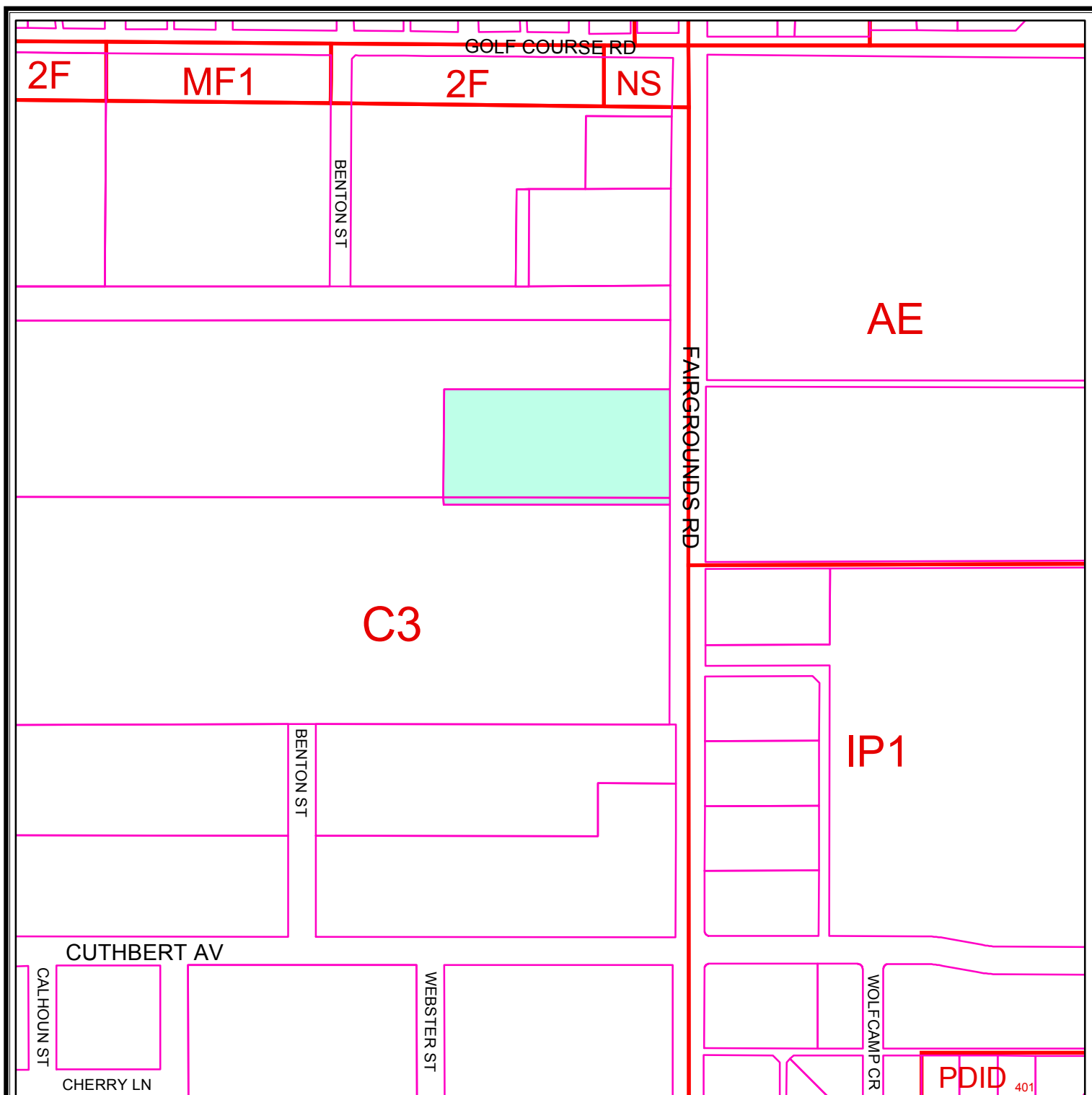
Consider a request for a zone change from C3, Commercial District to PD, Planned District for a Housing Development on a 5.00-acre tract of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 039

Scale: 1" = 400'

Consider a request for a zone change from C3, Commercial District to PD, Planned District for a Housing Development on a 5.00-acre tract of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 01/08/2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Dusty Evans for approval of a zone change from AE, Agriculture Estate District on a 3.911-acre tract of land and from PD, Planned District for a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District.

Purpose:

Consider an ordinance on second reading on a request by Dusty Evans for approval of a zone change from AE, Agriculture Estate District on a 3.911-acre tract of land and from PD, Planned District of a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District. (Generally located on the northwest corner of the intersection of N. Midkiff Road and Mockingbird Lane.)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application. No changes have occurred since first reading.

Discussion:

Dusty Evans is requesting to rezone approximately 11.62 acres of his property for future development in accordance with LR-2, Local Retail District, regulations. The rezoning request consists of two zoning districts, an AE, Agriculture Estate District, zoned tract, and a PD, Planned District for a Shopping Center, which was adopted in 1994, but was never developed. Mr. Evans' intention to rezone removes the obligation of the planned district site plan and the associated public hearings that would currently be required on the larger, 7.7-acre tract. The planned district's underlying zoning regulation is LR-1, Local Retail District, which provides for slightly fewer uses than the LR-2 usage requested. The primary difference applicable in this case is the *ability to request* for the sale of alcoholic beverages for on-premise consumption by a specific use permit at a later date. While a public hearing for a site plan would not be required, any development is still subject to administrative site plan approval and design guidelines. If the zoning is approved, the property will need to be platted, any public improvements addressed, and (for the alcohol sales portion of the plan) a Specific Use Permit approved. The Planning and Zoning Commission recommended approval on November 19, 2012. The Staff concurs with this recommendation for approval.

Attachments:

November 19, 2012 P&Z Staff Report
Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 3.911-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, AND A 7.709-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND MOCKINGBIRD LANE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an LR-2, Local Retail District, as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned AE, Agriculture Estate District, in part, and PD, Planned District for a Shopping Center, in part, and it shall be used as an LR-2, Local Retail District, said property being described as follows:

A 3.911-acre tract of land and a 7.709-acre tract of land, all out of Section 8, Block

“X”, H.P. Hilliard Survey, City and County of Midland, Texas, said tracts being more specifically described by metes and bounds in Exhibits “A” and “B”, respectively, which are attached hereto and incorporated herein.

SECTION TWO. That City of Midland Ordinance No. 7300 is hereby repealed.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; 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., 2013, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



NEWTON ENGINEERING, PC

4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499

F-13856

November 8, 2012

Field Notes

3.911 acres

A 3.911 acre tract of land out of Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas and being and more particularly described as follows:

Starting at a point in the centerline intersection of Mockingbird Lane and Midkiff Road at the Southeast corner of said Section 8.

Thence S 75°40'02" W along the South line of said Section 8, 460.00 feet and N 14°27'48" W, 730.00 feet to the Place of Beginning of this tract.

Thence N 14°27'48" W along the West line of this tract, 370.00 to its Northwest corner.

Thence N 75°40'02" E along the North line of this tract, 460.00 feet to the Northeast corner of this tract on the East line of said Section 8.

Thence S 14°27'48" E along the East line of this tract and said East line of Section 8, 370.00 feet to the Southeast corner of same.

Thence S 75°40'02" W along the South line of this tract 460.00 feet to the place of beginning and containing 3.911 acres of land. This survey was made from records obtained from the Clerk's Office of Midland County, Texas.

Charles P. Rutherford

Charles P. Rutherford, R.P.



RECEIVED

NOV 9 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. Z-12-047



NEWTON ENGINEERING, P.C.

4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499

F-13856

November 8, 2012

Field Notes

7.709 acres

A 7.709 acre tract of land out of Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas and being and more particularly described as follows:

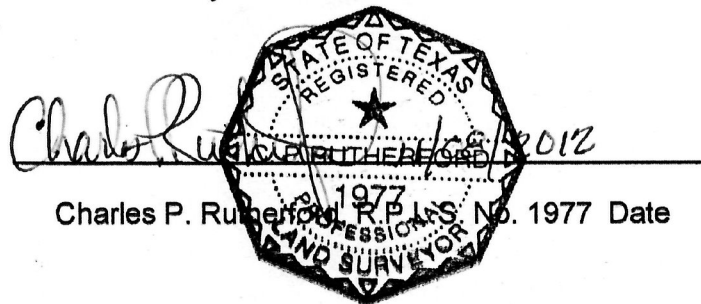
Beginning at a point in the centerline intersection of Mockingbird Lane and Midkiff Road at the Southeast corner of said Section 8 and the Southeast corner of this tract.

Thence S 75°40'02" W along the South line of said Section 8, 460.00 feet to the Southwest corner of this tract.

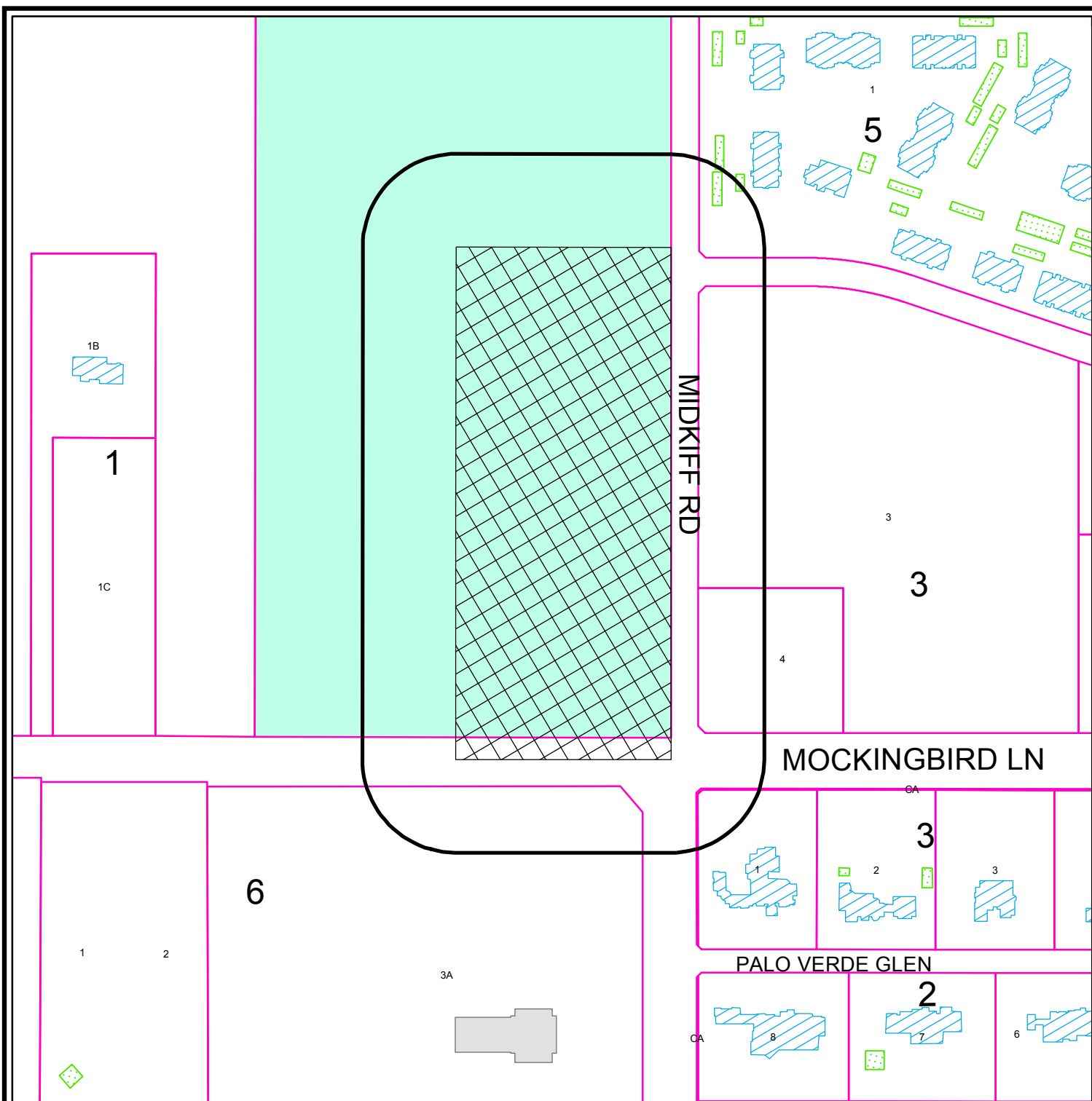
Thence N 14°27'48" W, 460.00 feet from and parallel to the East line of said Section 8, 730.00 feet to the Northwest corner of this tract.

Thence N 75°40'02" E along the North line of this tract, 460.00 feet to the Northeast corner of this tract on the East line of said Section 8.

Thence S 14°27'48" E along the East line of this tract and said East line of Section 8, 730.00 feet to the place of beginning and containing 7.709 acres of land. This survey was made from records obtained from the Clerk's Office of Midland County, Texas.



CASE NO. 2-12-047



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 047

Scale: 1" = 300'

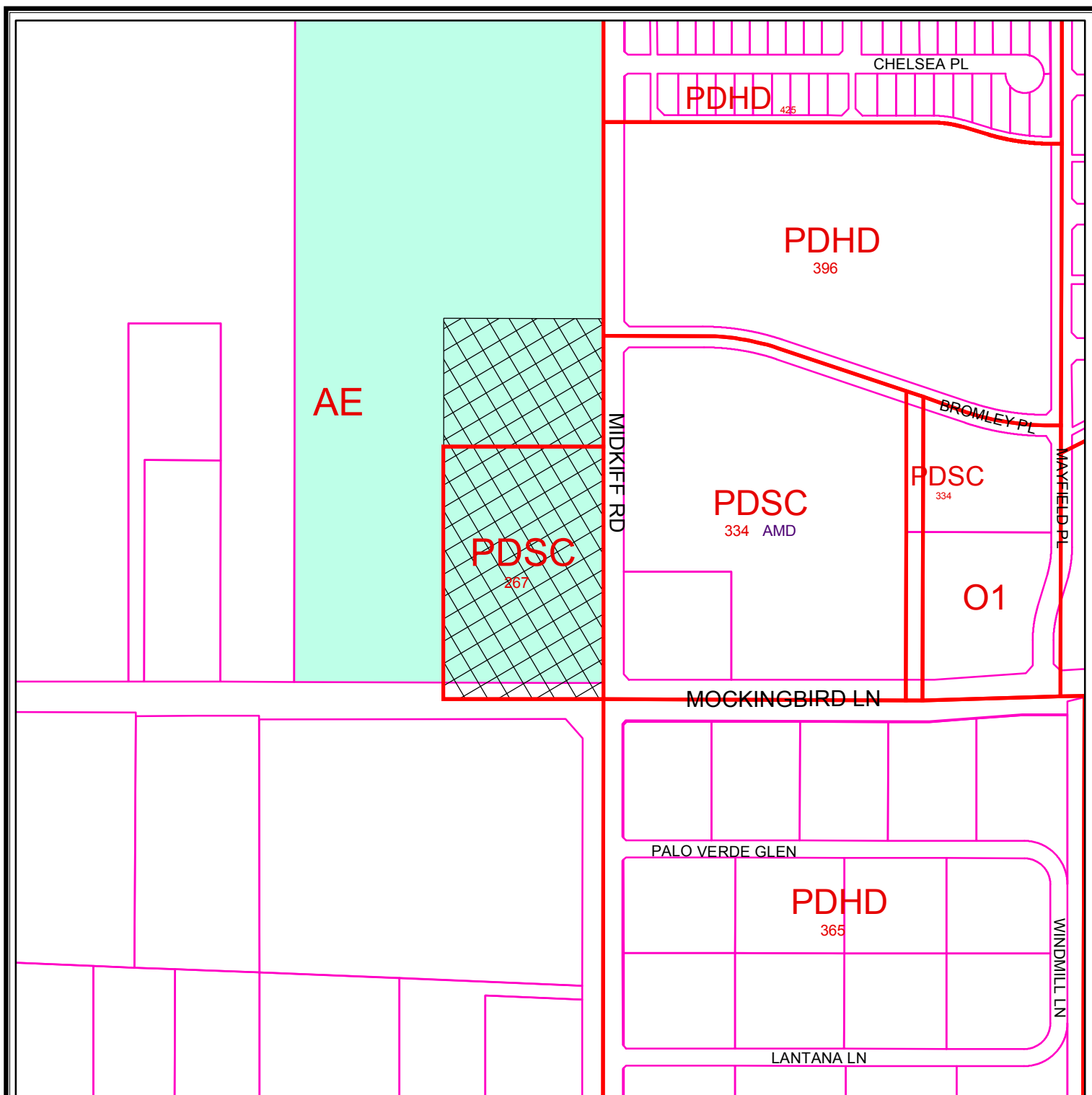
Consider a request for a zone change from AE, Agriculture Estates District on a 3.911-acre tract of land and from PD, Planned District of a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District all out of Section 8, Block "X", H. P. Hilliard Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 047

Scale: 1" = 400'

Consider a request for a zone change from AE, Agriculture Estates District on a 3.911-acre tract of land and from PD, Planned District of a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District all out of Section 8, Block "X", H. P. Hilliard Co. Survey, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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Case Number: 2-12-047

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Dusty Evans <u>1, Ltd.</u>	(432) 557-4340
Applicant Name	Contact #s
3700 Mockingbird Ln.	79707
Address	Zip Code
Evans I Ltd.	
Property Owner Name	Contact #s
Address	Zip Code
Newton Engineering, PC	(432) 770-0499
Representative Name	Contact #s
4908 N. Midkiff Rd.	79705
Address	Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal). Describe by tracts if more than one zoning district is requested: See attached Metes and Bounds
Description.

PRESENT ZONE: 7.7 acres PDSC remainder AE REQUESTED ZONE: LR-2
(List by tracts if more than one district is requested)

Reason for Zone Change or PD Amendment: To conform to development

Present Use of Property: Pasture

Proposed Use of Property: Retail.

How will zone change affect the public health, safety and welfare? N/A

Describe how conditions affecting the property have changed since present zoning designation:
N/A

Is a Specific Use Permit with Term for alcoholic beverages sales needed? x Yes No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies of the PD site plan: N/A
Site Plan on a CD in .pdf and .jpg format: N/A

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): [Signature] Date: 10/12/12

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>[Signature]</u>	Date: <u>10/17/12</u>
Assigned: _____	
For: <u>P42</u>	On: <u>11-19-12</u>

****Application will not be considered for scheduling until reviewed by a planner.****

PLANNING AND ZONING COMMISSION

November 19, 2012

CASE: Z-12-047, Dusty Evans.

REQUEST: Hold a public hearing and consider a request for a zone change from AE, Agriculture Estate District on a 3.911-acre tract of land and from PD, Planned District of a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District.

APPLICANT/OWNER: Dusty Evans.

LEGAL DESCRIPTION: A 3.911-acre tract of land and a 7.709-acre tract, all out of Section 8, Block "X", H. P. Hilliard Co. Survey, City and County of Midland, Texas.

LOCATION: Generally located on the northwest corner of the intersection of N. Midkiff Road and Mockingbird Lane.

CURRENT ZONING: AE, Agriculture Estate District, and PD, Planned District for a Shopping Center.

DETAILS OF REQUEST:

1. The applicant is requesting to rezone approximately 11.62 acres of his property for future development in accordance with LR-2, Local Retail District, regulations. The subject property is currently split between two zoning districts. The southern 7.7 acres is zoned for a PD, Planned District for a Shopping Center (subject to LR-1, Local Retail, regulations), and was adopted in 1994, but was never developed. The balance of the 11.62 acres is zoned AE, Agriculture Estate District, and is located adjacent to, and immediately north of the previously described 7.7-acre tract. The applicant intends to open a retail store in the future. This requested zone change is the first step in the applicant's plan. If a rezoning request is approved, this will only grant LR-2, Local Retail, uses. The property will also need to be platted. In addition, any proposed sale of alcohol for on-premise consumption, will require a separate specific use permit approval process.

SURROUNDING ZONING AND LAND USE:

2. This property is located at the northwest corner of the intersection of Midkiff Road and Mockingbird Lane. Both of the subject property's frontages are on arterial class roads. Adjacent zoning includes a recently approved site plan, to the east of Midkiff Road, for a Planned District for a Shopping Center that includes a mix of office/retail development subject to LR-2, Local Retail District, regulations. To the southeast and south it is zoned AE, Agriculture Estates District, these areas are developed with housing and one large church lot, respectively. Immediately adjacent to the subject property is the applicant's vineyard land

ANALYSIS:

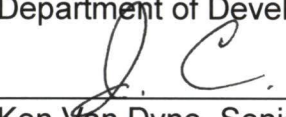
3. The applicant's intention to rezone removes the obligation of a planned district site plan and the associated public hearings. The planned district's underlying zoning regulation is LR-1, Local Retail District, which provides for slightly fewer uses than the, LR-2 usage requested. The primary difference applicable in this case is the *ability to request* for the sale of alcoholic beverages for on-premise consumption by a specific use permit at a later date. While a public hearing for a site plan would not be required, any development is still subject to administrative site plan approval and design guidelines. If the zoning is approved, the property will need to be platted, any public improvements addressed, and (for the alcohol sales portion of the plan) a Specific Use Permit approved. Staff supports this request for rezoning in accordance with LR-2 regulations and find it matches the zoning of the retail/office development approved across Midkiff Road.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from AE, Agriculture Estate District on a 3.911-acre tract of land and from PD, Planned District of a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District, subject to the following conditions:

- A. That the property shall be governed by LR-2, Local Retail District, regulations in all respects;
- B. That the property must be platted and any public improvements are adequately addressed;
- C. That Ordinance 7300 is repealed by this action;


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Field Notes

PLANNING AND ZONING COMMISSION MINUTES

November 19, 2012

3:30 p.m.

Z-12-047 - Hold a public hearing and consider a request by **Dusty Evans** for a *zone change* from AE, Agriculture Estate District on a 3.911-acre tract of land and from PD, Planned District of a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District all out of Section 8, Block "X", H.P. Hilliard Co. Survey, City and County of Midland, Texas. (Generally located on the northwest corner of the intersection of N. Midkiff Road and Mockingbird Lane.)

John Newton, Newton Engineering 4908 N. Midkiff, 79705, representing the applicant, Dusty Evans, stated Mr. Evans wanted to rezone 11.6 acres of his property and that 7.7 acres were already zoned for PD, Planned District for a Shopping Center. Mr. Evans would like to zone the 7.7 acres an LR2, Local Retail to eliminate the requirement for site plan approval and to extend the zoning to match the other side of Midkiff. He stated that an oil well had also been approved in that area.

Planning Division Manager Cameron Walker gave an overview of the request and explained that some of the Evans land had been authorized for drilling. He stated that design standards had been place from 2006 and the request was not unreasonable. There were no letters of objections and staff recommended approval.

Chairman Ferguson opened the public hearing.

Dusty Evans, 3502 Mockingbird, Midland, TX, stated they had no real plans for big retail but tat the wells would definitely effect the area for housing development and there would be limited use for housing, therefore, retail would work a little better. He stated they would try to match what was across the road.

With no one wishing to speak in favor or in opposition of the request, Chairman Ferguson closed the public hearing.

After further discussion a motion for approval was made by Commissioner Gatten; seconded by Commissioner Watkins. The motion carried by the following vote: AYE: Ferguson, Gatten, Wolf, York, Hotchkiss, Ivey and Watkins. NAY: None. ABSTAIN: None. ABSENT: Wilton, Norris, Lanning and Woodruff.



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 01/08/2013

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider an ordinance on second reading designating the I-20 Wildlife Preserve as parkland and establishing Title IX "Public Ways and Property," Chapter 5 "Parks and Playgrounds," Section 18 "Hours of Use of Public Parks," Subsection C of the City Code of Midland, Texas

Purpose:

To designate the I-20 Wildlife Preserve as parkland and to set the operating hours at the I-20 Wildlife Preserve and James M. Bradford Park.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

To meet the requirement of the Texas Parks and Wildlife Department Grant, the I-20 Wildlife Preserve needs to be designated as parkland. This action is required to take place between the time of receiving the grant and the ribbon cutting of the new park. The action is being recommended at this time as the ribbon cutting will be scheduled sometime after January 1st. Much consideration was given to the operating hours recommended. Elain Magruder and her staff have chosen the hours based on the times and days of operation of many state parks. They are proposing to be closed:

6:00 p.m. to 8:00 a.m. from October 1 – the end of February

8:00 p.m. to 8:00 a.m. from March 1 – September 30

Dates of closure: New Year's, Easter, Thanksgiving, and Christmas Days

The Director of the I-20 Wildlife Preserve shall be authorized to grant exceptions to the above hours on a temporary basis for management and safety purposes.



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider an ordinance designating the I-20 Wildlife Preserve as parkland and establishing Title IX "Public Ways and Property," Chapter 5 "Parks and Playgrounds," Section 18 "Hours of Use of Public Parks," Subsection C of the City Code of Midland, Texas

Purpose:

To designate the I-20 Wildlife Preserve as parkland and to set the operating hours at the I-20 Wildlife Preserve and James M. Bradford Park.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

To meet the requirement of the Texas Parks and Wildlife Department Grant, the I-20 Wildlife Preserve needs to be designated as parkland. This action is required to take place between the time of receiving the grant and the ribbon cutting of the new park. The action is being recommended at this time as the ribbon cutting will be scheduled sometime after January 1st. Much consideration was given to the operating hours recommended. Elain Magruder and her staff have chosen the hours based on the times and days of operation of many state parks. They are proposing to be closed:

6:00 p.m. to 8:00 a.m. from October 1 – the end of February

8:00 p.m. to 8:00 a.m. from March 1 – September 30

Dates of closure: New Year's, Easter, Thanksgiving, and Christmas Days

The Director of the I-20 Wildlife Preserve shall be authorized to grant exceptions to the above hours on a temporary basis for management and safety purposes.

ORDINANCE NO. _____

AN ORDINANCE DESIGNATING THE I-20 WILDLIFE PRESERVE AS PARKLAND; AMENDING TITLE IX, “PUBLIC WAYS AND PROPERTY”, CHAPTER 5, “PARKS AND PLAYGROUNDS”, SECTION 18, “HOURS OF USE OF PUBLIC PARKS”, ESTABLISHING SUBSECTION (C) OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO ESTABLISH PROVISIONS CONCERNING HOURS OF USE AND RULES AND REGULATIONS FOR THE I-20 WILDLIFE PRESERVE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); AND ORDERING PUBLICATION

WHEREAS, the Council finds it to be in the public interest to designate the I-20 Wildlife Preserve as parkland and to establish provisions concerning hours of use, and rules and regulations for the I-20 Wildlife Preserve;

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

SECTION ONE. That the I-20 Wildlife Preserve is hereby designated as Parkland, said property is described on Exhibits “A”, “B”, “C”, and “D” attached hereto and incorporated herein for all purposes.

SECTION TWO. That Title IX, “Public Ways and Property”, Chapter 5, “Parks and Playgrounds”, Section 18, “Hours of use of public parks” of the City Code of Midland, Texas is hereby amended so as to establish Subsection (C), which shall hereby read as follows:

9-5-18. Hours of use of public parks

- (C) That the I-20 Wildlife Preserve hours of use, and rules and regulation shall be established as described in Exhibit “E” attached hereto and incorporated herein for all purposes.

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 five hundred dollars (\$500.00).

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 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., 2012; 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., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Reso # 2002-101

QUITCLAIM DEED

THE STATE OF TEXAS
COUNTY OF MIDLAND

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, **CITY OF MIDLAND, TEXAS, A Texas Home Rule Municipal Corporation**, P.O. Box 1152, Midland, Texas 79702 of the County of Midland, State of Texas, hereinafter referred to as "Grantor", whether one or more, for and in consideration of Grantee herein named to use the property in a manner that primarily promotes a public purpose of the City of Midland in accordance with House Bill 122, passed by the Seventy-Seventh Texas Legislature during its regular session. The public purpose being to develop an exposition center. The Grantor has QUITCLAIMED, and by these presents does QUITCLAIM unto **West Texas Expo Center Incorporated**, 200 West Wall, Suite 200, Midland, Texas 79701, herein referred to as "Grantee", whether one or more, the real property (the "Property") described as follows:

For a 84.01 acre tract of land out of Section 5, Block 39, T-2-S, T&P Railroad Company Survey, Midland County, Texas and being the same land conveyed to the City of Midland by the following deeds, Vol. 385, Page 256 tracts 1 and 2 and Vol. 384, Page 659 tract 1 as recorded in Midland County Deed Records and being more fully described as follows;

Beginning at a 1/2" iron rod with aluminum cap set for the northwest corner of the herein described tract also being the northwest corner of said Vol. 384, Pg. 659, Tract 1 and being in the East line of south Midland Drive and the South line of Industrial Ave.

Thence N 59° 43' 16" E along said Industrial Ave. a distance of 441.04 feet to a found 3/8" iron rod at the northwest corner of a tract to Terramark LP recorded in Vol. 1950, Pg 111 of said deed records.

Thence S 14° 23' 34" E with the West line of the said Terramark tract a distance of

Vol Page
7232 1978 27

519.55 feet to a found ½" iron rod

Thence N 75° 36' 26" E along the South line of said Terramark tract a distance of 466.78 feet to a set ½" iron rod with aluminum cap.

Thence S 26° 21' 22" E a distance of 123.88 feet to a found ½" iron rod at a corner of the said Terramark tract.

Thence N 75° 03' 11" E along South line of said Terramark tract a distance of 203.10 feet to a steel fence corner post for corner in the West line of a tract owned by McClatchy Brothers.

Thence S 13° 37' 10" E along West line of said McClatchy tract a distance of 164.74 feet to a large cedar fence corner post for corner.

Thence N 75° 36' 38" E along the South line of said McClatchy Brothers tract a distance of 1492.91 feet to a set ½" iron with aluminum cap in the West line of a county road.

Thence S 14° 23' 22" E along said county road a distance of 60.00 feet to a set ½" iron rod with aluminum cap.

Thence S 75° 36' 38" W along the North line of a tract to Western Wireless Corp., Vol. 1154, Pg. 54 and another tract to Holsum Partnership LLP, Vol. 1637, Pg. 357 a distance of 798.2 feet to a set ½" iron rod with aluminum cap in the East line of the herein described tract.

Thence S 14° 23' 22" E a distance of 303.00 feet to a set ½" iron rod with aluminum cap at an angle point in the East line of this tract.

Thence S 38° 37' 34" E along the East line of this tract a distance of 1939.98 feet to a set ½" iron rod with aluminum cap set in the north right-of-way of Interstate Hwy. 20 at the southeast corner of this tract.

Thence along the said north right-of-way and a curve to the left having a radius of 11609.2 feet and a length of 1350.10 feet and a chord bearing of S 67° 15' 10" W to a set ½" iron rod with aluminum cap for the southwest corner of this tract and southeast corner of a tract to David Hoff, Vol. 912, Pg. 680.

Thence N 37° 32' 32" W along the West line of this tract a distance of 2532.05 feet

to a set ½" iron rod with aluminum cap for the northeast corner of a tract to Henry Culp Vol. 1228 Pg. 466.

Thence S 75° 36' 38" W along said Culp tract a distance of 278.07 feet to a set ½" iron rod with aluminum cap in the East line of South Midland Drive.

Thence N 14° 23' 22" W along the East line of said road a distance of 682.71 feet To The Place Of Beginning and containing 84.01 acres.

Bearings based on the Texas State Coordinate System Central Zone.

BY EXECUTING THIS QUITCLAIM DEED, THE GRANTOR AND THE GRANTEE AGREE THAT GRANTEE IS TAKING THE PROPERTY "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE CITY OF MIDLAND, TEXAS THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. THE GRANTEE ACKNOWLEDGES THAT GRANTEE IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE CITY OF MIDLAND WITH RESPECT TO THE CONDITION OF THE PROPERTY, BUT IS RELYING UPON GRANTEE'S EXAMINATION OF THE PROPERTY. GRANTEE ALSO RECOGNIZES BY AGREEING TO PURCHASE THE PROPERTY "AS IS" THAT GRANTEE AGREES TO MAKE GRANTEE'S OWN APPRAISAL OF THE PROPERTY AND TO ACCEPT THE RISK THAT GRANTEE MAY BE WRONG. THE GRANTOR GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE PROPERTY SOLD. IN NO EVENT SHALL A GRANTEE HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE GRANTEE WILL

TAKE THE PROPERTY UNDER THE EXPRESS UNDERSTANDING THE PROPERTY IS ACCEPTED "AS IS" AND WITH ALL FAULT, EXCLUDING EXPRESS OR IMPLIED WARRANTIES. PROVISIONS OF THIS PARAGRAPH SURVIVE THE CLOSING.

In accordance with House Bill 122, now codified as Section 253.011 of the Texas Local Government Code, the ownership of the above-referenced property automatically reverts back to the Grantor in the event the Grantee at any time fails to use the property to promote the public purpose of developing an exposition center.

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

This conveyance, however, is made and accepted upon the following reservations and exceptions:

1. The City of Midland ("Grantor") expressly reserves and retains a drainage easement on, over, through, across and under the entire tract of Property described above. The City of Midland reserves and retains the right to construct, place, operate, repair, maintain, rebuild, replace and relocate drainage structures on, over, under, across and through the Property described above.
2. The Property is conveyed subject to a lease between the City of Midland ("Grantor") and Benchmark Research & Technology, Inc., dated April 14, 1998.
3. Midland County ("Grantee") must receive a Grant in the amount of \$1,000,000.00 from the Texas Parks and Wildlife Department for the development of a Midland County Exposition Center prior to December 31, 2003.

TO HAVE AND TO HOLD all of Grantor's right, title and interest in and to the above described property and premises unto the Grantee, and Grantee's heirs, administrators, executors, successors and/or assigns forever; so that neither Grantor nor Grantor's heirs, administrators, executors, successors and/or assigns shall have, claim or demand any right or title to the aforesaid property, premises or appurtenances or any part thereof.

EXECUTED this 9th day of April, 2002.

CITY OF MIDLAND, TEXAS

By: *Rick Menchaca*
Rick Menchaca, City Manager

THE STATE OF TEXAS

§

§

COUNTY OF MIDLAND

§

This instrument was acknowledged before me on the 9th day of April, 2002, by *Rick Menchaca*.



Lyn Miller
Notary Public, State of Texas

ACCEPTED BY GRANTEE

Wm. C. Morrow
Wm. C. Morrow, Midland County Judge

7232 Vol 1978 Page 31

THE STATE OF TEXAS
COUNTY OF MIDLAND

§
§
§

This instrument was acknowledged before me on the 16TH day of April, 2002, by Wm. C. Morrow.



Michelle Rudd
Notary Public, State of Texas

7232 Vol 1978 Page 32

LAContracts\Administration\2002\Expo Center.wpd

6



STATE OF TEXAS
COUNTY OF MIDLAND

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the named RECORDS of Midland County, Texas, as stamped hereon by me.

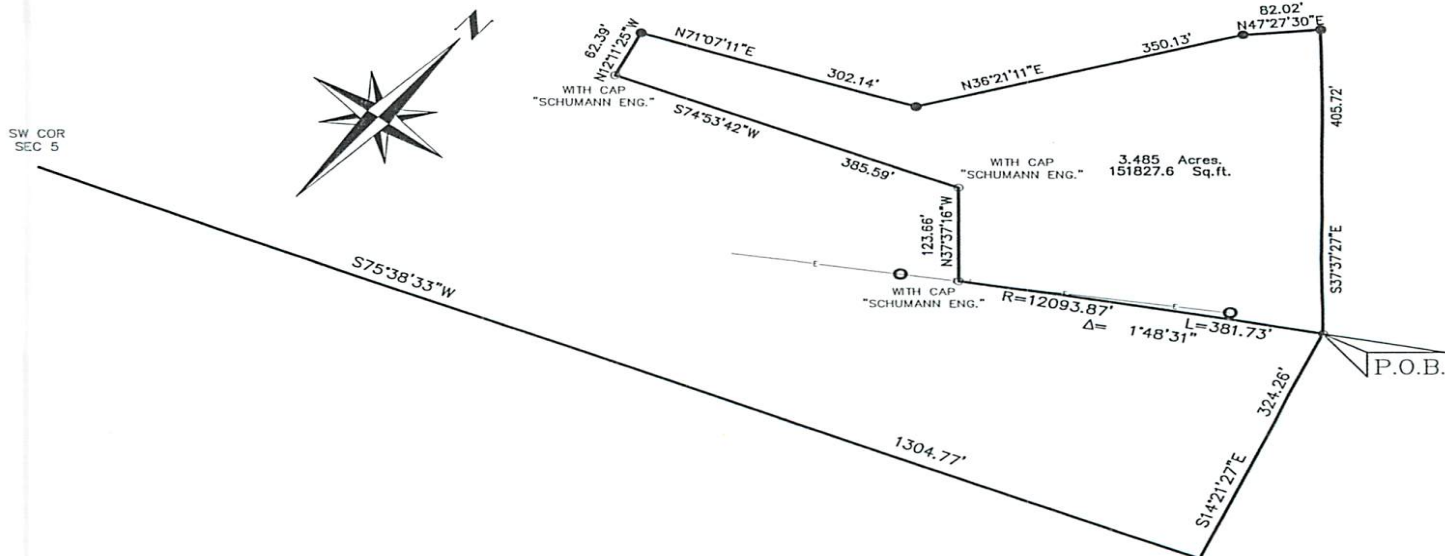
Midland County
Shauna Brown
County Clerk
On: Apr 16, 2002 at 03:31PM

Shauna Brown

County Clerk
Midland County, Texas

* COPYRIGHT 2011

This survey plat is being provided solely for the use of: I-20 Wildlife Preserve and that no license has been created, express or implied, to copy the survey plat except as is necessary in conjunction with the original transaction dated June 24 2011, which shall take place within 90 days after the survey was provided.



BEING a description of a 3.485 acre tract of land out of a 20.55 acre tract of land out of the southwest quarter (SW/4) of Section 5, Block 39, T-2-S T&P R.R. Co. Survey, Midland County, Texas, said 3.485 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod found for the southeast corner of this tract in the north right-of-way line of Interstate 20, also being the southeast corner of said 20.55 acre tract, from which the southwest corner of said Section 5 bears S 14°21'27" E a distance of 324.26 feet and S 75°38'33" W a distance of 1304.77 feet;

THENCE along a curve to the left having a radius of 12093.87 feet, a delta of 1°48'31" and arc length of 381.73 along the south line of said 20.55 acre tract and the north right-of-way line of said Interstate 20 a distance of 381.71 feet to a 1/2" iron rod with cap marked "SCHUMANN ENG." found for the most southerly southwest corner of this tract;

THENCE N 37°37'16" W a distance of 123.66 feet to a 1/2" iron rod with cap marked "SCHUMANN ENG." found for an interior corner of this tract;

THENCE S 74°53'42" W a distance of 385.59 feet to a 1/2" iron rod with cap marked "SCHUMANN ENG." found for the most northerly southwest corner of this tract;

THENCE N 12°11'25" W a distance of 62.39 feet to a 1/2" iron rod with cap marked "RPLS 4170" set for the northwest corner of this tract;

THENCE N 71°07'11" E a distance of 302.14 feet to a 1/2" iron rod with cap marked "RPLS 4170" set for an interior corner of this tract;

THENCE N 36°21'11" E a distance of 350.13 feet to a 1/2" iron rod with cap marked "RPLS 4170" set in the north line of this tract;

THENCE N 47°27'30" E a distance of 82.02 feet to a 1/2" iron rod with cap marked "RPLS 4170" set in the east line of said 20.55 acre tract for the northeast corner of this tract;

THENCE S 37°37'27" E along the east line of said 20.55 acre tract a distance of 405.72 feet to the POINT OF BEGINNING.

THE CONSTRUCTION OF THE BOUNDARY OF THIS PLAT IS BASED ON INFORMATION PROVIDED BY CLIENT FROM A PREVIOUS SURVEY.

LEGEND

- Set 1/2" I.R. W/Cap "RPLS 4170"
- Fnd. 1/2" I.R.
- Power Pole
- E — E — OVERHEAD ELECTRIC
- ▷ Guy Wire

Census Tract: 101.11

This tract is in Flood Zone "X" as shown on the Flood Insurance Rate Map, Dated September 16, 2005 provided by the Federal Emergency Management Agency Flood Map Number: 48329C0203 F

The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct, and that there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights-of-way, except as shown hereon, and that said property has access to and from a dedicated roadway.

Dated this the 24th day of June 2011.

Bruce R. Pennell

Registered Professional Land Surveyor No. 4170
Date: 06/24/11

(IF SURVEYORS SIGNATURE IS NOT SIGNED IN RED INK, THIS IS NOT AN ORIGINAL DOCUMENT)

PENNELL & MARLOWE LAND SURVEYORS, INC.

PROFESSIONAL LAND SURVEYING

P.O. BOX 51622, MIDLAND, TEXAS 79710

VOICE: (432) 570-6256

FAX: (432) 682-3262

MOBILE: (432) 528-1027

ABSTRACT OFFICE: N/A

G.F. #: N/A

COMMITMENT EFFECTIVE DATE: N/A

CAD FILE: BRP14733-3

DATA FILE: WILDLIFE

DRAWN BY: MARCY N.

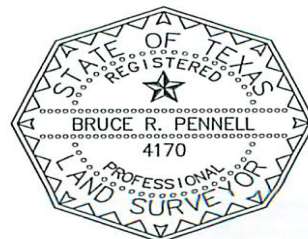
BOOK/PAGE: 1/

Basis of Bearings:
EAST Line of this Lot

Bearings and Distances Shown
Inside () Indicate Record Information

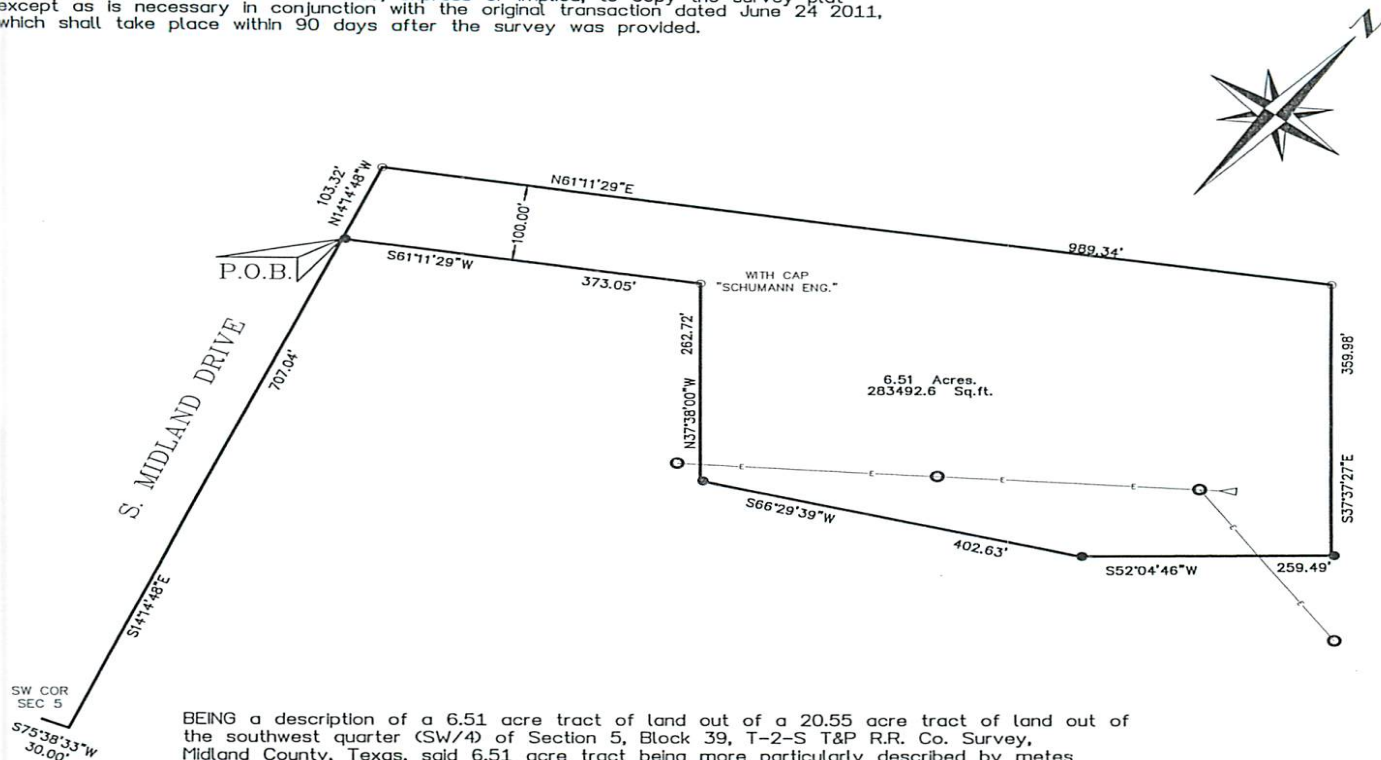


SCALE: 1" = 200'



* COPYRIGHT 2011

This survey plat is being provided solely for the use of: I-20 Wildlife Preserve and that no license has been created, express or implied, to copy the survey plat except as is necessary in conjunction with the original transaction dated June 24 2011, which shall take place within 90 days after the survey was provided.



BEING a description of a 6.51 acre tract of land out of a 20.55 acre tract of land out of the southwest quarter (SW/4) of Section 5, Block 39, T-2-S T&P R.R. Co. Survey, Midland County, Texas, said 6.51 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod with cap marked "RPLS 4170" set in the east right-of-way line of South Midland Drive for the most northerly southwest corner of this tract, from which the southwest corner of said Section 5 bears S 14°14'48" E a distance of 707.04 feet and S 75°38'33" W a distance of 30.00 feet;

THENCE N 14°14'48" W along the east right-of-way line of said South Midland Drive a distance of 103.32 feet to a 1/2" iron rod found for the northwest corner of this tract, also being the northwest corner of said 20.55 acre tract;

THENCE N 61°11'29" E along the north line of said 20.55 acre tract a distance of 989.34 feet to a 1/2" iron rod found for the northeast corner of this tract, also being the northeast corner of said 20.55 acre tract;

THENCE S 37°37'27" E along the east line of said 20.55 acre tract a distance of 359.98 feet to a 1/2" iron rod with cap marked "RPLS 4170" set for the southeast corner of this tract;

THENCE S 52°04'46" W a distance of 259.49 feet to a 1/2" iron rod with cap marked "RPLS 4170" set in the south line of this tract;

THENCE S 66°29'39" W a distance of 402.63 feet to a 1/2" iron rod with cap marked "RPLS 4170" set for the most southerly southwest corner of this tract;

THENCE N 37°38'00" W a distance of 262.72 feet to a 1/2" iron rod with cap marked "SCHUMANN ENG." found for an interior corner of this tract;

THENCE S 61°11'29" W 100.00 feet south of and parallel to the north line of said 20.55 acre tract a distance of 373.05 feet to the POINT OF BEGINNING.

THE CONSTRUCTION OF THE BOUNDARY OF THIS PLAT IS BASED ON INFORMATION PROVIDED BY CLIENT FROM A PREVIOUS SURVEY.

- LEGEND**
- Set 1/2" I.R. W/Cap "RPLS 4170"
 - Fnd. 1/2" I.R.
 - Power Pole
 - E — E — OVERHEAD ELECTRIC
 - ▷ Guy Wire

Census Tract: 101.11

This tract is in Flood Zone "X" as shown on the Flood Insurance Rate Map, Dated September 16, 2005 provided by the Federal Emergency Management Agency Flood Map Number: 48329C0203 F

The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct, and that there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights-of-way, except as shown hereon, and that said property has access to and from a dedicated roadway.

Dated this the 24th day of June 2011.

Bruce R. Pennell
Registered Professional Land Surveyor No. 4170
Date: 06/24/11

(IF SURVEYORS SIGNATURE IS NOT SIGNED IN RED INK, THIS IS NOT AN ORIGINAL DOCUMENT)

PENNELL & MARLOWE LAND SURVEYORS, INC.

PROFESSIONAL LAND SURVEYING

P.O. BOX 51622, MIDLAND, TEXAS 79710

VOICE: (432)570-6256

FAX: (432)682-3262

MOBILE: (432)528-1027

ABSTRACT OFFICE: N/A

G.F. #: N/A

COMMITMENT EFFECTIVE DATE: N/A

CAD FILE: BRP14733-1

DATA FILE: WILDLIFE

DRAWN BY: MARCY N.

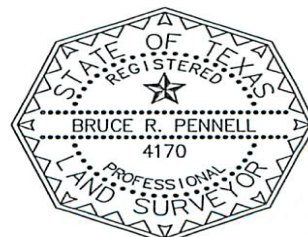
BOOK/PAGE: 1/

Basis of Bearings:
EAST Line of this Lot

Bearings and Distances Shown
Inside () Indicate Record Information



SCALE: 1" = 200'



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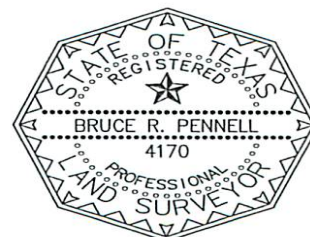


THENCE S 11°07'13" E along the east line of said 3.10 acre tract a distance of 91.25 feet to the POINT OF BEGINNING.

LEGEND

- BOOK / PAGE: 1 /

SCALE: 1" = 100'





I-20 Wildlife Preserve

Mission Statement: The mission of the I-20 Wildlife Preserve is to ensure conservation of, and provide access to, Midland's wildlife preserve for the use, enjoyment and education of present and future generations.

Preserve Regulations: The I-20 Wildlife Preserve is for your enjoyment. The City of Midland has by ordinance enacted laws to ensure that all members of the park have the opportunity to enjoy these facilities. Your cooperation in obeying the following ordinance is sincerely appreciated.

Preserve Hours: October to February — 8:00am thru 6:00pm

March to September — 8:00am thru 8:00pm

Rules:

Dogs are not allowed at anytime.

Alcoholic beverages are not permitted.

Firearms are not permitted on the property.

No hunting or fishing is allowed on the property.

There shall be no littering or dumping on the property.

Motorized vehicles and bicycles are not allowed on trail system.

Do not remove, damage, cut, disturb, destroy or carve any structure, sign, fence or living and non living material.

Warning: It should be noted that caution should be used at all times on this property. This site contains elevated walkways and platforms. **Drop offs** are prevalent. It falls upon the person entering this property to exercise awareness at all times while enjoying the trails, bird blinds, bridges, boardwalks and hawk tower. By entering the I-20 Wildlife Preserve you understand and accept the liability of being in a natural area where wildlife and natural hazards exist.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Ken Gray to vacate a portion of public right-of-way.

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Ken Gray to vacate a portion of public right-of-way.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

On November 27, 2012 the City Council considered a request by Cliff Chalmers to vacate a 45-foot by 215-foot section of public right-of-way that abuts two of his lots at the intersection of N. Big Spring Street and Arapahoe Road. This earlier request was deferred to allow for further review. We have since received a request from Mr. Ken Gray to vacate the remaining portion of this same 45-foot wide strip of right-of-way in front of his two lots, Lots 1 and 2, Block 1, and in front of a third lot, Lot 3, Block 1 which is owned by Kevin Wilton. These three lots are located immediately south of Mr. Chalmers two lots. A warehouse is located on Lot 1, Block 1, and the other lots are vacant. These three lots abut a strip of pavement that is separate from the Big Spring Street paving. This pavement lies in a 45-foot wide right-of-way, and functions as a "service road" to Big Spring Street. Staff has confirmed with the Texas Department of Transportation that it does not own this 45-foot wide right-of-way. Further, the City has no need for it, nor do any of the franchised utility companies. The right-of-way associated with Mr. with Mr. Gray's and Mr. Milton's property is 311.94 long and contains 14,037 square feet. The Midland Central Appraisal District has determined the value of this land is \$1.00 per square foot, which places value

of this right-of-way segment at \$14,037. We recommend that any approval be conditioned upon receipt of this compensation. The ordinance attached for the City Council's consideration includes only that right-of-way adjacent to Mr. Gray's and Mr. Milton's property; the portion associated with Mr. Chalmers' request is not included.

Attachments:

Maps

Letter from MCAD

Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 45-FOOT BY 311.94-FOOT PORTION OF RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1, 2 AND 3, BLOCK 1, 349 RANCH ESTATES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH BIG SPRING STREET, BETWEEN ARAPAHOE ROAD AND TEJAS); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$14,037.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 45-foot by 311.94-foot portion of right-of-way adjacent to Lots 1, 2 and 3, Block 1, 349 Ranch Estates Addition, City and County of Midland, Texas, is no longer needed for public use; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, an application for vacating the right-of-way has been received by the City from the abutting property owner; and

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$14,037.00, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the right-of-way described herein;

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

SECTION ONE. That the 45-foot by 311.94-foot portion of right-of-way adjacent to Lots 1, 2 and 3, Block 1, 349 Ranch Estates Addition, City and County of Midland, Texas, as described in Exhibit "A" attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way

affects any private easement or access easement which abutting property owners may have in said right-of-way.

The City is hereby abandoning the public interest in said property but it is expressly provided, however, that this ordinance in no way affects the property interest(s) of any other abutting property owner(s), including but not limited to the Texas Department of Transportation, which may have an interest in said property.

SECTION TWO. That this Ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of \$14,037.00.

SECTION THREE. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; 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., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

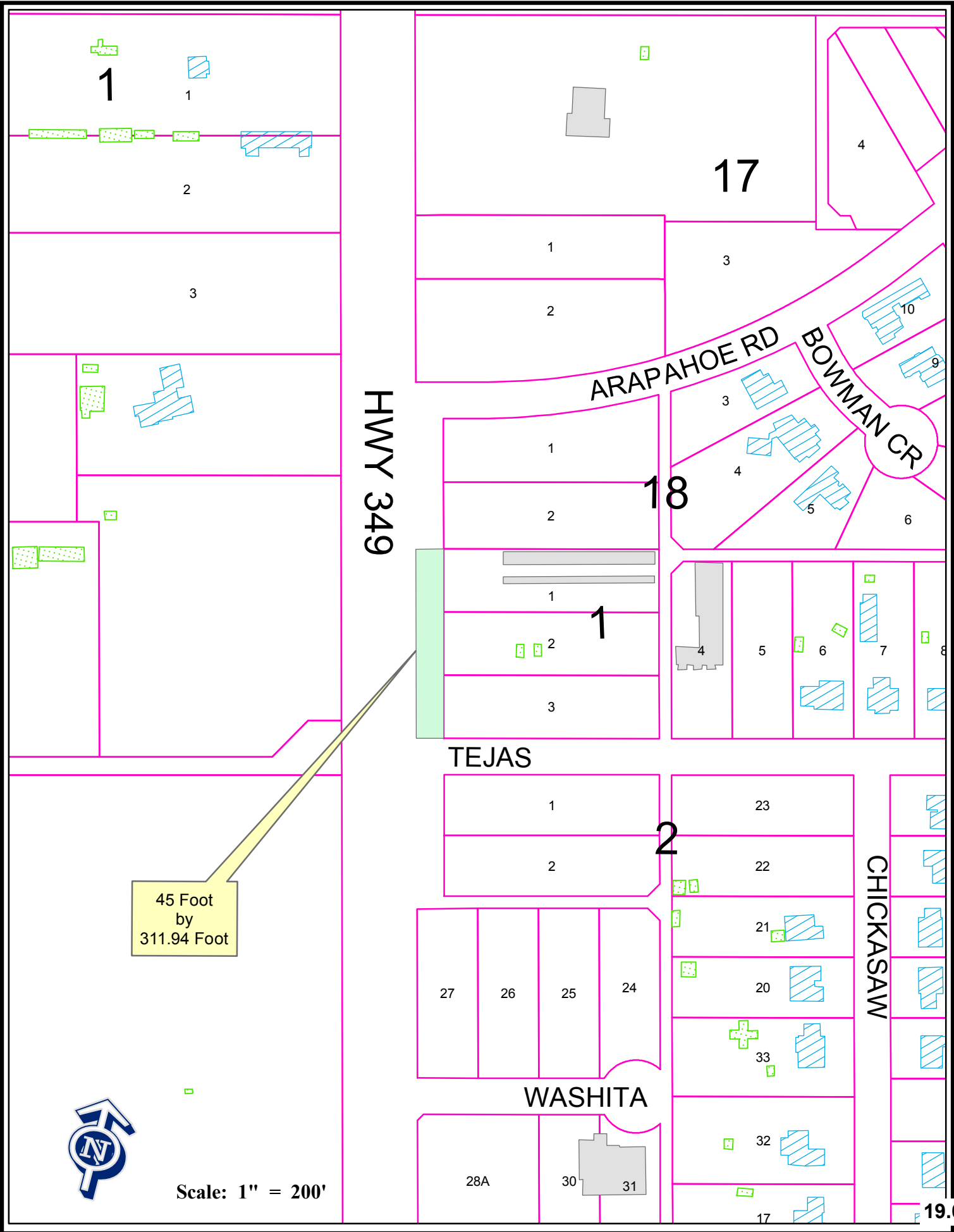
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney





MIDLAND CENTRAL APPRAISAL DISTRICT
4631 ANDREWS HWY.
P. O. BOX 908002 MIDLAND, TEXAS 79708-0002
(432) 699-4991 FAX (432) 689-7185

DENNIS RAMBO
RPA
Assistant Chief Appraiser

October 16, 2012

Re: Proposed street or alley right-of-way vacation

Attn: Jim Compton
City of Midland
Department of Development Services
PO Box 1152
Midland TX 79702-1152

Dear Mr. Compton:

The estimated value on Case No. V-12-008 is as follows:

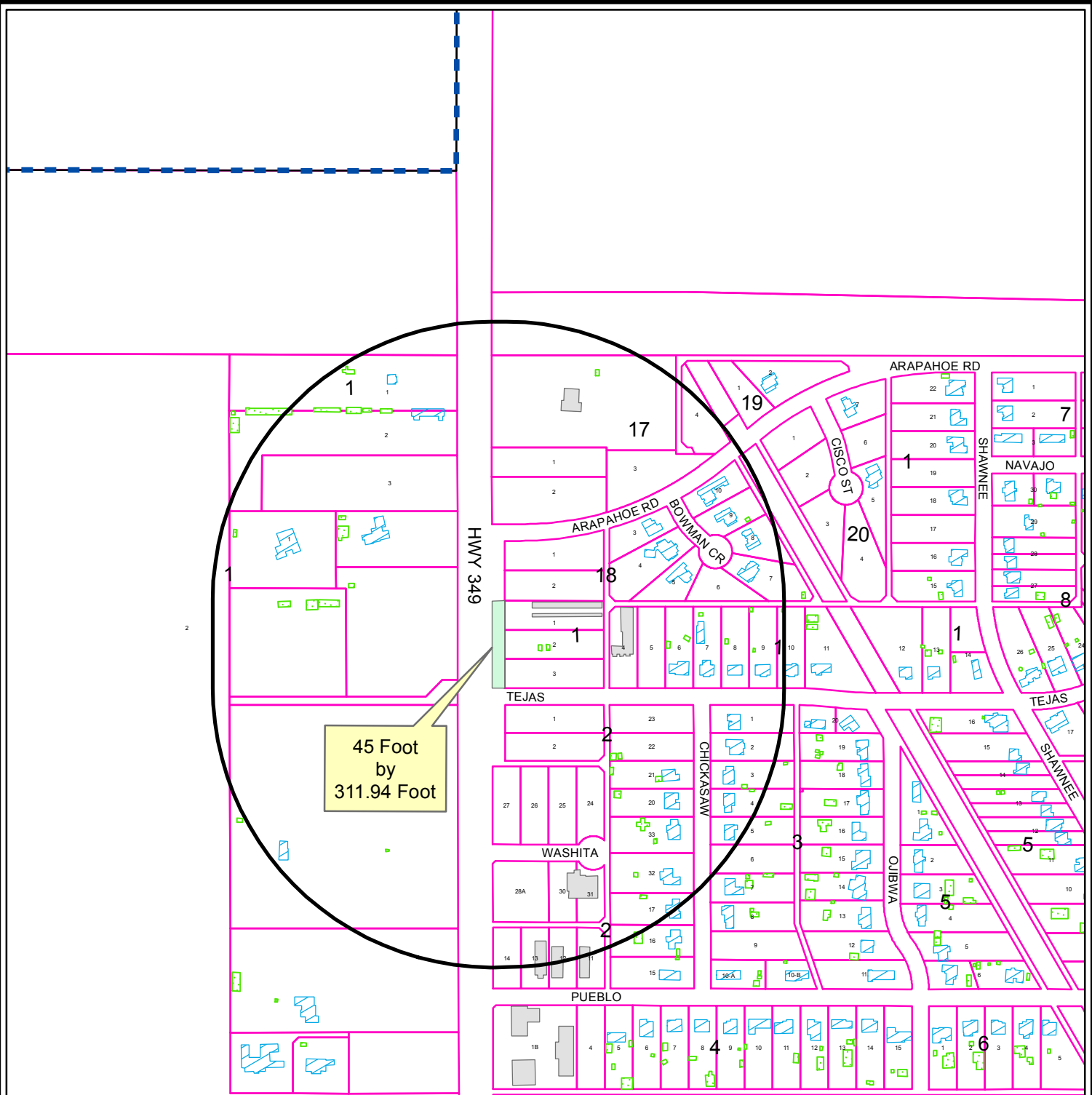
<u>General Location</u>	<u>Area</u>	<u>Current Zoning</u>
East side of Big Spring Street, south of Araphoe	9,675 acres	LR-2 District

9,675 X \$1.00 = \$9,675

Sincerely,

Dennis Rambo, RTA/RPA
Chief Appraiser

DR/dh



PROPERTY OWNER NOTIFICATION MAP

V - 12 - 015

Scale: 1" = 500'

Consider a request for the vacation of a 45 foot by 311.94 foot portion of the right-of-way of N. State Hwy 349 adjacent to Lots 1, 2 and 3, Block 1, 349 Ranch Estates, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 1000 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



©THE CITY OF MIDLAND - 2012
 THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, SITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

Case Number: V-12-015

CITY OF MIDLAND
Planning Division

APPLICATION TO VACATE RIGHT-OF-WAY

I. Application is hereby made to the City Council to vacate the following public right-of-way or easement:

A tract of land 45' (east to west) and 311.94' (north to south) being directly contiguous to and west of Lots 1, 2, 3 Block 1, 349 Ranch Estates (6400, 6402, 6404 N. Hwy 349)

II. Reason for Request: To insure access from Hwy 349 to storage units (Northside Storage) located at 6404 N. Hwy 349

III. Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:

See attached page

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)

Name: Kenneth & Sherrie Gray

Address: 4505 Meadowlark Lane

Phone: 432-697-3827

Street

Midland,

Texas

City

State

79707

Zip Code

See attached 2. Metes and bounds description of property to be vacated including total square feet of vacation.

See attached 3. Map showing:

Property to be vacated and its relationship to the applicant's property

Lot and block numbers of all adjacent tracts

Current zoning of all adjacent tracts

See attached 4. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)

5. Application Fee: **\$300.00**

Required items attached? Date Received: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____

The City of Midland will take no action on this request, until items 1-5 are received.

V. Clearance is needed from the following utility companies: City of Midland / Atmos Energy

Caprock Energy / Oncor Electric / AT&T / Suddenlink Cable TV Co. / Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained and to work out any issues that may arise.

III.

We are trying to accommodate Cliff Chalmers request for 6406 & 6408 N. Hwy 349 in which he has requested to purchase by Application to Vacate Right-of-way on Lots immediately west of 6406 & 6408 N. Hwy 349. Our preference would be to leave all items as they currently exist but if the City of Midland thinks this is the thing to do to best service all involved we would be willing to do so on the condition that (1). We could purchase the additional acreage outlined on this application at no more than \$.11/sq foot. This application is offset acreage to Block 001, Lot 003 349 Ranch Estates currently owned by Wilton, Kevin Lee plus Lots 2 and 3 owned by Applicant. (2). That no build up of any kind would occur on or around the East end of our current existing storage units. We understood that soil would be removed from the East end of the Lots owned by Cliff Chalmers and moved to the West end of his lots to which we approve, if understood correctly.

IV.

2. Starting at the northwest corner of Lot 1, (6404 N. Hwy 349) Block 1, 349 Ranch Estates addition being the NE corner of tract being described then going in a westerly direction 45' parallel to and being an extension of north line of said Lot 1 to the NW corner of tract being described, then going in a southerly direction 311.94' parallel to the west lines of Lots 1, 2, & 3 Block 1 to the SW corner of tract being described; then going in an easterly direction 45' to southwest corner of Lot 3, (6400 N. Hwy 349) Block 1 and SE corner of tract being described; then 311.94' in a northerly direction along the west lines of Lots 1, 2, & 3, Block 1 to place of beginning being the NE corner of Tract being described, containing 14,037.30 square feet.

3. Plat attached as provided by City.

4. None attached; we were never asked to sign one on the hearing requested by Cliff Chalmers on 6406 & 6408 N Hwy 349 as adjacent property owners.

VI. Policies:

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.
 - b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signature of applicant: _____

[Handwritten Signature]

Date: _____

12-5-12

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

FOR OFFICE USE ONLY	
Rec'd. By: <u>DS</u>	Date: <u>12/5/12</u>
Assigned: <u>JC</u>	
For: _____	On: _____



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:33 a.m. regarding a proposed oil and gas permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans P 1) located 490 feet from the south line and 565 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the North Midkiff Drive, approximately 490 feet north of Mockingbird Lane.)

Purpose:

At approximately 10:33 a.m. hold a public hearing on a request from Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans O 1) located 490 feet from the south line and 565 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No letters of objection received.

Recommended City Council Action

Approve Deny X Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommended that the application proceed to City Council; however, by a vote of 2-2, the Committee did not recommend the requested two year variance for installation of landscaping and irrigation.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 09/17/2012	Operator Name (must match W-1) Bluestem Energy Holdings, LLC	Operator Address 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701
Representative Name Jim Mason	Representative Address (within Midland City Limits) 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701	Rep. Tele. (432) 770-8322 Rep. Fax (817) 872-9888
Fee: \$4,000.00 Rec'd Yes ___ No ___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134		
24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____		
Option B: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134		
Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Same as above		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]):		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Evans Resources, LP, P.O. Box 7962, Midland, TX 79708		
2. Joy D. Anguish Trust and David D. Anguish Trust, P.O. Box 2749, Longview, TX 75606		
3. Anguish Partnership, P.O. Box 63, Midland, TX 79702		
ATTACHED AS EXHIBIT C is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Farming		
RECEIVED OCT 5 2012 CITY OF MIDLAND PLANNING DIVISION OFFICE		
ATTACHED AS EXHIBIT D is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Evans P 1

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit V

Legal Description of Proposed Well Site:

490' FSL and 565' FEL, Sec. 8, Blk. X, Hilliard Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) Drilling: None
- (2) Operations: Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Evans water wells located in N/2 of Sec. 8, Blk. X, Hilliard Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future. Ultimately, electrical lines will be buried in the proposed corridors as shown on Exhibit N, in accordance with the Surface Agreement dated November 3, 2010 between Operator and the Surface Owner.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Bluestem Energy Holdings, LLC

[NAME OF COMPANY]

Jim Mason

By Jim Mason

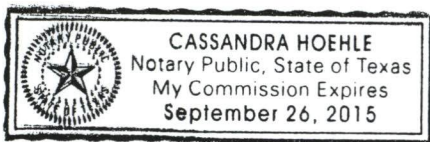
Its District Production Manager

State of Texas

County of Midland

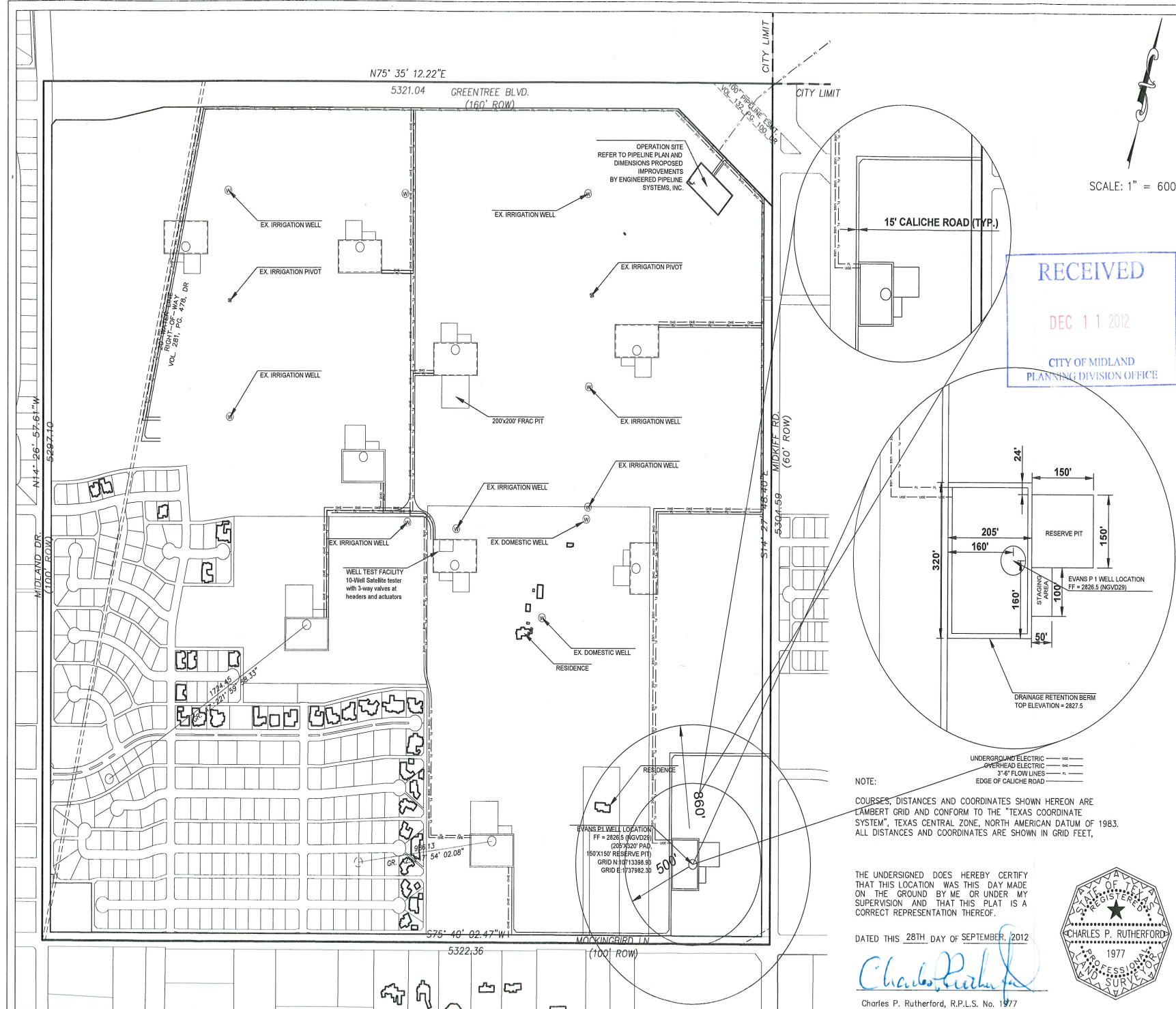
Jim Mason

, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



[SEAL]

Cassandra Hoehle
Notary Public, State of Texas



SITE PLAN

BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS P 1
EVANS LEASE
490 FEET FROM THE SOUTH AND
565 FEET FROM THE EAST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
H.P. HILLIARD SURVEY, MIDLAND
COUNTY, TEXAS

NEWTON ENGINEERING, P.C.
F-13595
4008 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499

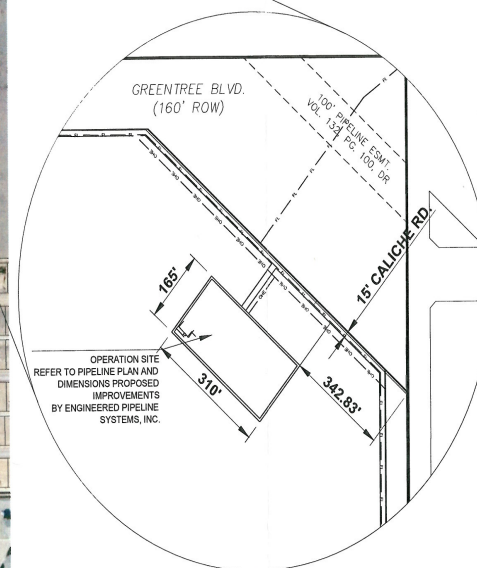


DRILL SITE MAP

0-12-022



SCALE: 1" = 600'



NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 3rd DAY OF OCTOBER 2012

Charles P. Rutherford

Charles P. Rutherford, R.P.L.S. No. 1977



SITE PLAN

BLUESTEM ENERGY HOLDINGS, LLC

OPERATION SITE

EVANS LEASE
SECTION 8, ABSTRACT 17, BLOCK X, H.P.
HILLIARD SURVEY, MIDLAND COUNTY, TEXAS

NEWTON ENGINEERING, P.C.

4908 N. Midland Rd.
Midland, Texas 79705
(432) 770-0499



JOB NO: 11-ME0007

FLOW LINE MAP

O-12-022



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:36 a.m. regarding a proposed oil and gas permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans A 1) located 993 feet from the north line and 490 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the North Midkiff Drive, approximately $\frac{3}{4}$ mile north of Mockingbird Lane.)

Purpose:

At approximately 10:36 a.m. hold a public hearing on a request from Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans A 1) located 993 feet from the north line and 490 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No letters of objection received.

Recommended City Council Action

Approve Deny X Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application with requested two year variance for landscaping and irrigation to be installed.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 10/16/2012	Operator Name (must match W-1) Bluestem Energy Holdings, LLC	Operator Address 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701
Representative Name Jim Mason	Representative Address (within Midland City Limits) 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701	Rep. Tele. (432) 770-8322 Rep. Fax (817) 872-9888
Fee: \$4,000.00 Rec'd Yes ___ No ___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Same as above		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Evans Resources, LP, P.O. Box 7962, Midland, TX 79708		
2. Joy D. Anguish Trust and David D. Anguish Trust, P.O. Box 2749, Longview, TX 75606		
3. Anguish Partnership, P.O. Box 63, Midland, TX 79702		
ATTACHED AS EXHIBIT C is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Farming		
ATTACHED AS EXHIBIT D is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Evans A 1

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit V

Legal Description of Proposed Well Site:

993' FNL and 490' FEL, Sec. 8, Blk. X, Hilliard Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: none

(2) Operations: Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Evans water wells located in N/2 of Sec. 8, Blk. X, Hilliard Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future. Ultimately, electrical lines will be buried in the proposed corridors as shown on Exhibit N, in accordance with the Surface Agreement dated November 3, 2010 between Operator and the Surface Owner.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Bluestem Energy Holdings, LLC

[NAME OF COMPANY]

Jim Mason

By Jim Mason

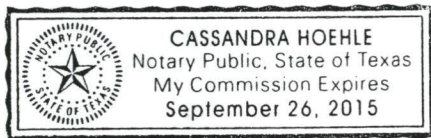
Its District Production Manager

State of Texas

County of Midland

Jim Mason

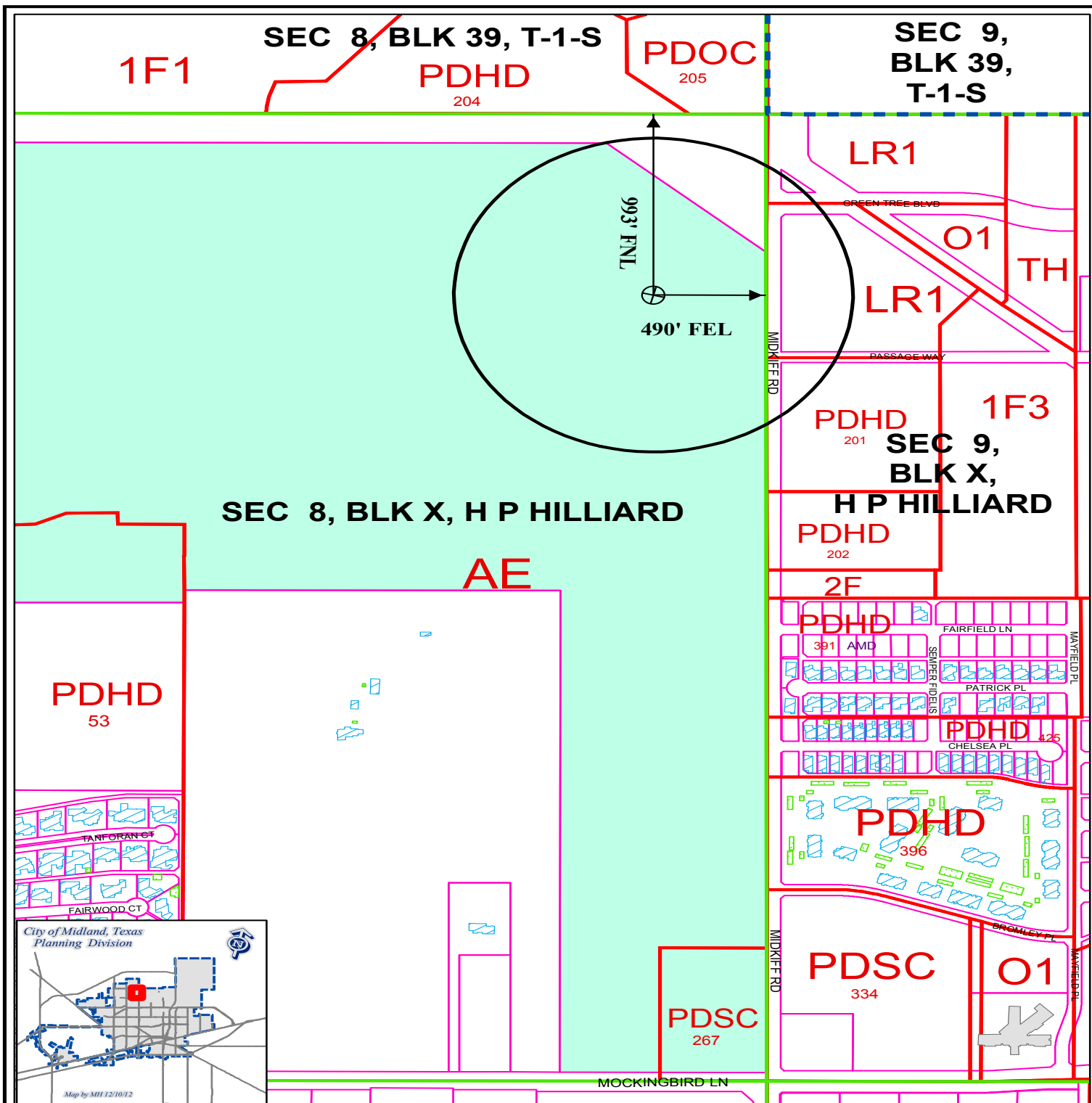
, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



[SEAL]

Cassandra Hoehle

Notary Public, State of Texas



LOCATION AND ZONING MAP

O - 12 - 026

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 993' FNL and 490' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

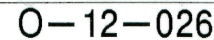
Evans A 1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

FD PD AE 1F1, 1F2, 1F3 MH TH 2F MF1, MF2	FUTURE DEVELOPMENT PLANNED DISTRICT AGRICULTURE ESTATE ONE-FAMILY DWELLING MOBILE HOME DWELLING TOWNHOUSE DWELLING TWO-FAMILY DWELLING MULTIPLE FAMILY DWELLING	BP P O1, O2 NS LR1, LR2, LR3 C1, C2, C3 IP, JP1, IP2, IP3 LI HI	BUSINESS PARK PARKING OFFICE NEIGHBORHOOD SERVICE LOCAL RETAIL COMMERCIAL INDUSTRIAL PARK LIGHT INDUSTRY HEAVY INDUSTRY
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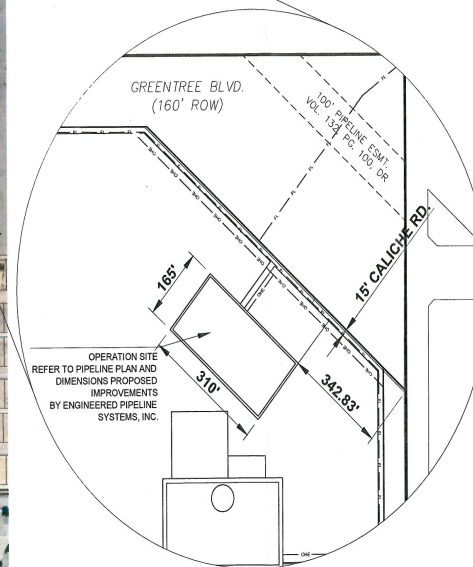


FLOW LINE MAP



RECEIVED
DEC 11 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

SCALE: 1" = 600'



NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 25TH DAY OF OCTOBER, 2012

Charles P. Rutherford
Charles P. Rutherford, R.P.L.S. No. 1977



SITE PLAN

BLUESTEM ENERGY HOLDINGS, LLC
OPERATION SITE

EVANS LEASE
SECTION 8, ABSTRACT 17, BLOCK X, H.P.
HILLIARD SURVEY, MIDLAND COUNTY, TEXAS

NEWTON ENGINEERING, P.C.
F-13856
4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499



JOB NO: 11-ME0007

O-12-026



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:39 a.m. regarding a proposed oil and gas permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans B 2) located 490 feet from the north line and 2,328 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of North Midkiff Drive, approximately 1 mile north of Mockingbird Lane.)

Purpose:

At approximately 10:39 a.m. hold a public hearing on a request from Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans B 2) located 490 feet from the north line and 2,328 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No letters of objection received.

Recommended City Council Action

Approve Deny X Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application with requested two year variance for landscaping and irrigation to be installed.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 10/16/2012	Operator Name (must match W-1) Bluestem Energy Holdings, LLC	Operator Address 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701
Representative Name Jim Mason	Representative Address (within Midland City Limits) 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701	Rep. Tele. (432) 770-8322 Rep. Fax (817) 872-9888
Fee: \$4,000.00 Rec'd Yes ☐ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): _____ Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Same as above		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]):		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Evans Resources, LP, P.O. Box 7962, Midland, TX 79708		
2. Joy D. Anguish Trust and David D. Anguish Trust, P.O. Box 2749, Longview, TX 75606		
3. Anguish Partnership, P.O. Box 63, Midland, TX 79702		
ATTACHED AS EXHIBIT C is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Farming		
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ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Evans B 2

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit V

Legal Description of Proposed Well Site:

490' FNL and 2328' FEL, Sec. 8, Blk. X, Hilliard Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

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(1) **Drilling:** none

(2) **Operations:** Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Evans water wells located in N/2 of Sec. 8, Blk. X, Hilliard Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

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Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

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ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Bluestem Energy Holdings, LLC

[NAME OF COMPANY]

Jim Mason

By Jim Mason

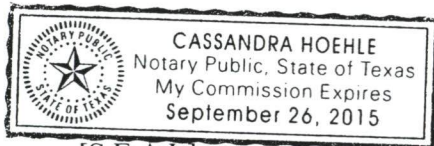
Its District Production Manager

State of Texas

County of Midland

Jim Mason

, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



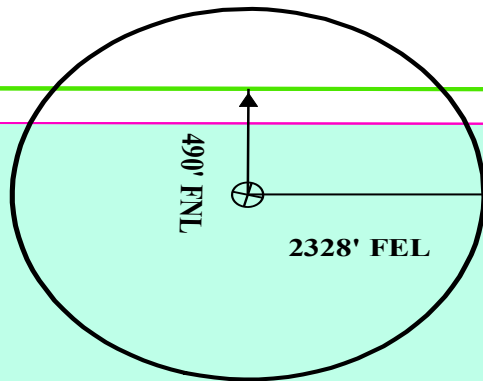
[SEAL]

Cassandra Hoehle

Notary Public, State of Texas

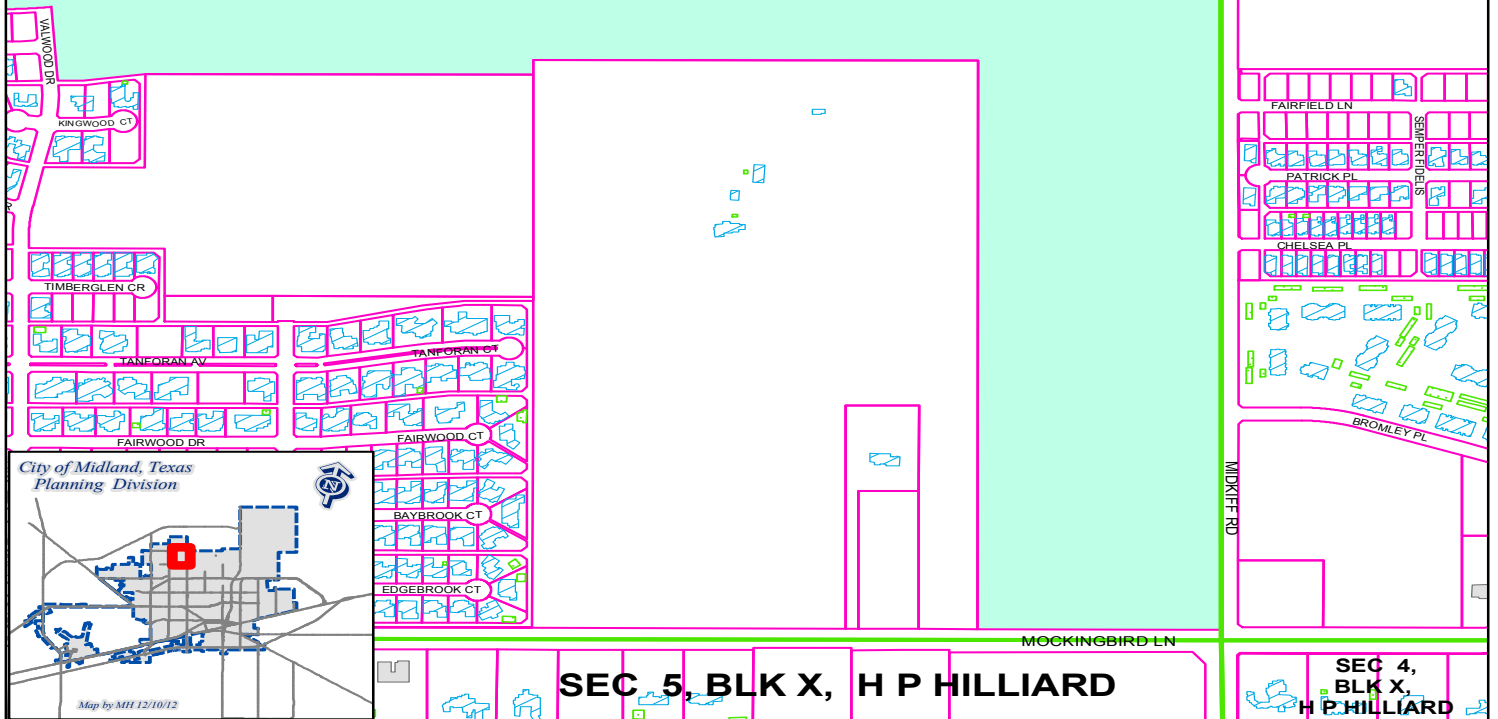
SEC 8, BLK 39, T-1-S

**SEC 9,
BLK 39,
T-1-S**



SEC 8, BLK X, H P HILLIARD

**SEC 9,
BLK X,
H P HILLIARD**



SEC 5, BLK X, H P HILLIARD

**SEC 4,
BLK X,
H P HILLIARD**

LOCATION AND ZONING MAP

O - 12 - 028

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 490' FNL and 2328' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Evans B 2

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



0-12-028

BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS B 2
EVANS LEASE SHL
490 FEET FROM THE NORTH AND
2328 FEET FROM THE EAST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
H.P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS

NEWTON ENGINEERING, PC

4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499

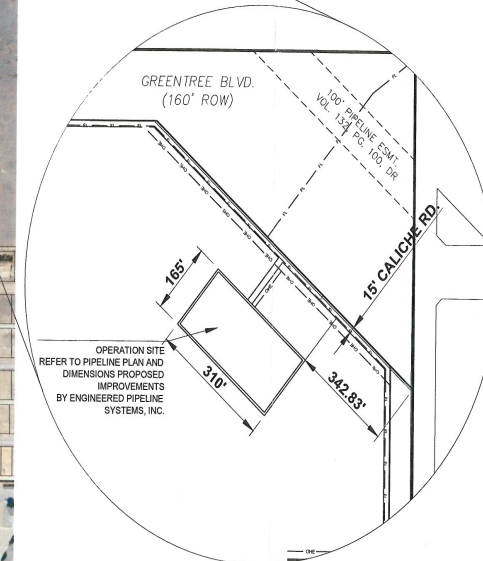


PROJECT: 727470JD
JOB NO: 72,747-F



RECEIVED
DEC 11 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

SCALE: 1" = 600'



NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 25TH DAY OF OCTOBER, 2012

Charles P. Rutherford
Charles P. Rutherford, R.P.L.S. No. 1977



SITE PLAN

BLUESTEM ENERGY HOLDINGS, LLC

OPERATION SITE

EVANS LEASE
SECTION 8, ABSTRACT 17, BLOCK X, H.P.
HILLIARD SURVEY, MIDLAND COUNTY, TEXAS

NEWTON ENGINEERING, P.C.



JOB NO: 11-ME0007



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:42 a.m. regarding a proposed oil and gas permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans O 1) located 654 feet from the south line and 1,860 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the north side of Mockingbird Lane, approximately 1/3 mile west of North Midkiff Drive.)

Purpose:

At approximately 10:42 a.m. hold a public hearing on a request from Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans O 1) located 654 feet from the south line and 1,860 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No letters of objection received.

Recommended City Council Action

Approve Deny X Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommended that the application proceed to City Council; however, by a vote of 2-2, the Committee did not recommend the requested two year variance for installation of landscaping and irrigation.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

0-12-027



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 10/29/2012	Operator Name (must match W-1) Bluestem Energy Holdings, LLC	Operator Address 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701
Representative Name Jim Mason	Representative Address (within Midland City Limits) 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701	Rep. Tele. (432) 770-8322 Rep. Fax (817) 872-9888
Fee: \$4,000.00 Rec'd Yes ___ No ___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134		
Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Same as above		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Evans Resources, LP, P.O. Box 7962, Midland, TX 79708		
2. Joy D. Anguish Trust and David D. Anguish Trust, P.O. Box 2749, Longview, TX 75606		
3. Anguish Partnership, P.O. Box 63, Midland, TX 79702		
ATTACHED AS EXHIBIT C is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Farming		
ATTACHED AS EXHIBIT D is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Evans O 1

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit V

Legal Description of Proposed Well Site:

654' FSL and 1860' FEL, Sec. 8, Blk. X, Hilliard Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: none

(2) Operations: Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Evans water wells located in N/2 of Sec. 8, Blk. X, Hilliard Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future. Ultimately, electrical lines will be buried in the proposed corridors as shown on Exhibit N, in accordance with the Surface Agreement dated November 3, 2010 between Operator and the Surface Owner.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Bluestem Energy Holdings, LLC

[NAME OF COMPANY]

Jim Mason

By Jim Mason

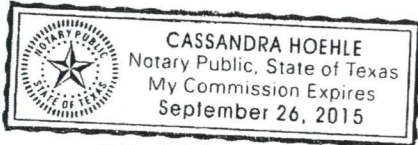
Its District Production Manager

State of Texas

County of Midland

Jim Mason

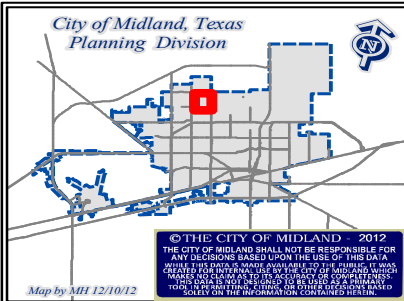
, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



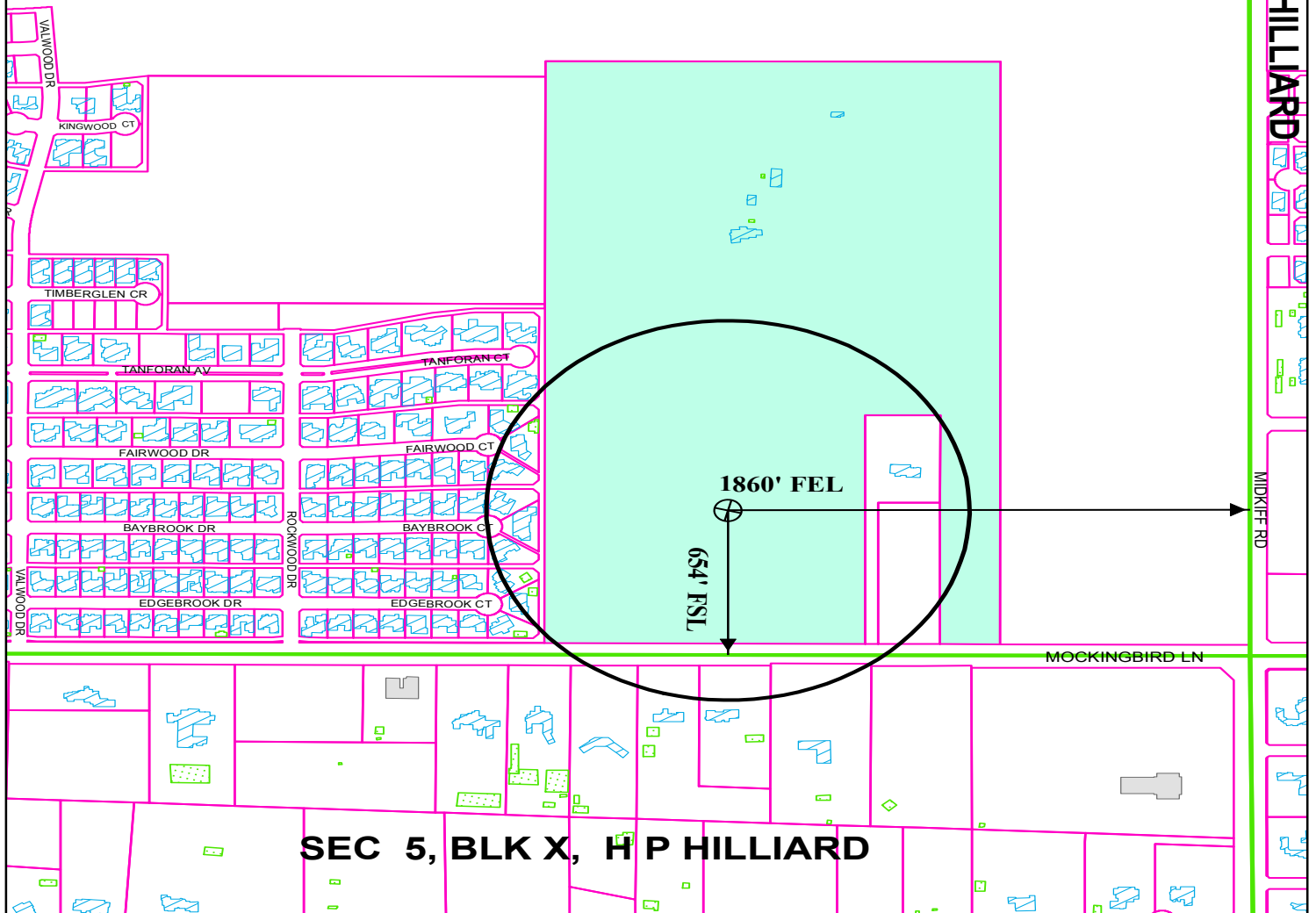
[SEAL]

Cassandra Hoehle

Notary Public, State of Texas



SEC 8, BLK X, H P HILLIARD



SEC 5, BLK X, H P HILLIARD

LOCATION AND ZONING MAP

O - 12 - 027

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 654' FSL and 1860' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Evans O 1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



PROJECT: 727470JD
JOB NO: 72,747-F

BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS O 1
654 FEET FROM THE SOUTH AND
1860 FEET FROM THE EAST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
H.P. HILLIARD SURVEY, MIDLAND
COUNTY, TEXAS

NEWTON ENGINEERING, PC

4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499



NOTE

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET,

THE UNDERSIGNED DOES HEREBY CERTIFY
THAT THIS LOCATION WAS THIS DAY MADE
ON THE GROUND BY ME OR UNDER MY
SUPERVISION AND THAT THIS PLAT IS A
CORRECT REPRESENTATION THEREOF.

DATED THIS 25th DAY OF OCTOBER, 2012

Charles P. Rutherford, R.P.L.S. No. 1977

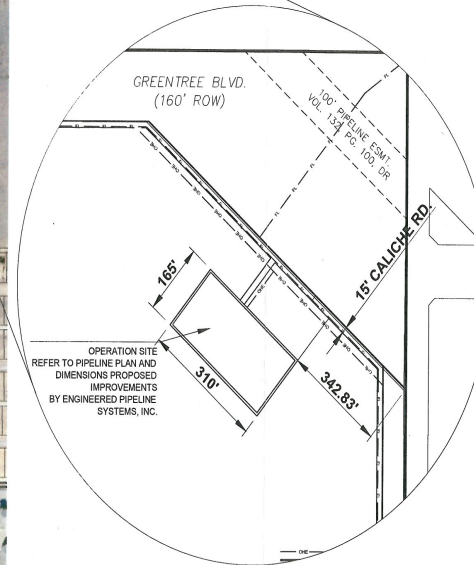


0-12-027



RECEIVED
DEC 11 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

SCALE: 1" = 600'



NOTE:
OVERHEAD ELECTRIC ———
3" 8" FLOW LINES ———
EDGE OF CALICHE ROAD ———

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 25TH DAY OF OCTOBER, 2012

Charles P. Rutherford
Charles P. Rutherford, R.P.L.S. No. 1977



SITE PLAN

BLUESTEM ENERGY HOLDINGS, LLC
OPERATION SITE

EVANS LEASE
SECTION 8, ABSTRACT 17, BLOCK X, H.P.
HILLIARD SURVEY, MIDLAND COUNTY, TEXAS

NEWTON ENGINEERING, P.C.
4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499



JOB NO: 11-ME0007



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:45 a.m. and consider an ordinance on a request by David Miller for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

Purpose:

Hold a public hearing at approximately 10:45 a.m. and consider an ordinance on a request by David Miller for a zone change from PD, Planned District for a Housing Development to an Amended Planned District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The subject property contains 14 acres, and is located on the south side of Wadley Avenue, 450 feet east of Sunburst. On October 9, 2012 the City Council approve a zone change that adopted site plans allowing the construction of apartments. The applicant is now requesting that the elevation drawings for the original approval be replaced by a revised set. No other changes are proposed. The proposal includes 290 dwelling units and a density of 21 dwelling units per acre. The apartments are proposed to be three stories tall, and the location of the buildings on the site is unchanged.

The principle changes on the revised site plan include exterior building materials and the roof line. The original plans specified that the exterior of the apartment buildings would be 100 percent Stucco, except that exterior hallways would be a siding material. The revised

site plan has removed all references to Stucco. Instead, a brick wainscot would be provided from the bottom of the buildings to the bottom of the first floor windows. Additional brick details extend to the top of some of the arches used to define some of the architectural features. The balance of the building exterior would be lap siding using fiber cement board. While compositions shingles are planned for both roofs, the slope on the proposed site plan appears to be slightly shallower than on the approved site plan. However, neither set of site plans called out the specific roof slope. Finally, there are minor architectural changes, such as the removal of roof dormers and less attractive overhead garage doors. The Planning and Zoning Commission recommended unanimous approval of this request, and there were no negative public comments noted.

Attachments:

December 17th, 2012 P&Z Report
Proposed Ordinance and Exhibits A-E

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 14.05-ACRE TRACT OF LAND OUT OF SECTION 19, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED AT THE SOUTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 450 FEET EAST OF SUNBURST DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an Amended Planned District, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development, and it shall be used as an Amended Planned District, subject to the special conditions and restrictions hereinafter set out, said property being described as

follows:

A 14.05-acre tract of land out of Section 19, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “F”, which is attached hereto and incorporated herein.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of apartments on this prshall conform to the conditions shown on Exhibits “A”, “B”, “C”, “D” and “E”, which are attached hereto and incorporated herein.
2. That the maximum number of dwelling units shall not exceed 290, and the maximum density shall not exceed 21 units per acre.
3. That the development of this property shall comply with all applicable City of Midland regulations regarding signs, landscaping, outdoor lighting and the requirement for the screening of solid waste containers.
4. That the maximum building height shall not exceed three stories or 50 feet.
5. That City of Midland Ordinance No. 9062 is hereby repealed.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2013; 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., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS ____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

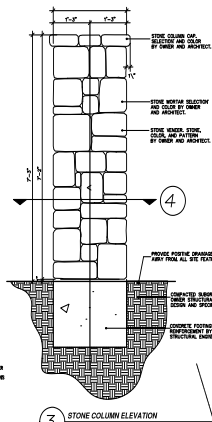


WADLEY AVE
SCALE 1"=60'-0"



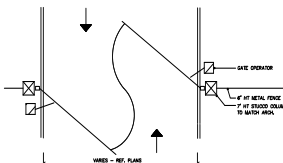
REFER TO LANDSCAPE SHEET FOR BALANCE OF
LANDSCAPE DESIGN INFORMATION.

4 STONE COLUMN SECTION

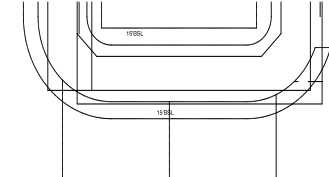


3 STONE COLUMN ELEVATION

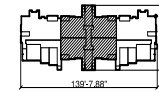
5 DOUBLE SWING GATES



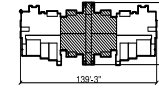
6 DOUBLE SWING GATES



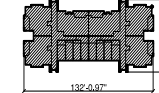
BUILDING LEGEND



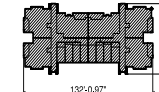
BUILDING A



BUILDING B



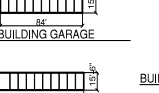
BUILDING D #3, 4, 11



BUILDING D #5, 7



BUILDING LEASING



BUILDING GARAGE



BUILDING MAIL

UNIT TABULATION				PARKING TABULATION			
UNIT	AREA	NO.	% TOTAL AREA	PROVIDED	800	SPACES	(2.18 PRG)
A1	1,137	48	18.05%	32	376		
A2	1,137	48	18.05%	32	376		
A3	1,137	48	18.05%	32	376		
A4	1,137	48	18.05%	32	376		
A5	1,137	48	18.05%	32	376		
A6	1,137	48	18.05%	32	376		
A7	1,137	48	18.05%	32	376		
A8	1,137	48	18.05%	32	376		
A9	1,137	48	18.05%	32	376		
A10	1,137	48	18.05%	32	376		
A11	1,137	48	18.05%	32	376		
A12	1,137	48	18.05%	32	376		
A13	1,137	48	18.05%	32	376		
A14	1,137	48	18.05%	32	376		
A15	1,137	48	18.05%	32	376		
A16	1,137	48	18.05%	32	376		
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A98	1,137	48	18.05%	32	376		
A99	1,137	48	18.05%	32	376		
A100	1,137	48	18.05%	32	376		

SITE LEGEND

Diagram 1: Building types with setbacks. A building with a 10' setback is labeled 'TYPICAL BUILDING SPACE'. A building with a 15' setback is labeled 'HANDICAPPED BUILDING SPACE'. A building with a 20' setback is labeled '30% ACCESSIBLE HANDICAPPED SPACE'.

Diagram 2: A vertical dimension line showing a 10' MINIMUM setback from a building to a sidewalk.

Diagram 3: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 4: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 5: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 6: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 7: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 8: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 9: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 10: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 11: A building footprint with a 10' MINIMUM setback from a sidewalk.

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Diagram 366: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 367: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 368: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 369: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 370: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 371: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 372: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 373: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 374: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 375: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 376: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 377: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 378: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 379: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 380: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 381: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 382: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 383: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 384: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 385: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 386: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 387: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 388: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 389: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 390: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 391: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 392: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 393: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 394: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 395: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 396: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 397: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 398: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 399: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 400: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 401: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 402: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 403: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 404: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 405: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 406: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 407: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 408: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 409: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 410: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 411: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 412: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 413: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 414: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 415: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 416: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 417: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 418: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 419: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 420: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 421: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 422: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 423: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 424: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 425: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 426: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 427: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 428: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 429: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 430: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 431: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 432: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 433: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 434: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 435: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 436: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 437: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 438: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 439: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 440: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 441: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 442: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 443: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 444: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 445: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 446: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 447: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 448: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 449: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 450: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 451: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 452: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 453: A building footprint with a 10' MINIMUM setback from a sidewalk.

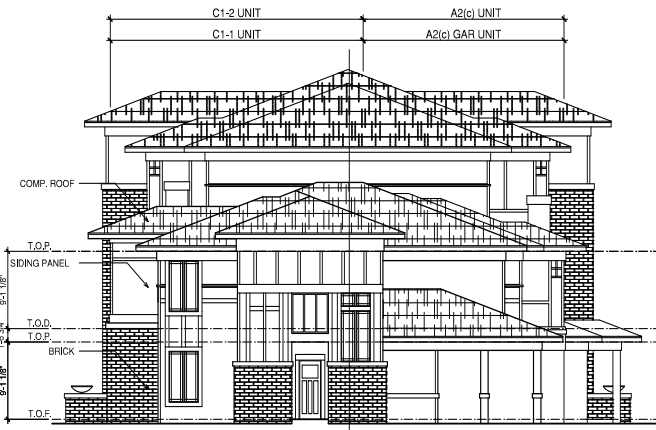
Diagram 454: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 455: A building footprint with a 10' MINIMUM setback from a sidewalk.

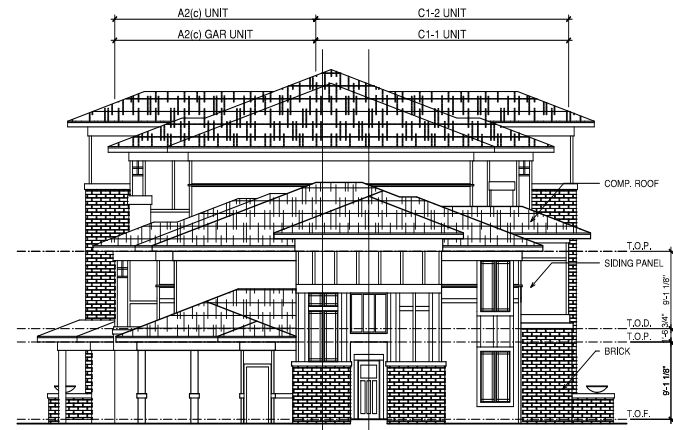
Diagram 456: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 457: A building footprint with a 10' MINIMUM setback from a sidewalk.

Diagram 458: A building footprint with a



4 END ELEVATION
SCALE: 1/8"=1'-0"



3 END ELEVATION
SCALE: 1/8"=1'-0"



2 REAR ELEVATION
SCALE: 1/8"=1'-0"



1 FRONT ELEVATION
SCALE: 1/8"=1'-0"



REVISIONS

NO.	DATE	DESCRIPTION

WADLEY APARTMENTS

in MIDLAND, TX for:
PRESTON WADLEY, LLC



4144 N. Central Expy., Suite B55
Dallas, TX 75204
214.920.6878
bgoarchitects.com

DATE

10-03-12

PROJECT

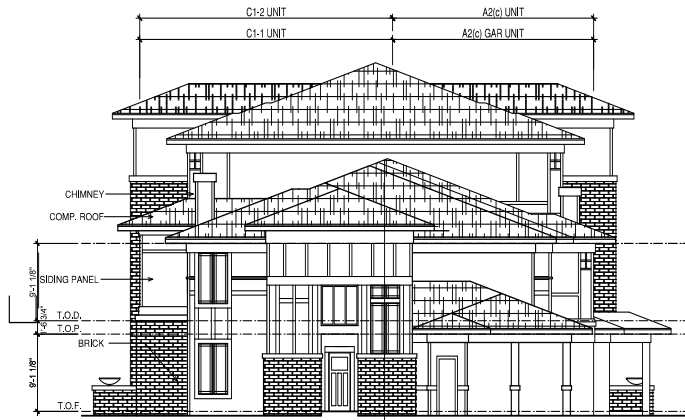
12147

SHEET NUMBER

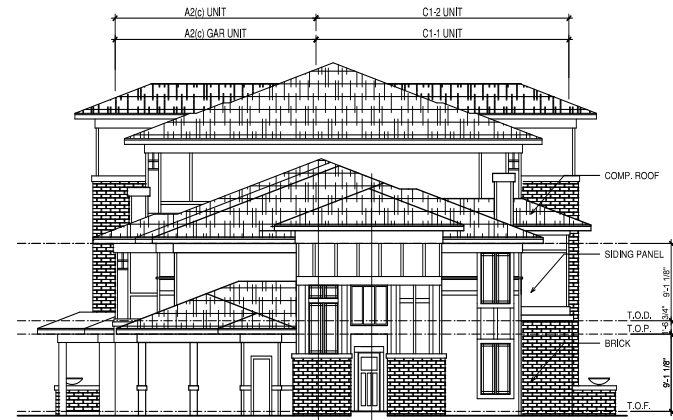
4.3

BUILDING 'B'
ELEVATIONS

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4 END ELEVATION
SCALE: 1/8"=1'-0"



3 END ELEVATION
SCALE: 1/8"=1'-0"



2 REAR ELEVATION
SCALE: 1/8"=1'-0"



1 FRONT ELEVATION
SCALE: 1/8"=1'-0"



REVISIONS

NO.	DATE	DESCRIPTION

WADLEY APARTMENTS
in MIDLAND, TX for:
PRESTON WADLEY, LLC



4144 N. Central Exp.,
Suite 855
Dallas, TX 75204
214.520.8878
bgoarchitects.com

DATE

10-03-12

PROJECT

12147

SHEET NUMBER

3.3

BUILDING 'A'
ELEVATIONS



3 BUILDING 'D' - END ELEVATIONS
SCALE: 1/8"=1'-0"



2 BUILDING 'D' - REAR ELEVATION
SCALE: 1/8"=1'-0"



1 BUILDING 'D' - FRONT ELEVATION
SCALE: 1/8"=1'-0"



REVISIONS

WADLEY APARTMENTS

in MIDLAND, TX for:
PRESTON WADLEY, LLC



4144 N. Central Expy.
Suite B55
Dallas, TX 75204
214.520.8878
bgoarchitects.com

DATE

10-03-12

PROJECT

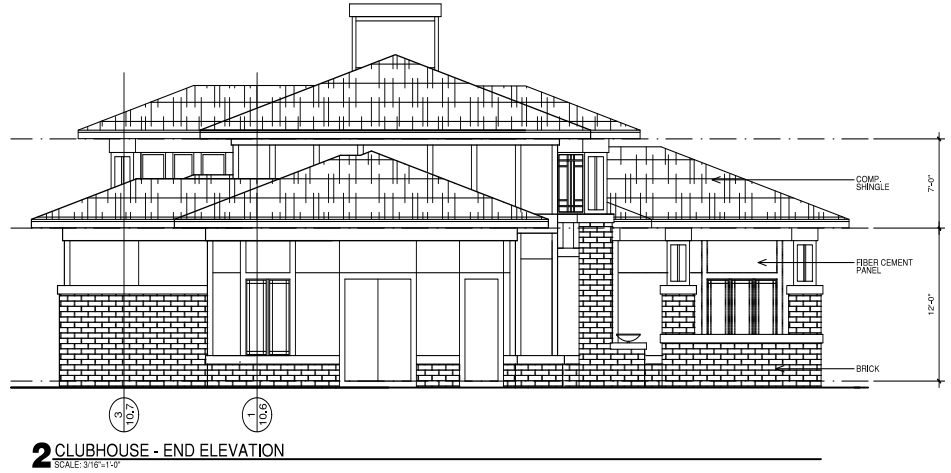
12147

SHEET NUMBER

5.5

BUILDING 'D'
ELEVATION

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REVISIONS	

WADLEY APARTMENTS
in MIDLAND, TX for:
PRESTON WADLEY, LLC

BGO
architects
4144 N. Central Expy.
Suite 855
Dallas, TX 75204
214.520.8878
bgoarchitects.com

DATE
10-03-12

PROJECT
12147

SHEET NUMBER

10.4
CLUB
ELEVATIONS

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PLANNING AND ZONING COMMISSION

December 17, 2012

CASE: Z-12-055.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

APPLICANT: McDougal Construction.

OWNER: Weidner Investment Services.

LEGAL DESCRIPTION: A 14.05-acre tract out of Section 19, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: South side of Wadley Avenue, approximately 450 feet east of Sunburst Drive.

DETAILS OF REQUEST:

1. On August 20, 2012 the Planning and Zoning Commission considered a request to rezone this property from Planned District for a Housing Development to an Amended Planned District. The proposal was to adopt site plans allowing the construction of apartments on this vacant 14-acre tract. The City Council agreed with the Commission's recommendation, and adopted Ordinance 9062 on October 9, 2012. We have since received a request to amend this ordinance by substituting an amended set of building elevations.

SURROUNDING ZONING AND LAND USE:

2. This tract is bounded on the north by Wadley Avenue, an arterial street, and on the south by Preston Drive, a neighborhood collector street. The area to the north, across Wadley Avenue, is zoned for medium density residential development, and is fully developed. The area to the east is zoned Planned District for a Housing Development, MF-1 District and 2F District; it is fully developed in accordance to the respective zoning districts. The area to the south is zoned 1-3 District, and is the location of Bush Elementary School and a City-owned storm water detention basin. The land to the west is comprised of several Planned Districts for Shopping Centers, and is developed with various retail uses.

ANALYSIS:

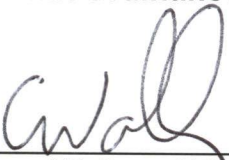
3. Some of the significant details of the approved site plans are as follows:
 - A. The maximum number of dwelling units is 290 dwelling units; the maximum density is 21 dwelling units per acre.
 - B. The maximum building height shall not exceed three stories of 50 feet.
 - C. Development is required to conform to various standing regulations, including the Sign, Landscaping, Outdoor lighting and screening requirements.
 - D. Conformance to a series of four site plans is required.

No changes to the basic elements of the original zoning are proposed, and no changes to access or building placement are planned. It is still a gated community planned for 290 dwelling units. The principle changes are to the architectural style and exterior building materials illustrated in the elevation drawings. The most significant changes are to the exterior building materials and to the roofline. The approved site plan specifies a 100 percent Stucco exterior, except that siding is proposed for exterior hallways and stairwells. The proposed site plans (Exhibits A, B, C and D) have added several face brick elements, but has removed references to Stucco, and replaced it with a higher percentage of an unspecified siding material. Further, while composition roof shingles are still proposed, the angle of the roof line appears to be shallower, although roof slopes are not specified on either set of site plans. Finally, there are subtle changes in the architectural elements, such as the removal of arches, less decorative overhead doors, and removal of dormers. While the impacts of such changes are clearly subjective, the staff finds that the conditions on the amended site plans will result in somewhat less attractive buildings when compared to the original submittal. This is not to suggest that the revised plan is not acceptable, it is possible the staff would have supported the amended site plan had it been the initial submittal. Zoning decisions must not be based on aesthetic principles alone, but on whether the proposal is appropriate for the site. But because of the proposed changes, the staff believes that it is in the public interest to reconsider the changes in a public hearing format, to allow abutting property owners a chance to comment on the changes. We recommend that the Commission give substantial weight to any comments received during the public hearing.

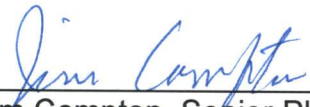
STAFF RECOMMENDATION:

We consider the appropriateness of these amended site plans to be a judgment matter to be determined by the Planning and Zoning Commission. If the Commission finds this request to be reasonable, we would recommend approval of this request for a zone change from PD, Planned District for a Housing Development to an Amended Planned District, subject to the following conditions:

- A. That the development of apartments on this property shall conform to the conditions shown on Exhibits A, B, C, D and E in all respects, except as otherwise stated below.
- B. That the maximum number of dwelling units shall not exceed 290, and the maximum density shall not exceed 21 dwelling units per acre.
- C. That the development of this property for apartments shall conform to all applicable regulations of the Sign, Landscaping, Outdoor Lighting Codes and to the requirement for screening solid waste container sites.
- D. The maximum building height shall not exceed three stories or 50 feet.
- E. That Ordinance 9062 is repealed.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A-E

Case Number: Z-12-055

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

McDougal Construction, LLC
Applicant Name

806-239-5914
(Phone/e-mail)

5001 West Loop 289
Address

79414
Zip Code

Weidner Investment Services
Property Owner Name

425-823-0906
(Phone/e-mail)

9757 NE Juanita Ave., # 300
Address

98034
Zip Code

David Miller
Representative Name

806-239-5914
(Phone/e-mail)

5001 West Loop 289
Address

79414
Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Wadley

Wylewood Estates, Section 29
Section 19, Block 39, T-1-S, T. & P. RR.

14.105 AC

PRESENT ZONE: _____ REQUESTED ZONE: _____
(List by tracts if more than one district is requested)

Reason for Zone Change Request: _____

Present Use of Property: Vacant

Proposed Use of Property: Apartment

How will zone change affect the public health, safety and welfare? N/A

Describe how conditions affecting the property have changed since present zoning designation:

N/A

Is a Specific Use Permit with Term for alcoholic beverages sales needed? _____ Yes X No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: _____ ✓

Site Plan in digital format .pdf and .jpg: _____ ✓

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): David R. Miller Date: 12/7/12

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

David Ray Miller who, being by me duly sworn, upon oath says: That (s)he is authorized by WEIDNER INVESTMENTS, 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.

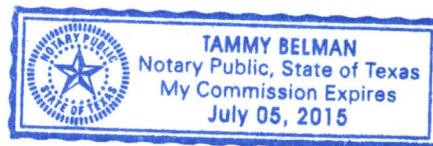
David R. Miller

Authorized Agent (signature)

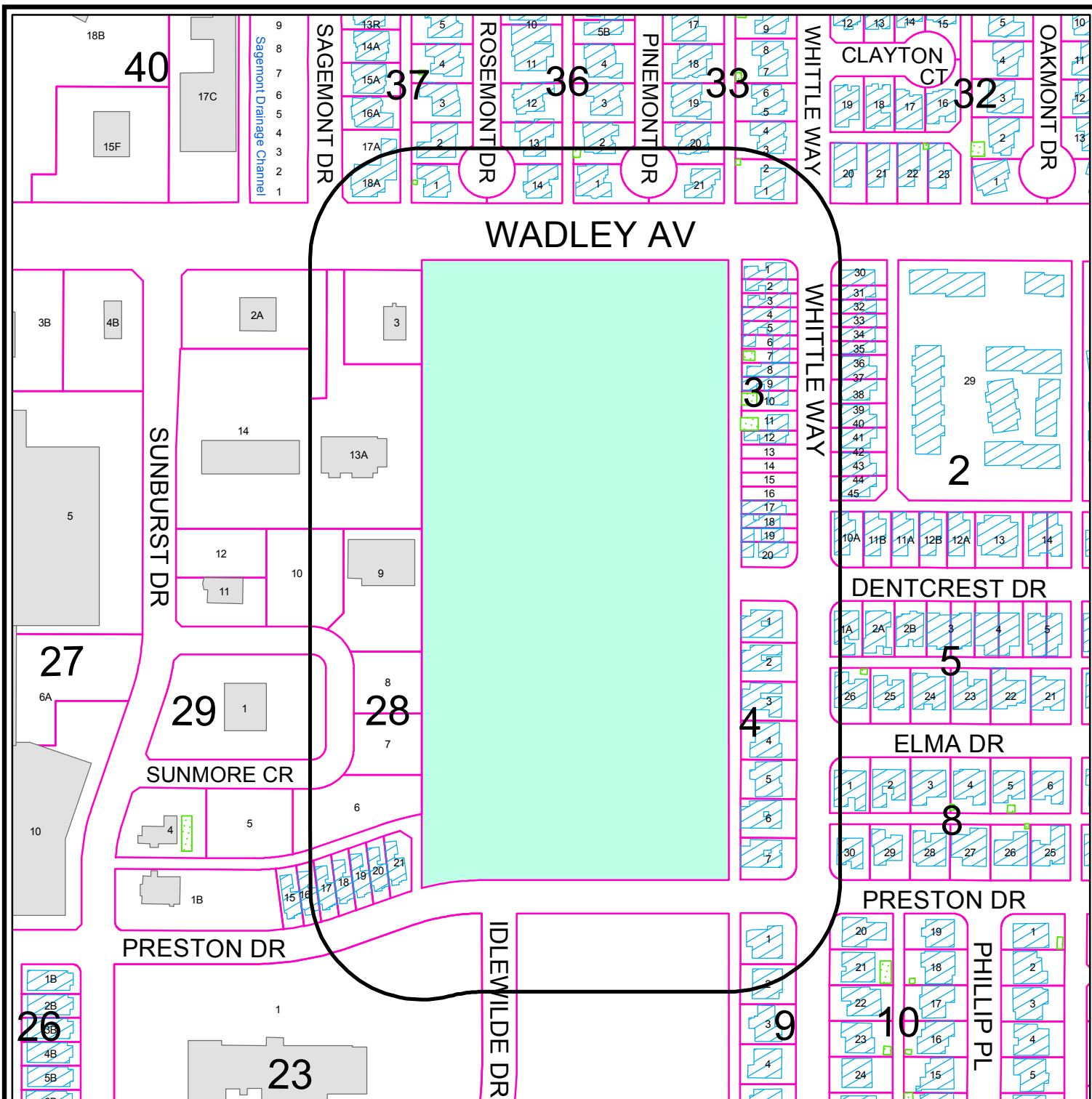
Subscribed and sworn to before me, this 7 day of December, 20 12, to certify which witness my hand and seal of office.

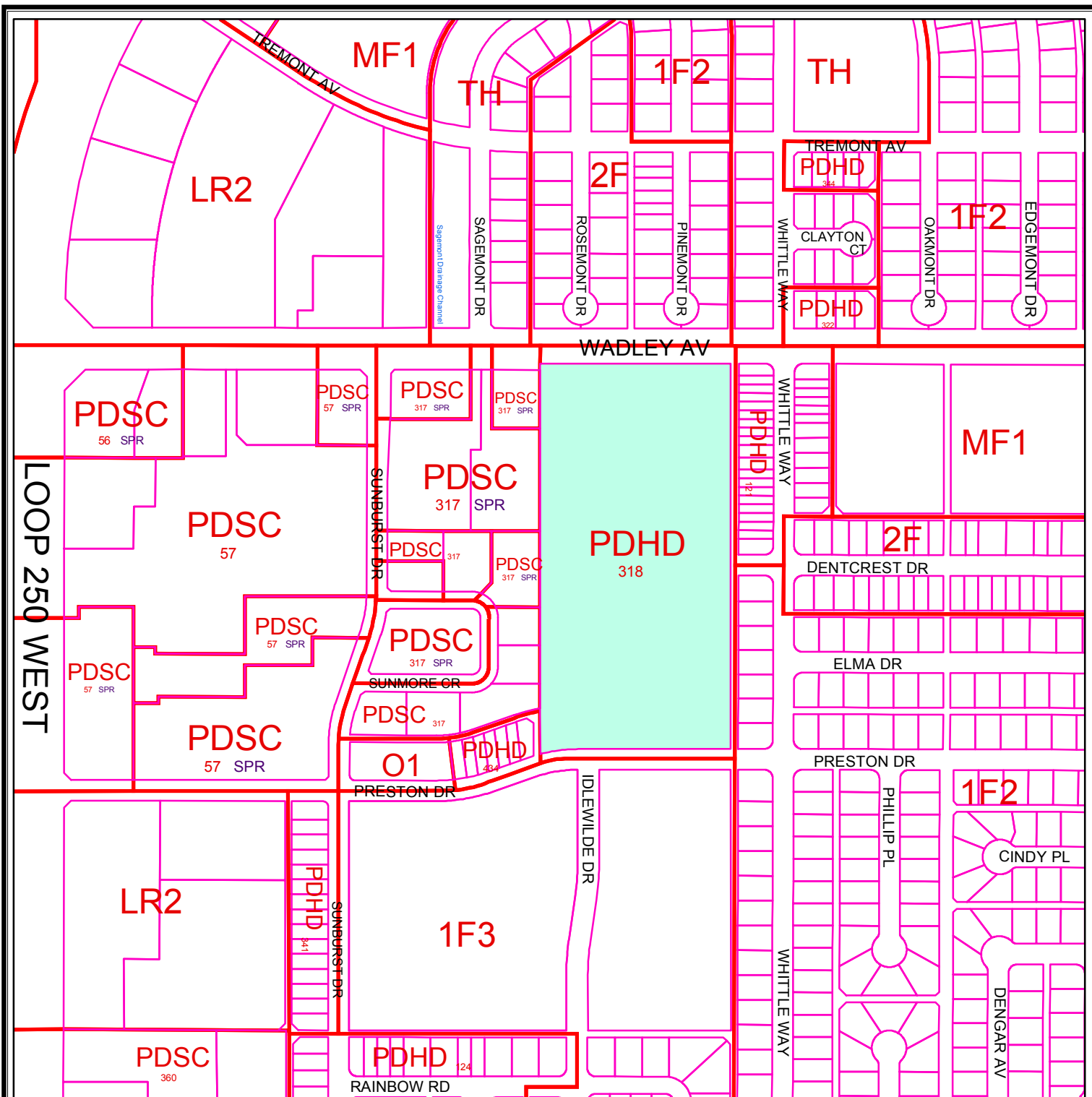
Tammy Belman
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>ang</u>	Date: <u>12/7/12</u>
Assigned: _____	
For: _____	On: _____



****Application will not be considered for scheduling until reviewed by a planner.****





ZONING MAP

Z - 12 - 055

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on 14.05-acres out of Section 19, Block 39, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to Endeavor Energy Resources, L.P. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Chaps No. 2) located 2,167 feet from the north line and 600 feet from the west line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the south side of the Passage Way, approximately 600 feet east of N. Midkiff Road.)

Purpose:

To consider a resolution approving the issuance of a permit to Endeavor Energy Resources, L.P. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Chaps No. 2) located 2,167 feet from the north line and 600 feet from the west line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. Four letters of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application approval with the following recommendations: identify the Atoka formation, certify wells inside the city limits, Certificate of Liability Insurance- Sudden and Accidental to cover a longer time period of 30 days to *discover an incident* and 90 days to *report* instead of 10 and 30 days respectively or add Control of Well that includes these time periods. Emergency response map needs to identify well location. Endeavor has notified the City since the last public meeting that a surface agreement has not been obtained. Endeavor Energy has addressed Committee recommendations and updated application except for the surface agreement.

Attachments: Application; Map; Exhibit - Drill site map, Exhibit – Flow Line Location, Exhibit – Aerial Map, Exhibit- Surface Ownership map 860 ft.

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO ENDEAVOR ENERGY RESOURCES, LP (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2,167 FEET FROM THE NORTH LINE AND 600 FEET FROM THE WEST LINE, SECTION 9, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF PASSAGE WAY, APPROXIMATELY 600 FEET EAST OF NORTH MIDKIFF ROAD)

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance

with Section 6-1-23(H)(1) and a public hearing was held on November 13, 2012; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 2,167 feet from the north line and 600 feet from the west line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on January 8, 2013, considered the application of Endeavor Energy Resources, LP, dated August 13, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Endeavor Energy Resources, LP, dated August 13, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Endeavor Energy Resources, LP, Chaps No. 2 oil and gas well shall be 2167 feet from the north line and 600 feet from the west line, Section 9, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Endeavor Energy Resources, LP, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from January 8, 2013, through January 8, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

NOTWITHSTANDING ANY OTHER PROVISION, ENDEAVOR ENERGY RESOURCES, LP, HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY OF MIDLAND, CITY OF MIDLAND'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH ENDEAVOR ENERGY RESOURCES, LP, 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 OWNERS NEGLIGENCE.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

This permit does not require or mandate the drilling of a water well. This permit does not require or mandate the planting of any landscaping or tree or the irrigation of any trees.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Endeavor Energy Resources, LP, shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Endeavor Energy Resources, LP, application for said well. Endeavor Energy Resources, LP, application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of January, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of January, 2013.

Endeavor Energy Resources, LP

By: _____

Michael A. Short

General Counsel, Vice President, Land

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Michael A. Short, Vice President, Land

Endeavor Energy Resources, LP
110 N. Marienfeld St., Ste 200
Midland, Texas 79701
(432)687-1575

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the

inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then

forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

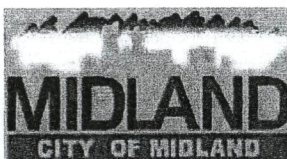
If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Michael A. Short, General Counsel, Vice President, Land

Endeavor Energy Resources, LP
110 N. Marienfeld, Suite 200
Midland, Texas 79701
(432) 687-1575



0-12-017

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date August 13, 2012	Operator Name (must match W-1) Endeavor Energy Resources, LP	Operator Address 110 N. Marienfeld, Suite 200 Midland, TX 79701
Representative Name Michael A. Short General Counsel, Vice President, Land	Representative Address (within Midland City Limits) 110 N. Marienfeld St., Ste. 200 Midland, TX 79701	Rep. Tele. 432-687-1575 Rep. Fax 432-682-3088
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services -No. 1 (Tele.): No. 2 (Tele.): Option B: Company Compliance Representative (Name, Address, Local Telephone): Alin Richardson 3345 Acapulco Road Midland, Texas 79705 432-664-1587 See attached statements		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Val Joe Walker, Safety Manager for Endeavor Energy Resources, LP: 432-262-4299 or 432-631-8968 Midland Police Department: 911 or 432-685-7110 Midland Fire Department: 911 Ambulance: 911 Paramedics: 911		
Other Permitted Wells in City (<i>ATTACH EXHIBIT B</i> [see § J(26)]). See attached		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): See attached – List of Names and Addresses of Mineral Estate Lessors and Supplemental Drilling and Division Order Title Opinion dated July 10, 2012 by Robert A. Spears at Lynch, Chappell & Alsop		
<i>ATTACHED AS EXHIBIT C is (a Title Opinion by , a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from , a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)]. See attached</i>		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Pasture and residential See attached a list of surface owners and their respective addresses.		
<i>ATTACHED AS EXHIBIT D is (a Title Opinion by , a licensed Texas Attorney/a Take-off from , a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)]. See attached</i>		
<i>ATTACHED AS EXHIBIT E is a (map/plat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].</i>		
<i>ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)]. See attached</i>		

IV. Well & Operations Information

Proposed Well Name: Chaps No. 2

ATTACHED IN EXHIBIT G -Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:
See attached

Legal Description of Proposed Well:

2167' FNL & 600' FWL

Southeast Quarter of the Northwest Quarter (SE/4NW/4) Section 9, Block X, H. P. Hilliard Survey, Midland County, Texas

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. *ATTACHED AS EXHIBIT H* is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. *ATTACHED AS EXHIBIT I* is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (*also file copy of W-1 with City Secretary before commencement of drilling operations*). [See § J(16) and (20)]. *ATTACHED AS EXHIBIT J* is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)]. *ATTACHED AS EXHIBIT K (if applicable)* is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)]. *ATTACHED AS EXHIBIT L* is the Fencing and Irrigation Plan. [See § J(30)]. *ATTACHED AS EXHIBIT M* is the Road Repair Agreement and *Letter of Credit/Certificate of Deposit/Surety Bond* in the amount of at least \$75,000. *Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):* Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 *letter of credit/certificate of deposit/surety bond* in conjunction with this request. [See § J(31)]. *ATTACHED AS EXHIBIT N* is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. See attached

Description of Public Utilities required during (1) drilling and (2) operations: (1) Drilling: (2) Operations:

Electricity

TXU: 1-800-233-2133

Description of water source to be used during Drilling:

Water well on location

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See attached plat

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: See attached

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)]. *ATTACHED AS EXHIBIT Q* are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. *ATTACHED AS EXHIBIT R* is the required Insurance Certificate. [See § J(19) and § K(3)]. *ATTACHED AS EXHIBIT S (if applicable)* is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. *ATTACHED AS EXHIBIT T* is Applicant's Emergency Action Response Plan. [See § J(22)]. *ATTACHED AS EXHIBIT U* is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

[SIGNATURE PAGE FOLLOWS]

CERTIFICATION OF APPLICATION

My name is Michael A. Short. I am General Counsel, Vice President, Land for Endeavor Energy Resources, LP.

I hereby certify that the information contained in this application is true and correct.

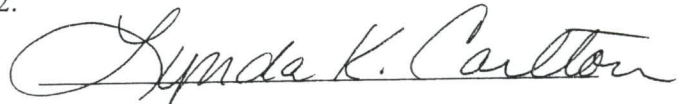


Michael A. Short
General Counsel, Vice President, Land
Endeavor Energy Resources, L.P.

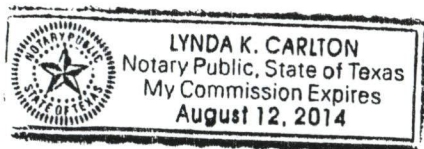
THE STATE OF §
 §
County of Midland §

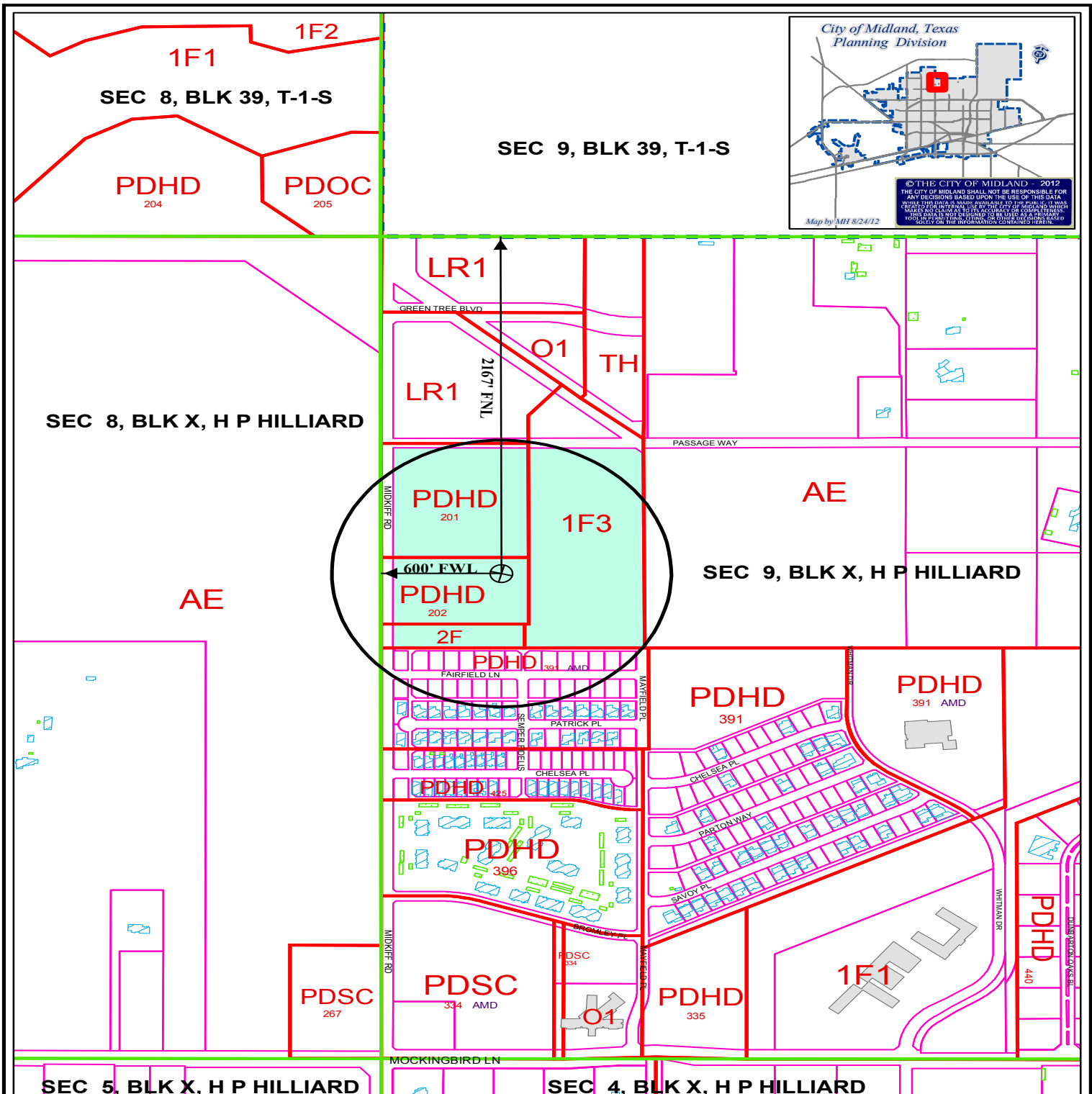
Before me, undersigned authority, on this day personally appeared Michael A. Short, General Counsel, Vice President, Land of Endeavor Petroleum, L.L.C., a Texas limited liability company, in its capacity as General Partner of ENDEAVOR ENERGY RESOURCES, L.P., a Texas limited partnership, on behalf of said limited partnership.

Given under my hand and seal of office this the 13th day of
August, A.D. 2012.



Notary Public in and for the State of Texas





LOCATION AND ZONING MAP

O - 12 - 017

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2167' FNL and 600' FWL, SE/4 of the NW/4 of Section 9, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Chaps No. 2

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY

RECEIVED

OCT 25 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

(59440) 8 9 (S-20114)

10 (74569)

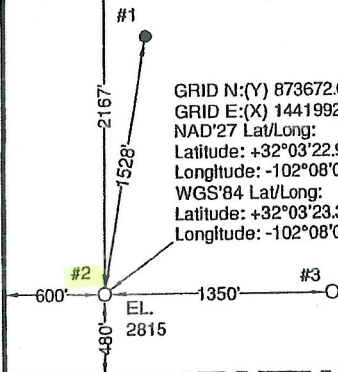
(S-44363) 8

ENDEAVOR ENERGY RESOURCES, L.P.

(S-44365) 9 10 (S-44366)

Abstract No. 1275
323.2 Acres

GRID N:(Y) 873672.027
GRID E:(X) 1441992.477
NAD'27 Lat/Long:
Latitude: +32°03'22.930"
Longitude: -102°08'03.531"
WGS'84 Lat/Long:
Latitude: +32°03'23.365"
Longitude: -102°08'05.035"

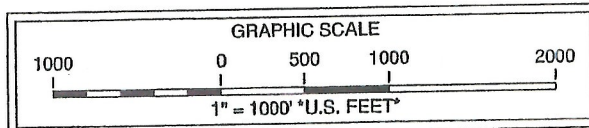


Chaps

Block X, H. P. Hilliard Survey
Midland County, Texas

(S-44361) 5 4 (S-44360)

3 (S-44359)



Note: City of Midland, Texas from well location bears S 37°44'55" E, 5.2 miles.
Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Acreages shown have been converted to surface acreages.
Note: Coordinates shown herein are on The Texas Coordinate System of 1927, Central Zone.
Note: Example: (S-99999) indicates General Land Office file number.



Stephen P. Marlowe
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715



October 19, 2008
08101982

USGS Quadrangle Sheet: Northwest Midland, Tex.

Railroad Commission Permit Plat

ENDEAVOR ENERGY RESOURCES, L.P.

Chaps #2

2167' FROM NORTH LINE

600' FROM WEST LINE

Chaps Lease

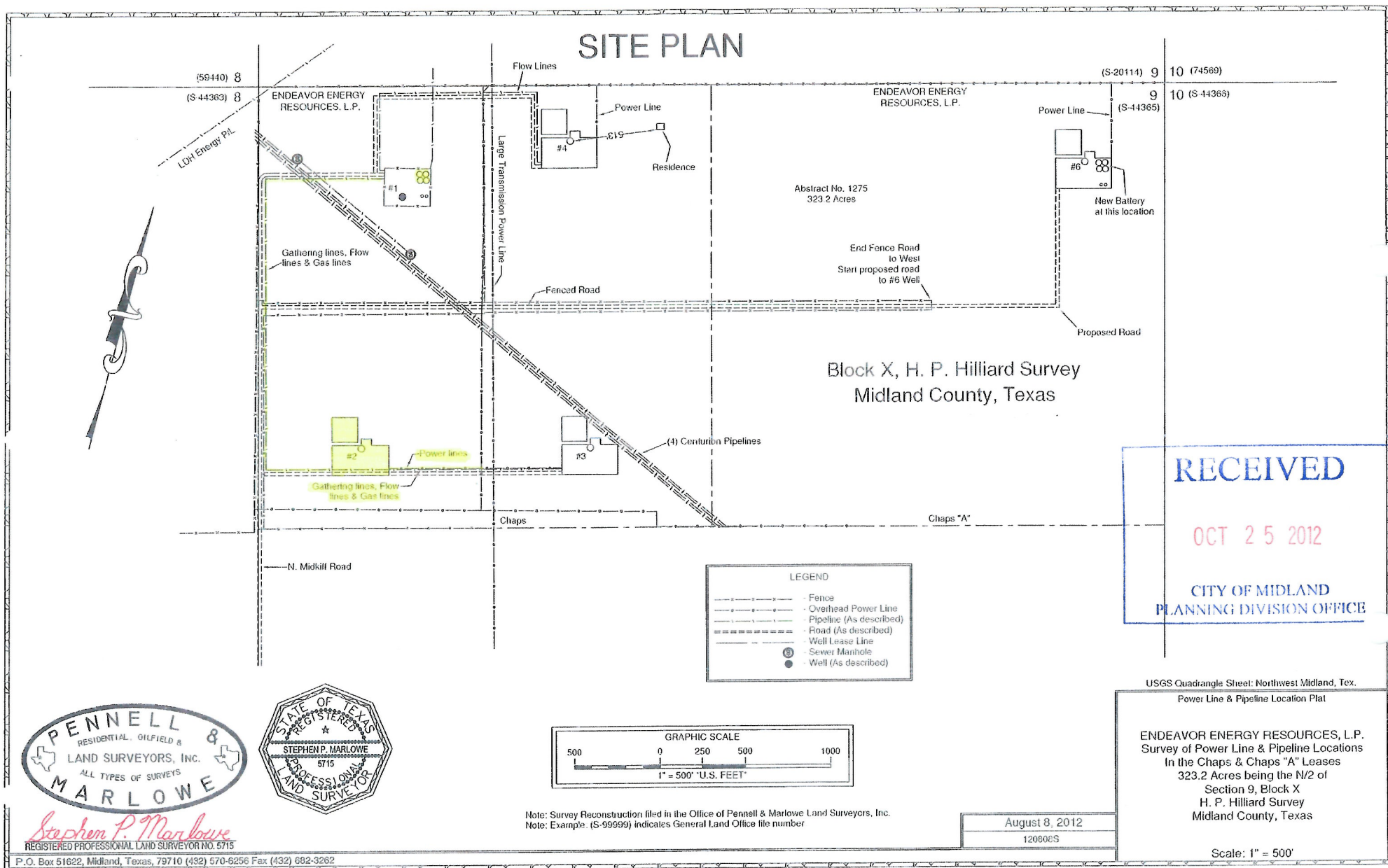
323.2 Acres being the N/2 of

Section 9, Block X

H. P. Hilliard Survey

Midland County, Texas

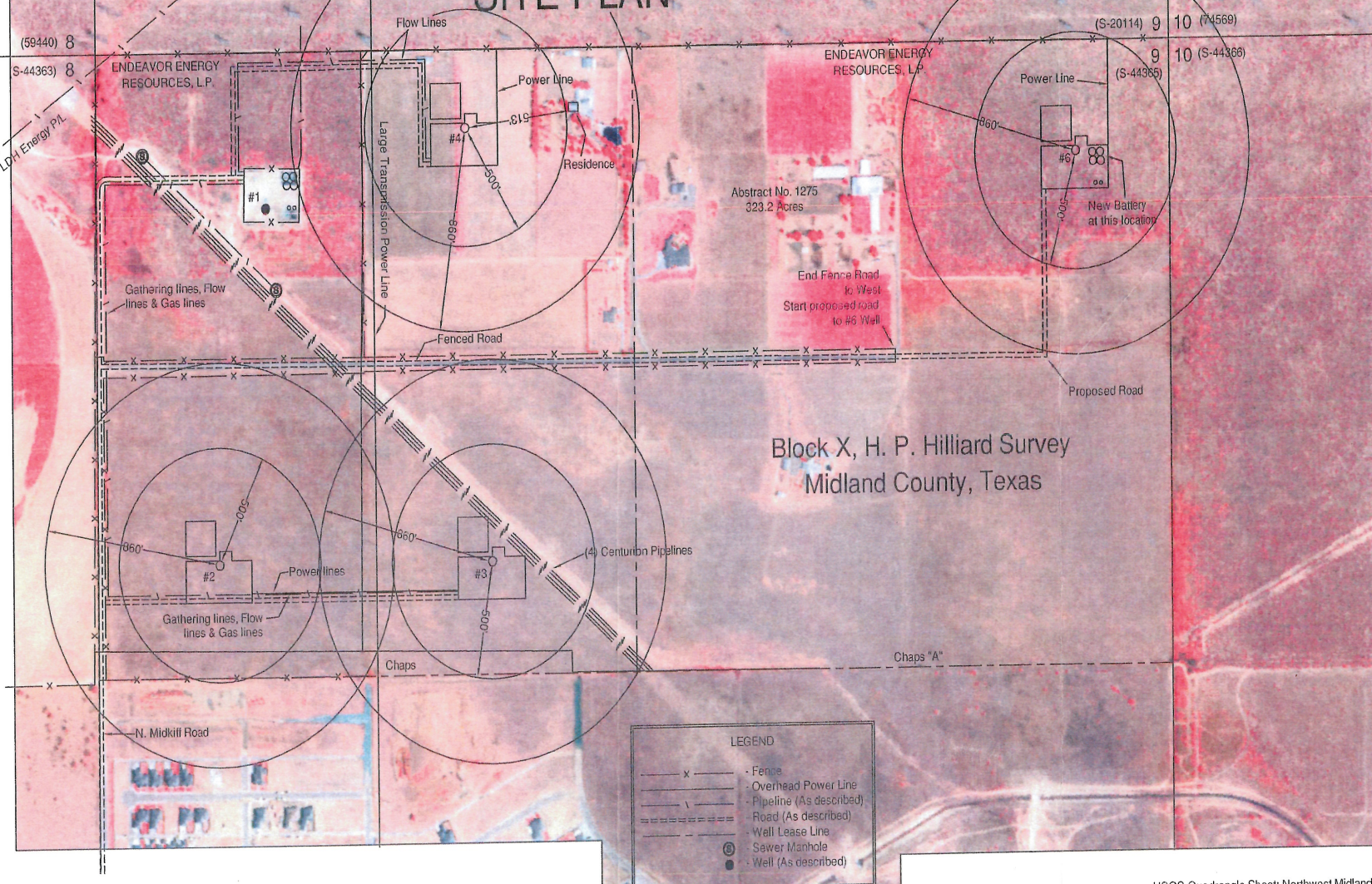
Scale: 1" = 1000'



FLOW LINE MAP

0-12-017

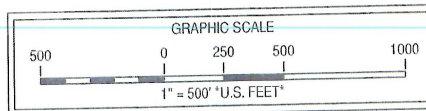
SITE PLAN



RECEIVED

OCT 25 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE



Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Example: (S-99999) indicates General Land Office file number.

August 8, 2012

12080852

USGS Quadrangle Sheet: Northwest Midland, Tex.

Power Line & Pipeline Location Plat

ENDEAVOR ENERGY RESOURCES, L.P.
Survey of Power Line & Pipeline Locations
In the Chaps & Chaps "A" Leases
323.2 Acres being the N/2 of
Section 9, Block X
H. P. Hilliard Survey
Midland County, Texas

Scale: 1" = 500'

AERIAL MAP

0-12-017

Endeavor Energy Chaps#2 Oil Well



WALTON JUDKINS
PO BOX 10692
MIDLAND TX

PASSAGE WAY

MULTIPLE OWNER
SEE ATTACHED LIST

EVANS I LTD
3700 MOCKINGBIRD LN
MIDLAND TX

N MIDKIFF RD

M JACKSON CONSTRUCTION I LTD
3209 CALDERA BLVD
MIDLAND TX

M JACKSON CONSTRUCTION I LTD
3209 CALDERA BLVD
MIDLAND TX

FAIRFIELD LN

WILLIAMS MICHAEL
3120 PATRICK PL
MIDLAND TX 79705

SUTTON STEVEN
3216 PATRICK PL
MIDLAND TX 79705

PATRICK PL

PATRICK PL

VARK WILLIAMS DOUGLAS
3124 PATRICK PL
MIDLAND TX 79707

DOLAPTCHIEV LUDMIL D
3212 PATRICK PL
MIDLAND TX 79705

CHELSEA PL

BOLDING DAVID
3200 PATRICK PL
MIDLAND TX 79705

MARTENS FRANK
3208 PATRICK PL
MIDLAND TX 79705

TODD WILL
3204 PATRICK PL
MIDLAND TX 79705

Legend

- Oil Well
- 860ft buffer
- Parcel
- Parcel Intersection 860ft

EG 9/24/12

1 inch = 420 feet

©THE CITY OF MIDLAND - 2012
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to Endeavor Energy Resources, L.P. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Chaps No. 3) located 2,167 feet from the north line and 1,950 feet from the west line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the south side of the Passage Way, approximately 1,950 feet east of N. Midkiff Road.)

Purpose:

To consider a resolution approving the issuance of a permit to Endeavor Energy Resources, L.P. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Chaps No. 3) located 2,167 feet from the north line and 1,950 feet from the west line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. Two letters of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application approval with the following recommendations: identify the Atoka formation, certify wells inside the city limits, Certificate of Liability Insurance- Sudden and Accidental to cover a longer time period of 30 days to *discover an incident* and 90 days to *report* instead of 10 and 30 days respectively or add Control of Well that includes these time periods. The surface owners and Endeavor Energy have come to an agreement. Endeavor Energy has addressed Committee recommendations.

Attachments: Application; Map; Exhibit - Drill site map, Exhibit – Flow Line Location, Surface Ownership Map 860 ft.

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO ENDEAVOR ENERGY RESOURCES, LP (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2,167 FEET FROM THE NORTH LINE AND 1,950 FEET FROM THE WEST LINE, SECTION 9, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF PASSAGE WAY, APPROXIMATELY 1,950 FEET EAST OF NORTH MIDKIFF ROAD)

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance

with Section 6-1-23(H)(1) and a public hearing was held on November 13, 2012; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 2,167 feet from the north line and 1,950 feet from the west line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on January 8, 2013, considered the application of Endeavor Energy Resources, LP, dated August 13, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Endeavor Energy Resources, LP, dated August 13, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Endeavor Energy Resources, LP, Chaps No. 3 oil and gas well shall be 2167 feet from the north line and 1950 feet from the west line, Section 9, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Endeavor Energy Resources, LP, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from January 8, 2013, through January 8, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

NOTWITHSTANDING ANY OTHER PROVISION, ENDEAVOR ENERGY RESOURCES, LP, HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY OF MIDLAND, CITY OF MIDLAND'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH ENDEAVOR ENERGY RESOURCES, LP, 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 OWNERS NEGLIGENCE.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

This permit does not require or mandate the drilling of a water well. This permit does not require or mandate the planting of any landscaping or tree or the irrigation of any trees.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Endeavor Energy Resources, LP, shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Endeavor Energy Resources, LP, application for said well. Endeavor Energy Resources, LP, application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of January, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of January , 2013.

Endeavor Energy Resources, LP

By: _____

Michael A. Short

General Counsel, Vice President, Land

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
 - i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
-------------	---

\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
--------------	--

d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Michael A. Short, Vice President, Land

Endeavor Energy Resources, LP
110 N. Marienfeld St., Ste 200
Midland, Texas 79701
(432)687-1575

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator

is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____

Michael A. Short, General Counsel, Vice President, Land

Endeavor Energy Resources, LP
110 N. Marienfeld, Suite 200
Midland, Texas 79701
(432) 687-1575



0-12-018

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date August 13, 2012	Operator Name (must match W-1) Endeavor Energy Resources, LP	Operator Address 110 N. Marienfeld, Suite 200 Midland, TX 79701
Representative Name Michael A. Short General Counsel, Vice President, Land	Representative Address (within Midland City Limits) 110 N. Marienfeld St., Ste. 200 Midland, TX 79701	Rep. Tele. 432-687-1575 Rep. Fax 432-682-3088

Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services -No. 1 (Tele.): No. 2 (Tele.):**Option B: Company Compliance Representative (Name, Address, Local Telephone):**Alin Richardson
3345 Acapulco Road
Midland, Texas 79705
432-664-1587

See attached statements See attached statements

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):Val Joe Walker, Safety Manager for Endeavor Energy Resources, LP: 432-262-4299 or 432-631-8968
Midland Police Department: 911 or 432-685-7110
Midland Fire Department: 911
Ambulance: 911
Paramedics: 911**Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).** See attached**II. Mineral Ownership****Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):**

See attached – List of Names and Addresses of Mineral Estate Lessors and Supplemental Drilling and Division Order Title Opinion dated July 10, 2012 by Robert A. Spears at Lynch, Chappell & Alsup

ATTACHED AS EXHIBIT C is (a Title Opinion by , a licensed Texas Attorney/Title Commitment by Abstract**Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from ,****a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)]. See attached****III. Surface Ownership & Use****General Description of Current Surface Use (within 860 feet of proposed surface location):**

Pasture and residential

See attached a list of surface owners and their respective addresses.

ATTACHED AS EXHIBIT D is (a Title Opinion by , a licensed Texas Attorney/a Take-off from**, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists****the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)]. See attached****ATTACHED AS EXHIBIT E is a (map/plot/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].****ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)]. See attached****IV. Well & Operations Information****Proposed Well Name:** Chaps No. 3**ATTACHED IN EXHIBIT G -Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**

See attached

Legal Description of Proposed Well Site

2167' FNL & 1950' FWL

Southwest Quarter of the Northwest Quarter (SW/4NW/4) Section 9, Block X, H. P. Hilliard Survey, Midland County, Texas

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. *ATTACHED AS EXHIBIT H* is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. *ATTACHED AS EXHIBIT I* is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (*also file copy of W-1 with City Secretary before commencement of drilling operations*). [See § J(16) and (20)]. *ATTACHED AS EXHIBIT J* is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)]. *ATTACHED AS EXHIBIT K (if applicable)* is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)]. *ATTACHED AS EXHIBIT L* is the Fencing and Irrigation Plan. [See § J(30)]. *ATTACHED AS EXHIBIT M* is the Road Repair Agreement and *Letter of Credit/Certificate of Deposit/Surety Bond* in the amount of at least \$75,000. *Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):* Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 *letter of credit/certificate of deposit/surety bond* in conjunction with this request. [See § J(31)]. *ATTACHED AS EXHIBIT N* is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. See attached

Description of Public Utilities required during (1) drilling and (2) operations: (1) Drilling: (2) Operations:

Electricity

TXU: 1-800-233-2133

Description of water source to be used during Drilling:

Water well on location

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See attached plat

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: See attached

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)]. *ATTACHED AS EXHIBIT Q* are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. *ATTACHED AS EXHIBIT R* is the required Insurance Certificate. [See § J(19) and § K(3)]. *ATTACHED AS EXHIBIT S (if applicable)* is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. *ATTACHED AS EXHIBIT T* is Applicant's Emergency Action Response Plan. [See § J(22)]. *ATTACHED AS EXHIBIT U* is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

[SIGNATURE PAGE FOLLOWS]

CERTIFICATION OF APPLICATION

My name is Michael A. Short. I am General Counsel, Vice President, Land for Endeavor Energy Resources, LP.

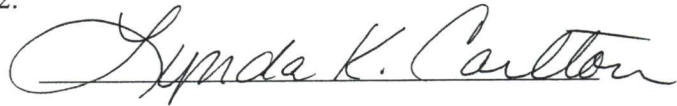
I hereby certify that the information contained in this application is true and correct.


Michael A. Short
General Counsel, Vice President, Land
Endeavor Energy Resources, L.P.

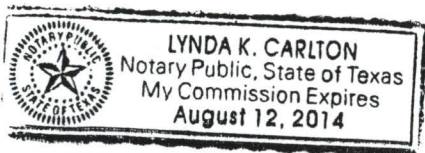
THE STATE OF §
 §
County of Midland §

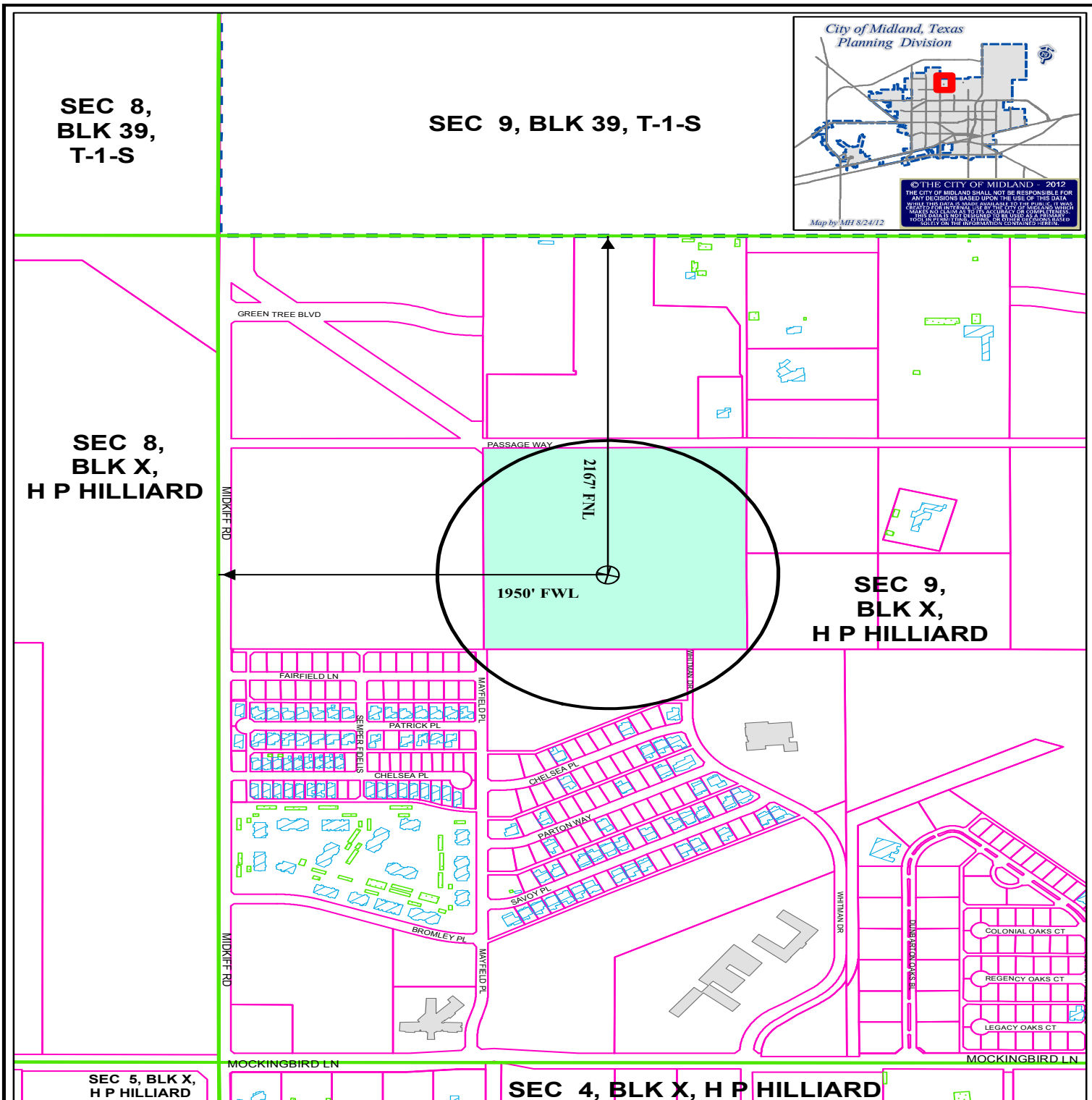
Before me, undersigned authority, on this day personally appeared Michael A. Short, General Counsel, Vice President, Land of Endeavor Petroleum, L.L.C., a Texas limited liability company, in its capacity as General Partner of ENDEAVOR ENERGY RESOURCES, L.P., a Texas limited partnership, on behalf of said limited partnership.

Given under my hand and seal of office this the 13th day of
August, A.D. 2012.



Notary Public in and for the State of Texas





LOCATION AND ZONING MAP

O - 12 - 018

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2167' FNL and 1950' FWL, SW/4 of the NW/4 of Section 9, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Chaps No. 3

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY

26.40

RECEIVED

OCT 25 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

(59440) 8 9 (S-20114)

10 (74569)

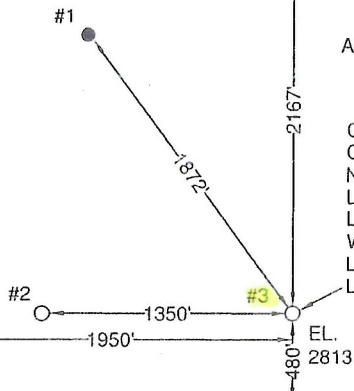
(S-44363) 8

ENDEAVOR ENERGY
RESOURCES, L.P.

(S-44365) 9 10 (S-44366)

Abstract No. 1275
323.2 Acres

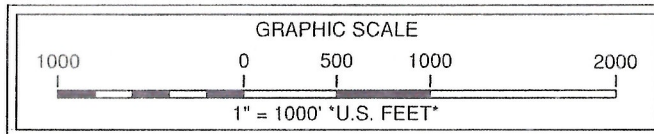
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WGS'84 Lat/Long:
Latitude: +32°03'26.902"
Longitude: -102°07'49.911"



Block X, H. P. Hilliard Survey
Midland County, Texas

(S-44361) 5 4 (S-44360)

3 (S-44359)



Note: City of Midland, Texas from well location bears S 35°07'49" E, 5.1 miles.
Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Acreages shown have been converted to surface acreages.
Note: Coordinates shown herein are on The Texas Coordinate System of 1927, Central Zone.
Note: Example: (S-99999) indicates General Land Office file number.

USGS Quadrangle Sheet: Northwest Midland, Tex.

Railroad Commission Permit Plat

ENDEAVOR ENERGY RESOURCES, L.P.

Chaps #3

2167' FROM NORTH LINE

1950' FROM WEST LINE

Chaps Lease

323.2 Acres being the N/2 of

Section 9, Block X

H. P. Hilliard Survey

Midland County, Texas

Scale: 1" = 1000'



October 19, 2008

081019B3

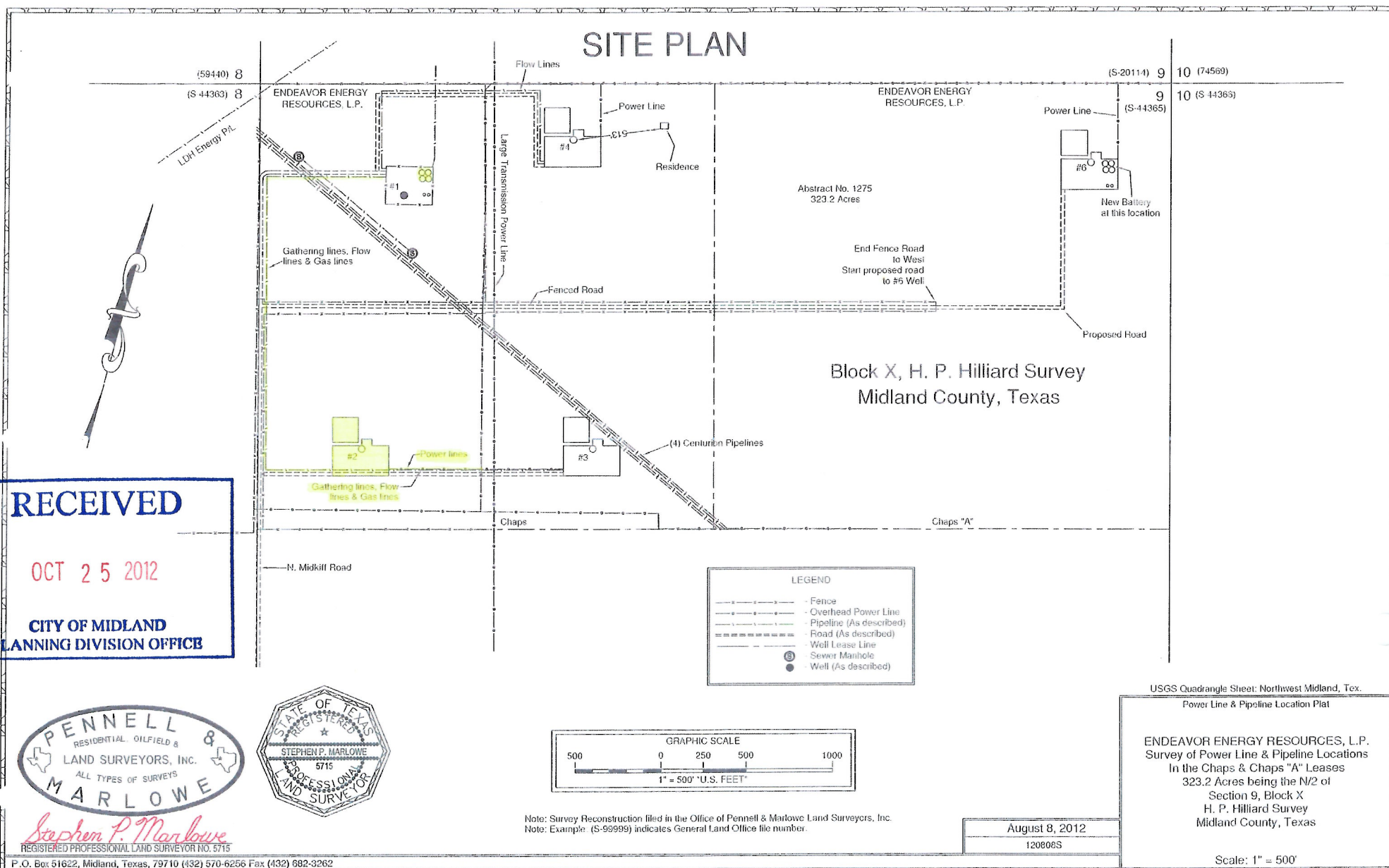
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715

P.O. Box 51622, Midland, Texas, 79710 (432) 570-6256 Fax (432) 682-3262

DRILL SITE MAP

0-12-018

26.41



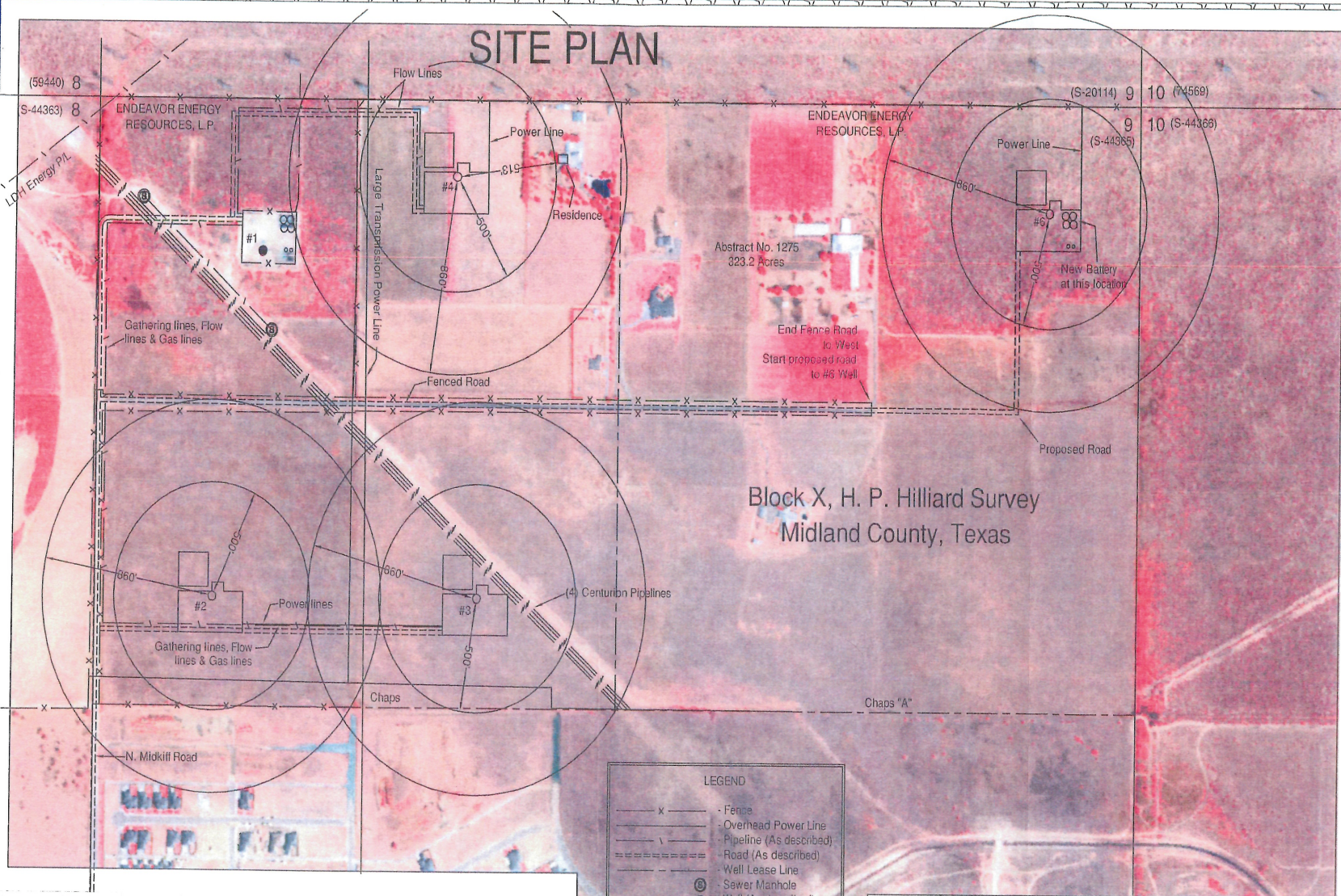
FLOW LINE MAP

0—12—018

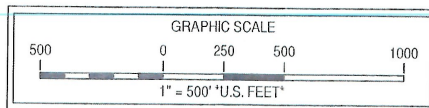
RECEIVED

OCT 25 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE



AERIAL MAP



Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Example: (S-99999) indicates General Land Office file number.

August 8, 2012

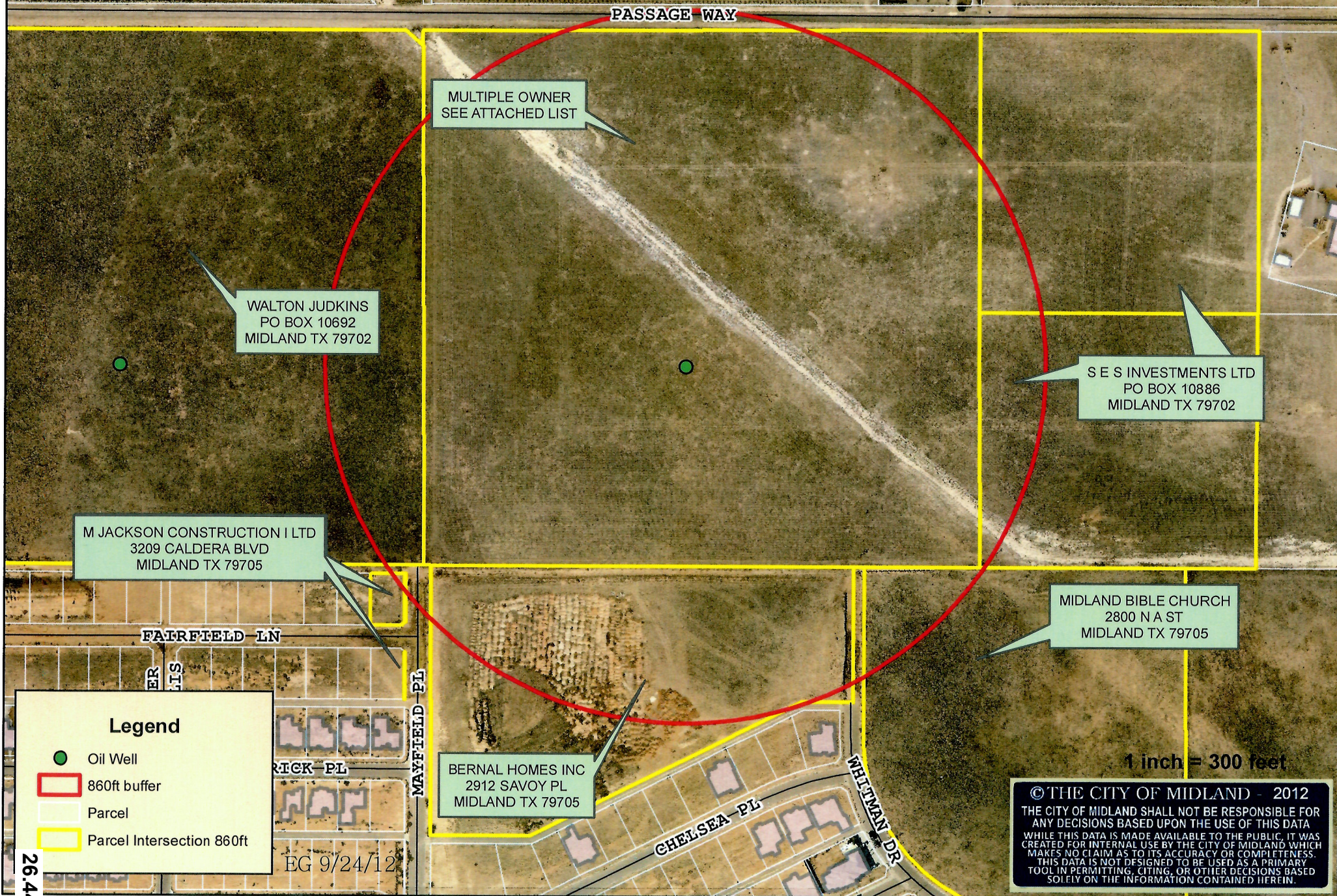
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USGS Quadrangle Sheet: Northwest Midland, Tex.
Power Line & Pipeline Location Plat

ENDEAVOR ENERGY RESOURCES, L.P.
Survey of Power Line & Pipeline Locations
In the Chaps & Chaps "A" Leases
323.2 Acres being the N/2 of
Section 9, Block X
H. P. Hilliard Survey
Midland County, Texas

Scale: 1" = 500'

Endeavor Energy Chaps#3 Oil Well





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution authorizing the execution of a road repair agreement with Endeavor Energy Resources, LP, regarding its applications to drill oil and gas wells (Chaps No. 2 and Chaps No. 3) within the City Limits, in Section 9, Block "X", H.P. Hilliard Survey, Midland County, Texas. The Road Repair Agreement will cover Midkiff Road and be in the amount of \$75,000.00.

Purpose:

Consider a resolution approving a road repair agreement between the City of Midland and Endeavor Energy Resources, LP.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

This agreement will cover the cost of road damages to Midkiff Road that are attributable to Endeavor Energy Resources, LP, in association with the above drilling permits. The total amount of the surety bond covering proposed and existing well sites within the City is \$75,000; this is the amount specified in the City's oil and gas drilling regulations.

Discussion:

Endeavor Energy Resources, LP, has met the requirements contained in the City code related to this matter.

Attachments: Draft agreement

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
ROAD REPAIR AGREEMENT WITH ENDEAVOR
ENERGY RESOURCES, LP REGARDING ITS
APPLICATIONS TO DRILL OIL AND GAS WELLS
(CHAPS NO. 2 AND CHAPS NO. 3) WITHIN THE CITY
LIMITS IN SECTION 9, BLOCK "X", H.P. HILLIARD
SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS**

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a road repair agreement with Endeavor Energy Resources, LP.;

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

THAT the Mayor is hereby authorized and directed to execute on behalf of the City of Midland, Texas, a road repair agreement with Endeavor Energy Resources, LP. Said agreement shall be substantially similar in form as that of Exhibit "A", which is attached hereto and incorporated herein for all purposes.

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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Road Repair Agreement

Endeavor Energy Resources, LP, (“Operator”) intends to use portions of Midkiff Road to access its oil and gas lease. Operator agrees to pay actual road repair costs up to a maximum amount of Seventy-Five Thousand and No/Hundred Dollars (\$75,000.00) per calendar year for damage done to of Midkiff Road and the lease entrance gate to the extent that any such damage is verifiably attributable to traffic servicing Operator. Operator will not be obligated to pay for any damage to Midkiff Road attributable to other parties or for damage associated with normal wear and tear. Operator will not be required to pay road repair expenses in excess of \$25,000.00 per calendar year per well not to exceed a total of \$75,000.00 per calendar year for the Chaps No. 2 and Chaps No. 3 wells it plans to operate within the city limits in Section 9, Block X, H.P. Hilliard Survey, Midland County, Texas. Operator has attached to this agreement a surety bond in the amount of \$75,000.00 which will serve to secure payment of any such road repair expenses for said wells Operator plans to drill within the city limits in Section 9, Block X, H.P. Hilliard Survey, Midland County, Texas. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$75,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permits shall be suspended on such date and the Operator’s right to operate under the Oil and Gas Well Permits shall immediately cease until the Operator files the required letter of credit or certificate of deposit or surety bond.

Operator and the City of Midland agree that documentation of any road damage determined to be caused by Operator’s use of Midkiff Road to access any of the wells shall be presented to Operator. If the Operator does not agree, then Operator may file a written objection with the City Manager within ten (10) days of being notified of the road damage. The City Manager shall review the objections and give Operator the opportunity to be heard and present facts that Operator deems relevant. The City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of the General Conditions of all the Oil and Gas Well Permits, in order to remedy such situation under City of Midland Ordinance No. 8769, 6-1-23, “Oil & Gas Well Permits.” The amount drawn from the letter of credit, certificate of deposit or surety bond shall not exceed the limits previously described by this agreement.

AGREED TO AND ACCEPTED BY THE FOLLOWING PARTIES:

Endeavor Energy Resources, LP

City of Midland

Date: _____

Date: _____

By: _____

By: _____

Michael Short, General Counsel

Mayor: W. Wesley Perry



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 01/08/2013

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider a resolution authorizing a right-of-way crossing license with the City of Midland, Texas and Endeavor Energy Resources, L.P. for the purpose of installing one 3" Gas, Oil and Production Water poly pipeine and one 4" Fresh Water poly pipeline line contained within an 81/2" standard steel casing under a portion of Passage Way right-of-way within the City of Midland, Texas, Section 9, Block X, H.P. Hilliard Survey, City of Midland, Midland County Texas.

Purpose:

Consider a resolution authorizing a right-of-way crossing license with the City of Midland, Texas and Endeavor Energy Resources, L.P. for the purpose of installing one 3" Gas, Oil and Production Water poly pipeine and one 4" Fresh Water poly pipeline line contained within an 81/2" standard steel casing under a portion of Passage Way right-of-way within the City of Midland, Texas, Section 9, Block X, H.P. Hilliard Survey, City of Midland, Midland County Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City of Midland shall receive payment of \$400.00 annually for the duration of the Right-of-Way License Agreement.

Discussion:

The Legal Department has prepared a resolution authorizing a right-of-way crossing license with the City of Midland, Texas and Endeavor Energy Resources, L.P. for the purpose of installing one 3" Gas, Oil and Production Water poly pipeine and one 4" Fresh Water poly pipeline line contained within an 81/2" standard steel casing under a portion of Passage Way right-of-way within the City of Midland, Texas, Section 9, Block X, H.P. Hilliard Survey, City of Midland, Midland County Texas.

This Agreement shall be for a term of five (5) years and shall renew at the end of the initial

Agreement term for one (1) five (5) year term. With written request from Endeavor Resources, L.P.

Attached are maps indicating location of the proposed pipeline.

Staff recommends approval of this resolution.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A RIGHT-OF-WAY CROSSING LICENSE WITH THE CITY OF MIDLAND, TEXAS AND ENDEAVOR ENERGY RESOURCES, L.P.; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF INSTALLING ONE (1) THREE INCH (3") OIL AND GAS, PRODUCTION WATER POLY PIPELINE, AND ONE FOUR INCH (4") FRESH WATER POLY PIPELINE ALL CONTAINED WITHIN AN EIGHT AND ONE-HALF INCH (8 ½) STANDARD STEEL CASING UNDER A PORTION OF PASSAGE WAY; THE CASING IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 9, BLOCK "X", H.P. HILLIARD SURVEY, MIDLAND, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE (5) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND MAY BE RENEWED AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 90 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way crossing license with Endeavor Energy Resources, L.P., located within the City of Midland Right-of-Way crossing under a portion of Passage Way, Section 9, Block "X", H.P. Hilliard Survey, Midland, Midland County, Texas;

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

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 right-of-way crossing license with Endeavor Energy Resources, L.P., said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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., 2013, by the following vote:

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

RIGHT-OF-WAY CROSSING LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

THIS RIGHT-OF-WAY CROSSING LICENSE (“AGREEMENT”), effective this 16th day of January, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called “Licensor”, and ENDEAVOR ENERGY RESOURCES, L.P., 110 N. Marienfeld, Suite 200, Midland, Texas 79701, hereinafter called “Licensee”.

Licensee desires use of property owned by the Licensor in Midland County, Texas within the City of Midland, Texas, in order to cross Licensor’s right-of-way for the purpose of placement, operation and maintenance of one (1) three inch (3”) oil and gas, production water poly pipeline, and one four inch (4”) fresh water poly pipeline all contained within an eight and one-half inch (8 ½) standard steel casing at the location shown on “Exhibit A”.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands of the City. The parties agree that the grant herein may be referred to as the “License”.

W I T N E S S E T H:

For and in consideration of the execution of this Agreement and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows, to wit:

I. Term

This Agreement shall be for a term of five (5) years (the “Initial Term”), commencing with the date of this Agreement, the “Commencement Date,” unless terminated earlier as provided hereafter. This Agreement may be renewed at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before ninety (90) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licensor. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Upon termination of this Agreement, 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 shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licensor upon inspection by Licensor’s Transportation Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this license.

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensor the sum of Four hundred dollars (\$400.00) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year’s license fee of \$400.00

shall be due and payable in advance of the commencement date of this license (“License Fee”). Licensee’s failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay the Licensors a late charge of five percent (5%).

2. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of \$500.00 to the Licensors’ Transportation Manager. Said fee shall revert to the Licensors and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

3. Prior to commencement of any renewal term, the Licensors and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensors and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensors in its sole discretion, provided the new License Fee shall not exceed one hundred fifty percent (150%) of the License Fee paid for the last year of the Initial Term.

4. The License Fee payment shall be made to the Licensors at the office of the Transportation Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment 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.

III. Use

1. Licensors does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland as shown on “Exhibit A” attached hereto and incorporated herein

for all purposes, at the location identified on “Exhibit A”.

2. Licensee shall install one (1) three inch (3”) oil and gas, production water poly pipeline, and one four inch (4”) fresh water poly pipeline all contained within an eight and one-half inch (8 ½) standard steel casing at the location shown on “Exhibit A”.

3. Licensee covenants and agrees that it will repair any of Licensor’s roads that Licensee damages on Licensor’s property so that such roads will comply with Licensor’s Standard Specifications.

4. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by the Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of the Licensor’s Standard Specifications.

5. Licensee will install the oil and gas, production water poly pipeline, the fresh water poly pipeline and the steel casing at a depth of at least forty-eight inches (48”) below the surface to comply with the requirements of the Licensor’s Transportation Department.

6. Before the Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by the Licensor’s Transportation Manager.

7. 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 the Licensee and North Midkiff.

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 the Licensor, in, across, along, over or under any public property occupied by Licensee and North Midkiff. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's system, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINE OR CASING, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform its facilities because of changes in the width or grade of a street or in the location or manner of constructing a drainage channel, water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the 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 the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

8. 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.

9. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease 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 days (120) notice, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, or any re-entry by the Licensee.

10. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system 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 the Licensor's Transportation Manager for his approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's Transportation Manager before making any repairs if during a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's Transportation Manager on the first work day after repairs have begun.

11. The Licensor reserves the right to use the land covered by this License, the surface or subsurface or airspace above the land covered by this Agreement and North Midkiff for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed

necessary or proper by the Licenser on, across, along, under or over said right of way occupied by the Licensee and North Midkiff. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licenser, at Licenser's sole discretion, to alter, change, adapt, conform or relocate any pipeline or casing of Licensee, such alteration or change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the Licenser pursuant to directions from the Licenser's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licenser. The relocation 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 the Licenser, payment for alteration or relocation of its pipelines to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

1. **Insurance** - Licensee 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
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Business Automobile Liability: \$1,000,000.00 combined single limit -

	Personal Injury and Property Damage
<u>Worker's Compensation:</u>	Statutory limits
<u>Umbrella Liability:</u>	\$10,000,000.00 each occurrence and aggregate
<u>Control of Well:</u>	\$5,000,000.00

This insurance, except Worker's Compensation, shall name the Licensor as an additional insured and all insurance shall waive subrogation in favor of the Licensor.

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

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 Agreement. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the Licensor 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 Licensor.

The parties agree that, prior to the execution of the Agreement, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later

than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Licensee 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 as required by Licensee, and name the City of Midland as an additional insured.

Licensee certifies that the one or more certificates 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.

2. INDEMNITY - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipelines in the Licensor's rights of way. The Licensee will be required to pay any judgment with costs which may be obtained against the Licensor or any of its officers, agents, or

employees including attorney's fees.

THE LICENSEE AGREES THAT LICENSEE WILL INDEMNIFY AND HOLD THE LICENSOR 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 PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINES DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE 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 LICENSOR, LICENSOR'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 LICENSEE OR LICENSEE'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 INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINES IN THE LICENSOR'S RIGHT OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of the governing body of the Licensor. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensor 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.

4. **Independent Contractor** - It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Licensor; that Licensee 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

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 and services described hereunder shall be considered an officer, agent, servant or employee of the Licensor. 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. Licensee 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. 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.

5. **WAIVER OF ATTORNEY'S FEES - BY EXECUTING THIS AGREEMENT, LICENSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE LICENSOR, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, OR INTERPRETATION OF THE AGREEMENT. THE LICENSEE SPECIFICALLY AGREES THAT IF THE LICENSEE 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 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 THE AGREEMENT. THE LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE LICENSOR AND THE LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

6. **Governing Law & 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.

7. **RELEASE** - NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, 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.

8. **Sovereign Immunity** - By executing this Agreement the Licensor is not waiving its right of sovereign immunity. The Licensor is retaining its immunity from suit. The Licensor is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

9. **Third-party Beneficiary** - The Licensor'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.

10. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: Transportation Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensee as follows: Endeavor Energy Resources, L.P., Rodney Foster, Surface Manager – Permian Basin, 110 N. Marienfeld, Suite 200, Midland, Texas, 79701.

11. **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, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, 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 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 the 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 months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee 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

Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

12. **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.

LICENSOR:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:

ENDEAVOR ENERGY RESOURCES, L.P.
By: ENDEAVOR PETROLEUM, LLC
Its General Partner

Autry C. Stephens, Sole Member

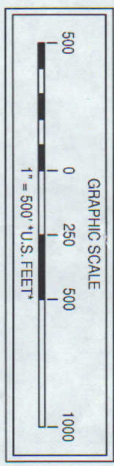
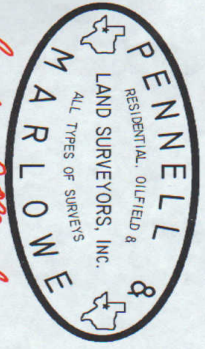
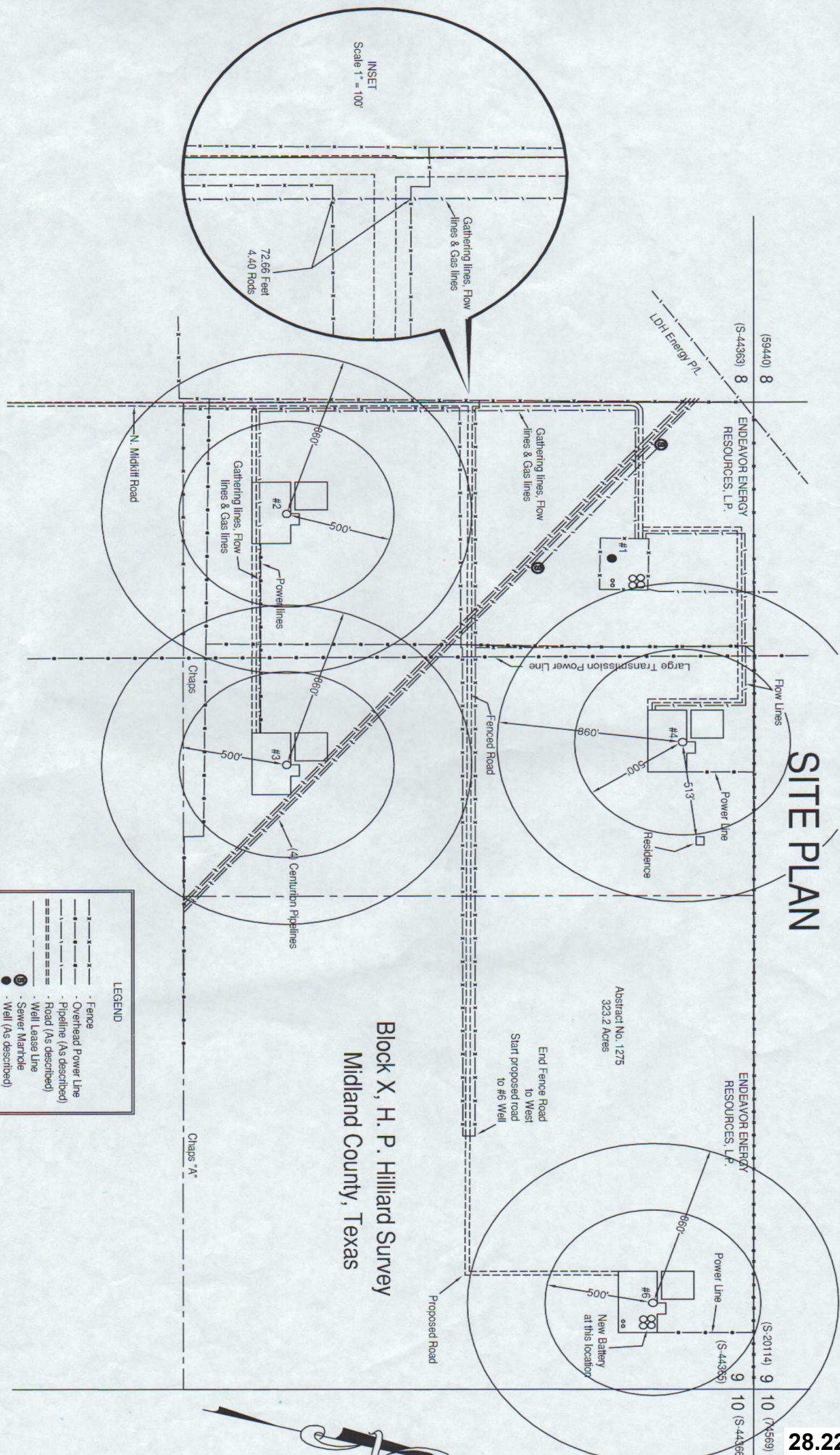
THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared Autry C. Stephens, Sole Member of ENDEAVOR ENERGY RESOURCES, L.P., 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 _____, 2013.

Notary Public, State of Texas

SITE PLAN



LEGEND	
—	Fence
—	Overhead Power Line
—	Pipeline (As described)
—	Road (As described)
—	Well Lease Line
—	Sewer Mainline
●	Well (As described)

Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Example: (S-99999) indicates General Land Office file number.

P.O. Box 51622, Midland, Texas 79710 (432) 570-6256 Fax (432) 692-3262

August 8, 2012
1208085

Scale: 1" = 500'

USGS Quadrangle Sheet: Northwest Midland, Tex.
Power Line & Pipeline Location Plat

ENDEAVOR ENERGY RESOURCES, L.P.
Survey of Power Line & Pipeline Locations
In the Chaps & Chaps "A" Leases
323.2 Acres being the N/2 of
Section 9, Block X
H. P. Hilliard Survey
Midland County, Texas

Endeavor Energy
Resources, L.P.

GREEN TREE BLVD

MIDKIFF RD

Section 9, Block X
H. P. Hilliard Survey
Midland County, Texas

Gathering lines, Flow lines,
& Gas lines

PASSAGE WAY

Gathering lines, Flow lines,
& Gas lines





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Continue consideration of an ordinance on a request by Cliff Chalmers to vacate a portion of public right-of-way.

Purpose:

Continue consideration of an ordinance on a request by Cliff Chalmers to vacate a portion of public right-of-way.

Recommended City Council Action

☐ Approve

☐ Deny

☒ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

On November 27, 2012 the City Council held a public hearing and considered a request by Cliff Chalmers to vacate a 45-foot by 215-foot section of public right-of-way that abuts his two lots located at the intersection of N. Big Spring Street and Arapahoe Road. This request was deferred to allow for further review. We have since received a request from Mr. Ken Gray to vacate a portion of this same 45-foot wide strip of right-of-way in front of his two lots, Lots 1 and 2, Block 1, and in front of a third lot, Lot 3, which is owned by Kevin Wilton. These three lots are located immediately south of Mr. Chalmers two lots, and a public hearing has been scheduled on the January 8, 2013 agenda to consider this second request. These five lots abut a strip of pavement that is separate from the Big Spring Street paving. This pavement lies in a 45-foot wide right-of-way, and functions as a "service road" to Big Spring Street. Staff has confirmed with the Texas Department of Transportation that it does not own this 45-foot wide right-of-way. Further, the City has no need for it, nor do any of the franchised utility companies. The right-of-way associated with Mr. Chalmers request contains 9,675 square feet. The Midland Central Appraisal District has determined the value of this land is \$1.00 per square foot, which places right-of-way

value associated with Mr. Chalmers request at \$9,675. We recommend that any approval be conditioned upon receipt of this compensation. The ordinance attached for the City Council's consideration affects only the right-of-way associated with Mr. Chalmers' request; Mr. Gray's request is presented separately.

Attachments:

Maps

Letter from MCAD

Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 45-FOOT BY 215-FOOT PORTION OF RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1 AND 2, BLOCK 18, 349 RANCH ESTATES ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF STATE HIGHWAY 349 AND ARAPAHOE ROAD); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$9,675.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 45-foot by 215-foot portion of right-of-way adjacent to Lots 1 and 2, Block 18, 349 Ranch Estates Addition, Section 3, City and County of Midland, Texas, is no longer needed for public use; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, an application for vacating the right-of-way has been received by the City from the abutting property owner; and

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$9,675.00, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the right-of-way described herein;

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

SECTION ONE. That the 45-foot by 215-foot portion of right-of-way adjacent to Lots 1 and 2, Block 18, 349 Ranch Estates Addition, Section 3, City and County of Midland, Texas, as described in Exhibit "A" attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that

the City is hereby only abandoning the public interest in said property and this ordinance in no way affects any private easement or access easement which abutting property owners may have in said right-of-way.

The City is hereby abandoning the public interest in said property but it is expressly provided, however, that this ordinance in no way affects the property interest(s) of any other abutting property owner(s), including but not limited to the Texas Department of Transportation, which may have an interest in said property.

SECTION TWO. That this Ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of \$9,675.00.

SECTION THREE. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; 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., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

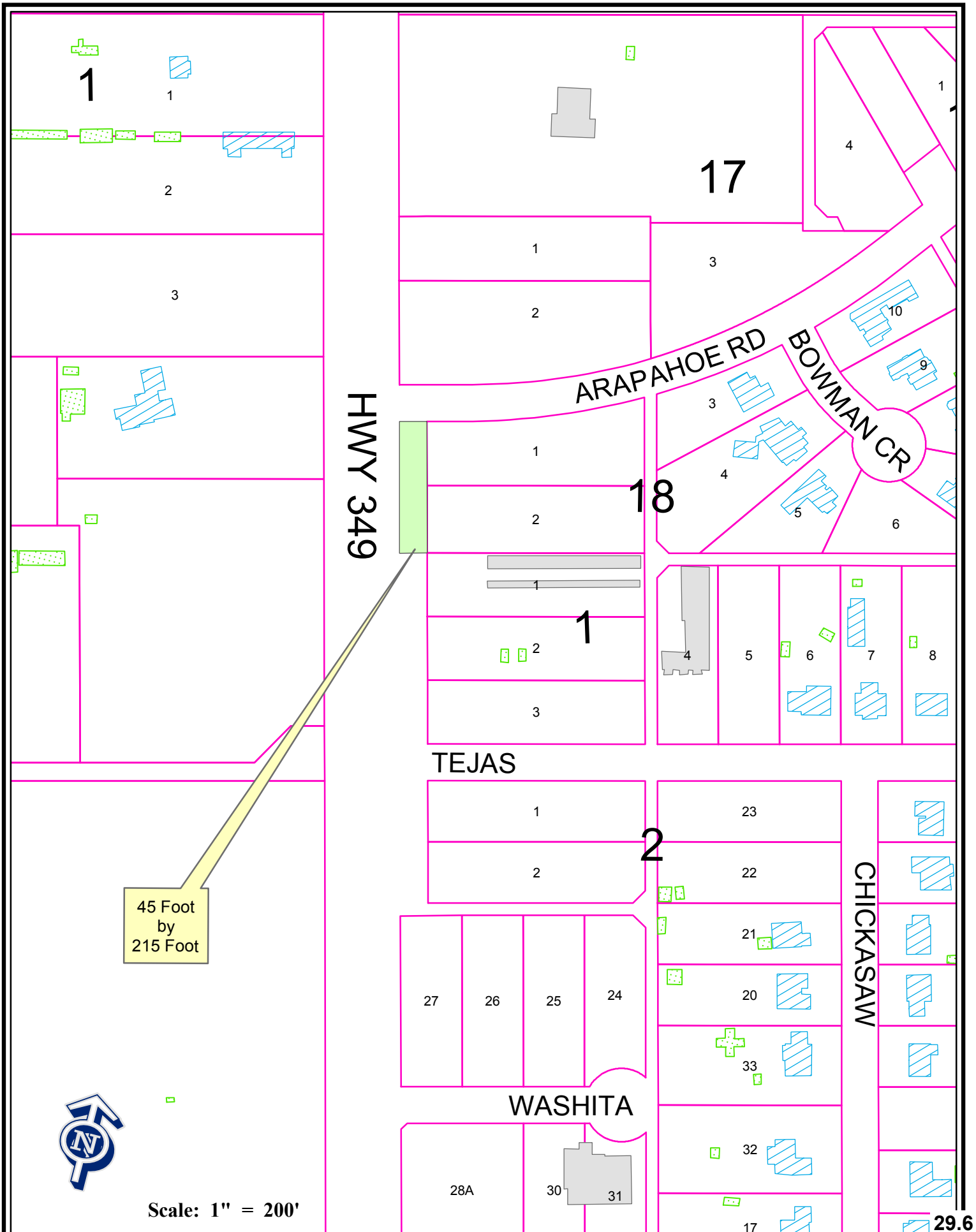
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney





December 11, 2012

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 45-foot by 311.94-foot portion of right-of-way adjacent to Lots 1, 2 and 3, Block 1, 349 Ranch Estates Addition, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is \$14,037.00. The property can be vacated and recorded in the Midland County Clerk's office when the City of Midland has received this amount from the adjoining property owner(s).

Very truly yours,

A handwritten signature in blue ink that reads "Courtney SP".

Courtney Sharp
City Manager

Exhibit "B"

L:\Ordinances\Planning\Vacate & Abandon\2012\State Highway 349, Blk 1, 349 Ranch Estates Addition - Appraisal Letter.wpd

CITY OF MIDLAND
Planning Division

APPLICATION TO VACATE RIGHT-OF-WAY

I. Application is hereby made to the City Council to vacate the following public right-of-way or easement:

A 45' STRIP of old pavement in Right-of-way
ADJACENT to two Retail lots - lots 1 & 2 Block 18 349 Ranch Estates
Sec. 3

II. Reason for Request: Expansion of Land Area For Development

III. Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:

A Larger lot Area Allows wider Range of
Development uses and Results in higher Property Valuation

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)

Name: CLIA CHALMERS 528-2201

Address: 2401 5100 Ashdown Phone: 432-528-2201

MIDLAND TX 79705
City State Zip Code

2. Metes and bounds description of property to be vacated including total square feet of vacation.

3. Map showing:

Property to be vacated and its relationship to the applicant's property
Lot and block numbers of all adjacent tracts
Current zoning of all adjacent tracts

4. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)

5. Application Fee: **\$300.00**

Required items attached? Date Received: 1. ____ 2. ____ 3. ____ 4. ____ 5. ____

The City of Midland will take no action on this request, until items 1-5 are received.

V. Clearance is needed from the following utility companies: City of Midland / Atmos Energy

Caprock Energy / Oncor Electric / AT&T / Suddenlink Cable TV Co. / Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained and to work out any issues that may arise.

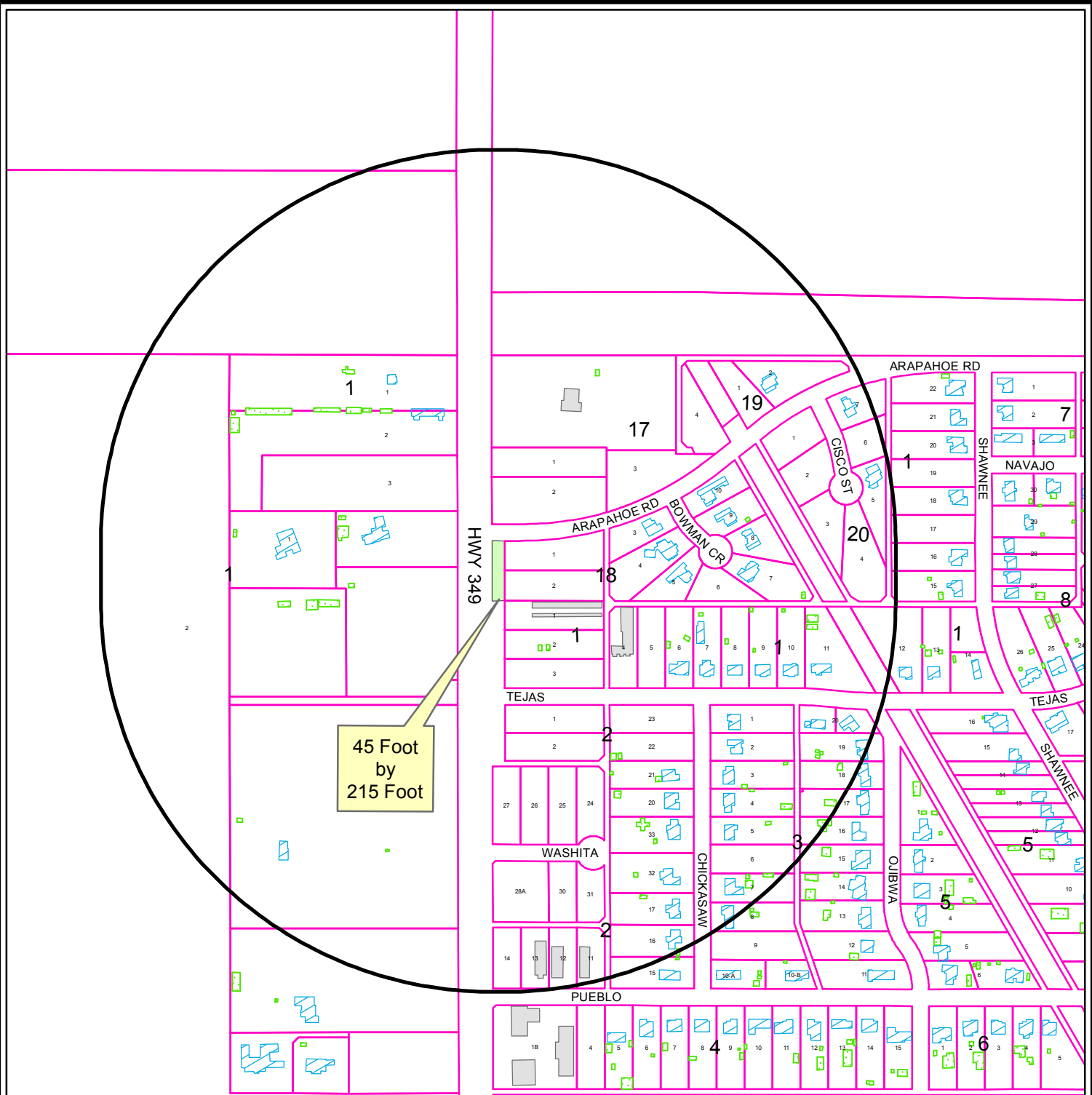
VI. Policies:

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.
 - b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signature of applicant:  Date: 6-12-12

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

FOR OFFICE USE ONLY	
Rec'd. By: <u>TS</u>	Date: <u>6/18/12</u>
Assigned: <u>JC</u>	
For: _____	On: _____



PROPERTY OWNER NOTIFICATION MAP

V - 12 - 008

Scale: 1" = 500'

Consider a request for the vacation of a 45 foot by 215 foot portion of the right-of-way of N. State Hwy 349 adjacent to Lots 1 and 2, Block 18, 349 Ranch Estates, Section 3, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 1000 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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 THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, SITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



MIDLAND CENTRAL APPRAISAL DISTRICT
4631 ANDREWS HWY.
P. O. BOX 908002 MIDLAND, TEXAS 79708-0002
(432) 699-4991 FAX (432) 689-7185

DENNIS RAMBO
RPA
Assistant Chief Appraiser

October 16, 2012

Re: Proposed street or alley right-of-way vacation

Attn: Jim Compton
City of Midland
Department of Development Services
PO Box 1152
Midland TX 79702-1152

Dear Mr. Compton:

The estimated value on Case No. V-12-008 is as follows:

<u>General Location</u>	<u>Area</u>	<u>Current Zoning</u>
East side of Big Spring Street, south of Araphoe	9,675 acres	LR-2 District

$9,675 \times \$1.00 = \$9,675$

Sincerely,

Dennis Rambo, RTA/RPA
Chief Appraiser

DR/dh



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans E 1) located 2,073 feet from the north line and 1,009 feet from the west line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the east side of the North Midland Drive, approximately 3/4 mile north of Mockingbird Lane.)

Purpose:

To consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans E 1) located 2,073 feet from the north line and 1,009 feet from the west line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. One letter of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application with correction of phrasing concerning the fencing heights and clean copies of the hazardous materials management plan. The Oil and Gas Advisory Committee is recommending no two year variance for the landscaping/irrigation due to proximity of well to Briarwood Avenue. Bluestem Energy has addressed Committee recommendations and updated application. Road repair can be consolidated with existing agreement.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2,073 FEET FROM THE NORTH LINE AND 1,009 FEET FROM THE WEST LINE, SECTION 8, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 3/4 OF A MILE NORTH OF MOCKINGBIRD LANE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an

oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on November 27, 2012; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 2,073 feet from the north line and 1,009 feet from the west line, Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That said permit does not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

On motion of Council member _____, seconded by Council member

_____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2013, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on January 8, 2013, considered the application of Bluestem Energy Holdings, LLC, dated September 17, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Bluestem Energy Holdings, LLC, dated September 17, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Bluestem Energy Holdings, LLC, Evans E 1 oil and gas well shall be 2,073 feet from the north line and 1,009 feet from the west line, Section 8, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Bluestem Energy Holdings, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from January 8, 2013, through January 8, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

NOTWITHSTANDING ANY OTHER PROVISION, ENDEAVOR ENERGY RESOURCES, LP, HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY OF MIDLAND, CITY OF MIDLAND'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH ENDEAVOR ENERGY RESOURCES, LP, 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 OWNERS NEGLIGENCE.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

Landscaping is not required at this time but will be required within two years from January 8, 2013. Operator shall notify the City Manager within 180 days (July 8, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Bluestem Energy Holdings, LLC, shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Bluestem Energy Holdings, LLC, application for said well. Bluestem Energy Holdings, LLC, application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of January, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of January, 2013.

Bluestem Energy Holdings, LLC

By: _____

Jim Mason, District Production Manager

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
 - i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jim Mason, District Production Manager

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432) 770-8322

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

Landscaping is not required at this time but will be required within two years from January 8, 2013. Operator shall notify the City Manager within 180 days (July 8, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jim Mason, District Production Manager

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432) 770-8322

0-12-021



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date	Operator Name (must match W-1)	Operator Address
09/17/2012	Bluestem Energy Holdings, LLC	400 W. Illinois Ave, Ste. 900 Midland, Texas 79701
Representative Name	Representative Address (within Midland City Limits)	Rep. Tele.
Jim Mason	400 W. Illinois Ave, Ste. 900 Midland, Texas 79701	(432) 770-8322
Fee: \$4,000.00 Rec'd Yes ___ No ___	NOTE: All attachments need to bound and put in a binder before submitting.	Rep. Fax (817) 872-9888
		Pages 1-4
Permit Compliance Contact (Choose 1):		
Option A: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134		
24/7 Answering Services - No. 1 (Tele.): No. 2 (Tele.):		
Option B: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134		
Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):		
Same as above		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Evans Resources, LP, P.O. Box 7962, Midland, TX 79708		
2. Joy D. Anguish Trust and David D. Anguish Trust, P.O. Box 2749, Longview, TX 75606		
3. Anguish Partnership, P.O. Box 63, Midland, TX 79702		
ATTACHED AS EXHIBIT C is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from, a Certified Petroleum Landman/an opinion letter from, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location):		
Farming		
ATTACHED AS EXHIBIT D is (a Title Opinion by Robert Rendall, a licensed Texas Attorney/a Take-off from, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

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CITY OF MIDLAND
PLANNING DIVISION OFFICE

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Evans E 1

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit V

Legal Description of Proposed Well Site:

2073' FNL and 1009' FWL, Sec. 8, Blk. X, Hilliard Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) Drilling: None
- (2) Operations: Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Evans water wells located in N/2 of Sec. 8, Blk. X, Hilliard Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future. Ultimately, electrical lines will be buried in the proposed corridors as shown on Exhibit N, in accordance with the Surface Agreement dated November 3, 2010 between Operator and the Surface Owner.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Bluestem Energy Holdings, LLC

[NAME OF COMPANY]

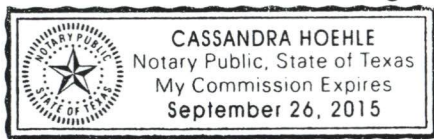
By Jim Mason

Its District Production Manager

State of Texas

County of Midland

Jim Mason, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



Cassandra Hoehle
Notary Public, State of Texas

[SEAL]

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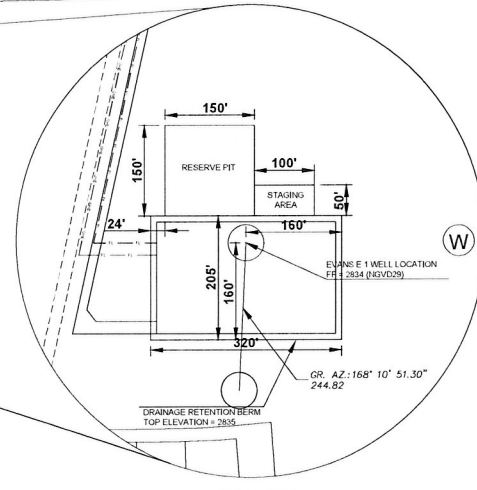
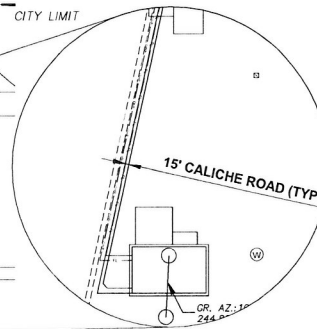
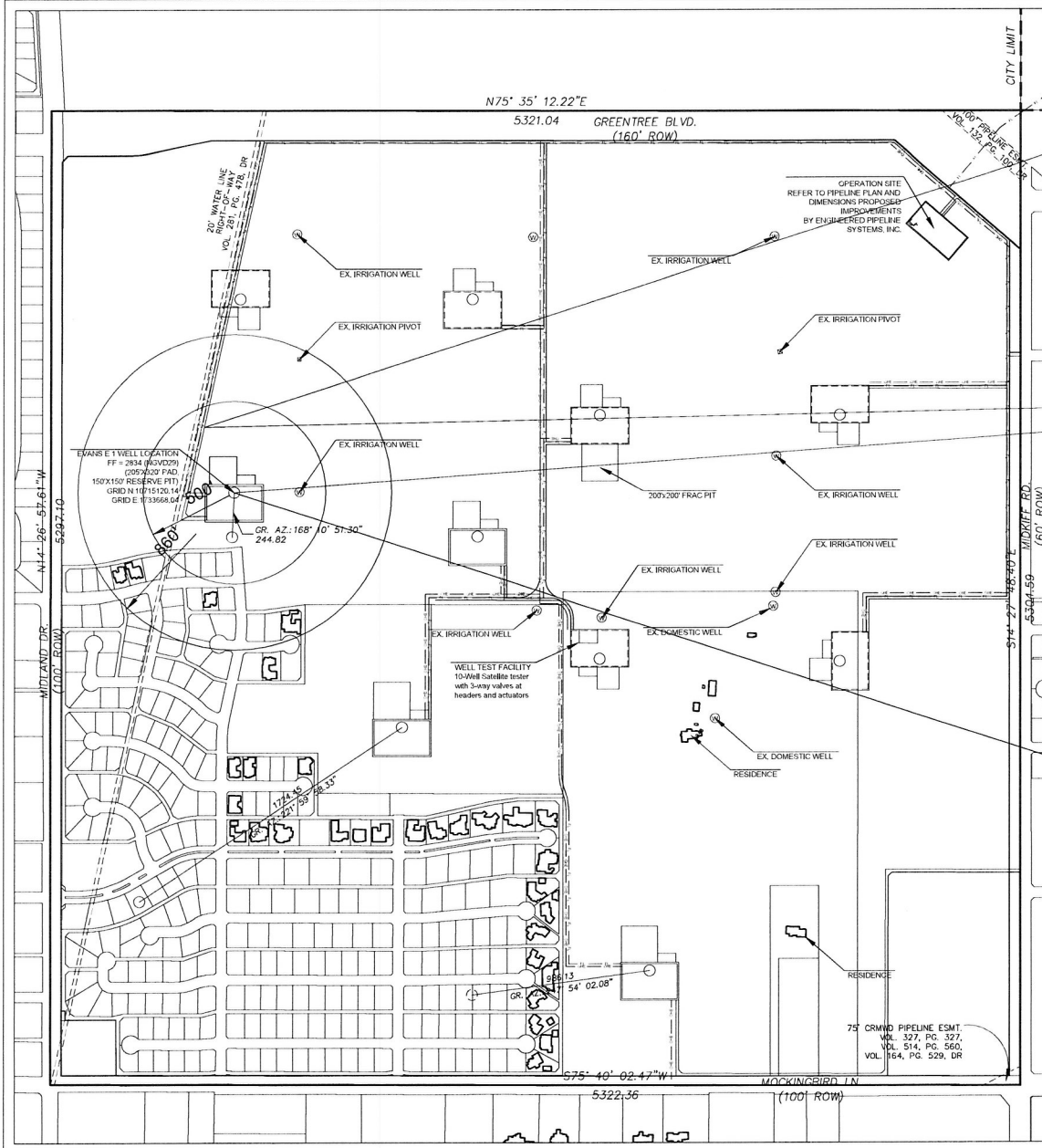
SCALE: 1" = 600'

SITE PLAN

PROJECT: 727470JD
JOB NO: 72,747-F

BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS E 1
EVANS LEASE SHL
2073 FEET FROM THE NORTH AND
1009 FEET FROM THE WEST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
H.P. HILLIARD SURVEY, MIDLAND
COUNTY, TEXAS

NEWTON ENGINEERING, P.C.
F-13856
4008 N. Midland Rd.
Midland, Texas 79705
(432) 770-0489



NOTE:
COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 3rd DAY OF OCTOBER, 2012

Charles P. Rutherford
Charles P. Rutherford, R.P.L.S. No. 1977



DRILL SITE MAP

0-12-021

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SCALE: 1" = 600'

SITE PLAN

JOB NO: 11-ME0007

BLUESTEM ENERGY HOLDINGS, LLC

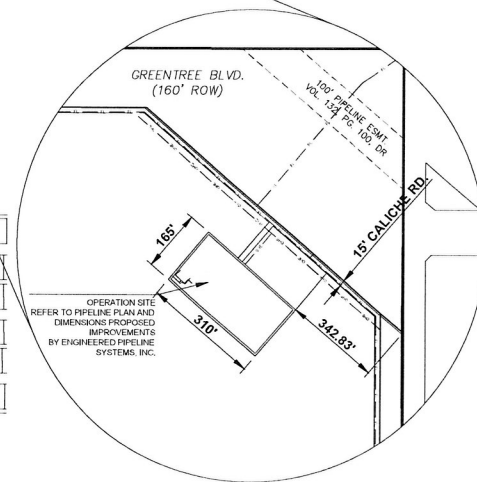
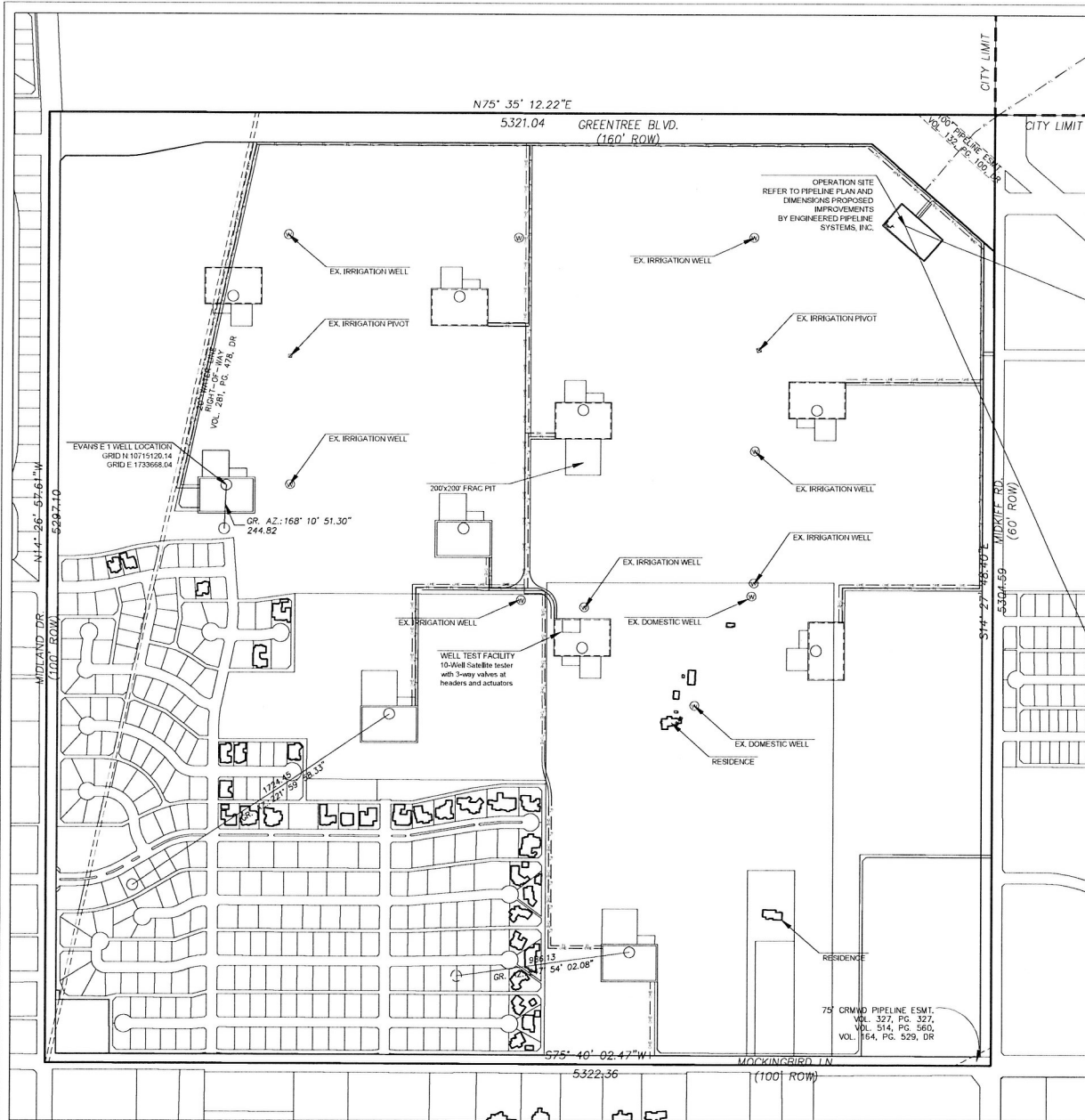
OPERATION SITE

EVANS LEASE
SECTION 8, ABSTRACT 17, BLOCK X, H.P.
HILLIARD SURVEY, MIDLAND COUNTY, TEXAS

NEWTON ENGINEERING, PC

F-13835

4008 N. Midland Rd.
Midland, TX 79705
(432) 770-0499



NOTE:
COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

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DATED THIS 3RD DAY OF OCTOBER, 2012

Charles P. Rutherford
Charles P. Rutherford, R.P.L.S. No. 1977



FLOW LINE LOCATION

0-12-021



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Pecan Acres 23 #11) located 947 feet from the west line and 660 feet from the south line located in Section 23, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the north side of Briarwood Avenue, approximately one half mile west of Golden Gate Drive.)

Purpose:

To consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Pecan Acres 23 #11) located 947 feet from the west line and 660 feet from the south line located in Section 23, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommended application with correction of phrasing concerning request of variance for landscaping for well site. The Oil and Gas Advisory Committee is recommending no variance for the landscaping/irrigation due to proximity of well to Briarwood Avenue. Callon Operating has addressed Committee recommendations and updated application. Road repair can be consolidated with existing agreement.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CALLON PETROLEUM OPERATING COMPANY ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 947 FEET FROM THE WEST LINE AND 660 FEET FROM THE SOUTH LINE, SECTION 23, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY ½ MILE WEST OF GOLDEN GATE DRIVE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, "Police Regulations," Chapter 1, "General Offenses," of the City Code of Midland, Texas, so as to establish Section 23, "Oil and Gas Well Permits issued on or after January 1, 2010," which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an

oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on November 27, 2012; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 947 feet from the west line and 660 feet from the south line, Section 23, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That said permit does not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

On motion of Council member _____, seconded by Council member

_____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on January 8, 2013, considered the application of Callon Petroleum Operating Company, dated October 8, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Callon Petroleum Operating Company, dated October 8, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Callon Petroleum Operating Company, Pecan Acres 23 #11 oil and gas well shall be 947 feet from the west line and 660 feet from the south line, Section 23, Blk 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Bluestem Energy Holdings, LLC, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from January 8, 2013, through January 8, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

NOTWITHSTANDING ANY OTHER PROVISION, ENDEAVOR ENERGY RESOURCES, LP, HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY OF MIDLAND, CITY OF MIDLAND'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH ENDEAVOR ENERGY RESOURCES, LP, 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 OWNERS NEGLIGENCE.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

Landscaping is not required at this time but will be required within two years from January 8, 2013. Operator shall notify the City Manager within 180 days (July 8, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Callon Petroleum Operating Company shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Callon Petroleum Operating Company application for said well. Callon Petroleum Operating Company application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of January, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of January, 2013.

Callon Petroleum Operating Company

By: _____

Jimmy Baggett, Operations Manager

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jimmy Baggett, Operations Manager

Callon Petroleum Operating Company
4305 N. Garfield, Suite 235
Midland, Texas 79705
(432)686-2764

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

Landscaping is not required at this time but will be required within two years from January 8, 2013. Operator shall notify the City Manager within 180 days (July 8, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

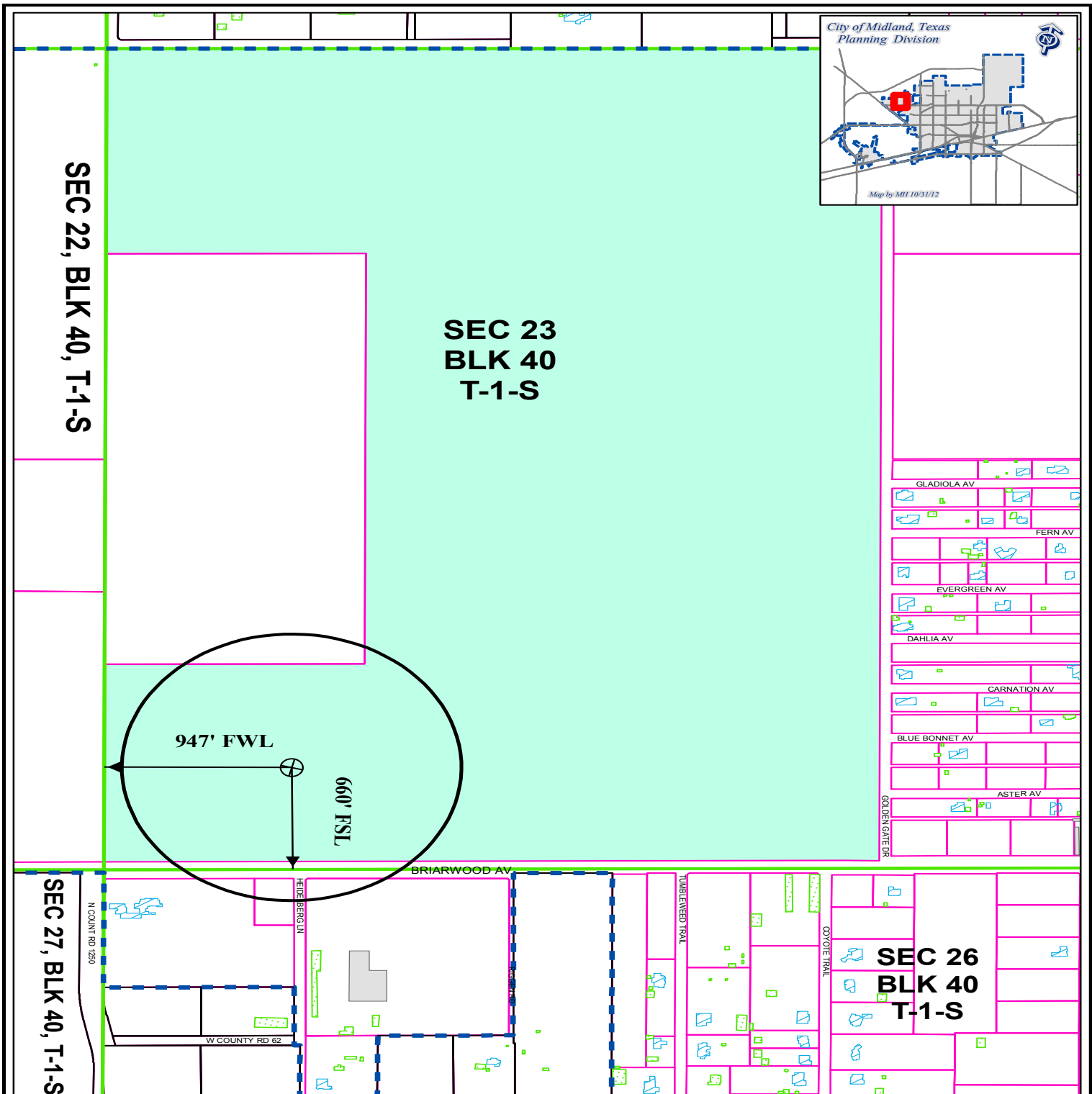
If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jimmy Baggett, Operations Manager

Callon Petroleum Operating Company
4305 N. Garfield, Suite 235
Midland, Texas 79705
(432) 686-2764



LOCATION AND ZONING MAP

O - 12 - 023

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 947' FWL and 660' FSL, Section 23, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Pecan Acres 23 #11

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LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

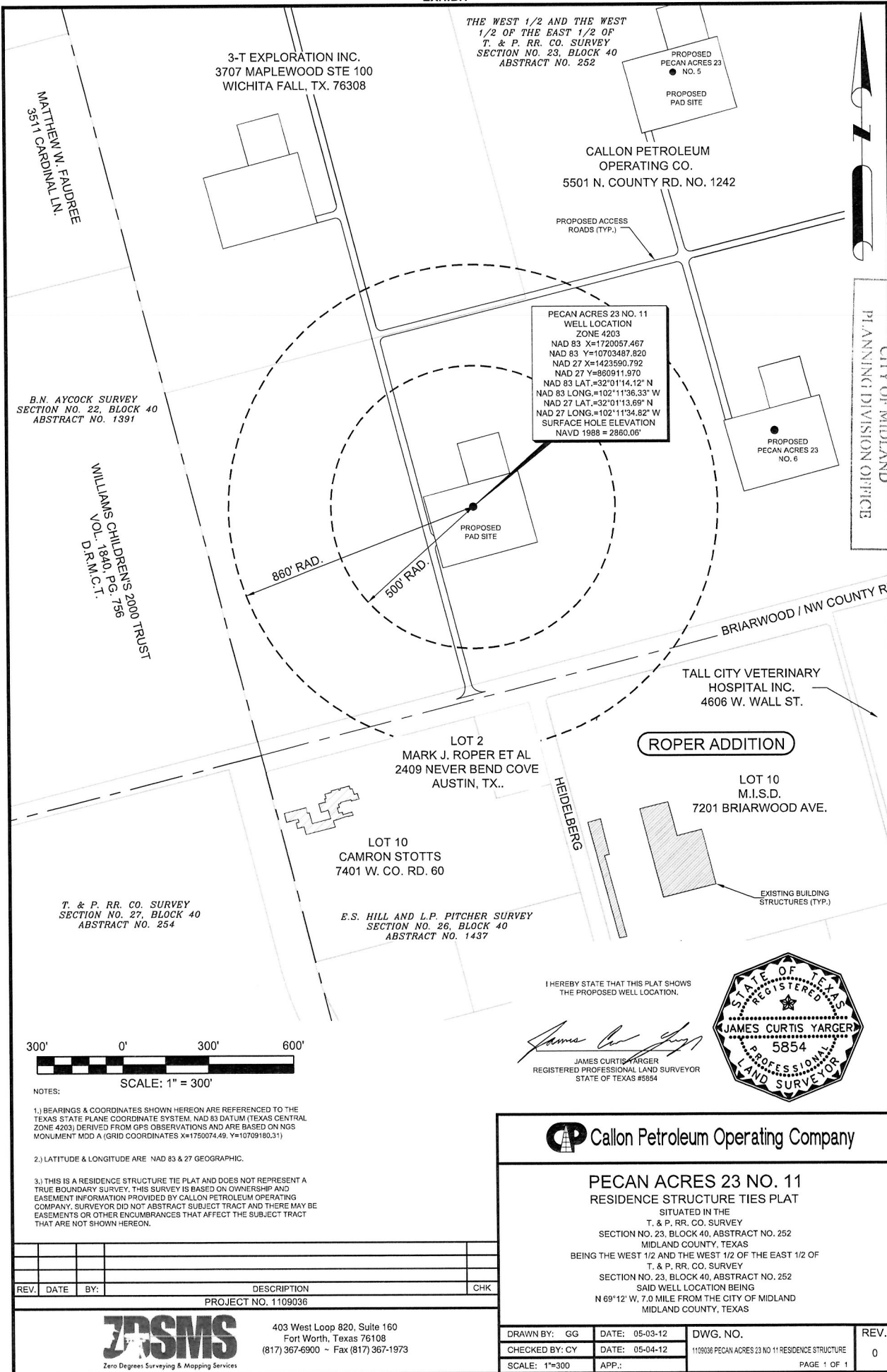
FD
PD
AE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

BP
P
01, 02
NS
LR1, LR2, LR3
C1, C2, C3
IP, JP1, IP2, IP3
LI
HI

BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY

EXHIBIT



CITY OF MIDLAND
PLANNING DIVISION OFFICE

NOV 14 2012

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OCT 8 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date 10/08/2012	Operator Name (must match W-1) Callon Petroleum Operating Company	Operator Address P.O. Box 1287 Natchez, MS 39121
Representative Name Jimmy Baggett	Representative Address (within Midland City Limits) 4305 N. Garfield, Suite 235 Midland, TX 79705	Rep. Tele. (432) 686-1828
Fee: \$4,000.00 Rec'd Yes ___ No ___		Rep. Fax (432) 686-2764

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (tele)

No. 2 (Tele.):

Option B: **Jimmy Baggett 4305 N. Garfield, Suite 235 Midland, TX 79705**

Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

Vince Borrello (432) 553-9522**4305 N. Garfield, Suite 235 Midland, TX 79705**Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). **Two: Annie #3,8; Pecan Acres 23A #1, 2, 3; Pecan Acres 23 #3,6**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): **See Attached List**

1.

2.

3.

ATTACHED AS EXHIBIT C is (a Title Opinion by **Mike Canon**, a licensed Texas Attorney/Title Commitment by Abstract

Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from

_____, a licensed Texas Attorney) indicating that |Operator| has a legal right to develop the mineral estate that is the subject of

this Application. [See § J(5)]. **Attached**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Agricultural pasture with some development

ATTACHED AS EXHIBIT D is (a Title Opinion by _____, A licensed Texas Attorney/a Take-off from

_____, a Certified Petroleum Landman/ **Current Tax Roll from Midland Central Appraisal District**), which liststhe name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)]. **Attached**ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance - one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)]. **Attached**ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)]. **Attached**

IV. Well & Operations Information

Proposed Well Name: **Pecan Acres 23 #11**

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary) [See § J(11) and § L(4)]:

Attached

Legal Description of Proposed Well Site: **947' FWL, 660' FSL of Section 23, Block 40, T1S, T&P RR Co. Survey, Midland County, Texas (Abstract 252)**

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. **Attached**

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. **Attached**

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (*also file copy of W-1 with City Secretary before commencement of drilling operations*). [See § J(16) and (20)]. **Attached**

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(1) **Attached**

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)]. **Attached**

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)]. **Attached variance request**

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Beause Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunciton with this request. [See § J(31)]. **Attached**

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. **Attached**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: **No public utilities will be needed during drilling operations.**

(2) Operations: **See Exhibit N and N-3**

Deescription of water source to be used during Drilling: **Water will be pulled from water wells existing on adjacent property and hauled if necessary.**

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]: **See Exhibits G & N attached.**

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: **See Exhibit O - Pits will be deep buried in accordance with City of Midland requirements.**

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the Letter of Credit/Certificate of Deposit in accordance with Subsection (K)(2). [See § J(18)]. **Attached**

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. **Attached**

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)]. **Attached**

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. **Attached**

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)]. **See Exhibit T and Attachment T-1**

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)]. **Attached**

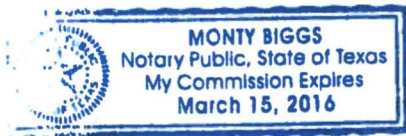
Callon Petroleum Operating Company

By: 
Jimmy Baggett
Operations Manager

STATE OF TEXAS

COUNTY OF MIDLAND

This instrument was acknowledged before me on the 8th day of October, 2012 by Jimmy Baggett, Operations Manager of Callon Petroleum Operating Company, who personally appeared before me, and states that he has read the above application and attached exhibits and the statements therein are true and correct to the best of his knowledge.




Notary Public – State of Texas

RECEIVED

NOV 14 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT

PECAN ACRES 22-A
160.00 ACRES

B.N. AYCOCK SURVEY
SECTION NO. 22, BLOCK 40
ABSTRACT NO. 1391

PROPOSED
PECAN ACRES
23 NO. 9

SURVEY/LEASE
LINE

CALLON
ACREAGE
(80 ACRES)

PROPOSED
PECAN ACRES
23 NO. 10

BEGIN ELEC.
PECAN ACRES 23, NO. 11
LENGTH=211'

SAVE & EXCEPT
20.000 ACRES

PROPOSED ACCESS
ROAD, LENGTH=13'

PROPOSED 300' X 75'
TANK BATTERY SITE

PECAN ACRES 23
480.7138 ACRES

MONTEVELLO

PROPOSED
PECAN ACRES
23 NO. 5

PROPOSED FLOWLINE
LENGTH=3114' RODS=188.7

PROPOSED
PECAN ACRES 23
NO. 11

PROPOSED
PECAN ACRES
23 NO. 4

T. & P. RR. CO. SURVEY
SECTION NO. 23
BLOCK 40 T-1-S
ABSTRACT NO. 252

PROPOSED
PECAN ACRES
23 NO. 13 SHL

PROPOSED
PECAN ACRES
23 NO. 6 SHL

PROPOSED
PECAN ACRES
23 NO. 7 SHL

COUNTY ROAD NO. 1242, A 60 FOOT RIGHT-OF-WAY
LEASE BOUNDARY
GOLDEN GATE

PECAN ACRES 23-A
160.5393 ACRES

B.N. AYCOCK SURVEY T-1-S
SECTION NO. 24, BLOCK 40
ABSTRACT NO. 1392

GENERAL NOTES:
3114' OF FLOWLINE
13' OF ACCESS ROAD
211' OF ELECTRIC LINE

LEGEND

- OHE— = PROPOSED ADDITIONAL OVERHEAD ELECTRIC LINES
- = PROPOSED FLOWLINES
- ===== = PROPOSED ADDITIONAL ACCESS ROADS
- = PROPOSED WELL LOCATION

I HEREBY STATE THAT THIS PLAT SHOWS
THE PROPOSED LOCATIONS AS SHOWN.

James Curtis Yarger

JAMES CURTIS YARGER
REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF TEXAS #5854



800' 0' 800' 1600'



SCALE: 1" = 800'



Callon Petroleum Operating Company

FOR PERMITTING PURPOSES ONLY

EXHIBIT SHOWING
PROPOSED

PECAN ACRES 23 NO. 11

PROPOSED FLOWLINE, ACCESS ROAD AND ELECTRIC LINE
LOCATIONS

CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

DRAWN BY: GG

DATE: 05-03-12

DWG. NO.

REV.

CHECKED BY: CY

DATE: 05-04-12

1109036 PECAN ACRES 23 NO 11 EXHIBIT

0

SCALE: 1"=800'

APP.:

PAGE 1 OF 1

REV.	DATE	BY:	DESCRIPTION	CHK

PROJECT NO. 1109036



403 West Loop 820, Suite 160
Fort Worth, Texas 76108
(817) 367-6900 ~ Fax (817) 367-1973

Zero Degrees Surveying & Mapping Services

31.41

FLOWLINE LOCATION

ATTACHMENT G-4.1 (FLOWLINES)

0-12-023



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance vacating the north/south and east/west 0.23-acre alley adjacent to Lot 1, Block 10, and to Lot 15, Block 11 Trueland Addition, Section 2, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of Scharbauer Dr and N. Fairgrounds Road.)

Purpose: Consider an ordinance vacating the north/south and east/west 0.23-acre alley adjacent to Lot 1, Block 10, and to Lot 15, Block 11 Trueland Addition, Section 2, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of Scharbauer Dr. and N. Fairgrounds Road.)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this request.

Discussion:

Mr. Prince and Mr. Gonzalez are the owners of the two lots adjacent to the above described alley. They are requesting the vacation of the above described right-of-way to allow for the future development of a storage unit facility. If the alley is vacated, the owners are proposing to replat the property into one lot.

The area to be vacated is approximately 10,019 square feet, and is valued at \$0.09 per square foot, which establishes its value at \$902.00. The applicants are proposing to dedicate a 20 foot alley for utility provision and solid waste pickup running east/west along the southern most property boundary. The amount of land proposed to be dedicated for an

alley would offset the value of the land to be vacated. Therefore, staff considers it to be a reasonable exchange of similarly valued property and no compensation to the City should be required.

Attachments: Site Plan

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.23-ACRE NORTH/SOUTH AND EAST/WEST ALLEY ADJACENT TO LOT 1, BLOCK 10, AND LOT 15, BLOCK 11, TRUELAND ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NEAR THE SOUTHWEST CORNER OF THE INTERSECTION OF SCHARBAUER DRIVE AND NORTH FAIRGROUNDS ROAD); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$902.00; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.23-acre north/south and east/west alley adjacent to Lot 1, Block 10, and Lot 15, Block 11, Trueland Addition, Section 2, City and County of Midland, Texas, is no longer needed for public use; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, an application for vacating the right-of-way has been received by the City from the abutting property owner; and

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$902.00, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to waive the fee for the cost of the right-of-way in light of the abutting property owner's dedication of right-of-way to the City; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the right-of-way described herein;

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

SECTION ONE. That the 0.23-acre north/south and east/west alley adjacent to Lot 1, Block 10, and Lot 15, Block 11, Trueland Addition, Section 2, City and County of Midland, Texas, as described in Exhibit “A” attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way affects any private easement or access easement which abutting property owners may have in said right-of-way.

SECTION TWO. That the fee for the cost of the right-of-way vacated and abandoned herein to the adjoining property owner is hereby waived.

SECTION THREE. That the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2013; 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., 2013, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS ____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

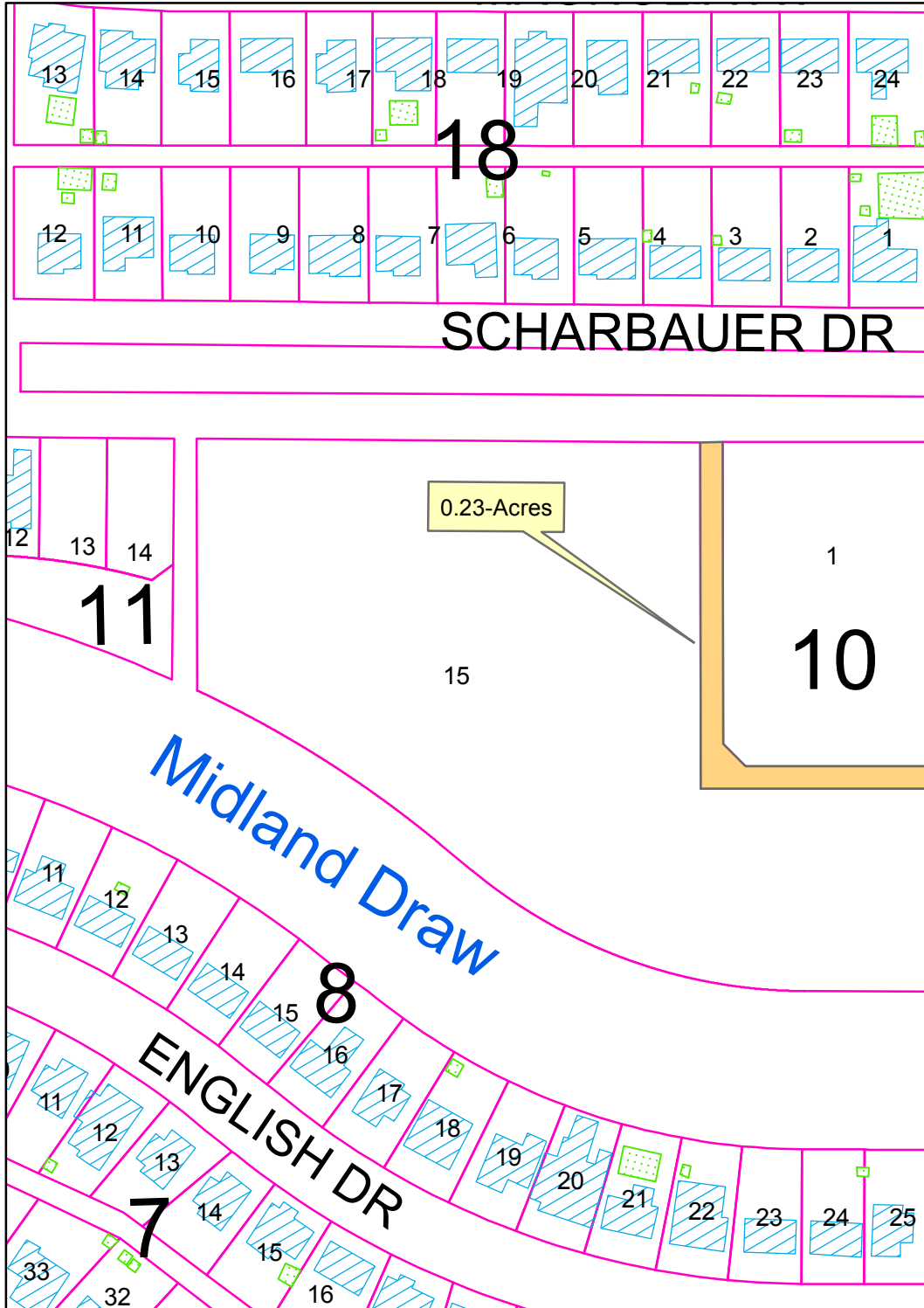
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



FAIRGROUNDS RD

LOCATION MAP

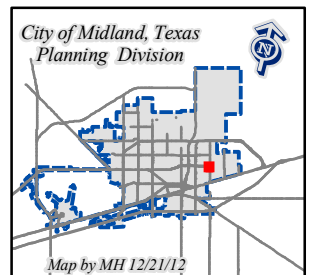
V - 12 - 010

Scale: 1" = 150'

Consider a request for the vacation of the 0.23-acre north/south and east/west alley adjacent to Lot 1, Block 10 and to Lot 15, Block 11, Trueland Addition, Section 2, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS
- ACCESSORY BLDGS



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December 28, 2012

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.23-acre north/south and east/west alley adjacent to Lot 1, Block 10, and Lot 15, Block 11, Trueland Addition, Section 2, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is \$902.00.

Very truly yours,

A handwritten signature in black ink that reads "Courtney Sharp". The signature is stylized, with the first letters of the first and last names being large and prominent.

Courtney Sharp
City Manager

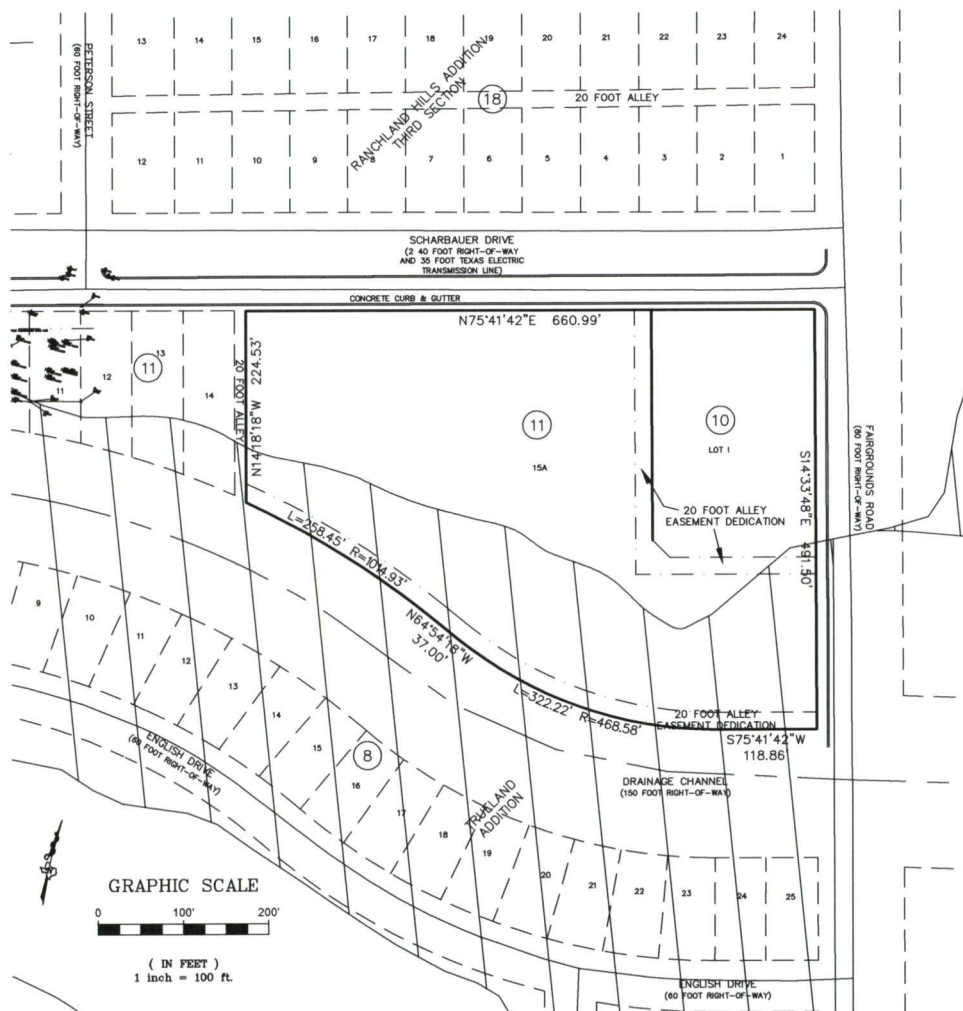
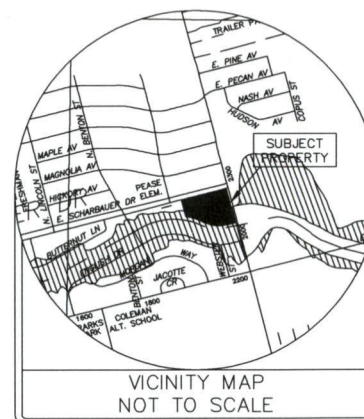
Exhibit "B"

L:\Ordinances\Planning\Vacate & Abandon\2013\Trueland Addition Appraisal Letter.wpd

SKETCH PLAN

TRUELAND ADDITION SECTION 3

A REPLAT OF LOT 1, BLOCK 10 AND
LOT 15, BLOCK 11 AND THE ALLEY
BETWEEN
TRUELAND ADDITION SECTION 2
AN ADDITION TO THE CITY AND COUNTY
OF MIDLAND, TEXAS.



GRAPHIC SCALE



(IN FEET)
1 inch = 100 ft.

RECEIVED

NOV 11 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

SITE PLAN

OWNER:

MICHAEL POSTAR
C/O JOHN T. OWENS
3110 FRANKFORD AVENUE
LUBBOCK, TEXAS 79407
(806) 441-4139

NOTES:

1. 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.
2. 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.
3. COURSE FOR THE WEST LINE OF FAIRGROUNDS ROAD WAS USED FOR DIRECTIONAL CONTROL.

1	11/02/2012	ADD ORIGINAL LOT AND ALLEY EASEMENTS	RJD	DRAWN BY:	CAK	DATE:	07/12/2012
1	07/17/2012	PREPARE SKETCH PLAN	CAK	CHECKED BY:	RJD	DRAWING NO.:	73172JO
NO.	DATE	DESCRIPTION	BY	JOB NO.:	73,172	SHEET	1 OF 1

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS
REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS AND NEW MEXICO
Civil Engineering ~ Land Surveying
408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504
Office (432) 684-5548
Fax (432) 684-6973

CASE NO. V-12-010

Case Number: V-12-010

CITY OF MIDLAND
Planning Division

APPLICATION TO VACATE RIGHT-OF-WAY

- I. Application is hereby made to the City Council to vacate the following public right-of-way or easement:
LOT 1, BLOCK 10 & LOT 15, BLOCK 11 & THE ALLEY BETWEEN FRANKFORD
ADD. TRIP SECTION 2.
- II. Reason for Request: Building new Storage Project. (Site Plan Submitted)
- III. Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:
the alley is NOT needed any more.

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)

Name: Michael POSTAR
Address: 3110 FRANKFORD AVE Phone: 806-789-6087
Street Lubbock State TX Zip Code 79407
City State Zip Code

2. Metes and bounds description of property to be vacated including total square feet of vacation. 1.5
3. Map showing: AKS
Property to be vacated and its relationship to the applicant's property
Lot and block numbers of all adjacent tracts
Current zoning of all adjacent tracts
4. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)
5. Application Fee: \$300.00 ✓

Required items attached? Date Received: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____

The City of Midland will take no action on this request, until items 1-5 are received.

- V. Clearance is needed from the following utility companies: City of Midland / Atmos Energy
Caprock Energy / Oncor Electric / AT&T / Suddenlink Cable TV Co. / Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained and to work out any issues that may arise.

VI. Policies:

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.
 - b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signature of applicant:

** [Signature]*
Nohe Gonzalez

Date: 8/16/12

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

[Signature]
James L. Prince

8/16/12

FOR OFFICE USE ONLY	
Rec'd. By: <i>[Signature]</i>	Date: <u>8/16</u>
Assigned: _____	
For: _____	On: _____



City Council Agenda

Approved For Agenda:
JNichols
City Manager's Office

MEETING DATE: January 8, 2013

TO: CITY COUNCIL, CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a motion interpreting two Ordinances regulating Lot 2, Block 5, Lilly Heights Addition; 3313 Andrews Highway

Purpose:

Consider a motion interpreting two Ordinances regulating Lot 2, Block 5, Lilly Heights Addition; 3313 Andrews Highway.

Recommended City Council Action:

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

None at this time; potential for a new residence

Discussion:

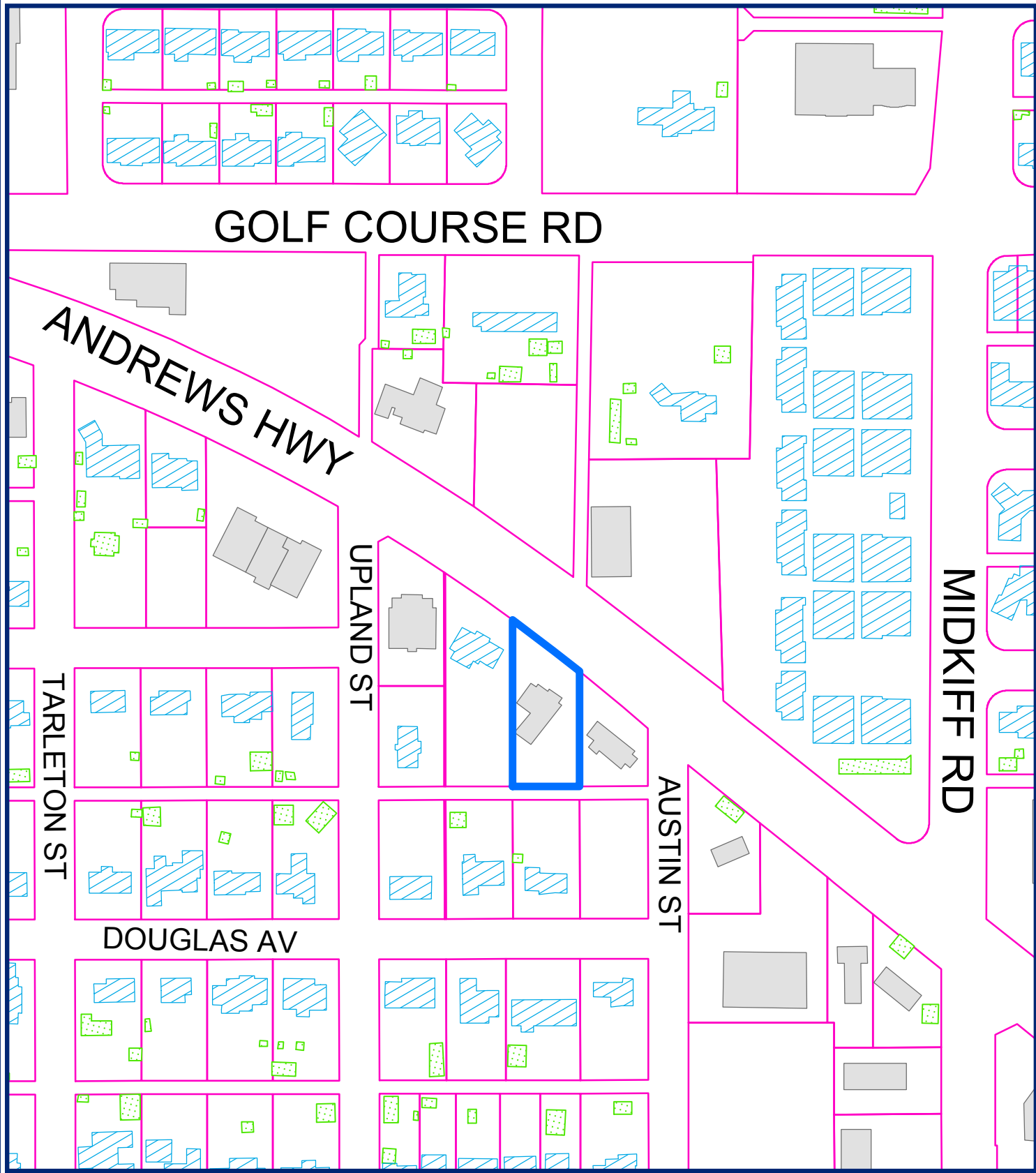
Staff has spoken with Dr. David Wassenberg who owns the above described property and has maintained a chiropractic clinic at this location since 1996. Dr. Wassenberg expressed an interest in building a home for his own occupancy on the same property as the clinic. In 1988, Ordinance 6862 established a PD, Planned District for an Office Center, which stated the following:

Section Two, 1. "That the use and development of Lots 1-4 shall conform to all the regulations applicable to an "O-1", Office District and in addition, shall conform to a detailed site plan which shall be approved according to the normal process of approval of a zone change prior to any lot being developed or used in a manner not allowed by a "1F-1, One-Family Dwelling District."

Dr. Wassenberg complied with the above regulations when he developed his chiropractic clinic when Ordinance 7500 was approved in 1996.

Section One, 1. states *"The development of Lot 2, Block 5, Lilly Heights Addition, shall in all respects be consistent with the site plan set forth in Exhibit "A", attached hereto and incorporated herin by reference."*

It is the staff's opinion that the continued development of the property to include a residence meets the requirements of Ordinance 6862 and does not violate the provisions of Ordinance 7500. At this time, a Council interpretation is requested in order to provide direction to staff and to Dr. Wassenberg.



GOLF COURSE RD

ANDREWS HWY

UPLAND ST

MIDKIFF RD

TARLETON ST

AUSTIN ST

DOUGLAS AV

LEGEND

-  City Parcel
-  Private Building
-  Public Building
-  Auxiliary Building

David Wassenberg
3313 Andrews Hwy

SCALE: 1" = 200'

December 28, 2012



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Map by MH



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 1/8/2013

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider an Ordinance Amending Title III. "Departments", Chapter 1, "Water Department", Section 2, "Rates", Subsection (A), "Customers Inside of City Limits", of the City Code of Midland, Texas, so as to Clarify the Rates Charged for Water and Sewer Services; Containing a Cumulative Clause; Containing a Savings and Severability Clause; and Ordering Publication; and the City Manager Shall Notify All Customers Outside the City Limits as Required by State Law.

Purpose:

Consider an ordinance on first reading for adopting currently charged sewer rates.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No fiscal impact. The rates in the ordinance are same as currently being charged.

Discussion:

Title III. "Departments", Chapter 1, "Water Department", Section 2, "Rates", Subsection (A), "Customers Inside of City Limits", of the City Code of Midland, Texas, shall be clarified to read as follows:

2. Sewer Rates: The monthly rates or charges for services provided to users of the City's sewer system shall be as follows:
 - (a) Residential: \$17.82 per month minimum.
 - (b) Commercial:
 - (1) \$17.82 per month minimum.
 - (2) \$0.71 per 1,000 gallons for water usage between 25,000 gallons and 500,000 gallons.
 - (3) \$0.54 per 1,000 gallons for all water usage over 500,000 gallons used per billing cycle.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE III, “DEPARTMENTS”, CHAPTER 1, “WATER DEPARTMENT”, SECTION 2, “RATES,” SUBSECTION (A), “CUSTOMERS INSIDE OF CITY LIMITS,” SUB-SUBSECTION 2., “SEWER RATES,” OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO CLARIFY THE RATES CHARGED TO CUSTOMERS INSIDE THE CITY LIMITS FOR SEWER SERVICE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION; AND THE CITY MANAGER SHALL NOTIFY ALL CUSTOMERS OUTSIDE THE CITY LIMITS AS REQUIRED BY STATE LAW

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to revise and clarify the charges for sewer services provided by the City of Midland;

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

SECTION ONE. That Title III, “Departments,” Chapter One, “Water Department” Section 2, “Rates,” Subsection (A), “Customers Inside of City Limits,” Sub-subsection 2, “Sewer Rates,” of the City Code of Midland, Texas, shall be clarified to hereafter read as follows:

3-1-2 **RATES:**

(A) Customers Inside of City Limits:

[...]

2. Sewer Rates: The monthly rates or charges for services to users of the City’s sewer system shall be as follows:

(a) Residential: \$17.82 per month minimum.

(b) Commercial:

(1) \$17.82 per month minimum.

(2) \$0.71 per 1,000 gallons for water usage between 25,000 gallons and 500,000 gallons.

- (3) \$0.54 per 1,000 gallons for all water usage over 500,000 gallons used per billing cycle.
- (c) For purposes of the above sewer rates, multiple dwellings will be classified on the basis of each apartment as a separate unit. Commercial rates shall apply to all non-dwelling users. Numbers of apartments shall be calculated pursuant to Subsection (B) of this Section.
- (d) All sewer rates will increase by 2.50% each year on the anniversary of the effective date of this ordinance unless otherwise modified by the City Council.

SECTION TWO. 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. 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. 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 law as an alternative method of publication.

SECTION FIVE. The City Manager shall notify all customers outside the City limits of the rate changes as required by state law.

SECTION SIX. The effective date of this Ordinance shall be February 1, 2013.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; 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., 2013, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: January 3, 2013
To: The Honorable Mayor Perry and Council
From: Amy M. Turner, City Secretary
Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective January 8, 2013. Remaining expirations and vacancies are listed below:

AIRPORT PLANNING AND DEVELOPMENT BOARD – Two terms expired on September 30, 2012.

CITY DEVELOPMENT ADVISORY COMMITTEE – One vacancy expiring on September 30, 2013 and two terms expired on September 30, 2012.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – Two vacancies for Alternate terms expired on September 30, 2007.

HOUSING AUTHORITY COMMISSION – One vacancy as Alternate term expiring in October 2015

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, and two terms expired on January 1, 2010.

MIDLAND HOUSING FINANCE CORPORATION – One vacancy expired on September 30, 2010, two terms expired on September 30, 2011 and one term expired on September 30, 2012.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD – Two terms expired on September 30, 2012.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico), one term expired on September 30, 2011 and two terms expired on September 30, 2012.

TAX INCREMENT REINVESTMENT ZONE BOARD – One term expired on March 20, 2009 (one College representative), four terms expired on March 20, 2010, one term expired March 20, 2011 and one terms expired on March 20, 2012. (Four City representatives, two Hospital representatives, two County representatives and one College representative.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- One term expired on September 30, 2011, one term expired on September 30, 2012 and one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

January 8, 2013

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2015	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
J. Ross Lacy	09/12*	Sept 30 2014	Sept 30 2020
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
(Vacancy)-Lena Margita	10/09	Sept 30 2013	Sept 30 2013
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>	<u>Position</u>
Don Woodward (At Large)	11/11*	Sept 30 2016	Sept 30 2020	5
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013	1
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021	4
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018	3
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018	2

ALTERNATES:

Vacancy	Sept 30 2007	Any
Vacancy	Sept 30 2007	Any

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	09/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Annabell Ramirez	09/12	Sept 30 2014	Sept 30 2016
Brian Smith	09/12	Sept 30 2014	Sept 30 2016
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

* Indicates appointment to an unexpired term.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2015
Dennis Bade	09/12	Oct 2014	Oct 2016
Norma Duran	11/08*	Oct 2014	Oct 2014

ALTERNATES:

Vacancy	Oct 2013	Oct 2015
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JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	11/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Greg Turner	(CC)	12/11	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Michael Trost	02/11*	Jan 14 2013	Jan 14 2019
Cary J. Love	12/09	Jan 14 2013	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2013	Jan 14 2019
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

Appt Date

Wes Perry
Gary Harris
Wayne Merritt

05/12
05/12
05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014

* Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date

Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015
Rebecca Bell	09/12	Sept 30 2014	Sept 30 2016

* Indicates appointment to an unexpired term.

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Russell Richards (Petroleum Eng.)	09/12	Sept 30 2015	Sept 30 2018
Perry Dan Taylor (Real Estate)	09/12	Sept 30 2015	Sept 30 2018
Lance Friday (Real Estate)	09/12*	Sept 30 2013	Sept 30 2019
Paul Brown (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017
David Rosen (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014
Katey Howard	09/12*	Sept 30 2014	Sept 30 2020
Amanda McCann	11/11*	Sept 30 2015	Sept 30 2018
Edward Mayberry	09/12	Sept 30 2015	Sept 30 2021

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2013
Jim Little (Big Spring)	09/03	Sept 30 2013
Frankie Rolfe (Kermit)	09/12	Sept 30 2013
Don Bethel (Lamesa)	02/91	Sept 30 2013
Willie Taylor (Odessa)	02/00	Sept 30 2013
Gloria Pena (Odessa)	03/03*	Sept 30 2013
Barbara Graff (Odessa)	06/10*	Sept 30 2013
Henry Cutbirth (Monahans)	09/05	Sept 30 2013
Isabelle Blanchard (Pecos)	10/10	Sept 30 2013
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2013
Glenn Wortham (Sweetwater)	10/07	Sept 30 2013
John Rogotzke (Snyder)	01/12	Sept 30 2013
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2013
Larry Fry (Roswell, NM)	09/00	Sept 30 2013

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)
(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2014	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014
Kevin Wilton	09/08*	Sept 30 2015	Sept 30 2017
Royce Watkins	02/08*	Sept 30 2015	Sept 30 2017
Karen York	10/10*	Sept 30 2015	Sept 30 2018
Sharla Hotchkiss	10/12	Sept 30 2015	Sept 30 2018
Warren Lvey	10/12*	Sept 30 2014	Sept 30 2020
<u>ALTERNATES:</u>			
Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Neil Florer (College)	07/01	Mar 20 2009	Mar 20 2009
Mark T. Wellen (City), Chairman	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Pete Hulder (Hospital)	03/10	Mar 20 2016	Mar 20 2016
Michael Blonkvist (City)	09/12*	Mar 20 2014	Mar 20 2020
John L. Kennedy (City)	10/09*	Mar 20 2015	Mar 20 2018
Ken Burgess (City)	10/12*	Mar 20 2013	Mar 20 2018
Link Grimes (City)	12/12*	Mar 20 2015	Mar 20 2021
Charlene McBride (College)	12/12	Mar 20 2016	Mar 20 2019
Russell Meyer (Hospital)	12/12	Mar 20 2016	Mar 20 2019

Ex-Officio member is President, Board of Trustees, Midland Independent School District

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015
Scott Young	09/12*	Sept 30 2013	Sept 30 2017
Todd Byars	02/08*	Sept 30 2014	Sept 30 2014

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

* Indicates appointment to an unexpired term.