CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
January 10, 2012 – 9:15 a.m.
Council Chamber - City Hall
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 and Discuss an update from Parkhill, Smith and Cooper regarding the State Highway 191 Water and Sewer Route Capacity Study.

AGENDA FOR CITY COUNCIL MEETING
January 10, 2012 – 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 - Father Frank Chavez, San Miguel Arcángel Catholic 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 2011 Christmas Parade of Lights float winners.

    b. Receive presentation from Midland Retired Seniors Volunteer Program.

    c. Receive Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association.

    d. Presentation to the 2011 Management Award Recipients.

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 Minutes of December 13, 2011.

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

RESOLUTION NO. 2011 - 323

RESOLUTION APPROVING THE MIDLAND DEVELOPMENT CORPORATION'S APPROPRIATION OF $505,743.00 FROM THE FISCAL YEAR 2010-2011 BUDGET TO BE USED FOR PROMOTIONAL PURPOSES, AS AUTHORIZED BY CHAPTER 504 OF THE TEXAS LOCAL GOVERNMENT CODE

7. Consider a resolution appropriating $111,250 from the Hotel/Motel Fund (090) Unappropriated Fund Balance (5650) to the Midland Center Improvements Project (8979) for renovation to the Midland Center. (General Services)

RESOLUTION NO. 2011 - 324

RESOLUTION APPROPRIATING $111,250.00 FROM THE HOTEL/MOTEL FUND TO THE MIDLAND CENTER IMPROVEMENTS PROJECT (8979)

8. Consider a resolution approving the purchase of 1-administrative car, 1-4WD Sport Utility Vehicle, 8-full size 1/2 ton regular cab pickups, 2-fullsize 1/2 ton extended cab pickups, 1-full size 3/4 ton regular cab pickup, 2-full size 3/4 ton RWD extended cab pickups, 1-full size 3/4 ton extended cab & chassis, 1-full size 1 ton dually crew cab pickup and 1-full size 1 ton heavy duty cab and chassis for the Garage Division. (General Services)

RESOLUTION NO. 2011 - 325

RESOLUTION APPROVING THE PURCHASE OF ONE (1) CAR, ONE (1) FOUR WHEEL DRIVE SPORT UTILITY VEHICLE, FOURTEEN (14) PICKUPS OF VARIOUS SIZES AND TWO (2) CAB & CHASSIS, FROM ROGERS FORD OF MIDLAND, TEXAS, AT A TOTAL COST OF $381,014.00; AND OTHER LOWER BIDS ARE REJECTED IN FAVOR OF THE LOCAL BIDDER PURSUANT TO TEXAS LOCAL GOVERNMENT CODE SECTION 271.9051

9. Consider a resolution approving a contract for the installation of a new video board at Grande Stadium at the Scharbauer Sports Complex (General Services)

RESOLUTION NO. 2011 - 326

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF A NEW VIDEO BOARD AT GRANDE COMMUNICATIONS STADIUM FROM DAKTRONICS, INCORPORATED, AT A TOTAL COST OF $293,076.00

10. Consider a resolution approving a contract for control room upgrade at Grande

Stadium at the Scharbauer Sports Complex. (General Services)

RESOLUTION NO. 2011 - 327

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF VIDEO CONTROL ROOM EQUIPMENT AT GRANDE COMMUNICATIONS STADIUM FROM MEDIA SUPPORT GROUP, LTD., AT A TOTAL COST OF $105,202.00

11. Consider a resolution approving a contract for control room upgrade at Citibank Ball Park at the Scharbauer Sports Complex. (General Services)

RESOLUTION NO. 2011 - 328

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF VIDEO CONTROL ROOM EQUIPMENT AT CITIBANK BALL PARK FROM TSE SERVICES, LLC, AT A TOTAL COST OF $80,754.00

12. Consider a resolution approving a contract for installation of rail pads at Citibank Ball Park at the Scharbauer Sports Complex (General Services)

RESOLUTION NO. 2011 - 329

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF FIELD PADS AT CITIBANK BALL PARK FROM UCS, INCORPORATED, AT A TOTAL COST OF $72,000.00

13. Consider a resolution approving the purchase of 1-John Deere 6430 cab tractor and 1-John Deere 550D utility tractor through HGAC from the John Deere Company for the Garage Division. (General Services)

RESOLUTION NO. 2011 - 330

RESOLUTION APPROVING THE PURCHASE OF A JOHN DEERE 6430 CAB TRACTOR AND A JOHN DEERE 550D UTILITY TRACTOR THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (HGAC) FROM JOHN DEERE CONSTRUCTION RETAIL SALES, OF MOLINE, ILLINOIS, AT A TOTAL COST OF $73,378.00; AND THESE ITEMS WERE NOT BID BUT PURCHASED THROUGH A COUNCIL OF GOVERNMENTS

14. Consider a resolution approving the purchase of a Leeboy model 645 motor grader through HGAC from Hi-Way Equipment Company for the Garage Division. (General Services)

RESOLUTION NO. 2011 - 331

RESOLUTION APPROVING THE PURCHASE OF A LEEBOY MODEL 635 GRADER THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (HGAC) AT A TOTAL COST OF $141,975.00; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COUNCIL OF

GOVERNMENTS

15. Consider a resolution authorizing the execution of Terminal Rental Car and Service Agreement between Lewis Transportation Group, LLC dba Dollar Rent a Car/Thrifty Car Rental and the City of Midland at Midland International Airport. (Airport)

RESOLUTION NO. 2011 - 332

RESOLUTION AUTHORIZING THE EXECUTION OF A SERVICE CENTER AGREEMENT WITH LEWIS TRANSPORTATION GROUP, LLC DBA DOLLAR RENT A CAR/THRIFTY CAR RENTAL AT THE MIDLAND INTERNATIONAL AIRPORT

16. Consider a resolution authorizing the execution of a Commercial Hangar Lease Agreement between Empire Airlines, Inc. and the City of Midland at Midland International Airport. (Airport)

RESOLUTION NO. 2011 - 333

RESOLUTION AUTHORIZING THE EXECUTION OF A COMMERCIAL HANGAR/GROUND LEASE AGREEMENT WITH EMPIRE AIRLINES, FOR THE USE OF CERTAIN LAND AT THE MIDLAND INTERNATIONAL AIRPORT

17. Consider a resolution approving an Interlocal Agreement with the Midland Emergency Communication District. (CISD)

RESOLUTION NO. 2011 - 334

RESOLUTION APPROPRIATING FUNDS FROM THE GENERAL LIABILITY SELF-INSURANCE FUND TO THE ATMOS RATE REVIEW MECHANISM PROJECT (8923) IN THE AMOUNT OF $25,000.00; 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

18. Consider a resolution transferring 4B funds to the Scharbauer Sports Complex Fund in the amount of $120,340. (Community Services)

RESOLUTION NO. 2011 - 335

RESOLUTION AUTHORIZING THE APPRORIATION AND ALLOCATION OF FUNDS FROM THE SCHARBAUER SPORTS COMPLEX SALES TAX FUND TO THE SCHARBAUER SPORTS COMPLEX OPERATING BUDGET IN ORDER TO PURCHASE A TELESCOPIC BOOM LIFT

19. Consider a resolution to assign a project number and allocate money from the General Fund for the design and construction of drainage and paving improvements for Mockingbird Lane from Mayfield Place to Whitman Drive. (Engineering)

RESOLUTION NO. 2011 - 336

RESOLUTION APPROPRIATING $19,478 FROM THE GENERAL FUND (001) UNAPPROPRIATED FUND BALANCE (5650) TO THE MOCKINGBIRD PAVING AND DRAINAGE IMPROVEMENTS PROJECT (8977) FOR IMPROVEMENTS TO MOCKINGBIRD LANE FROM MAYFIELD PLACE TO WHITMAN DRIVE

20. Consider a motion of a request by Parkhill, Smith & Cooper for Devon Addition (Section 3), to approve items requested for deferral, and to waive the associated public improvement guarantee. This subdivision is positioned inside the City Limits generally located near the Midland Airport at the northeast corner of the intersection of FM 1788 and Younger Road. The total value of the deferrals is $30,000.00. (Engineering)

21. Consider a resolution accepting $10,893 from Midland College and appropriate of funds. (Fire)

RESOLUTION NO. 2011 - 337

RESOLUTION ACCEPTING AND APPROPRIATING FUNDS IN THE AMOUNT OF $10,893.00 FOR THE MIDLAND COLLEGE FIRE TRAINING PROJECT IN ORDER TO RECOGNIZE AND PROMOTE THE CITY OF MIDLAND FIRE DEPARTMENT AS THE REGIONAL CENTER FOR FIREFIGHTER AND EMS TRAINING

22. Consider a resolution appropriating funds to the Equipment and Technology Project in the amount of $25,920. (Police)

RESOLUTION NO. 2011 - 338

RESOLUTION APPROPRIATING PROCEEDS FROM THE SALE OF OLD SERVICE WEAPONS AND COURT AWARDED WEAPONS IN THE AMOUNT OF $25,920.00 TO THE MIDLAND POLICE DEPARTMENT; THE PROCEEDS WILL BE USED TO PURCHASE EQUIPMENT AND TECHNOLOGY ESSENTIAL TO THE LAW ENFORCEMENT FUNCTION FOR THE MIDLAND POLICE DEPARTMENT

23. Consider a resolution approving the execution of a Task Order Contract with Arcadis U.S., Inc. and appropriate funds. (Utilities)

RESOLUTION NO. 2011 - 339

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL

SERVICES AGREEMENT TASK ORDER WITH ARCADIS U.S., INCORPORATED, FOR PROFESSIONAL GROUNDWATER EVALUATION SERVICES, AT AN ESTIMATED TOTAL COST OF $287,600.00; AND APPROPRIATING FUNDS

24. Consider a resolution approving the execution of a Task Order Contract with Camp Dresser & McKee, Inc. and appropriate funds. (Utilities)

RESOLUTION NO. 2011 - 340

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT TASK ORDER WITH CAMP DRESSER & MCKEE INC, FOR PROFESSIONAL ENGINEERING SUPPORT SERVICES, AT AN ESTIMATED TOTAL COST OF $466,912.00; AND APPROPRIATING FUNDS

25. Consider a resolution approving the funding of the Interlocal Agreement Between the City of Midland, the City of San Angelo and the City of Abilene as approved on April 8, 2011 and appropriate funds. (Utilities)

RESOLUTION NO. 2011 - 341

RESOLUTION APPROVING THE FUNDING OF THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF MIDLAND, THE CITY OF SAN ANGELO AND THE CITY OF ABILENE AS APPROVED ON APRIL 8, 2011 REGARDING LONG-TERM WATER SUPPLIES; AND APPROPRIATING $125,000.00

26. Consider a resolution appropriating funds from general liability to the Atmos RRM project as reimbursement of consulting/legal fees. (City Manager)

RESOLUTION NO. 2011 - 342

RESOLUTION APPROPRIATING FUNDS FROM THE GENERAL LIABILITY SELF-INSURANCE FUND TOTHE ATMOS RATE REVIEW MECHANISM PROJECT (8923) IN THE AMOUNT OF $25,000.00; 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

27. Consider a resolution approving the termination of the Economic Development Agreement between the Midland Development Corporation and Sentry Pumping Units International, Inc. (Legal)

RESOLUTION NO. 2011 - 343

RESOLUTION APPROVING THE TERMINATION OF THE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND SENTRY PUMPING UNITS INTERNATIONAL, INC.

SECOND READINGS

28. Consider an ordinance on second reading on a request by Rodney Roberts for a zone change. (Planning)

ORDINANCE NO. 8959

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 2, GREEN HILL TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTHEAST CORNER OF HOLIDAY HILL 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

29. Consider an ordinance on second reading on a request by Midland Bible Church for a zone change. (Planning)

ORDINANCE NO. 8960

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 4, MAYFIELD PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF WHITMAN DRIVE, APPROXIMATELY ½ MILE NORTH OF MOCKINGBIRD LANE); 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

30. Consider an ordinance on second reading on a request by Gary Dawson for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters. (Planning)

ORDINANCE NO. 8961

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 1, BLOCK 1, CAMELOT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ELKINS ROAD, APPROXIMATELY ONE MILE NORTH OF BUSINESS INTERSTATE 20), WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE

PERMIT WITHOUT TERM FOR AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULAT IVE CLAUSE ; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

31. Consider an ordinance on second reading on a request by Sonny Aguilar for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a lounge. (Planning)

ORDINANCE NO. 8962

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOTS 2 AND 3, BLOCK 27, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST OHIO AVENUE), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A LOUNGE FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

32. Consider an ordinance on second reading on a request by InSite Tower, LLC. Specific Use Permit without Term for a Wireless Communication System. (Planning)

ORDINANCE NO. 8963

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 2, BLOCK 5, NORTHLAND SHOPPING CENTER, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF SCHARBAUER DRIVE AND NORTH “A” STREET), WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR A WIRELESS COMMUNICATION TOWER; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

33. Consider an ordinance on second reading on a request by Matt Gallagher for a Specific Use Permit without Term for an accessory building for living or sleeping

quarters. (Planning)

ORDINANCE NO. 8964

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 19, BLOCK 9, REPLAT OF BLOCK 9, 2 SECTION, MA-ND MAR TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF STANOLIND CIRCLE, APPROXIMATELY 350 FEET EAST OF CESSNA DRIVE), WHICH IS PRESENTLY ZONED 1F-1, ONE-FAMILY DWELLING DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

34. Consider an ordinance on second reading on a request by Mid-Cities Church 191 for Special Exception to the zoning code. (Planning)

ORDINANCE NO. 8965

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 1, WESTLAKE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF STATE HIGHWAY 191 AND NORTH COUNTY ROAD 1275), BY PERMITTING A BUILDING TO EXCEED THE MAXIMUM HEIGHT LIMIT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

35. Consider an ordinance on second reading on a request by Larry Mills for a zone change from PD, Planned District for a Transition District. (Planning)

ORDINANCE NO. 8966

AN ORDINANCE ADOPTING A SITE PLAN FOR LOT 1, BLOCK 83, WEST END, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF WEST WALL STREET AND “J” STREET); SUBJECT TO THE FOLLOWING CONDITIONS AND RESTRICTIONS; 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

36. Consider an ordinance on second reading on a request by SBC, L.P. for a zone change from PD, Planned District for a Shopping Center, to an Amended

Planned District. (Planning)

ORDINANCE NO. 8967

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 4.68-ACRE PORTION OF THE REMAINDER OF LOT 1, BLOCK 6, WESTRIDGE PARK ADDITION, SECTION 6, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF CHAMPIONS DRIVE AND TRADEWINDS BOULEVARD); 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

37. Consider an ordinance on second reading amending currently adopted Energy Code to meet Texas state law requirements. (Code Administration)

ORDINANCE NO. 8968

AN ORDINANCE AMENDING TITLE IV, “BUILDING REGULATIONS”, CHAPTER 12, “ENERGY CODE”, SECTION 2, “CHANGES AND ADDITIONS TO ADOPTED ENERGY CODE”, OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, SO AS TO REMOVE THE EXEMPTION FOR ADDITIONS, ALTERATIONS OR REPAIRS TO EXISTING RESIDENTIAL AND COMMERCIAL STRUCTURES; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

38. Consider an ordinance on second reading on a City-initiated request to vacate a portion of E. Hamby Avenue and two alleys. (Planning)

ORDINANCE NO. 8969

AN ORDINANCE VACATING AND ABANDONING A 0.62-ACRE TRACT OF STREET AND ALLEY RIGHTOF-WAY LOCATED IN BLOCK 79, EAST MIDLAND ADDITION, AND BLOCKS 2 AND 4, GLENN FRANCIS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF EAST GOLF COURSE ROAD AND NORTH JACKSON STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $2,718.80; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; RETAINING A GENERAL UTILITY AND DRAINAGE EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY

39. Consider an ordinance on second reading on a request by Andrew Mellen for the vacation of the 0.10-acre north/south alley and a 0.050-acre portion of the right-of-way of N. Marienfeld Street adjacent to the east half of Block 31A, Homestead Addition, City and County of Midland, Texas. (Planning)

ORDINANCE NO. 8970

AN ORDINANCE VACATING AND ABANDONING A 0.025-ACRE PORTION OF MARIENFELD STREET RIGHT-OF-WAY ADJACENT TO THE EAST HALF OF BLOCK 31A, AND A 0.099-ACRE NORTH/SOUTH ALLEY ADJACENT TO LOTS 1-8, BLOCK 31A, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF LOUISIANA AVENUE AND MARIENFELD STREET); ADOPTING THE APPRAISAL BY THE CITYMANAGER OF $2,612.50; RETAINING A GENERAL UTILITY AND DRAINAGE EASEMENT; AND ORDERING RECORDATION BY THE CITYSECRETARY

40. Consider an ordinance on second reading on a request by Andrew Mellen for the vacation of a 0.55-acre portion of the right-of-way of Stonewall Street, a 0.17-acre portion of the right-of-way of Garden Lane, and a 0.14-acre portion of north/south alley right-of-way all adjacent to Block A, Montgomery Addition, City and County of Midland, Texas. (Planning)

ORDINANCE NO. 8971

AN ORDINANCE VACATING AND ABANDONING A0.55-ACRE PORTION OF STONEWALL STREET RIGHT-OF-WAY, A 0.16-ACRE PORTION OF GARDEN LANE RIGHT-OF-WAY, AND A 0.14-ACRE PORTION OF THE NORTH/SOUTH ALLEY RIGHT-OF-WAY, ALL ADJACENT TO BLOCK “A”, MONTGOMERY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF GARDEN LANE AND FAIRGROUNDSROAD); ADOPTING THE APPRAISAL BY THE CITYMANAGER OF $3,740.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

41. Consider an ordinance on second reading on an amended annexation ordinance to indicate that a portion of the land proposed for annexation on the west side of FM 1788 and on the north side of SH 191 will remain in the city’s extraterritorial jurisdiction due to the owners requesting an agricultural use exemption agreement with the City. (Planning)

ORDINANCE NO. 8972

AN ORDINANCE AMENDING ORDINANCE NO. 8925 OF THE CITY OF MIDLAND BY ATTACHING AN AGREEMENT EXECUTED BY THE CITY MANAGER OF THE CITY OF MIDLAND AND OWNERS OF APPROXIMATELY 309 ACRES OUT OF SECTION 37, BLOCK 41, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, PURSUANT TO SECTION 43.035 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING THAT THE PROPERTY

SUBJECT TO SUCH AGREEMENT SHALL REMAIN IN THE CITY'S EXTRATERRITORIAL JURISDICTION; PROVIDING THAT, EXCEPT AS AMENDED, ORDINANCE NO. 8925 SHALL REMAIN IN FULL FORCE AND EFFECT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ORDERING PUBLICATION; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO FILE A COPY OF THIS ORDINANCE IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND THE CITY MANAGER IS HEREBY AUTHORIZED AND DIRECTED TO EXECUTE THE AGREEMENT

42. Consider an ordinance on second reading on a request from the Texas Department of Transportation establishing a temporary construction speed zone of 60 miles per hour on a portion of Interstate 20 within the City Limits of Midland, Texas. (Transportation)

ORDINANCE NO. 8973

AN ORDINANCE ESTABLISHING A TEMPORARY CONSTRUCTION SPEED ZONE OF 60 MILES PER HOUR ON A PORTION OF INTERSTATE 20 FOR A STATE HIGHWAY IMPROVEMENT PROJECT BY THE TEXAS DEPARTMENT OF TRANSPORTATION; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

43. Consider an ordinance on second reading amending Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 9, "Collection from Commercial Customers", of the City Code of Midland, Texas, so as to replace the explanatory paragraph of Table 1. Standard Commercial Locations: Three Yard Containers. (Solid Waste)

ORDINANCE NO. 8974

AN ORDINANCE OF THE CITY OF MIDLAND AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION," CHAPTER 6, "GARBAGE, TRASH AND RUBISH," SECTION 9, "COLLECTION FROM COMMERCIAL CUSTOMERS" FOR CLARIFICATION; AND ORDERING PUBLICATION

PUBLIC HEARINGS

44. At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a request by Hamilton Williams for a Special Use Permit without Term for tire, battery and automotive accessory installation on the south 120 feet of Tract 4, Morningside, City and County of Midland, Texas. (Planning)

ORDINANCE NO. 8975

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE SOUTH 120 FEET OF TRACT 4, MORNINGSIDE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH BIG SPRING STREET, AP PROXIMATELY 880 FEET SOUTH OF SCHARBAUER DRIVE), WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR TIRE, BATTERY AND AUTOMOTIVE ACCESSORY USE; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

DEVELOPMENT SERVICES

45. Consider an ordinance on a request by Los Conchos Ventures, LLC. for a zone change. (Planning)

ORDINANCE NO. 8958

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 19.71-ACRE TRACT OF LAND (“TRACT 1”) WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 12.97-ACRE TRACT OF LAND (“TRACT 2”) WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN O-1, OFFICE DISTRICT; BY PERMITTING A 26.33-ACRE TRACT OF LAND (“TRACT 3”) WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 60.84-ACRE TRACT OF LAND (“TRACT 4”) WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING A 7.93-ACRE TRACT OF LAND (“TRACT 5”) WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 6.33-ACRE TRACT OF LAND (“TRACT 6”) WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 10.64-ACRE TRACT OF LAND (“TRACT 7”) WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 19.73-ACRE TRACT OF LAND (“TRACT 8”) WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; ALL OF SAID TRACTS BEING OUT OF SECTION 6, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; ALL OF

SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED SOUTH OF MOCKINGBIRD LANE, BETWEEN HOLIDAY HILL ROAD AND ORIOLE 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

46. Consider a motion approving a proposed preliminary plat of Greathouse Addition, Section 7, being a 155.99-acre tract of land out of Section 6, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. (Planning)

47. Consider a motion on a request from Bluestem Energy (Evan C #1) amending a Permit to drill an Oil and Gas Well within the City Limits located 1021' FNL and 2310' FWL, Section 8, Block "X" H.P. Hilliard Survey, Midland County Texas. (Development Services)

48. Consider a motion on a request from Bluestem Energy (Evans G #1) amending a Permit to drill an Oil and Gas Well within the City Limits located 1650' FNL and 2310' FEL, Section 8, Block "X", H.P. Hilliard Survey, Midland Count, Texas. (Development Services)

49. Consider a motion on a request from Bluestem Energy (Evans H #1) amending a Permit to drill and Oil and Gas Well within the City Limits located 1650' FNL and 990' FEL, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Development Services)

50. Consider a motion on a request from Bluestem Energy (Evans I #1) amending a Permit to drill and Oil and Gas Well within the City Limits located 2310' FSL and 990' FEL, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Development Services)

51. Consider a motion on a request from Bluestem Energy (Evans J #1) amending a Permit to drill and Oil and Gas Well within the City Limits located 2322' FSL and 2310' FEL, Section 8, Block "X" H.P. Hilliard Survey, Midland County, Texas. (Development Services)

MISCELLANOUS

52. Consider a motion appointing a Mayor Pro Tempore.

53. Consider making appointments to various Boards and Commissions.

EXECUTIVE SESSION

54. 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:

Respectfully Submitted,

Courtney B. Sharp
City Manager

MIDLAND CITY COUNCIL
MINUTES
December 13, 2011

BRIEFING SESSION
The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:00 a.m. on December 13, 2011.

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

Council Members absent: Mayor Pro Tem Michael Trost (District 4). (Trost arrived at 9:03 a.m.)

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, Development Services Director Rick Crownover, Utilities Director Stuart Purvis, Planning Division Manager Cameron Walker, Building Official Steve Thorpe, GIS Manager Bill Hodge, City Engineer David Beard, Public Information Officer Tasa Watts, and Senior Planner Jim Compton.

1. Discussion of City Council 2012 Retreat (format of retreat, date(s), etc.).

   City Manager Sharp noted that the City Council needed to start planning for their next retreat. The retreat was set for March 1-2, 2012. Ideas discussed for format included an opportunity for the Council to brainstorm; give each Council Member an opportunity to present ideas; hear input from Department Heads regarding staffing and equipment needs; have departments categorize their desires into wants versus needs; invite chairs from key boards and commissions to listen. Council will submit names for suggested facilitators to the City Manager.

2. Discussion and review of potential infrastructure deferral process.

   Assistant City Manager Jim Nichols reviewed staff recommended proposal for the deferral process. He explained that the terms waiver and deferral have been used interchangeably but the new policy defines those two terms. A waiver negates the need to meet the standards and a deferral delays the implementation of the standards. He noted the intent of the policy was to protect the City and to ensure that a deferral does eventually happen and explained the forms of security that could be used. Discussion ensued about when waivers and deferrals might be used and the different forms of security and how the forms of security could impact small businesses.

Mayor Perry briefly discussed the order in which he would handle the regular session agenda.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:52 a.m.

REGULAR SESSION
The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:01 a.m., December 13, 2011.

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

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 Regular Session Agenda Items were heard in the following order: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 17, 18, 19, 20, 23, 25, 26, 27, 28, 31, 32, 33, 11, 16, 21, 22, 24, 35, 36, 39, 74, 40, 41, 42, 44, 45, 47, 48, 49, 50, 53, 54, 55, 56, 57, 58, 59, 52, 60, 65, 72, 73, 71, 62, 29, 30, 34, 37, 38, 43, 46, 51, 61, 63, 64, 66, 67, 68, 69, 70.

OPENING ITEMS

1. The Invocation was voiced by Reverend Robert Pase of Grace Lutheran Church.

2. The Pledge of Allegiance to the Flag was stated.

PRESENTATIONS

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

   a. Presentation of Proclamation to retired employee Eddie Price.

      Eddie Price was not present to receive his retirement proclamation.

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.

   No public comments were made.

Mayor Perry announced that due to the long agenda any Public Hearing after Agenda Item #42 would not be heard until 12:45 p.m. at the earliest and Agenda Item numbers 53-59 would not start until 1:30 p.m. at the earliest.

CONSENT AGENDA

Council Member Trost moved to approve Consent Agenda items 5 - 34 excluding 11, 16, 21, 22, 24, 29, 30, 34; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:
   a. Regular meeting of November 8, 2011.
   b. Special meeting of November 21, 2011.

6. Approved a resolution to rescind Resolution 2011-261 and proceed with Fiscal Year 2012 General Purpose Certificates of Obligation Issue. (Finance)

   RESOLUTION NO. 2011 - 293

   RESOLUTION CANCELLING AND RESCINDING RESOLUTION NO. 2011-261 AND APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE SERIES 2012 CERTIFICATES OF OBLIGATION IN AN AMOUNT NOT TO EXCEED THIRTY-ONE MILLION ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($31,150,000.00); AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO CAUSE NOTICES TO BE PUBLISHED AND POSTED

7. Approved a resolution authorizing reimbursement of the Water and Sewer Operating Fund from proceeds of the 2012 Certificate of Obligation proceeds. (Finance)

   RESOLUTION NO. 2011 - 294

   RESOLUTION DECLARING EXPECTATION TO REIMBURSE EXPENDITURES WITH PROCEEDS OF FUTURE DEBT; AND THE CITY OF MIDLAND REASONABLY EXPECTS TO REIMBURSE CAPITAL EXPENDITURES WITH PROCEEDS OF DEBT HEREAFTER TO BE INCURRED BY THE CITY

8. Approved a resolution awarding a contract to the single bidder for the purchase and installation of two pivot irrigation systems for the Utilities Department. (General Services)

   RESOLUTION NO. 2011 - 295

   RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF TWO (2) CENTER PIVOT IRRIGATION SYSTEMS FOR USE AT THE CITY'S SPRABERRY FARM FROM THE SOLE BIDDER, LAMESA IRRIGATION COMPANY, OF LAMESA, TEXAS, AT A TOTAL COST OF $152,364.00

9. Approved a resolution awarding a contract for the purchase and installation of four complete side wheel roll irrigation systems for the Utilities Department. (General Services)

RESOLUTION NO. 2011 - 296

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, OF LAMESA, TEXAS, AT A TOTAL COST OF $68,720.00

10. Approved a resolution approving an annual master agreement for an estimated quantity of 5/8", 1", 1 1/2", and 2" water meters with automated encoders for the Warehouse Division. (General Services)

RESOLUTION NO. 2011 - 297

RESOLUTION APPROVING THE PURCHASE OF SEVEN HUNDRED AND FIFTY (750) WATER METERS OF VARIOUS SIZES, ALL WITH ENCODER REGISTERS, FROM WESTERN INDUSTRIAL SUPPLY, L.L.C., OF ODESSA, TEXAS, AT A TOTAL COST OF $128,809.00; THERE WAS ONE OTHER BIDDER WHO SUBMITTED A BID OF $99,690.00 BUT IT IS THE CITY MANAGERS RECOMMENDATION THAT SAID BID DID NOT MEET SPECIFICATIONS AND SHOULD BE REJECTED; AND ADOPTING THE CITY MANAGER'S RECOMMENDATION

12. Approved a resolution approving plans and specifications and authorizing advertisement for bids for the renovation of Washington Park Pool. (General Services)

RESOLUTION NO. 2011 - 299

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE RENOVATION OF THE WASHINGTON PARK AQUATIC CENTER

13. Approved a resolution authorizing the execution of a professional services agreement with Midland Sports, Incorporated, of Midland, Texas, for professional marketing, promotion, and management services at the Scharbauer Sports Complex at a total cost of $51, 000. (Community Services)

RESOLUTION NO. 2011 - 300

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MIDLAND SPORTS, INCORPORATED , FOR PROFESSIONAL MARKETING, PROMOTION AND MANAGEMENT SERVICES AT THE SCHARBAUER SPORTS COMPLEX AT A TOTAL COST OF $51,000.00

14. Received and filed the CDBG Annual Report. (CDBG)

15. Approved a motion directing staff to begin the annexation process for a tract of land approximately 28 acres. (Generally located at the northwest corner of Holiday Hill Road and Briarwood Avenue). (Planning)

17. Approved a motion on a request from the Texas State Independent Living Council (SILC) authorizing the City of Midland to support a grant from the Texas Department of Transportation that would increase employment and improve transportation services for individuals with disabilities living in the rural counties of Odessa and Midland. (Transportation)

18. Approved a motion on a request by West Company of Midland for Stadium Addition (Toyota of Midland), to approve items requested for deferral in the amount of $11,707.00, and to waive the associated public improvement guarantee. This subdivision is generally located at the northeast corner of the intersection of West Look 250 and Network Dr. (Engineering)

19. Approved a motion on a request by West Company of Midland for Gateway Plaza (Section 3), to approve items requested for deferral in the amount of $32,795.70, and to waive the associated public improvement guarantee. This subdivision is generally located at the northwest corner of the intersection of West Loop 250 and Business I-20. (Engineering)

20. Approved a motion on a request by West Company of Midland for Witcher Addition (Lot 2 & Lot 3), to approve items requested for deferral in the amount of $112,194.00, and to waive the associated public improvement guarantee. This subdivision is generally located at the southwest corner of the intersection of Norden Drive and Liberator Lane. (Engineering)

23. Approved a resolution authorizing staff to re-advertise for bids for the Ward Street Bridge project. (Engineering)

RESOLUTION NO. 2011 - 307
RE SOLUT ION AP PROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE WARD STREET BRIDGE PROJECT; SAID PROJECT WILL BE FOR THE REPLACEMENT OF THE BRIDGE DECK, REINFORCEMENT OF THE EXISTING BRIDGE STRUCTURE, IMPROVEMENTS TO PROTECT THE NEW STRUCTURE, AND IMPROVEMENTS TO BRIDGE RAILS AND SIDEWALKS

25. Approved a resolution to approve appointment of volunteers enforcing parking restrictions. (Police)

RESOLUTION NO. 2011 - 309
RESOLUTION APPOINTING INDIVIDUALS TO SERVE AS VOLUNTEERS TO ENFORCE AUTOMOBILE PARKING RESTRICTIONS AS AUTHORIZED BY CHAPTER 681 OF THE TEXAS TRANSPORTATION CODE

26. Approved a resolution approving award of the Raw Water Project at the Water Purification Plant to Archer Western Construction, LLC and appropriate funds. (Utilities)

RESOLUTION NO. 2011 - 310
RESOLUTION AWARDING THE RAW WATER PROJECT AT THE WATER PURIFICATION PLANT TO ARCHER WESTERN CONSTRUCTION, L.L.C., AT A TOTAL COST OF $7,058,965.00

27. Approved a resolution approving the extension of the farm lease agreement 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. 2011 - 311
RESOLUTION AUTHORIZING AN AMENDMENT TO THE EXISTING SPRABERRY FARM LEASE EXTENSION AGREEMENT WITH KEVIN COOK, EXTENDING THE TERM OF SAID AGREEMENT THROUGH DECEMBER 31, 2012

28. Approved a resolution approving a one year farm lease agreement with Schumann Cattle Company for a 219.3 acre portion of the Plant Farm. (Utilities)

RESOLUTION NO. 2011 - 312
RESOLUTION AUTHORIZING THE EXECUTION OF A ONE-YEAR FARM LEASE AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS, AND SCHUMANN CATTLE COMPANY FOR OPERATION OF THE CONNER FARM LOCATED IN SECTION 10, BLOCK 38, TWP-2-S, T&P RY. CO. SURVEY, MIDLAND COUNTY, TEXAS

31. Approved a motion on a request by Mayor Perry assigning a team comprised of Mayor Perry, Councilman Dufford, Councilman Morales, Courtney Sharp, Jim Nichols, and Stuart Purvis to review and evaluate the water RFP's recently received by the City. (City Manager)

32. Approved a resolution amending all three of the City of Midland's Section 457(b) Deferred Compensation Plan Documents in order to conform to final regulations issued by the Internal Revenue Service. (Administrative Services)

RESOLUTION NO. 2011 - 315
RESOLUTION AUTHORIZING THE ADOPTION OF REVISED AND AMENDED DEFERRED COMPENSATION PLANS OFFERED TO EMPLOYEES OF THE CITY OF MIDLAND, UNDER SECTION 457 OF THE INTERNAL REVENUE SERVICE CODE IN ORDER TO COMPLY WITH FINAL REGULATIONS WITH A COMPLIANCE DEADLINE OF DECEMBER 31, 2011

33. Approved a resolution authorizing the City Manager to execute a Right of Way License for the installation and maintenance of an oil & gas pipeline with Vitol Midstream, L.L.C. (Utilities)

RESOLUTION NO. 2011 - 316
RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A RIGHT OF WAY LICENSE FOR THE INSTALLATION AND MAINTENANCE OF AN OIL & GAS PIPELINE ACROSS SECTION 44, BLOCK 38, T-1-S, MIDLAND COUNTY, TEXAS, WITH VITOL MIDSTREAM, L.L.C.

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

11. Consider a resolution approving the purchase of a Genie S-80X, 2WD, telescoping boom lift through HGAC from Equipment Depot LTD of Waco, Texas for the Garage Division. (General Services)

RESOLUTION NO. 2011 - 298

RESOLUTION APPROVING THE PURCHASE OF A TELESCOPIC BOOM LIFT FOR USE AT THE SCHARBAUER SPORTS COMPLEX THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (HGAC) AT A TOTAL COST OF $120,340.00; AND THIS ITEM WAS NOT ADVERTISED FOR COMPETITIVE BIDS BUT PURCHASED THROUGH A COUNCIL OF GOVERNMENTS

Council Member Dufford asked if the lift would be used primarily at the sports complex or more throughout the city. Community Services Director, Tina Jauz, responded that it would be used primarily at the sports complex or about 75 percent of the time and the other 25 percent of the time it would be used in other areas.

Council Member Dufford moved to adopt Resolution No. 2011-298 with the amendment to use 4B funds for the purchase; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

16. Consider a resolution authorizing the Midland Odessa Transportation Organization or MOTOR MPO to be designated as a Transportation Management Area or TMA. (Transportation)

RESOLUTION NO. 2011 - 304

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS IN SUPPORT OF THE MOTOR MPO MOVING FROM A NON-TRANSPORTATION MANAGEMENT AREA (NON-TMA) DESIGNATION TO A TRANSPORTATION MANAGEMENT AREA (TMA) DESIGNATION; AND, DIRECTING STAFF TO REQUEST AND OBTAIN THE NECESSARY CORRESPONDENCE FROM THE GOVERNOR OF THE STATE OF TEXAS, ALONG WITH A FORMAL LETTER OF REQUEST FROM THE MOTOR MPO TO THE UNITED STATES DEPARTMENT OF TRANSPORTATION REQUESTING SAID DESIGNATION

Council Member Trost asked if this could jeopardize receiving operating funds.

Robin Donnelly, 4905 Castleford, explained how transit funds are handled emphasizing that with the new designation they can plan future planning and construction.

Council Member Morales moved to adopt Resolution No. 2011-304; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Hailey, Sparks, Dufford, James, Perry. NAY: Trost. ABSTAIN: None. ABSENT: None.

21. Consider a resolution assigning a project number for the design and construction of drainage and paving improvements for Briarwood Avenue from Holiday Hill Road to Heidleberg Lane. (Engineering)

RESOLUTION NO. 2011 - 305

RESOLUTION APPROPRIATING $36,413 FROM THE GENERAL FUND (001) UNAPPROPRIATED FUND BALANCE (5650) TO THE BRIARWOOD PAVING AND DRAINAGE IMPROVEMENTS PROJECT (8976)

Council Member Sparks moved to adopt Resolution No. 2011-305; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

22. Consider a resolution assigning a project number for the design and construction of drainage and paving improvements for Mockingbird Lane from Holiday Hill Road to Midland Drive. (Engineering)

RESOLUTION NO. 2011 - 306

RESOLUTION APPROPRIATING $19,478 FROM THE GENERAL FUND (001) UNAPPROPRIATED FUND BALANCE (5650) TO THE MOCKINGBIRD PAVING AND DRAINAGE IMPROVEMENTS PROJECT (8977)

At the request of City Engineer Beard, Council Member Sparks moved to defer the item until the next meeting; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY:

None. ABSTAIN: None. ABSENT: None.

24. Consider a resolution accepting preclearance from the United States Department of Justice, Civil Rights Division, regarding the City of Midland's 2011 redistricting plan for the election of individual city council members and the configuration of individual districts. (Legal)

RESOLUTION NO. 2011 - 308
RESOLUTION ACCEPTING PRECLEARANCE FROM THE UNITED STATES DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, REGARDING THE CITY OF MIDLAND'S 2011 REDISTRICTING PLAN FOR THE ELECTION OF INDIVIDUAL CITY COUNCIL MEMBERS AND THE CONFIGURATION OF INDIVIDUAL DISTRICTS

A brief discussion was held regarding the last time voting districts changed and how people were notified of the change.

Council Member James moved to adopt Resolution No. 2011-308 with the amendment to have town hall meetings and send out letters to the individuals who have been affected by the change; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

29. Consider a resolution approving the suspension of lease payments for AT&T Mobility Texas, L.L.C. while the Shell Tower is being relocated. (Utilities)

RESOLUTION NO. 2011 - 313
RESOLUTION APPROVING THE TEMPORARY SUSPENSION OF LEASE PAYMENTS FROM AT&T MOBILITY TEXAS, L.L.C., (AT&T), FROM JANUARY 1, 2012, THROUGH MAY 1, 2012, WHILE THE SHELL AVENUE ELEVATED WATER TOWER IS RE-COATED

Council Member James moved to adopt Resolution No. 2011-313; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

30. Consider a resolution approving the suspension of lease payments for WWC Texas RSA Limited Partnership while the Shell Tower is being relocated. (Utilities)

RESOLUTION NO. 2011 - 314
RESOLUTION APPROVING THE TEMPORARY SUSPENSION OF LEASE PAYMENTS FROM WWC TEXAS RSA, L.P., (VERIZON), FROM JANUARY 1, 2012, THROUGH MAY 1, 2012, WHILE THE SHELL AVENUE ELEVATED WATER TOWER IS RE-COATED

Council Member James moved to adopt Resolution No. 2011-314; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

34. Consider a motion authorizing the City Manager to approve the relocation of equipment for Clear Wireless L.L.C. from the Shell Elevated Tower to the Edgewood Elevated Tower while the Shell Tower is being recoated. (Utilities)

Council Member Sparks moved to approve a motion authorizing the City Manager to approve the relocation of equipment for Clear Wireless L.L.C. from the Shell Elevated Tower to the Edgewood Elevated Tower while the Shell Tower is being recoated; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

SECOND READINGS

35. Consider an ordinance on second reading on a request by Bourbon St. D.C. for a Specific use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a lounge, on Lot 24, Block 53, Original Town, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of N. Main Street and E. Texas Avenue.) (Planning) (First reading held November 8, 2011.)

ORDINANCE NO. 8953
AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 24, BLOCK 53, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST

CORNER OF THE INTERSECTION OF NORTH MAIN STREET AND EAST TEXAS AVENUE), WHICH IS PRESENTLY ZONED C-1,CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A LOUNGE FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

City Secretary Turner read the caption of Ordinance No. 8953.

Council Member Morales moved to approve the second and final reading of Ordinance No. 8953 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

36. Consider an ordinance on second reading on a request by Alan Hale for a zone change from PD, Planned District for a Housing Development to an Amended Planned District on a 2.52-acre portion of Lot 3A, Block 1, Trinity Towers Manor, Sections 3, City and County of Midland, Texas. (Generally located near the northeast corner of the intersection of N. Loop 250 West and Sinclair Avenue on Manor Village Circle.) (Planning) (First reading held November 8, 2011.)

ORDINANCE NO. 8954

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 3A, BLOCK 1, TRINITY TOWERS MANOR, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED NEAR THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND SINCLAIR AVENUE ON MANOR VILLAGE CIRCLE); 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

City Secretary Turner read the caption of Ordinance No. 8954.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 8954 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

37. Consider an ordinance on second reading establishing intersection stops at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars ($200.00); and ordering publication. (Transportation) (First reading held November 8, 2011.)

ORDINANCE NO. 8955

AN ORDINANCE ESTABLISHING INTERSECTION STOPS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; REQUIRING AND AUTHORIZING THE POSTING OF APPROPRIATE SIGNS AT INTERSECTIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

City Secretary Turner read the caption of Ordinance No. 8955.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8955 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

38. Consider an ordinance on second reading removing yield signs at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; containing a cumulative clause; containing a savings and

severability clause; providing for a maximum penalty or fine of two hundred dollars ($200.00); and ordering publication. (Transportation) (First reading held November 8, 2011.)

ORDINANCE NO. 8956

AN ORDINANCE ESTABLISHING YIELD RIGHT OF WAY SIGNS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; REQUIRING AND AUTHORIZING THE POSTING OF APPROPRIATE SIGNS AT SAID INTERSECTIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

City Secretary Turner read the caption of Ordinance No. 8956.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8956 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

39. At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a request by Los Conchos Ventures, LLC. for a zone change. (Planning)

ORDINANCE NO. 8958

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 19.71-ACRE TRACT OF LAND (“TRACT 1”) WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 12.97-ACRE TRACT OF LAND (“TRACT 2”) WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN O-1, OFFICE DISTRICT; BY PERMITTING A 26.33-ACRE TRACT OF LAND (“TRACT 3”) WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 60.84-ACRE TRACT OF LAND (“TRACT 4”) WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A 1F-2, ONEFAMILY DWELLING DISTRICT; BY PERMITTING A 7.93-ACRE TRACT OF LAND (“TRACT 5”) WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 6.33- ACRE TRACT OF LAND (“TRACT 6”) WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 10.64- ACRE TRACT OF LAND (“TRACT 7”) WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 19.73-ACRE TRACT OF LAND (“TRACT 8”) WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; ALL OF SAID TRACTS BEING OUT OF SECTION 6, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; ALL OF SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED SOUTH OF MOCKINGBIRD LANE, BETWEEN HOLIDAY HILL ROAD AND ORIOLE 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

Planning Division Manager Walker gave an overview of the item noting that the Planning & Zoning Commission recommended approval by a vote of 6-1 and that there were 14 people who spoke in opposition to the item and 5 in favor. He also reported that more than 46 percent opposition had been received requiring a super-majority vote.

Discussion ensued regarding what buildings could be built in specific zones, the types of building materials required, and where fences would be constructed.

Mayor Perry opened the public hearing at 10:49 a.m.

Eric West, representing the developer, shared a PowerPoint presentation and giving Council an overview of the development.

Linda Holmquist, 4515 Cardinal Lane, reminded the City Council about a traffic review study conducted in 2008 and expressed concern about increased traffic on Oriole. She asked that their visual and zoning way of life be protected.

Georgia Corwin, 4516 Robin, noted that the property in the area is zoned AE and explained that people have livestock and that it is a different lifestyle. She expressed concern about resale value of their homes and noted that she had not been contacted by the developer until last week. She expressed concern about keeping their form of lifestyle, safety and population density.

John Sullivan, 4707 Tattenham, recommended that the developer put up a fence along Holiday Hill and Mockingbird, expressed concern about changing the zoning and asked Council to defer the item so that the neighbors could have further discussions with the developer.

Paul Lewis, 3501 Gulf, stated his objection to any new development that would require new water meters for as long as there is a shortage of water. He also noted his objection for all other public hearings where new water meters would be required.

Larry Adams, 4508 Meadowlark Lane, expressed concern regarding entry points to the development because it would require travel through residential neighborhoods to the east. He asked the item be deferred so that talks could continue with the developer and expressed a desire to have everything in writing. He also expressed concern about potential traffic issues.

Tim McNealy, 4515 Meadowlark Lane, felt the 13 acres would be used for retail, noted that the roads do not have curbs and spoke about a fence on the west side of Oriole noting a wall would be a good separator between the residence and retail. He asked that the item be postponed to continue talks with the developer.

Tom Galloway, 5013 Pimlico, stated that retail is all being shoved into the corner, noted that there is plenty of retail within a mile of their residence, and asked to have the item deferred to a later date to give an opportunity to talk to the developers.

Karen York, 4501 Mockingbird, noted that some of the people in their group are elderly and could not be present. They wanted the O-1 changed to a better transition zoning due to traffic issues and school systems property nearby.

Greg Bowler, 4510 Meadowlark, expressed concern over traffic issues, noted an open area would allow kids to get in and cause trouble and felt something taller than a six foot fence was necessary, and asked that the item be postponed.

There being no one else present wishing to speak, the public hearing was closed at 11:29 a.m.

City Secretary Turner read the caption of Ordinance No. 8958.

Council Member Hailey moved to defer the item until the next meeting; seconded by Council Member Trost.

Following discussion, Richard Dunham was invited forward to address concerns raised regarding Tract 2.

Richard Dunham, 4400 N. Big Spring, noted they have no foreseeable plans to develop Tract 2 until 4-5 years down the road. His plan was for an office complex because he felt that was the best transition and would create a buffer between the homes and the higher density properties. He noted he was not in favor of doing a PD but would be willing to move to another type of zoning. He noted that by putting in a fence along Mockingbird it would force the developer to put in a gated community. He noted he had agreed to build a second fence along Oriole which would be about $250,000. He stated it appeared a fence along Mockingbird would need to be on north side of street which would be problematic.

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

40. Consider a motion approving a proposed preliminary plat of Greathouse Addition (Los Conchos Development), a 155.99-acre tract out of Section 7, Block “X”, H. P. Hilliard Survey, Midland County, Texas. (Generally located on the south side of Mockingbird Lane, between Oriole Drive and Holiday Hill Road.) (Planning)

Council Member Morales moved to defer to the next meeting; seconded by Council

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

41. At approximately 10:33 A.M. hold a public hearing and consider an ordinance on a request by Rodney Roberts for a zone change. (Planning)

ORDINANCE NO. 8959

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 2, GREEN HILL TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTHEAST CORNER OF HOLIDAY HILL ROAD AND MOCKINGB IR D L A N E) ; CON T A IN ING 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 that no letters of objection had been received and that the request was supported by staff as well as the Planning & Zoning Commission.

Mayor Perry opened public hearing at 12:57 p.m.

Rodney Roberts, 4515 Bent Tree, applicant, stated he noticed a lack of retail services in the area and had been waiting for this opportunity. He plans to put a convenience store on 1.5 acres of the west end oriented to the southwest so that lights would be disbursed away from the current residential area. He also noted he would like to put in a coffee house, a cleaner, and a pizza place. He noted he would not move forward with this until Mockingbird comes through.

John Sullivan, 4707 Tattenham, expressed his concern with that corner being retail is fencing, noting that if it had a true buffer from noise and light he would be okay with it. He noted he represent 60 families who are annual members of a pool and complex and wanted to ensure that a fence is placed between Pemlico and the pool area. He recommended deferring the item to a future meeting.

Junior Urias, 5017 Pimlico, noted he was not concerned with lights or traffic but more concerned with a secure buffer.

There being no one else present wishing to speak, the public hearing was closed at 1:08 p.m.

City Secretary Turner read the caption of Ordinance No. 8959.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 8959 in accordance with the Charter of the City of Midland with an amendment to require a fence and landscape barrier on the north and east side of Tract 1 of similar style to Holiday Hill with details delineated before the next meeting; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

42. At approximately 10:36 A.M. hold a public hearing and consider an ordinance on a request by Midland Bible Church for a zone change. (Planning)

ORDINANCE NO. 8960

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 4, MAYFIELD PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF WHITMAN DRIVE, APPROXIMATELY ½ MILE NORTH OF MOCKINGBIRD LANE); 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 that one letter of objection had been received expressing concern for potential vandalism. He stated that

the Planning & Zoning Commission unanimously recommended approval.

Mayor Pro Tem Trost opened the public hearing at 1:17 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8960.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8960 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Dufford, James, Hailey. NAY: None. ABSTAIN: Perry. ABSENT: None.

43. At approximately 10:39 A.M. hold a public hearing and consider an ordinance on a request by Gary Dawson for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters. (Planning)

ORDINANCE NO. 8961

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 1, BLOCK 1, CAMELOT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ELKINS ROAD, APPROXIMATELY ONE MILE NORTH OF BUSINESS INTERSTATE 20), WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULAT IVE 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 a Special Use Permit for an accessory building. He noted that no letters of objection had been received and that Planning & Zoning Commission had unanimously approved the item.

Mayor Perry opened the public hearing at 4:44 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8961.

Council Member Sparks moved to approve the first of two readings of Ordinance No. 8961 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

44. At approximately 10:42 A.M. hold a public hearing and consider an ordinance on a request by Sonny Aguilar for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a lounge. (Planning)

ORDINANCE NO. 8962

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOTS 2 AND 3, BLOCK 27, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST OHIO AVENUE), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A LOUNGE FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker gave an overview of the item noting that two letters of opposition had been received relating to parking issues.

Mayor Perry opened the public hearing at 1:21 p.m.

Gloria Salazar, 2504 Candle Tree Circle, stated that she would like to see this item passed noting she felt it was a very good cause. She stated that the area was in need of diversification and revitalization.

There being no one else wishing to speak, the public hearing was closed at 1:23 p.m.

City Secretary Turner read the caption of Ordinance No. 8962.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8962 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

45. At approximately 10:45 A.M. hold a public hearing and consider an ordinance on a request by InSite Tower, LLC. Specific Use Permit without Term for a Wireless Communication System. (Planning)

ORDINANCE NO. 8963

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 2, BLOCK 5, NORTHLAND SHOPPING CENTER, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF SCHARBAUER DRIVE AND NORTH "A" STREET), WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR A WIRELESS COMMUNICATION TOWER; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker gave an overview of the item noting this item was for a cell tower on Midland County property. He stated that no letters of opposition had been received.

Mayor Perry opened the public hearing at 1:25 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8963.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8963 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

Council Member James noted he had previously spoke about ensuring that the City of Midland has designated space on cell towers and wanted to clarify that the Ordinance was broad enough to meet those needs. City Attorney Stretcher suggested an amendment be made to include that language.

Council Member James moved to amend the motion by amending Section 2, item G to reflect that the City of Midland reserves the right to affix other suitable devices to a tower including but not limited to Wi-Fi; seconded by Council Member Sparks. The motion to amend carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

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

46. At approximately 10:48 A.M. hold a public hearing and consider an ordinance on a request by Matt Gallagher for a Specific Use Permit without Term for an accessory building for living or sleeping quarters. (Planning)

ORDINANCE NO. 8964

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 19, BLOCK 9, REPLAT OF BLOCK 9, 2 SECTION, MA-ND MAR TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF STANOLIND CIRCLE, APPROXIMATELY 350 FEET EAST OF CESSNA DRIVE), WHICH IS PRESENTLY ZONED 1F-1, ONE -FAMILY DWEL L ING DI STRICT , BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker gave an overview of the item noting that no letters of objection had been received and that it was supported by both staff and the Planning & Zoning Commission.

Mayor Perry opened the public hearing at 4:46 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Council Turner read the caption of Ordinance No. 8964.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 8964 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

47. At approximately 10:51 A.M. hold a public hearing and consider a resolution on a request by Westlake Hardware, Inc. for a Temporary Land Use Permit for Outdoor Sales. (Planning)

RESOLUTION NO. 2011 - 317

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR OUTDOOR SALES ON LOT 1, BLOCK 5, PARK PLACE, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF ANDREWS HIGHWAY AND CUTHBERT AVENUE); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

Planning Division Manager Walker gave an overview of the item noting that no letters of objection had been received.

Mayor Perry opened the public hearing at 1:32 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Hailey moved to adopt Resolution No. 2011-317; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

48. At approximately 10:57 A.M. hold a public hearing and consider an ordinance on a request by Mid-Cities Church 191 for Special Exception to the zoning code. (Planning)

ORDINANCE NO. 8965

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 1, WESTLAKE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF STATE HIGHWAY 191 AND NORTH COUNTY ROAD 1275), BY PERMITTING A BUILDING TO EXCEED THE MAXIMUM HEIGHT LIMIT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

Planning division Manager Walker gave an overview of the item no letters of objection

Mayor Perry opened the public hearing at 1:34 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8965.

Council Member James moved approval of the first of two readings of Ordinance No. 8965 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

49. At approximately 11:00 A.M. hold a public hearing and consider a resolution on a request by Erasto Martinez dba Triple M Construction for a proposed preliminary plat ON APPEAL of Country Sky Addition. (Planning)

RESOLUTION NO. 2011 - 318

RESOLUTION APPROVING A PRELIMINARY PLAT OF COUNTRY SKY ADDITION, SECTION 12, BEING A REPLAT OF LOT 27, BLOCK 4, COUNTRY SKY ADDITION, SECTION 10, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF TUMBLEWEED TRAIL , APPROXIMATELY 780 FEET NORTH OF CACTUS TRAIL); THIS PLAT WAS DENIED BY THE PLANNING AND ZONING COMMISSION; AND THIS RESOLUTION IS AN APPEAL TO THE CITY COUNCIL

Planning Division Manager Walker gave an overview of the item, noting it was on appeal from the Planning & Zoning Commission. He stated that staff recommended approval because the minimum lot standards had been met.

Mayor Perry opened the public hearing at 1:38 p.m.

Glen Miller, 5505 San Saba Court, felt it was in the best interest to the area to keep lots the same size as those in the neighborhood.

Michael Strange noted his concerns were those as stated by Mr. Miller.

Cindy Klatt, Schuman Engineering, 408 N. Pecos, noted she is representing her client and that he bought the lot to divide it to build two nice homes. His intent is to increase the value of the properties while maintaining one-acre tracts.

Scott Powden, 4901 Widener Strip, noted he represented Mr. Miller on a lot sale and the question was asked if the lot could be subdivided and he was told that it was within the zoning regulations.

There being no one else present wishing to speak, the public hearing was closed at 1:42 p.m.

Council Member Trost moved to adopt Resolution No. 2011-318; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Dufford, Hailey. NAY: Perry. ABSTAIN: James. ABSENT: None.

50. At approximately 11:03 A.M. hold a public hearing and consider a resolution on a request by Arcelia Renteria for an Extension for a Special Temporary for a Manufactured Home. (Planning)

RESOLUTION NO. 2011 - 319

RESOLUTION AUTHORIZING A TEMPORARY SPECIAL PERMIT FOR A MANUFACTURED HOME ON LOT 9, BLOCK 1, HOLLOWAY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF TERRELL STREET, APPROXIMATELY 150 FEET SOUTH OF CUTHBERT AVENUE)

Planning Division Manager gave an overview of the item noting that a special temporary permit was originally granted in 2005, and then renewed in 2007 and 2009. He noted that there was a medical note on file for medical hardship reasons and that one letter of objection had been received.

Mayor Perry opened the public hearing at 1:50 p.m.

Don Easley, 4308 Princeton, representing Aubrey Easley, 1100 N. Terrell. He noted there were four owners of property in the area who have spent thousands of dollars to revitalize the area and they offered their objection.

Veronica Calix, 1108 N Terrell, (as translated by Rachel Stone), requested the item be denied noting that she and her husband have put in $80,000 of improvements into their property and she did not want her home devalued.

There being no one else wishing to speak, the public hearing was closed at 1:52 p.m.

Council Member Hailey moved to adopt Resolution No. 2011-319; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Dufford, James, Hailey. NAY: Perry. ABSTAIN: None. ABSENT: None.

51. At approximately 11:06 A.M. hold a public hearing and consider an ordinance on a request by Larry Mills for a zone change from PD, Planned District for a Transition District. (Planning)

ORDINANCE NO. 8966

AN ORDINANCE ADOPTING A SITE PLAN FOR LOT 1, BLOCK 83, WEST END, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF WEST WALL STREET AND “J” STREET); SUBJECT TO THE FOLLOWING CONDITIONS AND RESTRICTIONS; 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 overview of the item noting that no letters of

objection had been received and that staff supported the item.

Mayor Perry opened the public hearing at 4:48 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8966.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8966 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

52. At approximately 11:09 A.M. hold a public hearing and consider an ordinance on a request by SBC, L.P. for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District. (Planning)

ORDINANCE NO. 8967

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 4.68-ACRE PORTION OF THE REMAINDER OF LOT 1, BLOCK 6, WESTRIDGE PARK ADDITION, SECTION 6, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF CHAMPIONS DRIVE AND TRADEWINDS BOULEVARD); 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 that no letters of objection had been received and that the Planning and Zoning Commission recommended approval.

Mayor Perry opened the public hearing at 3:11 p.m.

Larry Bell, 1700 W. Wall, noted he was available to answer any questions.

There being no one else present wishing to speak, the public hearing was closed at 3:11 p.m.

City Secretary Turner read the caption of Ordinance No. 8967.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8967 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

53. At approximately 11:12 A.M. hold a public hearing and consider a request by RSP Permian, L.L.C. (Bus Barn #2601) for a Permit to Drill an Oil and Gas Well within the City Limits located 733' FNL and 1905' FWL, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the south side of Briarwood Avenue, approximately 870 feet east of Heidelberg Lane.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Oil & Gas Compliance Officer Ron Jenkins gave an overview of the item.

Mayor Perry opened the public hearing at 1:59 p.m.

Steven Rea, 4214 Coyote Trail, noted he was speaking on item numbers 53, 54 and 55. He handed out a presentation and noted he was representing members of the Country Sky Addition. He reviewed sections of Ordinance 8769, showed where RSP could vertically drill, and shared pictures of what can go wrong at a tank battery or when drilling. He emphasized that they do not want drilling in their back yard and asked that horizontal drilling be implemented for this project.

Robert Simpson, 4206 Coyote Trail, gave the City Council a handout. He noted that the appraised value of the area has gone up and objected to the wells being drilled for not

only safety reasons but also property valuations. He noted that MISD accepted a $1,500 donation from RSP for their education foundation.

Dr. Hal Jr. stated he requires an inhaler from having to breathe in gas fumes and noted there is a risk from gas escaping from the wells which he considers a serious health risk.

Jim Spradlin, representing RSP Permian, recommend being approved as submitted noting that the closest building is 464 from the bus barn.

Karla Burrow, 4001 Coyote Trail, asked the Council how they would feel if a well was in their backyard. She explained that they live two streets away and she can hear them all night long which disrupts her sleep.

Kelly Kuykendall, 409 E County Road 137, noted her opposition to drilling and asked the City Council to keep residential growth in mind.

Terry Donathan, 6610 Cactus Trail, stated that if Council allows a well to come into a residential area they should be ready for a well to come in on the 15th green at the golf course. He asked for the Council to protect the residents and to save their property values.

Ann Conder, 4201 Tumbleweed Trail, stated that she moved to country to allow her kids to play, not to see oil wells.

Charlie Stubbs, 4108 Tumbleweed Trail, stated that the well will be 300 feet from his bedroom and asked the Council to carefully consider approving a well that close to people's residences. He emphasized that it is dangerous and would devaluate property.

There being no else present wishing to speak, the public hearing was closed at 2:25 p.m. No action was taken on this item.

54. At approximately 11:15 A.M. hold a public hearing and consider a request by RSP Permian, L.L.C. (Bus Barn #2602) for a Permit to Drill an Oil and Gas Well within the City Limits located 600' FNL and 525' FWL, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the south side of Briarwood Avenue, approximately 450 feet west of Heidelberg Lane.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Oil & Gas Compliance Officer, Ron Jenkins, gave an overview of the item noting that the application had been reviewed by the Oil & Gas Advisory Committee. He stated the well site is near Mid Cities Church and that the applicant is asking for a waiver on landscaping due to the scarcity of water. He indicated that two letters of objection had been received, one from the person who donated the house to the church.

Mayor Perry opened the public hearing at 2:27 p.m.

Jim Spradlin noted that there was no way to do horizontal drilling as they did not have rights outside of the tract.

David Ham, 3411 Coyote Trail, asked for a show of hands of who was present regarding the wells. The majority of the people in the audience raised their hand.

There being no one else wishing to speak, the public hearing was closed at 2:29 p.m. No action was taken on this item.

55. At approximately 11:18 A.M. hold a public hearing and consider a request by RSP Permian, L.L.C. (Bus Barn #2603) for a Permit to Drill an Oil and Gas Well within the City Limits located 690' FNL and 1080' FEL, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the south side of Briarwood Avenue, approximately 600 feet west of Roadrunner Trail.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Oil & Gas Compliance Officer Jenkins gave an overview of the item noting that it had been approved by the Oil & Gas Advisory Committee except that landscaping should be required as recommended by the Committee. He noted that petitions had been received and they had been included in the Council's packet. He noted that five letters of objection had been received in addition to the petitions and that the tank battery would be located to the west in the County.

Mayor Perry opened the public hearing at 2:31 p.m.

Dr. Rea, again voiced his opposition to the wells and the variances.

Jim Spradlin again clarified that they cannot do a horizontal drill because they do not have mineral rights outside of the tract.

Mike Wallace, 200 Blackberry Circle, in response to questions about horizontal drilling noted that the oil comes from all 10 wells which are marginal but when they are put together, that is when it makes economic sense. He explained that horizontal drilling is for very specific zones when you know where the oil is located.

Craig Tellinghuisen, 4008 Coyote Trail, noted that everyone from the neighborhood was present because everyone is actively involved.

Steve Gray, representing RSP Permian, 125 Missouri, noted that first and foremost they are concerned about safety. He explained that the only variance was for planting of vegetation which was strictly due to water issues and explained that the mandatory fencing will be completed. He noted that they do not own the lease on the next section of property so they cannot do horizontal drilling.

Robert Wood, 4111 Tumbleweed Trail, asked that the Council not grant the exception to go within 500 feet.

Dr. Rea, stated that RSP has the capability of reaching outside of the community to do horizontal drilling.

There being no one else present wishing to speak, the public hearing was closed at 2:58 p.m. No action was taken on this item.

56. At approximately 11:21 A.M. hold a public hearing and consider a request by Pioneer Natural Resources (Mabee #3) for a Permit to Drill an Oil and Gas Well within the City Limits located 660' FNL and 1980' FEL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of State Highway 349, approximately 1 mile north of Arapahoe Road.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Oil & Gas Compliance Officer Ron Jenkins gave an overview of the item noting it been to the Oil & Gas Committee, and that a waiver on fencing and landscaping had been requested. He noted that no city roads would be used and that no letters of objection had been received.

Mayor Perry opened the public hearing at 3:01 p.m. There being no one present wishing to speak the public hearing was immediately closed. No action was taken on this item.

57. At approximately 11:24 A.M. hold a public hearing and consider a request by Pioneer Natural Resources (Mabee E #4) for a Permit to Drill an Oil and Gas Well within the City Limits located 800' FSL and 1980' FEL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of State Highway 349 north of Arapahoe Road.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Mayor Perry opened the public hearing at 3:04 p.m. There being no one present wishing to speak, the public hearing was immediately closed. No action was taken on this item.

58. At approximately 11:27 A.M. hold a public hearing and consider a request by Pioneer Natural Resources (Mabee D #5) for a Permit to drill an Oil and Gas Well within the City Limits located 1880' FNL and 1980' FWL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of State Highway 349, approximately 3/4 mile north of Arapahoe Road.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Mayor Perry opened the public hearing at 3:05 p.m. There being no one present wishing to speak, the public hearing was immediately closed. No action was taken on this item.

59. At approximately 11:30 A.M. hold a public hearing and consider a request by Pioneer Natural Resources (Mabee D #6) for a Permit to drill an Oil and Gas Well within the City

Limits located 1865' FNL and 660' FEL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of State Highway 349, approximately 3/4 mile north of Arapahoe Road.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Mayor Perry opened the public hearing at 3:06 p.m. There being no one present wishing to speak, the public hearing was immediately closed. No action was taken on this item.

60. At approximately 11:33 A.M. hold a public hearing and consider a resolution on a request by Robert Anderson for a Temporary Land Use Permit for a Caliche Pit. (Planning)

RESOLUTION NO. 2011 - 320

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A CALICHE PIT ON A 128.08-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK 38, T-1- S, T&P RR CO. SURVEY, MARTIN COUNTY, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ELKINS ROAD, APPROXIMATELY ONE-HALF MILE NORTH OF ARAPAHOE ROAD); MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

Planning Division Manager Walker gave an overview of the item noting that staff recommended a one-year approval as proposed noting it is the maximum time for a Temporary Land Use Permit. He stated he had received phone calls from nearby owners but no letters of objection had been received.

Mayor Perry opened the public hearing at 3:19 p.m.

Robert Anderson, 10716 Highway 191, noted he owns the acreage and does not want to do a caliche pit but this is what has to do in order to use the caliche for a project and will later cover it up. He intends to put a pond where the pit was and again emphasized that he is only using this for his own projects.

Jake Stasny, Dallas, noted he was legal representation for several of the neighbors. He claimed that a temporary land use permit cannot be used for a caliche pit but instead was designed for items such as carnivals or moving vendors or something that can be set up and taken down without damaging the land. He explained that there were several state requirements that, to his knowledge, had not been enforced. He suggested that Mr. Anderson get his caliche from somewhere else.

Keith Petty, 2033 County Road 2300, stated they purchased their acreage for their dream home and did not want a commercial use in the area and did not want to lose the value of his home. He objected to filling the hole with a pond when water was such a valuable resource.

Ignacio Lopez, speaking on behalf of his parents, noted they moved in there in 1987. He stated there is a lot of material coming off of the property and being left in the middle of the road. He noted his parents want a place where their grandkids can grow up and be safe without having pollution and that it does not look like the ranch their parents originally purchased.

Jason Edwards, 6709 Elkins Road, stated that a caliche pit is not a temporary thing. If he fills up the pit with water he is using everyone's water and that is not good for the community.

Leonard Stasny, 6611 Elkins Road, stated he bought his property because it was zoned AE and is disappointed that someone else can turn the neighborhood into a commercial operation.

Pat Schneider, 906 Citation, stated she has owned property near the location for at least 25 years. She noted that she was nearly run off the road by a truck that was picking up caliche and it has created a bad traffic situation.

Cathy Stasny, 6611 Elkins Road, stated they have lived within the parameters of the zoning and requested that Mr. Anderson do the same. She spoke about other neighbors who were opposed to the caliche pit, stated it could be seen from her kitchen window, spoke about the traffic problems that have been generated and the damage the heavy trucks are causing to the roadway.

Hortencia Hernandez, 6801 N. Elkins Road, stated her property is 100 feet from the Caliche pit noting it way too close to her house. She expressed concern regarding dust

and traffic.

Robert Anderson stated he was not intending to devalue the land as he intended on building half-million dollar homes there. He also stated that the accidents people have referred to have nothing to do with his operations clarifying that he wants to do what is right for everyone.

Discussion ensued about whether a six month time frame could be used instead of a 12 month time frame and if there was anything in the law that prevented a property owner from digging up his own property. City Attorney Stretcher clarified that a property owner can use resources from their own property as long as those resources are not moved off the property or sold.

Robert Anderson reiterated that he is not selling the caliche but using it on his other projects. City Attorney Stretcher noted that if he is receiving compensation for those projects, then it is considered a sale.

Jake Stasny noted some of the procedures that he felt were necessary to have a caliche permit noting that Mr. Anderson had not asked the State for permission.

There being no one else wishing to speak, the public hearing was closed at 3:50 p.m.

Council Member Dufford moved to deny the Temporary Land Use Permit; seconded by Council Member Hailey.

Following a request for clarification it was determined that the owner can still dig on his property and pile the caliche up on his land, but he cannot move it off of his land or sell it.

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

DEVELOPMENT SERVICES

61. Consider an ordinance amending currently adopted Energy Code to meet Texas state law requirements. (Code Administration)

ORDINANCE NO. 8968

AN ORDINANCE AMENDING TITLE IV, “BUILDING REGULATIONS”, CHAPTER 12, “ENERGY CODE”, SECTION 2, “CHANGES AND ADDITIONS TO ADOPTED ENERGY CODE”, OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, SO AS TO REMOVE THE EXEMPTION FOR ADDITIONS, ALTERATIONS OR REPAIRS TO EXISTING RESIDENTIAL AND COMMERCIAL STRUCTURES; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

Building Official Steve Thorpe gave an overview of the item noting that they were updating the code to match state law.

City Secretary Turner read the caption of Ordinance No. 8968.

Council Member James moved approval of the first of two readings of Ordinance No. 8968 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

62. Consider an ordinance on a City-initiated request to vacate a portion of E. Hamby Avenue and two alleys. (Planning)

ORDINANCE NO. 8969

AN ORDINANCE VACATING AND ABANDONING A 0.62-ACRE TRACT OF STREET AND ALLEY RIGHTOF-WAY LOCATED IN BLOCK 79, EAST MIDLAND ADDITION, AND BLOCKS 2 AND 4, GLENN FRANCIS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF EAST GOLF COURSE ROAD AND NORTH JACKSON STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $2,718.80; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; RETAINING A GENERAL UTILITY AND DRAINAGE EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY

Planning Division Manager Walker gave an overview of the item noting that staff recommended in favor of the proposed vacation.

City Secretary Turner read the caption of Ordinance No. 8969.

Council Member James moved approval of the first of two readings of Ordinance No. 8969 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, Sparks, Dufford, James, Hailey. NAY: None. ABSTAIN: None. ABSENT: Perry.

63. Consider an ordinance on a request by Andrew Mellen for the vacation of the 0.10-acre north/south alley and a 0.02-acre portion of the right-of-way of N. Marienfeld Street adjacent to the east half of Block 31A, Homestead Addition, City and County of Midland, Texas. (Planning)

ORDINANCE NO. 8970

AN ORDINANCE VACATING AND ABANDONING A 0.025-ACRE PORTION OF MARIENFELD STREET RIGHT-OF-WAY ADJACENT TO THE EAST HALF OF BLOCK 31A, AND A 0.099-ACRE NORTH/SOUTH ALLEY ADJACENT TO LOTS 1-8, BLOCK 31A, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF LOUISIANA AVENUE AND MARIENFELD STREET); ADOPTING THE APPRAISAL BY THE CITYMANAGER OF $2,612.50; RETAINING A GENERAL UTILITY AND DRAINAGE EASEMENT; AND ORDERING RECORDATION BY THE CITYSECRETARY

Planning Division Manager Walker gave an overview of the item noting that no letters of objection had been received and that the item was supported by staff.

City Secretary Turner read the caption of Ordinance No. 8970.

Council Member Trost moved approval of the first of two readings of Ordinance No. 8970 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

64. Consider an ordinance on a request by Andrew Mellen for the vacation of a 0.55-acre portion of the right-of-way of Stonewall Street, a 0.17-acre portion of the right-of-way of Garden Lane, and a 0.14-acre portion of north/south alley right-of-way all adjacent to Block A, Montgomery Addition, City and County of Midland, Texas. (Planning)

ORDINANCE NO. 8971

AN ORDINANCE VACATING AND ABANDONING A 0.55-ACRE PORTION OF STONEWALL STREET RIGHT-OF-WAY, A 0.16-ACRE PORTION OF GARDEN LANE RIGHT-OF-WAY, AND A 0.14-ACRE PORTION OF THE NORTH/SOUTH ALLEY RIGHT-OF-WAY, ALL ADJACENT TO BLOCK “A”, MONTGOMERY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF GARDEN LANE AND FAIRGROUNDSROAD); ADOPTING THE APPRAISAL BY THE CITYMANAGER OF $3,740.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

Planning Division Manager Walker gave an overview of the item.

City Secretary Turner read the caption of Ordinance No. 8971.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8971 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

65. Consider an amended annexation ordinance to indicate that a portion of the land proposed for annexation on the west side of FM 1788 and on the north side of SH 191 will remain in the city’s extraterritorial jurisdiction due to the owners requesting an agricultural use exemption agreement with the City. (Planning)

ORDINANCE NO. 8972

AN ORDINANCE AMENDING ORDINANCE NO. 8925 OF THE CITY OF MIDLAND BY ATTACHING AN AGREEMENT EXECUTED BY THE CITY MANAGER OF THE CITY OF MIDLAND AND OWNERS OF APPROXIMATELY 309 ACRES OUT OF SECTION 37, BLOCK 41, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, PURSUANT TO SECTION 43.035 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING THAT THE PROPERTY SUBJECT TO SUCH AGREEMENT SHALL REMAIN IN THE CITY’S EXTRATERRITORIAL JURISDICTION; PROVIDING THAT, EXCEPT AS AMENDED, ORDINANCE NO. 8925 SHALL REMAIN IN FULL FORCE

AND EFFECT; CONTAINING A CUMULAT IVE CLAUSE ; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ORDERING PUBLICATION; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO FILE A COPY OF THIS ORDINANCE IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND THE CITY MANAGER IS HEREBY AUTHORIZED AND DIRECTED TO EXECUTE THE AGREEMENT

Planning Division Manager Walker gave an overview of the item.

City Secretary Turner read the caption of Ordinance No. 8972.

Following brief discussion, Council Member Sparks moved approval of the first of two readings of Ordinance No. 8972 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

66. Consider an ordinance on a request from the Texas Department of Transportation establishing a temporary construction speed zone of 60 miles per hour on a portion of Interstate 20 within the City Limits of Midland, Texas. (Transportation)

ORDINANCE NO. 8973

AN ORDINANCE ESTABLISHING A TEMPORARY CONSTRUCTION SPEED ZONE OF 60 MILES PER HOUR ON A PORTION OF INTERSTATE 20 FOR A STATE HIGHWAY IMPROVEMENT PROJECT BY THE TEXAS DEPARTMENT OF TRANSPORTATION; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

Transportation Manager Gary Saunders gave an overview of the item.

City Secretary Turner read the caption of Ordinance No. 8973.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8973 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

MISCELLANOUS

67. Consider an ordinance amending Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 9, "Collection from Commercial Customers", of the City Code of Midland, Texas, so as to replace the explanatory paragraph of Table 1. Standard Commercial Locations: Three Yard Containers. (Solid Waste)

ORDINANCE NO. 8974

AN ORDINANCE OF THE CITY OF MIDLAND AMENDING TITLE VIII, “FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION,” CHAPTER 6, “GARBAGE, TRASH AND RUBISH,” SECTION 9, “COLLECTION FROM COMMERCIAL CUSTOMERS” FOR CLARIFICATION; AND ORDERING PUBLICATION

Solid Waste Manager Morris Williams gave a brief overview of the item.

City Secretary Turner read the caption of Ordinance No. 8974.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 8974 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

68. Approved a resolution amending Article VIII of the Airport Minimum Standards. (Airport)

RESOLUTION NO. 2011 - 321

RESOLUTION AUTHORIZING AN AMENDMENT TO ARTICLE VIII. PRIVATELY OWNED NONCOMMERCIAL HANGAR AND AVIATION FUEL DISPENSING FACILITY OF THE AIRPORT MINIMUM STANDARDS AT THE MIDLAND INTERNATIONAL AIRPORT

Council Member James moved to adopt Resolution No. 2011-321; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey,

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

69. Approved a resolution authorizing the execution of a Land Lease Agreement between Good Luck Investments L.L.C. and the City of Midland for a 0.28 acre tract of land. (Airport)

RESOLUTION NO. 2011 - 322

RESOLUTION AUTHORIZING THE EXECUTION OF A LAND LEASE AGREEMENT WITH GOOD LUCK INVESTMENTS L.L.C., FOR HANGAR DEVELOPMENT LOCATED ON A 0.28 ACRE TRACT OF LAND LOCATED IN LOT 4B, BLOCK 11, MIDLAND INTERNATIONAL AIRPORT, INDUSTRIAL PARK ADDITION, SECTION 6, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

Council Member Dufford moved to adopt Resolution No. 2011-322; seconded by Council Member Trost.

Council Member Dufford moved to amend the motion by authorizing the City Manager and City Attorney to negotiate the release section of the agreement consistent with discussion in executive session and give the City Manager authority to execute such an agreement; seconded by Council Member James. The motion to amend carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

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

70. Consider making appointments to various Boards and Commissions.

No appointments were made to boards and commissions.

71. Consider a request from Bluestem Energy Holdings, LLC. (Evans “J” #1) for a Permit to drill an Oil and Gas Well within the City Limits. (Planning)

RESOLUTION NO. 2011 - 301

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 2,322 FEET FROM THE SOUTH LINE AND 2,310 FEET FROM THE EAST LINE, SECTION 8, BLOCK “X”, T-1-S, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY ½ MILE NORTH OF MOCKINGBIRD LANE); AND CONSOLIDATING SAID PERMIT UNDER AN EXISTING ROAD REPAIR AGREEMENT

Oil and Gas Compliance Officer Jenkins noted the item had been reviewed by the Oil & Gas Advisory Committee and that the landscaping was consistent with the surrounding land. He explained that no letters of objection had been received.

John Anderson of Blue Stem Energy, noted this well was being drilled in a vineyard and the previous wells were in a hay field.

Council Member Hailey moved to adopt Resolution No. 2011-301 with amendment to defer landscaping until requested by City manager within 3 years; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

72. Consider a request from Callon Petroleum (Annie #3) for a Permit to drill an Oil and Gas Well within the City Limits. (Planning)

RESOLUTION NO. 2011 - 302

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 849 FEET FROM THE NORTH LINE AND 2,087 FEET FROM THE EAST LINE, SECTION 48, BLOCK 41, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH FARM-TO-MARKET ROAD 1788, APPROXIMATELY 1 MILE SOUTH OF STATE HIGHWAY 191); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

Oil and Gas Compliance Officer Jenkins gave a brief overview of the item noting that a waiver for road repair was anticipated and that no letters of objection had been received.

Council Member James asked about landscaping and thought maybe the money could

be placed into a fund to be done at a later time when necessary. Discussion ensued about whose responsibility it would be to install the landscaping and if that burden would fall to the taxpayers.

Jimmy Wright, 5212 Mathis Street, noted he was the land manager for Callon Petroleum. He explained that they put in the appropriate landscaping at the request of the landowner but also understands the water restriction issues at this time and feels that it does not make sense to install landscaping now. He stated they would be open to putting the money into a landscaping fund.

Council Member James moved to defer the landscape for two years; seconded by Council Member Trost. The motion failed by the following vote: AYE: Morales, James, Trost. NAY: Hailey, Sparks, Dufford, Perry. ABSTAIN: None. ABSENT: None.

Council Member Hailey moved to adopt Resolution No. 2011-302 with amendment to defer landscaping until requested by City Manager within 3 years; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

73. Consider a request from Callon Petroleum (Annie #8) for a Permit to drill an Oil and Gas Well within the City Limits. (Planning)

RESOLUTION NO. 2011 - 303

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 671 FEET FROM THE NORTH LINE AND 1,197 FEET FROM THE EAST LINE, SECTION 48, BLOCK 41, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH FARM-TO-MARKET ROAD 1788, APPROXIMATELY 1 MILE SOUTH OF STATE HIGHWAY 191); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

Oil & Gas Compliance Officer Ron Jenkins noted that a variance was requested from the 500 foot minimum from a commercial building noting that it was 328 feet to the closest structure. He also stated that a waiver of road repair was being request and that no letters of objection had been received.

Council Member Hailey moved to adopt Resolution No. 2011-303 with amendment to defer landscaping until requested by city Manager within 3 years; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

EXECUTIVE SESSION

Mayor Perry announced that pursuant to Texas Government Code Section 551.101, the Council would hold an Executive Session, closed to the public, to discuss the above matters as permitted under the Texas Government Code Sections:

74. 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:

Mayor Perry recessed the meeting to Executive Session at 11:46 a.m. The entire Council met in Executive Session until 12:__ p.m. Mayor Perry reconvened the meeting to regular session at 12:54 p.m.

a. Section 551.071, Consultation with the City Attorney:

1. Discuss with the City Attorney contemplated litigation with the U.S. Fish and Wildlife Service regarding the Dunes Sagebrush Lizard.

2. Discuss with the City Attorney and Attorney(s) with the law firm of Cotton, Bledsoe, Tighe, and Dawson, litigation styled In Re: Heritage Consolidated, LLC, Case No. 10-36484-hdh, Chapter 11, Jointly Administered, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division.

b. Section 551.072, Deliberation Regarding Real Property

3. Deliberate the lease and value of approximately 0.28 acres of land located

in Lot 4B, Block 11, Midland International Airport Industrial Park Addition, Section 6, an Addition to the City of Midland, Midland County Texas, to Good Luck Investments, L.L.C, organized and existing under and by virtue of the laws of the State of New Mexico.

Mayor Perry recessed the meeting to Executive Session at 11:46 a.m. The meeting was reconvened to regular session at 12:54 p.m.

There being no other business to come before the City Council, the meeting was adjourned at 5:02 p.m.

PASSED AND APPROVED the 10th day of January, 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/ INTERIM CITY MANAGER**

FROM: **Bob McNaughton, Director of Finance**

SUBJECT: **MDC Promotions Fund**

Purpose:

The MDC Board of Directors approved a resolution at their November 18, 2011, meeting which authorizes the transfer of $505,743 to the MDC Promotion Project. Currently there is a balance of $1,262,492 in the Promotions Project.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

$505,743 appropriated from MDC (235) Unappropriated Fund Balance (5650) to the MDC Promotions Project.

Discussion:

State law allows 10% of Development Corporation funds to be used for promotional purposes, and may be allowed to accumulate, if transferred to a project account.

RESOLUTION NO.

RESOLUTION APPROVING THE MIDLAND DEVELOPMENT CORPORATION'S APPROPRIATION OF $505,743.00 FROM THE FISCAL YEAR 2010-2011 BUDGET TO BE USED FOR PROMOTIONAL PURPOSES, AS AUTHORIZED BY CHAPTER 504 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, pursuant to Chapter 504 of the Texas Local Government Code, the Midland Development Corporation (MDC) may spend no more than ten percent (10%) of the corporate revenues for promotional purposes; and

WHEREAS, the City Council finds it to be in the public interest to approve the MDC's appropriation of $505,743.00 to Project No. 8705 from the Fiscal Year 2010-2011 budget to be used for promotional purposes; and

WHEREAS, the City Council finds that said project will advertise or publicize the City of Midland for the purposes allowed under Chapter 504 of the Texas Local Government Code;

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

THAT the MDC's appropriation of $505,743.00 to Project No. 8705 from the Fiscal Year 2010-2011 budget to be used for promotional purposes is hereby approved.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 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:
THudson
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **Midland Center Facility Upgrades**

Purpose:

Approval of a resolution authorizing the appropriation of funds for facility upgrades at Midland Center.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$111,250.00 Hotel/Motel Fund

Discussion:

Funds for the facility upgrades will be used for the following:

HVAC Replacement	$21,000
New Carpet for Bays Upstairs	$60,000
Digital Signage	$15,250
TVs for Meeting Rooms	$10,000
Security Camera System	$5,000
Building Directional Signage	Sponsorships

For more discussion about this request, please see the attached Facility Upgrades Capital Funding Request from Brad Barnett of the Midland Center.

Therefore, please consider approval of a resolution authorizing the sum of $111,250 be appropriated from the Hotel/Motel Fund to the Midland Center Improvements Project 8979.

RESOLUTION NO.

RESOLUTION APPROPRIATING $111,250.00 FROM THE HOTEL/MOTEL FUND TO THE MIDLAND CENTER IMPROVEMENTS PROJECT (8979)

WHEREAS, the Council finds it to be in the public interest to appropriate $111,250.00 from the Hotel/Motel Fund to the Midland Center Improvements Project (8979);

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

THAT the sum of $111,250.00 is hereby appropriated from the Hotel / Motel Fund (090) Unappropriated Fund Balance (5650) to the Midland Center Improvements Project (8979).

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., 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

Facility Upgrades

Capital Funding Request

To: Bobby Burns, Robert Patrick

cc: Courtney Sharp, Tommy Hudson, Midland City Council

Overview

The City of Midland and the Midland Center are working together to evaluate needs for a comprehensive renovation of the Midland Center. This process should take at least the first half of 2012. There are many areas that need improvement that can be done in the interim period. Below is a list of updates that I am proposing. All items listed below would be used before and after the major renovations are completed. It is important for us to begin the upgrade and rebranding process of the Midland Center as soon as possible, to will allow our clients and the public to see us moving forward toward an improved Midland Center. The total cost for the six (6) items listed below would be $111,250. We are requesting that this money be taken from the Hotel / Motel Tax funds to cover this Capital Expenditure cost.

Item 1 – HVAC Replacement - $21,000

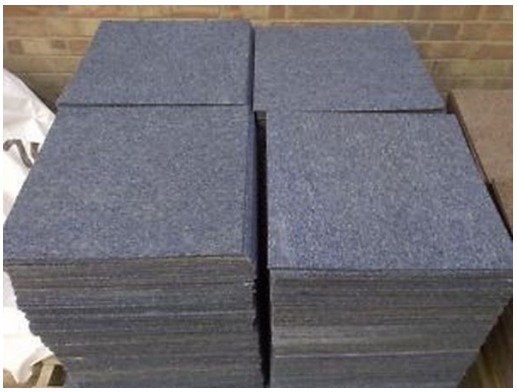
Cost to cover the replacement of a 25 ton HVAC unit for the East Bay of the Exhibit Hall. The heating unit has been down for several months and we have lost at least 2 events that could not be booked in East Bay when closed off from the main bay. The new unit has already been ordered and should be installed by the end of 2011.

Current HVAC Unit / Not Heating

Item 2 – New Carpet For Bays Upstairs - $60,000

Our current carpet for use in the upstairs bays is old, in very poor condition and takes a lot of man hours to put down and take up. Assuming we put the carpet down and take it up once a month, we are looking at an annual cost of $5,760. We are proposing using carpet squares in the bays and leaving the carpet down unless a client requests a concrete floor for their event. The cost for keeping the carpet clean and removing it three times a year would be under $1,800. Leaving the carpet down gives the main room a warmer feel and improves the acoustics. This option would also allow clients to use red drinks, including red wine, because their security deposit would cover the cleaning or replacement of a few pieces of carpet squares rather than billing them for a large section of carpeting. Keeping carpet in place would decrease our event turn around time. The carpet squares would be taped down from the bottom to the concrete to secure them in place. Estimates for carpet squares to cover our 12,500 square feet of floor space ranges from $45,000 to $60,000. Our plan would include several boxes of additional squares to have on hand for quick repairs or replacement as needed.

Carpet Squares Being Used At A Civic Center



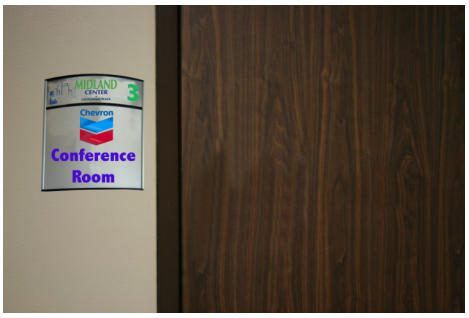
Carpet Squares Take Up Less Storage Space Than Roles Of Carpet

Carpet Squares In Place At A Conference Center

Item 3 – Building Directional Signage – N/A

The Midland Center's current interior signage is old and outdated. We need to get this updated as soon as possible, incorporating the new Midland Center logo into the new signage. We are requesting permission from the City to cover this cost via sponsorships. We would sell the name for each room on an annual basis. This is a standard procedure used within many facilities like the Midland Center. These monies would cover the cost for upgrading our signage and other non-budgeted items and continue as part of a long-range plan to prevent our facility from needing the large list of upgrades we are currently looking at with our upcoming major renovations.

Current Door Signage



Sample Updated Door Signage

Item 4 – Digital Signage - $15,250

The Midland Center plans to implement digital signage throughout the facility to allow us to convey up-to-date information to current clients and promote future events. This cost includes five (5) 60" LED TVs and wall mounts as well as five (5) digital signage computers to run the messages.

Sample Digital Signage

Current Lobby Area

Sample Updated Lobby Area

Item 5 – TVs For Meeting Rooms - $10,000

Upgrade from aging portable projectors used in the meeting rooms downstairs to flat panel TVs. This allows clients easy access to the internet and a modern method of display of information to their groups. The cost includes the purchase of four (4) 60" LED TVs, DVD players and portable (rolling) carts. This allows maximum flexibility for use of this equipment throughout the Midland Center . We can also have video feeds in each room to use as overflow areas for large events.

Current Meeting Room Set Up With Screen & Media Table

Updated Meeting Room With Flat Panel TV

Item 6 – Security Cameras System - $5,000

With our offices in the basement, we need a security camera system to monitor the Midland Center. This system will also help protect us from legal action based on false claims of injury at our facility.

Brad Barnett
Vice President, Midland Center
brad@visitmidlandtexas.com
(432) 599-1390 (cell)

City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4423-12 Automobiles and Light Trucks**

Purpose:

Approval of a resolution authorizing the purchase of 1 - adminstrative car, 1 - 4 wheel drive sport utility vehicle, 15 - various sized pick-up trucks and 1 - 1 ton heavy duty cab & chassis for the Garage Division.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$381,014.00 Garage Fund

Discussion:

Rogers Ford was the lowest most responsive bidder meeting specifications for Items 1 through 3, Items 5 through 7 and Item 9. Sam Pack's Five Star Ford of Carrollton, Texas was the low bid for Items 4 and 8 but we propose invoking the local preference option for these items. See the memo from Dennis Yates for a detailed discussion of the recommendation. We are recommending that all vehicles be purchased from Rogers Ford of Midland, Texas as shown below:

Item	Cost	Low Bid	Local Preference	Increase for Local Preference
1	$21,418	Yes		
2	$28,410	Yes		
3	$135,504	Yes		
4	$43,420		Yes	.006%
5	$18,828	Yes		
6	$61,048	Yes		
7	$20,606	Yes		
8	$24,953		Yes	.032%
9	$26,827	Yes		

Therefore, please consider approval of a resolution authorizing the purchase of all vehicles from Rogers Ford of Midland, Texas, for a total cost of $381,014.00.

City of Midland

Office of Fleet Services

Interoffice Memorandum

Date: December 28, 2011

To: Robert Patrick

From: Dennis Yates

Subject: Bid # 4423-12 Administrative cars, pickups and cab and chassis recommendation

Bid # 4423-12 is for 18 administrative cars, pickups and light trucks. State Contract prices do not meet our specifications.

ITEM # 1 is for one, administrative car. Low bid is from Rogers Ford out of Midland. Mr. Gary Seay offered a 2012 Ford Taurus for $ 21,418 with delivery in 60-90 days. This offer is acceptable. We recommend awarding this to Rogers Ford for $21,418.

ITEM # 2 is for one, 4-wheel drive, sport utility vehicle. Low bid is from Rogers Ford out of Midland. Mr. Gary Seay offered a 2012 Ford Expedition for $ 28,410 with delivery in 60-90 days. This offer is acceptable. We recommend awarding this to Rogers Ford for $ 28,410.

ITEM # 3 is for eight, full size, ½ ton, regular cab pickups. Low bid is from Rogers Ford out of Midland. Mr. Gary Seay offered eight 2012 Ford F150 pickups for $ 16,938 each or $ 135,504 with delivery in 60-90 days. This offer is acceptable. We recommend awarding this to Rogers Ford for $ 135,504.

ITEM # 4 is for two, full size, ½ ton, extended cab, pickups. Low bid is an alternate bid from Sam Pack's Five Star Ford out of Carrollton, Texas. Mr. Bill Dutton offered 2012 Ford, F150, extended cab, pickups for $ 21,582.85 each or $ 43,165.70 with delivery in 90 days.

We recommend using Local Preference. Mr. Gary Seay with Rogers Ford out of Midland offered two 2012 Ford F150 extended cab pickups for $ 21,710 each or $ 43,420 with delivery in 60-90 days. This offer is acceptable. We recommend awarding this to Rogers Ford for $ 43,420. This is a .006 % increase.

ITEM # 5 for one, full size, ¾ ton, regular cab pickup. Low bid is from Rogers Ford out of Midland. Mr. Gary Seay offered eight 2012 Ford F250 pickup for $ 18,828 with delivery in 60-90 days. This offer is acceptable. We recommend awarding this to Rogers Ford for $ 18,828.

ITEM # 6 is for two full size, ¾ ton, 4-wheel drive, extended cab, pickups. Low bid is from Rogers Ford out of Midland. Mr. Gary Seay offered two 2012 Ford F250 pickups for $ 30,524 each or $ 61,048 with delivery in 60-90 days. This offer is acceptable. We recommend awarding this to Rogers Ford for $ 61,048.

ITEM # 7 is for one full size, ¾ ton, extended cab, cab and chassis. Low bid is from Rogers Ford out of Midland. Mr. Gary Seay offered eight 2012 Ford F250 cab and chassis for $ 20,606 with delivery in 60-90 days. This offer is acceptable. We recommend awarding this to Rogers Ford for $ 20,606.

ITEM # 8 is for one full size, crew cab, 1-ton dually pickup. Low bid is an alternate and the regular bid from Sam Pack's Five Star Ford out of Carrollton, Texas. Mr. Bill Dutton offered a 2012 Ford, F350, crew cab, pickup for $ 24,185.72 with delivery in 90 days.

We recommend using Local Preference. Mr. Gary Seay with Rogers Ford out of Midland offered a 2012 Ford F350 pickup for $ 24,953 with delivery in 60-90 days. This offer is acceptable. We recommend awarding this to Rogers Ford for $ 24,953. This is a .032 % increase.

ITEM # 9 is for one full size, heavy duty, 1-ton cab and chassis. Low bid is from Rogers Ford out of Midland. Mr. Gary Seay offered eight 2012 Ford F450 cab and chassis for $ 26,827 with delivery in 90-120 days. This offer is acceptable. We recommend awarding this to Rogers Ford for $ 26,827.

If I can answer any questions please feel to call me at 7451. Thank you.

RESOLUTION NO.

RESOLUTION APPROVING THE PURCHASE OF ONE (1) CAR, ONE (1) FOUR WHEEL DRIVE SPORT UTILITY VEHICLE, FOURTEEN (14) PICKUPS OF VARIOUS SIZES AND TWO (2) CAB & CHASSIS, FROM ROGERS FORD OF MIDLAND, TEXAS, AT A TOTAL COST OF $381,014.00; AND OTHER LOWER BIDS ARE REJECTED IN FAVOR OF THE LOCAL BIDDER PURSUANT TO TEXAS LOCAL GOVERNMENT CODE SECTION 271.9051

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for eighteen (18) administrative vehicles of various types as submitted below; and

WHEREAS, Bid No. 4423-12 was opened on December 21, 2011, with the lowest and/or most advantageous bids being submitted as follows and as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes:

Item#	Qty.	Description	Supplier	Cost
1	1	Passenger Vehicle (Color: white)	Rogers Ford Midland, TX	$21,418.00
2	1	Sport Utility Vehicle (4WD)	Rogers Ford Midland, TX	$28,410.00
3	8	Pickups, full size, ½ ton regular cab	Rogers Ford Midland, TX	$135,504.00
4	2	Pickups, full size, ½ ton extended cab	Rogers Ford Midland, TX	$43,420.00
5	1	Pickup, full size, ¾ ton regular cab	Rogers Ford Midland, TX	$18,828.00
6	2	Pickups, full size, ¾ ton extended cab, 4WD	Rogers Ford Midland, TX	$61,048.00
7	1	Cab & Chassis, full size ¾ ton, extended cab	Rogers Ford Midland, TX	$20,606.00
8	1	full size dually Pickup Crew cab, 1-ton	Rogers Ford Midland, TX	$24,953.00
9	1	Cab & Chassis, full size 1-ton, heavy duty	Rogers Ford Midland, TX	$26,827.00

Total Costs to City $381,014.00

WHEREAS, the City Council finds it to be in the public interest to reject bids received for items 4 and 8, from Sam Packs 5-Star Ford, of Carrollton, Texas, in favor of the local bidder, Rogers Ford; and

WHEREAS, the City Council finds it to be in the public interest to award contracts to local bidders, even when such local bidders are not the lowest bidder, if the local bidder is located within the corporate limits of the City of Midland, Texas, if the local bidder's proposed price is within five percent (5%) of the lowest bid received, and if the award of the contract to the local bidder offers the City of Midland the best combination of contract price and additional economic development opportunities, including the employment of residents of the City of Midland, and increased tax revenues to the City of Midland;

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

SECTION ONE. That the City Council finds that the bid prices proposed on items 4 and 8 above, by Rogers Ford, of Midland, Texas, although not the lowest bids received, are within five percent (5%) of the lowest bids received.

SECTION TWO. That the City Council finds that Rogers Ford, being located within the corporate limits of the City of Midland, Texas, offers the City of Midland the best combination of contract price and additional economic development opportunities for the City of Midland created by the award of the contract for the purchase of items 4 and 8 above, including the employment of residents of the City of Midland, and increased tax revenues to the City of Midland.

SECTION THREE. That the City Manager is hereby authorized and directed to purchase the above listed administrative vehicles from Rogers Ford, of Midland, Texas, as specified in the bid tabulation, attached hereto as Exhibit "A", and incorporated herein for all purposes, at an estimated total price not to exceed $381,014.00.

SECTION FOUR. That the City Treasurer is hereby authorized and directed to pay Rogers Ford, of Midland, Texas, from funds available in the Fiscal Year 2011 – 2012 Garage Fund (750) General Services (040) Garage (0752) Automobiles (8800) and Light Trucks (8820) budget accounts upon proper receipt of invoices or statements approved by the City Manager.

SECTION FIVE. That the bids submitted for items 4 and 8, from Sam Packs 5-Star Ford, of Carrollton, Texas, are hereby rejected, pursuant to Texas Local Government Code Section 271.9051.

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., 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 of Midland - Bid Tabulation

BID NO.: 4423-12
FOR: Automobiles and Light Trucks
CLOSES: 12/21/2011

ITEM	QTY	DESCRIPTION	Sam Pack's Five Star Ford 1635 S IH 35E Carrollton, TX 75006 Bill Dutton (888)837-3389		Sam Pack's Five Star Ford 1635 S IH 35E Carrollton, TX 75006 Bill Dutton (888)837-3389		Rogers Ford 4200 W Wall Midland, TX 99703 Gary Seay (432)694-8801	
			COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
		Please see notes following this list.....	***Alternate Bid***					
1	1	Administrative Car - White	$22,853.18000	$22,853.18	$22,853.180	$22,853.18	$21,418.000	$21,418.00
		Model/EPA Mileage	2013 Ford Police Interceptor-17/27		2013 Ford Police Interceptor-17/27		Ford Taurus - Not Specified	
		Warranty	3yr/36,000 Bumper 5 yr/60,000 Powertrain		3yr/36,000 Bumper 5 yr/60,000 Powertrain		3 yr/36,000 Mile	
		Delivery	120 Days ARO		120 Days ARO		60-90 Days ARO	
2	1	Sport Utility Vehicle 4WD	$29,564.770	$29,564.77	$29,964.770	$29,964.77	$28,410.000	$28,410.00
		Model/EPA Mileage	2012 Ford Expedition - 13/18		2012 Ford Expedition - 13/18		Ford Expedition - 13/18	
		Warranty	3yr/36,000 Bumper 5 yr/60,000 Powertrain		3yr/36,000 Bumper 5 yr/60,000 Powertrain		3 yr/36,000 Mile	
		Delivery	60-90 Days ARO		60-90 Days ARO		60-90 Days ARO	
3	8	Full Size 1/2 Ton Regular Cab Pickup	$18,837.850	$150,702.80	$19,187.850	$153,502.80	$16,938.000	$135,504.00
		Model/EPA Mileage	2012 Ford F150- 16/22		2012 Ford F150- 16/22		Ford F150 - 15/21	
		Warranty	3yr/36,000 Bumper 5 yr/60,000 Powertrain		3yr/36,000 Bumper 5 yr/60,000 Powertrain		3 yr/36,000 Mile	
		Delivery	90 Days ARO		90 Days ARO		60-90 Days ARO	
4	2	Full Size 1/2 Ton Extended Cab Pickup	$21,582.850	$21,582.85	$21,932.850	$21,932.85	$21,710.000	$43,420.00
		Model/EPA Mileage	2012 Ford F150 - 15/21		2012 Ford F150 - 15/21		Ford F150 - 15/21	
		Warranty	3yr/36,000 Bumper 5 yr/60,000 Powertrain		3yr/36,000 Bumper 5 yr/60,000 Powertrain		3 yr/36,000 Mile	
		Delivery	90 Days ARO	*with carpet*	90 Days ARO	*with carpet*	60-90 Days ARO	
			$21,033.850	$21,033.85	$21,383.850	$21,383.85		
				without carpet		*without carpet*		
5	1	Full Size 3/4 Ton Regular Cab Pickup	$20,484.020	$20,484.02	$20,809.020	$20,809.02	$18,828.000	$18,828.00
		Model/EPA Mileage	2012 Ford F250 - Not Rated		2012 Ford F250 - Not Rated		Ford F250 - Not Applicable	
		Warranty	3yr/36,000 Bumper 5 yr/60,000 Powertrain		3yr/36,000 Bumper 5 yr/60,000 Powertrain		3 yr/36,000 Mile	
		Delivery	90 Days ARO		90 Days ARO		60-90 Days ARO	
6	2	Full Size 3/4 Ton 4WD Extended Cab Pickup	$31,627.340	$63,254.68	$32,052.340	$64,104.68	$30,524.000	$61,048.00
		Model/EPA Mileage	2012 Ford F250 - Not Rated		2012 Ford F250 - Not Rated		Ford F250 - Not Applicable	
		Warranty	3yr/36,000 Bumper 5 yr/60,000 Powertrain		3yr/36,000 Bumper 5 yr/60,000 Powertrain		3 yr/36,000 Mile	
		Delivery	90 Days ARO		90 Days ARO		60-90 Days ARO	
7	1	Full Size 3/4 Ton Extended Cab & Chassis	$22,357.520	$22,357.52	$22,357.520	$22,357.52	$20,606.000	$20,606.00
		Model/EPA Mileage	2012 Ford F250 - Not Rated		2012 Ford F250 - Not Rated		Ford F250 - Not Applicable	
		Warranty	3yr/36,000 Bumper 5 yr/60,000 Powertrain		3yr/36,000 Bumper 5 yr/60,000 Powertrain		3 yr/36,000 Mile	
		Delivery	90 Days ARO		90 Days ARO		60-90 Days ARO	
8	1	Full Size 1 Ton Dually Crew Cab Pickup	$24,185.720	$24,185.72	$24,185.720	$24,185.72	$24,953.000	$24,953.00
		Model/EPA Mileage	2012 Ford F350 - Nc		2012 Ford F350 - Not Rated		Ford F350 - Not Applicable	
		Warranty	3yr/36,000 Bumper 5 yr/60,000 Powertrain		3yr/36,000 Bumper 5 yr/60,000 Powertrain		3 yr/36,000 Mile	
		Delivery	90 Days ARO		90 Days ARO		60-90 Days ARO	
9	1	Full Size 1 Ton Heavy Duty Cab & Chassis	$27,705.260	$27,705.26	$27,705.260	$27,705.26	$26,827.000	$26,827.00
		Model/EPA Mileage	2012 Ford F450 - Not Rated		2012 Ford F450 - Not Rated		Ford F450 - Not Applicable	
		Warranty	3yr/36,000 Bumper 5 yr/60,000 Powertrain		3yr/36,000 Bumper 5 yr/60,000 Powertrain		3 yr/36,000 Mile	
		Delivery	120-140 Days ARO		120-140 Days ARO		90-120 Days ARO	
			Using factory supplied full size spare					
		TOTALS:		$403,724.65		$408,799.65		$381,014.00

x:\123wks\tabulations\2012\4423-12.xls

	Discount if all awarded to your company…**Discounted Total:**		$ 403,724.65		$ 408,799.65		$ 381,014.00

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Bidding Summary:

6 Bid requests were issued.

2 Bids listed above

1 NO BIDS were received.

Grapevine Dodge Chrysler Jeep

3 Bidders did not respond.

Sewell Chevrolet-GMC-Buick Inc, Gunn Auto, Meador Auto,

City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4371-12 Video Board for Grande Communications Stadium**

Purpose:

Approval of a resolution authorizing the purchase of a new video board for the Grande Communications Stadium.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$293,076.00 Scharbauer Sports Complex Maintenance Budget

Discussion:

The new video board will replace the current video board at Grande Communications Stadium at the Scharbauer Sports Complex. We are recommending the low bidder. For further discussion on this item please see the attached memo from Tina Jauz, Community Services Director.

Therefore, please consider approval of a resolution authorizing the purchase and installation of a new video board from Daktronics, Inc. of Brookings, South Dakota, for a total cost of $293,076.00.

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: December 29, 2011
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Purchase of Video Board for Grande Communications Stadium

On June 15, 2011, the 4B Board approved recommending the purchase of a video board at Grande Communications Stadium. The City Council approved the item through the budget as a capital project.

Three bids were received. Parks & Recreation staff recommend the low bidder, Daktronics, Inc. at $293,076. The video board, combined with the bid of $105,201.45 on the control room upgrade at Grande, is well below the budgeted amount of $500,000.

This item would include the removal, purchase, and installation of the video board at Grande.

The video board currently at the Sports Complex is no longer functioning to its fullest capacity. We are no longer able to purchase parts for the video board.

The City of Midland will be responsible for the maintenance and operation of the video board.

MIDLAND
Purchasing Division

THE CITY OF MIDLAND

CONTRACT
Contract No.4371-12

THIS CONTRACT, effective the 11th day of January, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and Daktronics, Inc., hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: $ 293,076.00 DOLLARS

2. **Scope of Work:** The Contractor shall perform all work described for Replacement of Video Display at Grande Stadium 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 Tina Jauz or her 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 __14____ working 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.

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" or "per policy" aggregate, including completed operations, and shall be on an occurrence basis.

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

The 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.

All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name the Owner as an additional insured on a claims occurred basis. All insurance required

pursuant to this Contract, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Owner.

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

> ***"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The 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."***

Owner 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. Owner shall not be required to provide any insurance whatsoever pursuant to this Contract.

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).

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.

Contract No: 4371-12

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.4371-12

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ___ day of _____, 2012

_____

Notary Public, State of Texas

MIDLAND
Purchasing Division

CITY OF MIDLAND

PURCHASING DIVISION DATE: 11/14/11

BID REQUEST PAGE: 01

(THIS IS NOT AN ORDER) **BID NO: 4371-12**

OPENING TIME: 11:00 AM **OPENING DATE: 12-07-11**

ORIGINAL

CITY OF MIDLAND
300 NORTH LORAINE
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. 12-07-11 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:
Grande Stadium, 5514 Champion Dr., Midland, Texas

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
	1		New Video Board Display at Grande Stadium in accordance with the attached proposal, specifications and contract. **Also, see pricing sheet immediately behind bid documents for voluntary alternates.** **Daktronics is a member of Buyboard, #336-10 and TPCN.**	$ _____	$ 293,076.00
				TOTAL	$293,076.00

NOTE TO BIDDERS:
1. FAILURE TO RESPOND WITH EITHER A BID OR A NO BID WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BIDDERS LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLIES.
2. SEALED BIDS FAXED DIRECTLY TO THE CITY WILL BE REJECTED. FAX BIDS MAY BE SENT TO THE CITY PURCHASING DIVISION FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.

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: Daktronics, Inc.
ADDRESS 201 Daktronics Dr
CITY Brookings ST SD ZIP 57006
PHONE NO. 605-692-0200 FAX NO. 605-697-4746

CASH DISCOUNT: 0 % _____ DAYS
DELIVERY CAN BE MADE 90-100 Days ARO
AUTHORIZED SIGNATURE

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

Exhibit "A"

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ORIGINAL

MIDLAND
Purchasing Division

Daktronics, Inc.
Contractor's Name

PROPOSAL
Bid 4371-12

To: Purchasing Agent
City of Midland
Midland, Texas

Gentlemen: The undersigned bidder, having examined the plans, specifications and contract documents, the location of the proposed work and being fully advised as to the extent and character of the work proposes to furnish all materials, equipment and to perform all labor and work necessary for the complete work described by and in accordance with the attached plans, specifications and contract for the sum of:

Materials Portion Incorporated Into Project $258,152.00 DOLLARS

Labor Portion Incorporated Into Project $ 34,924.00 DOLLARS

Other Costs Not Incorporated Into Project 0 DOLLARS

Total Proposal $293,076.00 DOLLARS

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid and he further agrees to commence work within ten (10) days after the date of written notice to do so and to substantially complete same within 14 ~~calendar days~~. working days after we are onsite.

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

E-mail: purchasing@midlandtexas.gov

All vendors on the bid list will then be notified of the questions and presented an answer. Verbal responses shall not be considered binding.

AWARD
The City may award a contract or purchase order to the lowest responsible bidder or to the bidder who provides goods or services at the best value to the City.
The City will be solely responsible for the determination of what constitutes best value in accordance with the applicable Section 252.043 of the Local Government Code.

PROPOSAL TERM
Unless otherwise noted, this proposal shall be valid for 90 days.

BID WAIVERS:

A. WAIVER OF ATTORNEY FEES: BY SIGNING THIS PROPOSAL, BIDDER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OWNER, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH

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

BIDDER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE BIDDER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE CONTRACT. THE BIDDER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE OWNER AND THE BIDDER.

THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

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).

C. 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, Bidder 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

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occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Bidder will settle, the physical and mailing addresses of Bidder at the time and date the claim was presented and the physical and mailing addresses of Bidder for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Bidder 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 Bidder that Bidder'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, Bidder's failure to comply with the requirements herein shall perpetually bar Bidder'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. Bidder agrees that the requirements of this entire Contract are reasonable.

By Signing 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.

SOVEREIGN IMMUNITY: By Executing this contract the City is not waiving its right of Sovereign immunity. the City is retaining its IMMUNITY from suit. the City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

Daktronics, Inc.		605-692-0200
Bidder	Authorized Signature	Telephone
201 Daktronics Dr, Brookings, SD 57006	Peter Johnson	605-697-4746
Address, City and State	Please Print above Name	Fax

Bidder's Enclosure Check List: (Bidder - Please review the following list and check to ensure that you have included the documents with your bid.)

[X] PROOF OF AUTOMOBILE WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. (**Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision) including a waiver of subrogation as stated in the contract)**

[X] 5% BID BOND FOR CONTRACTS IN AMOUNTS OF $25,000 OR MORE. (ONLY WHEN EXHIBIT "C" IS INCLUDED IN THE CONTRACT).* **THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PROVIDE A PAYMENT BOND FOR BIDS IN EXCESS OF $25,000 AND A PERFORMANCE BOND FOR BIDS OVER $100,000. IF BOND FORMS WERE NOT INCLUDED, THEY MAY BE OBTAINED FROM THE OFFICE OF THE PURCHASING AGENT. Call (432) 685-7234 for information.**

PLEASE NOTE:

FAILURE TO INCLUDE ANY OF THE REQUIRED DOCUMENTS ON THE CHECK LIST, MAY CAUSE REJECTION OF YOUR BID.

***FAILURE TO PROVIDE LIABILITY OR WORKER'S COMPENSATION INSURANCE AND SUBSEQUENT CERTIFICATES; OR, PAYMENT AND/OR PERFORMANCE BONDS AS REQUIRED BY THE CONTRACT MAY CAUSE FORFEITURE OF YOUR BID BOND OR OTHER SURETY (I.E.- CASH OR CASHIERS CHECK).**

PRICING SHEET – CITY OF MIDLAND BID NO: 4371-12
DAKTRONICS, INC. RESPONSE - January 5, 2012

BASE BID

Reference Daktronics drawing(s) #1076784 Rev 0 for display details / specifications

- Video Display Model DVX-100-20MT-HC-234x504-120BU
  - Physical Dimensions: 15' 11.2" Tall X 33' 11.2" Wide
  - Active Area: 15'7" Tall X 33'7" Wide
  - 524.16 SQFT
  - Front Service Access
  - 117,936 Total Pixels
  - 234 Pixels X 504 Pixels
  - 20mm Pixels
  - Control System: RS-4010-17-SE: Controls 1 Video Display, DMP7000-SE Primary, DSTI, VIP-4400, VIP-4060, Router, Requires 2 extended user stations
  - One (1) Show Control User Station and License
  - 2500' Fiber Optic Cable 4 Strand DK 50um
  - 500' Fiber Optic Cable 2 Strand DK 50um
  - One (1) Year Parts and Labor Warranty
  - Freight
  - Installation (See Installation Responsibility Checklist)
  - FOB: Destination

Equipment/Materials: $258,152.00
Labor: $34,924.00

TOTAL PRICE $ $293,076.00

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: <u>ATTACH POWER OF ATTORNEY</u>

EXHIBIT "D"

PREVAILING WAGE RATE SCHEDULE
BUILDING CONSTRUCTION TRADES
as of July 24, 2009
Attorney General, General Decision TX20080297

Classification	Rate/hr	Fringes
Acoustical Installers	$ 11.18	
Boilermaker	$ 26.02	$ 13.66
Bricklayers	$ 18.00	
Carpenters (Including Metal Stud Installation and Drywall Hanging)	$ 15.17	
Cement Mason/ Concrete Finisher	$ 13.89	
Drywall Hangers	$ 11.08	
Electrician	$ 13.63	$ 1.25
Elevator Mechanics	$ 32.66	18.285+a
Forklift Operator	$ 22.70	$ 9.35
HVAC mechanic (set unit only)	$ 10.00	
Ironworkers (reinforcing)	$ 20.90	$ 4.60
Ironworkers (structural)	$ 10.84	
Laborers, Common or General	$ 8.67	
Laborer, Mason Tender - Brick	$ 9.13	
Operator, Backhoe/ Excavator	$ 13.81	
Operator, Blade/ Grader	$ 12.97	
Operator, Front End Loader	$ 12.23	
Painter (Including Drywall Finishing)	$ 15.81	$ 4.56
Plasterer	$ 14.00	
Plumber (Including HVAC Work)	$ 19.20	$ 6.55
Roofer	$ 12.06	
Sheet Metal Worker (Including HVAC Work)	$ 10.00	
Sprinkler Fitters	$ 12.00	
Tile Setter	$ 8.50	
Truck Driver	$ 10.15	
Welders	*	

*Welders receive the rate prescribed for the craft performing the operation to which welding is incidental.

a under 5 years employment, 6% of BHR, over 5 years employment, 8%BHR.
Paid Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Labor Day, Thanksgiving Day, The Friday after thanksgiving and Christmas Day.

Unlisted classifications needed for the 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)(v)).

CERTIFICATE OF INSURANCE:

PRODUCER INSURANCE COMPANY PHONE	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE APPROVED BY THE POLICIES BELOW. COMPANIES AFFORDING COVERAGE
INSURED VENDOR COMPANY	COMPANY LETTER A COMPANY NAME COMPANY LETTER B COMPANY LETTER C COMPANY LETTER D COMPANY LETTER E

>COVERAGES**********

THIS IS TO CERTIFY THAT 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 THE 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 TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF DATE (MM/DD/YY)	POLICY EXP DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY				GENERAL AGGREGATE	1000000*
A	[X] COMMERCIAL GEN LIABILITY	ABC123456789	00/00/00	00/00/00	PROD-COMP/OP AGG.	1000000*
	[ ] CLAIMS MADE [X] OCC.				PERS. & ADV. INJURY	500000*
	[ ] OWNER'S & CONTRACTOR'S PROTECTIVE				EACH OCCURRENCE	500000*
	PROTECTIVE				FIRE DAMAGE [ANY ONE FIRE]	50000*
	[ ]				MED. EXPENSE [ANY ONE PERSON]	5000*
	[ ]					
	AUTOMOBILE LIAB				COMB. SINGLE LIMIT	250000*
A	[X] ANY AUTO	ABC123456789	00/00/00	00/00/00	BODILY INJURY [EACH PERSON]	
	[ ] ALL OWNED AUTOS					
	[ ] SCHEDULED AUTOS				BODILY INJURY [PER ACCIDENT]	
	[ ] HIRED AUTOS					
	[ ] NON-OWNED AUTOS					
	[ ] GARAGE LIABILITY				PROPERTY DAMAGE	
	EXCESS LIABIL8ITY					
	[ ] UMBRELLA FORM				EACH OCCURRENCE	
	[ ] OTHER THAN UMBRELLA FORM				AGGREGATE	
					{STATUTORY LIMITS}	
A	WORKERS' COMP	ABC123456789		00/00/00	EACH ACCIDENT	100000*
	AND				DISEASE-POL. LIMITS	500000*
A	EMPLOYERS' LIAB	ABC123456789		00/00/00	DISEASE-EACH EMP.	100000*
	OTHER					

EXAMPLE

DESCRIPTION OF OPERATIONS / LOCATIONS/ VEHICLES/ SPECIAL ITEMS

The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's 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 <********** > CERTIFICATE HOLDER <**********

City of Midland
P.O. BOX 1152
MIDLAND, TX
79702-1152

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES

AUTHORIZED REPRESENTATIVE

--------ACORD 25-S (2001/08) *Insurance limits should be adjusted to the amounts required by the attached contract.--------

NOTE: The wording under "Description of Operations", must appear exactly as shown above. Otherwise it will be rejected and contract execution will be delayed until a properly worded certificate is received.

City of Midland - Bid Tabulation

BID NO.: 4371-12
FOR: Video Board at Grande Stadium
CLOSES: 12/7/2011

ITEM	QTY	DESCRIPTION	LSI Industries 10000 Alliance Road Concinnati, OH 45242 Spencer LeFort (713)329-4015		Spectrum Corporation 10048 EastHaven Houston, TX 77075 Darren Garner (713)944-6200		Daktronics, Inc 201 Kaktronics Dr. Brookings, SD 57006 Peter Johnson (605)692-0200		Daktronics, Inc 201 Kaktronics Dr. Brookings, SD 57006 Peter Johnson (605)692-0200	
			COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
		Please see notes following this list.....							***Alternate***	
1	1	Materials Portion Incorporated Into Project	$283,000.00000	$283,000.00	$295,794.000	$295,794.00	$258,152.00	$258,152.00	$319,111.00	$319,111.00
2	1	Labor Portion Incorporated Into Project	$15,000.000	$15,000.00	$52,190.000	$52,190.00	$34,924.00	$34,924.00	$39,629.00	$39,629.00
3	1	Other Costs Not Incorporated Into Project	Included		Included		Included		Included	
		Work Can Be Complete	120 Calendar Days		130 Calendar Days		14 Calendar Days		14 Calendar Days	
					*Enclosed oppurtunities to decrease price		***Voluntary Alternate***		Scoreboard Replacement with FB-2024	
					and/or improve warrant				Model Scoreboard	$39,599.00
							Full Backup Control System for base			
							Bid Only	$28,934.00		
							OR			
							Additional 2 years Standard Parts &			
							Labor Warranty for Base Bid Only			
							OR	$23,636.00		
							Full Backup Control System AND Additional			
							2 years parts/Labor warranty for			
								$38,856.00		
		TOTALS:		$298,000.00		$347,984.00		$293,076.00		$398,339.00

Bidding Summary:

4 **Bid requests were issued.**

3 **Bids listed above**

0 **NO BIDS were received.**

1 **Bidders did not respond.**
TS Sports (Late Bid)

x:\123wks\tabulations\2012\4371-12.xls

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF A NEW VIDEO BOARD AT GRANDE COMMUNICATIONS STADIUM FROM DAKTRONICS, INCORPORATED, AT A TOTAL COST OF $293,076.00

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for the supply and installation of a new video board at Grande Communications Stadium; and

WHEREAS, Bid No. 4371-12 was opened on December 7, 2011, with the lowest and most responsible bid being submitted from Daktronics, Inc., 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 video board from Daktronics, Inc., at an estimated total price not to exceed $293,076.00, 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 Daktronics, Inc., for said video board from funds available in the Fiscal Year 2011 – 2012 Scharbauer Sports Complex (620) Sports Complex (620) Non-Departmental (0625) Communication and Video Equipment (8481) 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., 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:
THudson
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4373-12 Control Room Upgrade for Grande Communications Stadium**

Purpose:

Approval of a resolution authorizing the purchase of video control room equipment for the Grande Communications Stadium.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$105,201.45 Scharbauer Sports Complex Maintenance Budget

Discussion:

The new video control room equipment will replace the current equipment at Grande Communications Stadium at the Scharbauer Sports Complex. The equipment will consist of a camera system, video switcher, SDI replay, cabling, system racks and training. We are recommending the low bidder. For further discussion on this item please see the attached memo from Tina Jauz, Community Services Director.

Therefore, please consider approval of a resolution authorizing the purchase and installation of new video control room equipment from Media Support Group of Lubbock, Texas, for a total cost of $105,201.45.

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: December 29, 2011
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Purchase of Video Control Room Equipment for Grande Communications Stadium

On June 15, 2011, the 4B Board approved recommending the purchase of a video board, to include an upgraded video control room at Grande Communications Stadium. The City Council approved the item through the budget as a capital project.

One bid was received for the Grande Control Room upgrade. Media Support Group out of Lubbock bid the project at $105,201.45. This amount, combined with the low bid on the video board at Grande $293,076, is still well below the budgeted cost of $500,000.

This item would include the disconnecting of all existing equipment, relocating and running all necessary wiring and cabinets, and installation of new equipment at Grande. The equipment would work in conjunction with the new video board.

The City of Midland will be responsible for the maintenance of the video control room.

MIDLAND
Purchasing Division

THE CITY OF MIDLAND

CONTRACT
Contract No.4373-12

THIS CONTRACT, effective the 11th day of January, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and Media Support Group, Ltd, hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: $ 105,201.45 DOLLARS

2. **Scope of Work:** The Contractor shall perform all work described for Replace Control Room Equipment at Grande Stadium 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 Tina Jauz or her 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.

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" or "per policy" aggregate, including completed operations, and shall be on an occurrence basis.

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

The 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.

All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name the Owner as an additional insured on a claims occurred basis. All insurance required

pursuant to this Contract, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Owner.

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

> ***"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The 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."***

Owner 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. Owner shall not be required to provide any insurance whatsoever pursuant to this Contract.

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).

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.

Contract No: 4373-12

OWNER, City of Midland

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

CONTRACTOR

Contractor Corporate Acknowledgment: Contract: Contract No.4373-12

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of Media Support Group, Ltd _____, 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 _____, 2012

_____

Notary Public, State of Texas

Media Support Group

1303 82nd Street, Suite 500, Lubbock, Texas 79423
Phone 806-785-3600 Fax 806-785-3700 www.mediasupportgroup.net

Monday, December 5, 2011

City of Midland Purchasing Division
300 N. Loraine, Suite 300
Midland, TX 79701

To Whom It May Concern,

Thank you for allowing Media Support Group to respectfully submit this document in response to your invitation to bid on the Control Room Upgrade for Grande Stadium with the City of Midland.

Media Support Group has enjoyed a good working relationship with the City of Midland in the past and hopes to continue this relationship during the course of 2012 and into the future.

Please find enclosed in this bid submittal the following:

- City of Midland RFB page 1 – Total Cost
- City of Midland RFB page 3 – Cost Breakdown
- MSG Line Pricing
- City of Midland RFB page 5 – Checklist
- MSG Bid Bond
- MSG Insurance Certificate – Specimen Copy
- MSG Company Profile including Scope of Work and References
- Proposed Equipment Data Sheets

If Media Support Group is selected as the vendor we would request an alternate schedule of payment terms be considered by the City of Midland. Our standard terms are 50% down, 40% upon delivery of the equipment and 10% at acceptance.

Media Support Group wants to provide this solution for you! As an indication of our desire to continue our relationship with City of Midland please note the monthly "system-check" proposal we have included at no additional cost!

We look forward to serving you in the future!

Respectfully,

Kip Perkins
859.229.9503

Exhibit "A"

Media Support Group

1303 82nd Street, Suite 500, Lubbock, Texas 79423
Phone 806-785-3600 Fax 806-785-3700 www.mediasupportgroup.net

Monday, December 30, 2011

Regina Stephenson
City of Midland Purchasing Division
300 N. Loraine, Suite 300
Midland, TX 79701

Regina,

Thank you for the conversation regarding Grande Stadium this afternoon.

Per our discussion regarding payment terms, it is noted by Media Support Group that the following line(s) will be removed from our cover letter by the city –

"If Media Support Group is selected as the vendor we would request an alternate schedule of payment terms be considered by the City of Midland. Our standard terms are 50% down, 40% upon delivery of the equipment and 10% at acceptance."

Additionally, Media Support Group will not conduct any Power Up or System Check procedures for Citibank Ball Park, since this venue will not be in our scope of work. It would be ill-advised for Media Support Group to make adjustments on a system installed by others. Thus, we will provide on-site system checks for Grande Stadium during August, September, October and November.

Respectfully,

Kip Perkins
859.229.9503

Media Support Group

1303 82nd Street, Suite 500 Lubbock, Texas 79423
Phone 806-785-3600 Fax 806-785-3700 www.mediasupportgroup.net

Order of Proposal Documents

1. City of Midland RFB page 1 – Total Cost/Signed
2. City of Midland RFB page 3 – Cost Breakdown
3. MSG Line Pricing
4. City of Midland RFB page 5 – Checklist/Signed
5. MSG Bid Bond
6. MSG Insurance Specimen Copy
7. MSG Company Profile
8. Equipment Data Sheets

MIDLAND
Purchasing Division

CITY OF MIDLAND

PURCHASING DIVISION DATE: 11/14/11

BID REQUEST PAGE: 01

(THIS IS NOT AN ORDER) **BID NO: 4373-12**

OPENING TIME: 11:00 AM **OPENING DATE: 12-07-11**

CITY OF MIDLAND
300 NORTH LORAINE
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. 12-07-11 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:
Grande Stadium, 5514 Champion Dr., Midland, Texas

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Control Room Upgrade at Grande Stadium in accordance with the attached proposal, specifications and contract.	$ *105,201.45*	$ *105,201.45*
				TOTAL	*$105,201.45*

NOTICE TO BIDDERS:
1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
2. SEALED BIDS FAXED DIRECTLY TO THE CITY WILL BE REJECTED. FAX BIDS MAY BE SENT THROUGH A 3RD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.

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: *Media Support Group*
ADDRESS *1303 82nd Street Suite 500*
CITY *Lubbock* ST *TX* ZIP *79423*
PHONE NO. *1.806.785.3600* FAX NO. *1.806.785.3700*
Kip Perkins - direct - 1.859.229.9503

CASH DISCOUNT: _____ % _____ DAYS

DELIVERY CAN BE MADE *4-6 weeks after Notice to Proceed*

AUTHORIZED SIGNATURE

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

MIDLAND
Purchasing Division

Media Support Group
Contractor's Name

PROPOSAL
Bid 4373-12

To: Purchasing Agent
City of Midland
Midland, Texas

Gentlemen: The undersigned bidder, having examined the plans, specifications and contract documents, the location of the proposed work and being fully advised as to the extent and character of the work proposes to furnish all materials, equipment and to perform all labor and work necessary for the complete work described by and in accordance with the attached plans, specifications and contract for the sum of:

Materials Portion Incorporated Into Project ***Eighty Seven Thousand, Seven-Hundred One and 45/100*** DOLLARS

Labor Portion Incorporated Into Project ***Seventeen Thousand, Five-Hundred and 00/100*** DOLLARS

Other Costs Not Incorporated Into Project ***0*** DOLLARS

Total Proposal ***One Hundred Five Thousand, Two-Hundred One and 45/100*** DOLLARS

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid and he further agrees to commence work within ten (10) days after the date of written notice to do so and to substantially complete same within ***60*** calendar days.

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

E-mail: purchasing@midlandtexas.gov

All vendors on the bid list will then be notified of the questions and presented an answer. Verbal responses shall not be considered binding.

AWARD

The City may award a contract or purchase order to the lowest responsible bidder or to the bidder who provides goods or services at the best value to the City.
The City will be solely responsible for the determination of what constitutes best value in accordance with the applicable Section 252.043 of the Local Government Code.

PROPOSAL TERM

Unless otherwise noted, this proposal shall be valid for 90 days.

BID WAIVERS:

A. WAIVER OF ATTORNEY FEES: BY SIGNING THIS PROPOSAL, BIDDER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OWNER, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH

Media Support Group

Vendor	Media Support Group	Ship To:	City of Midland
Address	1303 82nd Street, Suite 500 Lubbock, TX 79423	Address	
Contact	Kip Perkins	Contact	
Telephone	859.229.9503	Phone	
Fax	806.785.3700	Fax	

Date	12.7.11	Payment	P.O. #

Part #	Description	Price	Quantity	Total
	Video Equipment - Control Room Upgrade SDI			
	Camera System			
HXR-NX5U	Sony NXCAM Professional Camcorder w/20x Lens	$ 4,499.99	3	$ 13,499.97
NP-F970	Sony Li-Ion Battery Pack	$ 129.99	6	$ 779.94
ZC-3DV	Libec Remote Lens Control	$ 170.00	3	$ 510.00
LS-38M	Libec Counter Balance Tripod System	$ 639.99	3	$ 1,919.97
CC-193	Kata Soft Carry Case	$ 159.99	3	$ 479.97
CC-195	Kata Soft Carry Case for Wireless Camera	$ 224.99	1	$ 224.99
CRC-15	Kata Rain Slicker	$ 112.95	3	$ 338.85
RC-10	Kata Rain Slicker for Wireless	$ 137.99	1	$ 137.99
CLM-V55BDL	Sony 5" HDMI On-Board Monitor with Battery and Shoe Mount	$ 573.99	3	$ 1,721.97
	Video Switcher			
TCXD850	Tricaster 8-Input HD/SD SDI Production Solution with Clips/CG	$ 24,995.00	1	$ 24,995.00
LC-11	Tricaster Control Panel	$ 1,795.99	1	$ 1,795.99
TBD	37"-42" LCD allowance for source monitoring for multiview (Vizio or similar)	$ 899.99	1	$ 899.99
LiveText2	Tricaster LiveText Graphics Plug In	$ 949.99	1	$ 949.99
MSGLaptop	MSG Laptop for Tricaster LiveText	$ 799.99	1	$ 799.99

ACU3022A	KVM Extender	$ 699.99	1	$ 699.99
	Upgrade to SDI replay			
BUF SDI UPGRADE	Buftek Composite to SDI Upgrade - requires unit to be shipped	$ 1,895.00	2	$ 3,790.00
DSR4x1	Burst Electronics SDI 4x1 Switcher	$ 1,399.99	2	$ 2,799.98
RM-4	Burst DSR4x1 Rack Mount	$ 85.99	1	$ 85.99
Rainier 4u1v	Avitech 4 Input HD/SD-SDI Color Quad	$ 3,148.99	1	$ 3,148.99
TBD	19" LCD monitor allowance for replay (Vizio or similar)	$ 279.99	1	$ 279.99
	SDI Signal Distribution/Routing			
CONVMAAS	Black Magic Design Mini Converter Analog to SDI	$ 495.00	16	$ 7,920.00
VHUB/MV	Black Magic Design 16x16 SDI Video Router	$ 2,175.99	1	$ 2,175.99
CONVMSDIDA	Black Magic Design Mini Converter SDI DA	$ 295.00	16	$ 4,720.00
	Signal Record/Playback			
SR-HD1250US	JVC Blu Ray Player/Recorder	$ 1,199.99	2	$ 2,399.98
MISC	Conversion to/from SDI-HDMI	$ 2,000.00	1	$ 2,000.00
	Audio Mix/Monitoring			
RM-2	Fostex Rack Mount Monitor Speakers	$ 580.00	1	$ 580.00
MIX5s	Whirlwind Mic/Line Audio Mixer to Feed PA	$ 529.99	1	$ 529.99
	System Furniture/Racking			
Smart1200LCD	Smart LCD 1200VA 2U Rack/Tower UPS System	$ 195.99	1	$ 195.99
GS116NA	Netgear 16-Port Gigabit Desktop Switch	$ 224.99	1	$ 224.99
MDV-DSK	Middle Atlantic Audio Video Desks/Racks	$ 375.00	3	$ 1,125.00
Middle Atlantic	WRK 44 RU Rack Allowance with Side Panels	$ 1,399.99	1	$ 1,399.99
Misc.	Middle Atlantic Blank Panel and Shelf Allowance	$ 600.00	1	$ 600.00
DRS-1215	Tripp Lite Rack Mount Power Strip	$ 79.99	1	$ 79.99
PS4816	Tripp Lite 48" Power Strip	$ 69.99	2	$ 139.98
	System Cabling/Integration			
Misc.	Cables, Connectors, and Hardware to re-wire interconnect equipment	$ 1,750.00	1	$ 1,750.00
MSG	Shipping	$ 2,000.00	1	$ 2,000.00
Labor	Installation, Travel, Training and 1st Event Support	$ 17,500.00	1	$ 17,500.00
	**Cable costs assume all existing cabling to camera locations and other video			
	destinations will remain in place AS IS.**			
	**Cable costs are for replacement cables, ends, hardware and new cabling necessary to			
	integrate existing equipment with new equipment withing the control room area.**			
	****OFE cable tuner/DVR can be integrated as well****			

	City of Midland IT support necessary for setup			
	Internet access in control room required			
	NOTE - Installation includes 8 monthly on-site "system check"			
	visits beginning in March and going through November. "System Check" will include			
	ON-SITE system power up for Citibank Ballpark and Grande Stadium and check for signal			
	continuity through all components. Minor adjustments will be made on-site. THIS IS			
	NOT A PARTS REPLACEMENT CONTRACT. In the event a component(s) need to be shipped			
	for repair City of Midland is responsible for shipping.			
	TOTAL is figured NOT INCLUDING SALES TAX			$ 105,201.45

occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Bidder will settle, the physical and mailing addresses of Bidder at the time and date the claim was presented and the physical and mailing addresses of Bidder for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Bidder 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 Bidder that Bidder'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, Bidder's failure to comply with the requirements herein shall perpetually bar Bidder'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. Bidder agrees that the requirements of this entire Contract are reasonable.

By Signing 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.

SOVEREIGN IMMUNITY: By Executing this contract the City is not waiving its right of Sovereign immunity. the City is retaining its IMMUNITY from suit. the City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

Media Support Group		***1.806.785.3600***
Bidder	Authorized Signature	Telephone
1303 82nd Street, Lubbock, TX, 79423	***Clifford (Kip) Perkins III***	***1.806.785.3700***
Address, City and State	Please Print above Name	Fax

Bidder's Enclosure Check List: (Bidder - Please review the following list and check to ensure that you have included the documents with your bid.)

[X] PROOF OF AUTOMOBILE WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. **(Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision) including a waiver of subrogation as stated in the contract)**

[X] 5% BID BOND FOR CONTRACTS IN AMOUNTS OF $25,000 OR MORE. (ONLY WHEN EXHIBIT "C" IS INCLUDED IN THE CONTRACT).* **THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PROVIDE A PAYMENT BOND FOR BIDS IN EXCESS OF $25,000 AND A PERFORMANCE BOND FOR BIDS OVER $100,000. IF BOND FORMS WERE NOT INCLUDED, THEY MAY BE OBTAINED FROM THE OFFICE OF THE PURCHASING AGENT. Call (432) 685-7234 for information.**

PLEASE NOTE:

FAILURE TO INCLUDE ANY OF THE REQUIRED DOCUMENTS ON THE CHECK LIST, MAY CAUSE REJECTION OF YOUR BID.

***FAILURE TO PROVIDE LIABILITY OR WORKER'S COMPENSATION INSURANCE AND SUBSEQUENT CERTIFICATES; OR, PAYMENT AND/OR PERFORMANCE BONDS AS REQUIRED BY THE CONTRACT MAY CAUSE FORFEITURE OF YOUR BID BOND OR OTHER SURETY (I.E.- CASH OR CASHIERS CHECK).**

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: <u>ATTACH POWER OF ATTORNEY</u>

EXHIBIT "D"

PREVAILING WAGE RATE SCHEDULE
BUILDING CONSTRUCTION TRADES
as of July 24, 2009
Attorney General, General Decision TX20080297

Classification	Rate/hr	Fringes
Acoustical Installers	$ 11.18	
Boilermaker	$ 26.02	$ 13.66
Bricklayers	$ 18.00	
Carpenters (Including Metal Stud Installation and Drywall Hanging)	$ 15.17	
Cement Mason/ Concrete Finisher	$ 13.89	
Drywall Hangers	$ 11.08	
Electrician	$ 13.63	$ 1.25
Elevator Mechanics	$ 32.66	18.285+a
Forklift Operator	$ 22.70	$ 9.35
HVAC mechanic (set unit only)	$ 10.00	
Ironworkers (reinforcing)	$ 20.90	$ 4.60
Ironworkers (structural)	$ 10.84	
Laborers, Common or General	$ 8.67	
Laborer, Mason Tender - Brick	$ 9.13	
Operator, Backhoe/ Excavator	$ 13.81	
Operator, Blade/ Grader	$ 12.97	
Operator, Front End Loader	$ 12.23	
Painter (Including Drywall Finishing)	$ 15.81	$ 4.56
Plasterer	$ 14.00	
Plumber (Including HVAC Work)	$ 19.20	$ 6.55
Roofer	$ 12.06	
Sheet Metal Worker (Including HVAC Work)	$ 10.00	
Sprinkler Fitters	$ 12.00	
Tile Setter	$ 8.50	
Truck Driver	$ 10.15	
Welders	*	

*Welders receive the rate prescribed for the craft performing the operation to which welding is incidental.

a under 5 years employment, 6% of BHR, over 5 years employment, 8%BHR.
Paid Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Labor Day, Thanksgiving Day, The Friday after thanksgiving and Christmas Day.

Unlisted classifications needed for the 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)(v)).

CERTIFICATE OF INSURANCE:

PRODUCER INSURANCE COMPANY PHONE	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE APPROVED BY THE POLICIES BELOW. COMPANIES AFFORDING COVERAGE
INSURED VENDOR COMPANY	COMPANY LETTER A COMPANY NAME COMPANY LETTER B COMPANY LETTER C COMPANY LETTER D COMPANY LETTER E

>COVERAGES**********

THIS IS TO CERTIFY THAT 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 THE 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 TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF DATE (MM/DD/YY)	POLICY EXP DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY				GENERAL AGGREGATE	1000000*
A	[X] COMMERCIAL GEN LIABILITY	ABC123456789	00/00/00	00/00/00	PROD-COMP/OP AGG.	1000000*
	[ ] CLAIMS MADE [X] OCC.				PERS. & ADV. INJURY	500000*
	[ ] OWNER'S & CONTRACTOR'S PROTECTIVE				EACH OCCURRENCE	500000*
	PROTECTIVE				FIRE DAMAGE [ANY ONE FIRE]	50000*
	[ ]				MED. EXPENSE [ANY ONE PERSON]	5000*
	[ ]					
	AUTOMOBILE LIAB				COMB. SINGLE LIMIT	250000*
A	[X] ANY AUTO	ABC123456789	00/00/00	00/00/00	BODILY INJURY [EACH PERSON]	
	[ ] ALL OWNED AUTOS					
	[ ] SCHEDULED AUTOS				BODILY INJURY [PER ACCIDENT]	
	[ ] HIRED AUTOS					
	[ ] NON-OWNED AUTOS					
	[ ] GARAGE LIABILITY				PROPERTY DAMAGE	
	EXCESS LIABIL8ITY					
	[ ] UMBRELLA FORM				EACH OCCURRENCE	
	[ ] OTHER THAN UMBRELLA FORM				AGGREGATE	
					{STATUTORY LIMITS}	
A	WORKERS' COMP	ABC123456789		00/00/00	EACH ACCIDENT	100000*
	AND				DISEASE-POL. LIMITS	500000*
A	EMPLOYERS' LIAB	ABC123456789		00/00/00	DISEASE-EACH EMP.	100000*
	OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS/ VEHICLES/ SPECIAL ITEMS

The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's 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 <**********	> CERTIFICATE HOLDER <**********
City of Midland P.O. BOX 1152 MIDLAND, TX 79702-1152	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES AUTHORIZED REPRESENTATIVE

--------ACORD 25-S (2001/08) *Insurance limits should be adjusted to the amounts required by the attached contract.----------

NOTE: The wording under "Description of Operations", must appear exactly as shown above. Otherwise it will be rejected and contract execution will be delayed until a properly worded certificate is received.

City of Midland - Bid Tabulation

BID NO.: 4373-12
FOR: Control Room Upgrade at Grande Stadium

CLOSES: 12/7/2011

Media Support Group
1303 82nd Street Suite 500
Lubbock, TX 79423
Clifford (Kip) Perkins III
(806)785-3600

ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
		Please see notes following this list.....		
1	1	Materials Portion Incorporated Into Project	$87,701.45000	$87,701.45
2	1	Labor Portion Incorporated Into Project	$17,500.000	$17,500.00
3	1	Other Costs Not Incorporated Into Project	Included	
		Can be Completed	60 Calendar Days	
		TOTALS:		$105,201.45
		Discount if all awarded to your company…**Discounted Total:**		**$ 105,201.45**

Bidding Summary:

5 **Bid requests were issued.**

1 **Bids listed above**

1 **NO BIDS were received.**

Total Sports Entertainment

3 **Bidders did not respond.**

Spectrum Scoreboards, LSI Industries, Daktronics

x:\123wks\tabulations\2012\4373-12.xls

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF VIDEO CONTROL ROOM EQUIPMENT AT GRANDE COMMUNICATIONS STADIUM FROM MEDIA SUPPORT GROUP, LTD., AT A TOTAL COST OF $105,202.00

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for the supply and installation of video control room equipment at Grande Communications Stadium; and

WHEREAS, Bid No. 4373-12 was opened on December 7, 2011, with the lowest and most responsible bid being submitted from Media Support Group, Ltd., 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 video control room equipment from Media Support Group, Ltd., at an estimated total price not to exceed $105,202.00, 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 Media Support Group, Ltd., for said video control room equipment from funds available in the Fiscal Year 2011 – 2012 Scharbauer Sports Complex (620) Sports Complex (620) Non-Departmental (0625) Communication and Video Equipment (8481) 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., 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:
THudson
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4373-12 Control Room Upgrade for Citibank Ball Park**

Purpose:

Approval of a resolution authorizing the purchase of video control room equipment for Citibank Ball Park.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$80,753.19 Scharbauer Sports Complex Maintenance Budget

Discussion:

The new video control room equipment will replace the current equipment at Citibank Ball Park at the Scharbauer Sports Complex. The equipment will consist of a video switcher and monitors, replay system, in-house CCTV enhancements, recording devices, cameras and training. We are recommending the low bidder. For further discussion on this item please see the attached memo from Tina Jauz, Community Services Director.

Therefore, please consider approval of a resolution authorizing the purchase and installation of new video control room equipment from TSE Services, LLC of La Crosse, Wisconsin, for a total cost of $80,753.19.

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: December 29, 2011
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Purchase of Video Control Room Equipment for Citibank Ball Park

On March 2, 2011, the 4B Board approved recommending the purchase of video control room equipment at Citibank Ball Park. The City Council approved the item through the budget as a capital project.

Two bids were received. Parks & Recreation staff recommend going with the low bidder TSE Services, LLC. at $80,753.19. Although the bid is over the budgeted $75,000, it is well below the second bid of $96,321.41. TSE Services, LLC. is well known for working with other minor league baseball stadiums.

This item would include the removal, purchase, and installation of all new video control room equipment at Citibank.

The scope of the project includes the installation of new cameras, new video switchers, new monitors, and a three channel replay. The equipment would provide selectable feeds to video board, an in-house TV system, web streaming, and other destinations. Also included is an upgrade to the audio software as well as two new laptops used to operate the equipment.

The City of Midland will be responsible for the maintenance of the video control room.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF VIDEO CONTROL ROOM EQUIPMENT AT CITIBANK BALL PARK FROM TSE SERVICES, LLC, AT A TOTAL COST OF $80,754.00

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for the supply and installation of video control room equipment at Citibank Ball Park; and

WHEREAS, Bid No. 4375-12 was opened on December 7, 2011, with the lowest and most responsible bid being submitted from TSE Services, LLC, 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 video control room equipment from TSE Services, LLC, at an estimated total price not to exceed $80,754.00, 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 TSE Services, LLC, for said video control room equipment from funds available in the Fiscal Year 2011 – 2012 Scharbauer Sports Complex (620) Sports Complex (620) Non-Departmental (0625) Communication and Video Equipment (8481) 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., 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 of Midland - Bid Tabulation

BID NO.: 4375-12
FOR: Control Room Upgrade at Citibank Ball Park
CLOSES: 12/7/2011

			TSE Services, LLC 2414 State Road La Crosse, WI 54601 Martin Masewicz (303)999-7545		Media Support Group 1303 82nd Street Suite 500 Lubbock, TX 79423 Clifford (Kip) Perkins III (806)785-3600	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
		Please see notes following this list.....				
1	1	Materials Portion Incorporated Into Project	$71,813.19000	$71,813.19	$80,321.410	$80,321.41
2	1	Labor Portion Incorporated Into Project	$8,940.000	$8,940.00	$16,000.000	$16,000.00
3	1	Other Costs Not Incorporated Into Project	Included		Included	
		Work Completed	30 Calendar Days		60 Calendar Days	
		TOTALS:		$80,753.19		$96,321.41
		Discount if all awarded to your company…**Discounted Total:**		**$ 80,753.19**		**$ 96,321.41**

Bidding Summary:

4 **Bid requests were issued.**

2 **Bids listed above**

0 **NO BIDS were received.**

2 **Bidders did not respond.**

Spectrum Scoreboards, Daktronics.com(late bid)

x:\123wks\tabulations\2012\4375-12.xls

MIDLAND
Purchasing Division

THE CITY OF MIDLAND

CONTRACT
Contract No.4375-12

THIS CONTRACT, effective the 11th day of January, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and TSE Services, LLC, hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: $ 80,753.19 DOLLARS

2. **Scope of Work:** The Contractor shall perform all work described for Control Room Upgrade at Citibank Ball Park 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 Tina Jauz or her 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 _30_ 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.

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" or "per policy" aggregate, including completed operations, and shall be on an occurrence basis.

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

The 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.

All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name the Owner as an additional insured on a claims occurred basis. All insurance required

pursuant to this Contract, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Owner.

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

> ***"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The 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."***

Owner 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. Owner shall not be required to provide any insurance whatsoever pursuant to this Contract.

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).

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.

Contract No: 4375-12

OWNER, City of Midland

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

CONTRACTOR

Contractor Corporate Acknowledgment: Contract: Contract No.4375-12

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ___ day of _____, 2012.

_____

Notary Public, State of Texas

TOTAL SPORTS ENTERTAINMENT

TSE Services, LLC
"We Help Teams"

Consulting ◈ Equipment ◈ Web Services

Marty@yourtse.com
ph. 303.999.7545

City of Midland
300 North Loraine
P.O. Box 1152
Midland, TX 79702

2-Dec-11

Re: Bid No: 4375-12
Citibank Ball Park AV Upgrades

Good Morning,

We are pleased to submit our proposal for the AV production room equipment upgrade at Citibank Ball Park.

Attached are the following documents:
Completed Proposal Bid 4375-12
Proof of Insurance (commercial auto, workers compensation and general liability)
5% Bid Bond document
Conflict of Interest Questionnaire

Noted exceptions to individual line items:

- *Please find line numbers on the TSE item and pricing worksheet.*

Line 39. Dell changed the configuration options and the following model replaces the specified model:
Mini Tower Video edit workstation: W7Pro 64bit OS, i5 -2500 w/VT 3.3GHz, 6MB cache, 8GB memory, Two 500GB HDD, (1TB), AMD Radeon HD 6450 1GB DDR3 video card

Line 52. TSE included the optional annual maintenance support and service line item. Preventive maintenance always saves money over the years. And the site visit allows new hired staff an opportunity to receive hands-on training while our technician is on-site. TSE base rate is $1,950 annually and the service can be customized to meet ball parks needs in each future year. This option can be added after the project is completed.

Please contact me with any ideas or question you may have. Thank you,
Respectfully submitted by:

Martin Masewicz, VP Equipment Services

MIDLAND
Purchasing Division

CITY OF MIDLAND

PURCHASING DIVISION

BID REQUEST

DATE: 11/14/11

PAGE: 01

(THIS IS NOT AN ORDER) **BID NO: 4375-12**

OPENING TIME: 11:00 AM **OPENING DATE: 12-07-11**

CITY OF MIDLAND
300 NORTH LORAINE
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. 12-07-11 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:
Citibank Ball Park, 5514 Champion Dr., Midland, Texas

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Control Room Upgrade at Citibank Ball Park in accordance with the attached proposal, specifications and contract.	$ 80,753.19	$ 80,753.19
				TOTAL	80,753.19

NOTICE TO BIDDERS:
1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
2. SEALED BIDS FAXED DIRECTLY TO THE CITY WILL BE REJECTED. FAX BIDS MAY BE SENT THROUGH A 3RD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.

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: TSE Services, LLC
ADDRESS 2414 State Road
CITY La Crosse ST WI ZIP 54601
PHONE NO. 303-999-7545 FAX NO. 608-782-4655

CASH DISCOUNT: n/a % DAYS
DELIVERY CAN BE MADE Electronically
AUTHORIZED SIGNATURE Matt Mercer

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

MIDLAND
Purchasing Division

On-line responses will not be allowed for this solicitation. Please print these documents and submit your bid in a sealed envelope to:

Mailing Address:

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

OR

Physical Address:

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

MIDLAND
Purchasing Division

_____
Contractor's Name

PROPOSAL
Bid 4375-12

To: Purchasing Agent
City of Midland
Midland, Texas

Gentlemen: The undersigned bidder, having examined the plans, specifications and contract documents, the location of the proposed work and being fully advised as to the extent and character of the work proposes to furnish all materials, equipment and to perform all labor and work necessary for the complete work described by and in accordance with the attached plans, specifications and contract for the sum of:

Materials Portion Incorporated Into Project $ 71,813.19 DOLLARS

Labor Portion Incorporated Into Project $ 8,940.00 DOLLARS

Other Costs Not Incorporated Into Project ---- DOLLARS

Total Proposal $ 80,753.19 DOLLARS

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid and he further agrees to commence work within ten (10) days after the date of written notice to do so and to substantially complete same within 30 calendar days.

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

E-mail: purchasing@midlandtexas.gov

All vendors on the bid list will then be notified of the questions and presented an answer. Verbal responses shall not be considered binding.

AWARD
The City may award a contract or purchase order to the lowest responsible bidder or to the bidder who provides goods or services at the best value to the City.
The City will be solely responsible for the determination of what constitutes best value in accordance with the applicable Section 252.043 of the Local Government Code.

PROPOSAL TERM
Unless otherwise noted, this proposal shall be valid for 90 days.

BID WAIVERS:

A. WAIVER OF ATTORNEY FEES: BY SIGNING THIS PROPOSAL, BIDDER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OWNER, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH

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

BIDDER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE BIDDER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE CONTRACT. THE BIDDER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE OWNER AND THE BIDDER.

THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

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).

C. 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, Bidder 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 Bidder will settle, the physical and mailing addresses of Bidder at the time and date the claim was presented and the physical and mailing addresses of Bidder for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Bidder 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 Bidder that Bidder'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, Bidder's failure to comply with the requirements herein shall perpetually bar Bidder'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. Bidder agrees that the requirements of this entire Contract are reasonable.

By Signing 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.

SOVEREIGN IMMUNITY: By Executing this contract the City is not waiving its right of Sovereign immunity. the City is retaining its IMMUNITY from suit. the City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

TSE Services, LLC	Mat Masewicz	303-999-7545
Bidder	Authorized Signature	Telephone
2414 State Road, La Crosse, WI 54601	Martin Masewicz for TSE Services, LLC	608-782-4655
Address, City and State	Please Print above Name	Fax

Bidder's Enclosure Check List: (Bidder - Please review the following list and check to ensure that you have included the documents with your bid.)

[X] PROOF OF AUTOMOBILE WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. **(Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision) including a waiver of subrogation as stated in the contract)**

[x] 5% BID BOND FOR CONTRACTS IN AMOUNTS OF $25,000 OR MORE. (ONLY WHEN EXHIBIT "C" IS INCLUDED IN THE CONTRACT).* **THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PROVIDE A PAYMENT BOND FOR BIDS IN EXCESS OF $25,000 AND A PERFORMANCE BOND FOR BIDS OVER $100,000. IF BOND FORMS WERE NOT INCLUDED, THEY MAY BE OBTAINED FROM THE OFFICE OF THE PURCHASING AGENT. Call (432) 685-7234 for information.**

PLEASE NOTE:

FAILURE TO INCLUDE ANY OF THE REQUIRED DOCUMENTS ON THE CHECK LIST, MAY CAUSE REJECTION OF YOUR BID.

***FAILURE TO PROVIDE LIABILITY OR WORKER'S COMPENSATION INSURANCE AND SUBSEQUENT CERTIFICATES; OR, PAYMENT AND/OR PERFORMANCE BONDS AS REQUIRED BY THE CONTRACT MAY CAUSE FORFEITURE OF YOUR BID BOND OR OTHER SURETY (I.E.- CASH OR CASHIERS CHECK).**

Control Room Upgrade
Citibank

Project Scope:
Install new BP Pix live video switcher; 3-ch replay; remote controlled center field camera; and multiview monitors. Provide selectable feeds to video board, in-house TV system, web streaming and other destinations. Upgrade audio EFX software and provide 2 new laptops; recable the video racks; integrate matrix router; and properly install NLL II receiver.

Video Switcher and Monitors

Qty	Brand/ Model	Item Description
1	Broadcast Pix Slate 1000a	Broadcast Pix 8-Channel Live Video Switcher, analog standard definition (SD) format, professional 1M/E. with dual 500GB channel clip & still players, overlays, integrated CG workstation, and selectable program outputs with dirty or clean feeds.
1	Burst or Kramer	Black Burst Generator with four or five video outputs, digitally generated by an internal microprocessor and an A/D converter
1	Samsung	Samsung LN40D550 40" LCD HDTV color monitor, 120Hz refresh rate, DVI or HDMI connection, with slim profile tilting wall mount.
1	HP	HP / Compaq LA2306x 23" Widescreen WLED-Backlit LCD monitor for CG station, D-sub (VGA) or DVI inputs
1	MCM 82-14280	17" Pro LCD Monitor •Inputs: (2) BNC, (1) VGA, (1) HDMI, (1) S-Video, (1) Audio (RCA) •Outputs: (2) BNC

Replay System

1	New Tek 3Play	New Tek 3Play multi-channel HD/SD slow-motion digital replay. Capture all the action with synchronized, continuous recording and display of up to three video streams
1	Burst VS4x1	4x1 vertical interval active switch to select additional sources for the 3rd channel of the New Tek 3play unit
1	MCM 82-12335	4 x 4.0 Inch Rack mount TFT Active Matrix LCD Monitor * quad-4" rack mount monitors for deck confidence sources, loop thru BNC inputs
1	HP	HP / Compaq LA2306x 23" Widescreen WLED-Backlit LCD monitor replay station, D-sub (VGA) or DVI inputs
1	Ikan or Middle Atlantic	Desktop rack frame, 5 to 8 space size, unit extends upward at a gentle slope.

In-House CCTV Enhancements

1	KeyWest	PC Based server with HDMI and dual VGA outputs. Video Server, five programmable windows, insert stills, videos and live feeds into cable modulator. MediaZone digital signage software with easy-to-use PC GUIs. Designed to be used with digital LCD/PDP display panels at native resolutions. Remote management of scheduling and media content updates over network.
1	HP	HP / Hewlett Packard LA1751g 17" LCD Monitor LCD 17" color monitor, with desk stand
1	Hauppauge	Hauppauge USB-Live-2 Video Capture Haup610 USB 2.0 Interface
1	Gefen	GefenTV GTV-HDMI-2-COMPSVIDS HDMI to Composite Scaler

Final Output Recording Devices

1	8DVDS20X250G	Produplicator 8 Target CD DVD Duplicator, Stand Alone Disc Burner wit composite video RCA connectors
2	Toshiba DR430	DVD-R recording decks DVD-R (Video Mode)/DVD+R (Video Mode)/DVD-RW (VR & Video Mode)/DVD+RW (VR Mode) Composite video RCA connectors
1	Delvcam or similar	LCD confidence monitors for DVD-R decks, rack mounted, dual 7", looping inputs, BNC connectors

Camera Support

4	Kata, Petrol or similar	Camera Rain Slickers, one-piece design, TPU and Waterproof Nylon for the Canon XL2 camcorder
4	Kata, Petrol or similar	Camera bag, soft sided, padded, shoulder strap, for the Canon XL2 camcorder
3	VariZoom or Ikan	TFT or LCD Ultimate Widescreen 16:9 On-Camera Monitor Kit, includes shoulder strap, sunhood, shoe mount, 3 ft. video cable, and battery kit. Display can be set for both 16:9 and 4:3 ratio

Center Field PTZ Camera

1	COP or Pelco	Dynamic Varifocal PTZ camera, minimum 35x optical zoom lens, auto focus, auto iris, auto white balance, weatherproof dome, installed, BNC video connectors.
1	Versitron	1-Channel Fiber Optic Video Converter With Return Data * composite video and return data transmitter & receiver set (multi-mode fiber) BNC video connections
1	COP or Pelco	Desktop controller for center field cameras, serial data input.

Input Decks CV feeds and Computer RGB feed

1	Panasonic, Sony or Toshiba	Blu-Ray / DVD Player, composite video I/O with RCA connectors Disc Playback Capability: BD-ROM, DVD, DVD±R/DVD±R DL/DVD±RW CD, CD-R/-RW
1	Local	Cable TV DVR * Provided by local cable company, RCA composite video connector
	On-site	Integrate up to 2 existing legacy playback decks
1	MCM 82-12335	4 x 4.0 Inch Rack mount TFT Active Matrix LCD Monitor * quad-4" rack mount monitors for deck confidence sources, loop thru BNC inputs
1	Kramer Electronics or similar	Kramer 501xl Scan converter for computer graphics video signals, converts computer graphics video signals up to UXGA (1600x1200) to composite BNC or S-video outputs

Distribution and Support Equipment

1	Kramer Electronics or similar	16x16 Composite Video & Stereo Audio Matrix Switcher for composite video and unbalanced stereo audio signals. BNC video connectors, Audio via RCA or hard wired
1	StarTech or Gefen	KVM Desktop Extension, VGA and USB extensions over UTP (Cat5e cable)
1	Tripplite	Smart LCD 1200VA 2U Rack/Tower Line-Interactive 120V UPS with LCD display, USB ports

Audio Clip Player with Sound Director software

1	RockHounds own basic license Upgrade to Premium License	Sound Director Premium is a software application designed to enhance the fan experience. Expandable Media Players with Effects & Visualization, Normalized Output, Clip Editor with Audition Mode, and Built in CD Ripper & Editor
2	Asus, Dell, or HP	Laptops with minimum Core i5 Processor, 500 GB HD, 6 GB DRAM, 17" LCD. Primary and backup laptops for use as music media players

Audio misc:

1	ATW-3141	Audio-Technica ATW-3141 Wireless Handheld System - Includes: ATW-R310 Receiver and ATW-T341 Handheld Transmitter (Band D - 655.500 MHz - 680.375 MHz)

Pre-Production Items

1	Lowel DV 901Z	DV Light Kit, 3 light with stands, barn doors, storage case
1	Backdrop Alley	STDKT-20BWG Studio Stand with Black, White and Chroma-Key Green Kit (10ft x 20ft fabric)
3	Impact	Sand bags, saddle type, heavy duty, 18lb
1	Shure MX-185	Shure, cartioid lavaliere microphone, wired or similar lav microphone kit
1	Asus, Dell, or HP	W7pro 64bit OS video edit workstation: minimum i5 quad core, 8GB memory, 1TB HDD, ATI DVI, VGA and S-video output card.
2	HP	HP / Compaq LA2306x 23" Widescreen WLED-Backlit LCD monitor for CG station, D-sub (VGA) or DVI inputs
1	CS5.5	Adobe Creative Suite CS 5.5 Production Premium Software Suite includes: Premier Pro, After Effects, PhotoShop Extended, Audition, Flash Professional, Illustrator, On Location, Encore, Device Central, Bridge and Media Encoder
1	Grass Valley ADVC-110	GV Canopus Bi-Directional analog / digital Media Convertor, with IE1394 cables
1	LaCie or Similar	Ethernet network 2TB hard drive for video files - 19" rack mounted, Windows XP embedded
1	Tripplite	Smart LCD 1200VA 2U Rack/Tower Line-Interactive 120V UPS with LCD display, USB ports

On-Site Training and Support:

1	Train staff on the operation and care of the production room equipment. Set up and conduct a practice production. Record the training for future reference.
1	On-Site support for opening day.

Warranty

1	One Year for Parts and Labor or better.

All brands and model numbers are proposed and may be substituted with non-proprietary brand(s) of equal or greater quality. All must integrate with our video board and existing equipment. The City of Midland reserves the right to determine if brands and models will be suitable for meeting our needs.

TOTAL SPORTS ENTERTAINMENT

TSE Services, LLC
PO Box 2166
La Crosse, WI 54602-2166 ph.(303) 999-7545

Date: 11/30/2011

Invoice: BID PACKAGE

Purchase Order:

Owner / Purchaser:
City of Midland
Office of the Purchasing Agent
P.O. Box 1152
Midland, TX 79202

Delivered to:
Citibank Ball Park
c/o Scott Lightfoot
5514 Champion Drive
Midland, Texas 79703

Project Scope:
Install new BP Pix live video switcher; 3-ch replay; remote controlled center field camera; and multiview monitors. Provide selectable feeds to video board, in-house TV system, web streaming and other destinations. Upgrade audio EFX software and provide two laptops; recable the video racks; integrate matrix router; and properly install NLL II receiver.

Bid Request 4375-12

Nov 14th, 2011

	Qty	Brand/ Model	Item Description	Each	Extended
		Video Switcher and Monitors			
Line 1	1	Broadcast Pix Slate 1000GA	**Broadcast Pix 8-Channel Live Video Switcher,** analog standard definition (SD) format, professional 1M/E. with dual 500GB channel clip & still players, overlays, and selectable program outputs with dirty or clean feeds. Easily upgradable to SDI video format with new I/O cards **Features an integrated Harris CG workstation.** Note: TSE provides 10 hours of on-site training for RockHounds staff by experienced sport technical director	21,525.65	21,525.65
Line 2	1	Burst BG-5	Black Burst Generator with five video outputs, digitally generated by an internal microprocessor and an A/D converter	315.00	315.00
Line 3	1	Samsung	Samsung LN40D550 40" LCD HDTV color monitor, 120Hz refresh rate, DVI or HDMI connection, with slim profile tilting wall mount.	888.75	888.75
Line 4	1	HP	HP / Compaq LA2306x 23" Widescreen WLED-Backlit LCD monitor for CG station, D-sub or DVI inputs	247.95	247.95
Line 5	1	MCM 82-14280	17" Pro LCD Monitor •Inputs: (2) BNC, (1) VGA, (1) HDMI, (1) S-Video, (1) Audio (RCA) •Outputs: (2) BNC	337.51	337.51
		Replay System			-
Line 6	1	New Tek 3Play	New Tek 3Play multi-channel HD/SD slow-motion digital replay. Capture all the action with synchronized, continuous recording and display of up to three video streams	18,995.00	18,995.00
Line 7	1	Burst VS4x1	4x1 vertical interval active switch to select additional sources for the 3rd channel of the New Tek 3play unit. with RM-4 rack frame	366.45	366.45
Line 8	1	MCM 82-12335	4 x 4.0 Inch Rack mount TFT Active Matrix LCD Monitor * quad-4" rack mount monitors	792.88	792.88
Line 9	1	HP	HP / Compaq LA2306x 23" Widescreen WLED-Backlit LCD monitor replay station, D-sub or DVI inputs	217.85	217.85
Line 10	1	Middle Atlantic	Desktop rack frame, 8 space size, unit extends upward at a gentle slope.	67.01	67.01
		In-House CCTV Enhancements			-
Line 11	1	KeyWest	PC Based server with HDMI and dual VGA outputs. Video Server, five programmable windows, insert stills, videos and live feeds into cable modulator. MediaZone digital signage software with easy-to-use PC GUIs. Designed to be used with digital LCD/PDP display panels at native resolutions. Remote management of scheduling and media content updates over network.	1,957.00	1,957.00
Line 12	1	HP	HP / Hewlett Packard LA1751g 17" LCD Monitor LCD 17" color monitor, with desk stand	149.55	149.55
Line 13	1	Hauppauge	Hauppauge USB-Live-2 Video Capture Haup610 USB 2.0 Interface	54.99	54.99
Line 14	1	Gefen	GefenTV GTV-HDMI-2-COMPSVIDS HDMI to Composite Scaler	299.95	299.95
		Final Output Recording Devices			-
Line 15	1	8DVDS20X250G	Produplicator 8 Target CD DVD Duplicator, Stand Alone Disc Burner	744.00	744.00
Line 16	2	Toshiba DR430	DVD-R recording decks DVD-R (Video Mode)/DVD+R (Video Mode)/DVD-RW (VR & Video Mode)/DVD+RW (VR Mode) Composite video RCA connectors	129.99	259.98
Line 17	1	Delvcam	LCD confidence monitors for DVD-R decks, rack mounted, dual 7", looping inputs, BNC connectors	289.85	289.85
		Camera Support			
Line 18	4	Porta Brace	RS-XL2 Camera Rain Slickers, one-piece design, TPU and Waterproof Nylon for the Canon XL2	187.80	751.20
Line 19	4	Pearstone	PEHDC1010W Camera bag(s), soft sided, padded, shoulder strap, for the Canon XL2 camcorder	199.25	797.00
Line 20	3	Varizoom	TFT or LCD Widescreen 16:9 On-Camera Monitor Kit, includes shoulder strap, sunhood, shoe mount, 3 ft. video cable, and battery kit. Display can be set for both 16:9 and 4:3 ratio	481.77	1,445.31
		Center Field PTZ Camera			
Line 21	1	COP	CD55W-1020 Dynamic Verifocal PTZ camera, minimum 35x optical zoom lens, auto focus, auto iris, auto white balance, weatherproof dome, installed, BNC video connectors.	2,197.85	2,197.85
Line 22	1	Versitron	1-Channel Fiber Optic Video Converter With Return Data * composite video and return data transmitter & receiver set (multi-mode fiber) BNC video connections	1,197.99	1,197.99
Line 23	1	COP	Desktop controller for center field cameras, serial data input.	285.90	285.90
		Input Decks CV feeds and Computer RGB feed			-
Line 24	1	Sony	BDP-S185 Blu-Ray / DVD Player, composite video I/O with RCA connectors Disc Playback Capability: BD-R, BD-RE, BD-ROM,DVD, DVD+RW, DVD-R,DVD-RW, CD-R/-RW	129.95	129.95
Line 25	1	local	Cable TV DVR * Provided by local cable company , RCA composite video connector	-	-
Line 26		on-site	Integrate up to 2 existing legacy playback decks	-	-
Line 27	1	MCM 82-12335	4 x 4.0 Inch Rack mount TFT Active Matrix LCD Monitor * quad-4" rack mount monitors for deck confidence sources, loop thru BNC inputs	792.88	792.88
Line 28	1	Kramer	501xl Scan converter for computer graphics video signals up to UXGA (1600x1200) to composite BNC or S-video outputs	395.65	395.65

Owner / Purchaser:	Delivered to:
City of Midland Office of the Purchasing Agent P.O. Box 1152 Midland, TX 79202	Citibank Ball Park c/o Scott Lightfoot 5514 Champion Drive Midland, Texas 79703

Project Scope:
Install new BP Pix live video switcher; 3-ch replay; remote controlled center field camera; and multiview monitors. Provide selectable feeds to video board, in-house TV system, web streaming and other destinations. Upgrade audio EFX software and provide two laptops; recable the video racks; integrate matrix router; and properly install NLL II receiver.

Bid Request 4375-12

Nov 14th, 2011

		Distribution and Support Equipment			
Line 29	1	Kramer	Kramer VS-162AVRCA 16x16 Composite Video & Balanced Stereo Audio Matrix Switcher for composite video and unbalanced stereo audio signals. BNC video connectors, Audio via RCA	2,765.88	2,765.88
Line 30	1	StarTech	SV565UTPU USB VGA KVM Desktop Extension over UTP Cat5e cable	249.77	249.77
Line 31	1	Tripp-Lite	Smart LCD 1200VA 2U Rack/Tower Line-Interactive 120V UPS with LCD display, USB ports	274.25	274.25
		Audio Clip Player with Sound Director software			
Line 32	1	RockHounds own basic license	Sound Director Premium upgrade is a software application designed to enhance the fan experience. Expandable Media Players with Effects & Visualization, Normalized Output, Clip Editor with Audition Mode, and Built in CD Ripper & Editor	995.00	995.00
Line 33	2	Dell Vostro 3750	Laptops with Win 7 Professional 64bit OS, Core i5-2430 M 2.40GHz Processor, 500 GB HD, 6 GB DDR3 memory, 17" LCD. One year warranty. Primary and backup laptops for use as music media players	879.00	1,758.00
		Audio misc:			-
Line 34	1	ATW-3141	Audio-Technica ATW-3141 Wireless Handheld System - Includes: ATW-R310 Receiver and ATW-T341 Handheld Transmitter (Band D - 655.500 MHz - 680.375 MHz)	499.00	499.00
		Pre-Production Items			-
Line 35	1	DV 901Z	Lowel DV Light Kit, 3 light with stands, barn doors, storage case	939.95	939.95
Line 36	1	Backdrop Alley	STDKT-20BWG Studio Stand with Black, White and Chroma-Key Green Kit (10ft x 20ft fabric)	337.50	337.50
Line 37	3	Impact	Sand bags, saddle type, heavy duty, 18lb	23.95	71.85
Line 38	1	Shure MX-185	Shure, cartioid lavaliere microphone, wired or similar lav microphone kit	192.75	192.75
Line 39	1	Dell Vostro 460	Mini Tower Video edit workstation: W7Pro 64bit OS, i5 -2500 w/VT 3.3GHz, 6MB cache, 8GB memory, Two 500GB HDD, (1TB), AMD Radeon HD 645o 1GB DDR3 video card	1,235.00	1,235.00
Line 40	2	HP	HP / Compaq LA2306x 23" Widescreen WLED-Backlit LCD monitor for CG station, D-sub (VGA) or DVI inputs	217.85	435.70
Line 41	1	Adobe CS5.5	Adobe Creative Suite CS 5.5 Production Premium Software Suite includes: Premier Pro, After Effects, PhotoShop Extended, Audition, Flash Professional, Illustrator, On Location, Encore, Device Central, Bridge and Media Encoder	1,599.50	1,599.50
Line 42	1	Grass Valley	ADVC-110 Canopus Bi-Directional analog / digital Media Convertor, with IE1394 cables	235.95	235.95
Line 43	1	LaCie 2big Network 2	Ethernet network 2TB hard drive for video files - 19" rack shelf mounted	432.99	432.99
Line 44	1	Tripp-Lite	Smart LCD 1200VA 2U Rack/Tower Line-Interactive 120V UPS with LCD display, USB ports	274.25	274.25
		On-Site Training and Support:			
Line 45	1	day	Train staff on the operation and care of the production room equipment. Set up and conduct a practice production. Record the training for future reference	Date TBD	-
Line 46	1	day(s)	On-Site support for opening day event. Note: Opening home stand starts Thursday April 12th, 2012	Date TBD	-
		Allowances for Installation, Other and Shipping:			
Line 47	1	ea	Installation, Integration & Testing of Production Room AV Equipment, Cameras, etc		8,940.00
Line 48	1	ea	Allowance for audio and video cables and connectors		965.00
Line 49	1	ea	Allowance for rack shelves, panels, and power strips		235.00
Line 50	1	ea	Allowance for freight & shipping on equipment		612.75
Line 51	1	ea	Manufacturers Warranty applies. one year parts and labor or better included		-
Line 52		OPTION	Maintenance Support in years 2 through 5. Provide a qualified technician on -site for 2 days pre-season, verify connectivity, ensure equipment is operating properly, identify broken or damaged equipment, complete repairs under warranty, research cost for other required repairs	1950.00 / year Years 2 +	-
Line 53		note	Project Insurance and required bonds		2,200.00
Line 54				Subtotal:	$ 80,753.19
Line 55		0.0%	Contingency for other cables, equipment, materials and small project items	Contingency:	$ -
Line 56				Taxable Items:	$ 67,800.44
Line 57				Sales Tax Included:	Exempt
				Equipment Package & Installation – TOTAL	**$ 80,753.19**

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.

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: <u>ATTACH POWER OF ATTORNEY</u>

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

EXHIBIT "D"

PREVAILING WAGE RATE SCHEDULE
BUILDING CONSTRUCTION TRADES
as of July 24, 2009
Attorney General, General Decision TX20080297

Classification	Rate/hr	Fringes
Acoustical Installers	$ 11.18	
Boilermaker	$ 26.02	$ 13.66
Bricklayers	$ 18.00	
Carpenters (Including Metal Stud Installation and Drywall Hanging)	$ 15.17	
Cement Mason/ Concrete Finisher	$ 13.89	
Drywall Hangers	$ 11.08	
Electrician	$ 13.63	$ 1.25
Elevator Mechanics	$ 32.66	18.285+a
Forklift Operator	$ 22.70	$ 9.35
HVAC mechanic (set unit only)	$ 10.00	
Ironworkers (reinforcing)	$ 20.90	$ 4.60
Ironworkers (structural)	$ 10.84	
Laborers, Common or General	$ 8.67	
Laborer, Mason Tender - Brick	$ 9.13	
Operator, Backhoe/ Excavator	$ 13.81	
Operator, Blade/ Grader	$ 12.97	
Operator, Front End Loader	$ 12.23	
Painter (Including Drywall Finishing)	$ 15.81	$ 4.56
Plasterer	$ 14.00	
Plumber (Including HVAC Work)	$ 19.20	$ 6.55
Roofer	$ 12.06	
Sheet Metal Worker (Including HVAC Work)	$ 10.00	
Sprinkler Fitters	$ 12.00	
Tile Setter	$ 8.50	
Truck Driver	$ 10.15	
Welders	*	

*Welders receive the rate prescribed for the craft performing the operation to which welding is incidental.

a under 5 years employment, 6% of BHR, over 5 years employment, 8%BHR.
Paid Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Labor Day, Thanksgiving Day, The Friday after thanksgiving and Christmas Day.

Unlisted classifications needed for the 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)(v)).

CERTIFICATE OF INSURANCE:

PRODUCER INSURANCE COMPANY PHONE	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE APPROVED BY THE POLICIES BELOW. COMPANIES AFFORDING COVERAGE
INSURED VENDOR COMPANY	COMPANY LETTER A COMPANY NAME COMPANY LETTER B COMPANY LETTER C COMPANY LETTER D COMPANY LETTER E

>COVERAGES**********

THIS IS TO CERTIFY THAT 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 THE 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 TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF DATE (MM/DD/YY)	POLICY EXP DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY [X] COMMERCIAL GEN LIABILITY [ ] CLAIMS MADE [X] OCC. [ ] OWNER'S & CONTRACTOR'S PROTECTIVE PROTECTIVE [ ] [ ]	ABC123456789	00/00/00	00/00/00	GENERAL AGGREGATE	1000000*
					PROD-COMP/OP AGG.	1000000*
					PERS. & ADV. INJURY	500000*
					EACH OCCURRENCE	500000*
					FIRE DAMAGE [ANY ONE FIRE]	50000*
					MED. EXPENSE [ANY ONE PERSON]	5000*
A	AUTOMOBILE LIAB [X] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [ ] HIRED AUTOS [ ] NON-OWNED AUTOS [ ] GARAGE LIABILITY	ABC123456789	00/00/00	00/00/00	COMB. SINGLE LIMIT	250000*
					BODILY INJURY [EACH PERSON]	
					BODILY INJURY [PER ACCIDENT]	
					PROPERTY DAMAGE	
	EXCESS LIABIL8ITY [ ] UMBRELLA FORM [ ] OTHER THAN UMBRELLA FORM				EACH OCCURRENCE	
					AGGREGATE	
A	WORKERS' COMP AND	ABC123456789		00/00/00	(STATUTORY LIMITS) EACH ACCIDENT	100000*
					DISEASE-POL. LIMITS	500000*
A	EMPLOYERS' LIAB	ABC123456789		00/00/00	DISEASE-EACH EMP.	100000*
	OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS/ VEHICLES/ SPECIAL ITEMS

The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's 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 <**********	> CERTIFICATE HOLDER <**********
City of Midland P.O. BOX 1152 MIDLAND, TX 79702-1152	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES AUTHORIZED REPRESENTATIVE

--------ACORD 25-S (2001/08) *Insurance limits should be adjusted to the amounts required by the attached contract.----------

NOTE: The wording under "Description of Operations", must appear exactly as shown above. Otherwise it will be rejected and contract execution will be delayed until a properly worded certificate is received.

City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4377-12 Rail/Field Pads for Citibank Ball Park**

Purpose:

Approval of a resolution authorizing the purchase of field pads for Citibank Ball Park.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$72,000.00 Scharbauer Sports Complex Maintenance Budget

Discussion:

The new field pads will replace the worn out field pads at Citibank Ball Park at the Scharbauer Sports Complex. The project will consist of replacing field pads along the outfield wall, rail pads and bullpen padding at Citibank. We are recommending the low bidder. For further discussion on this item, please see the attached memo from Tina Jauz, Community Services Director.

Therefore, please consider approval of a resolution authorizing the purchase and installation of new field pads from UCS, Inc. of Lincolnton, North Carolina, for a total cost of $72,000.00.

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: December 29, 2011
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Purchase of Field Pads for Citibank Ball Park

As part of the 2011-2012 Scharbauer Sports Complex maintenance schedule, the field pads at Citibank Ball Park need to be replaced.

Two bids were received for the project. The Parks & Recreation staff is recommending we go with the low bidder, UCS for a cost of $72,000. This is below the original estimated cost of $76,000.

The total project will include the removal, purchase, and installation of new field pads along the outfield wall at Citibank. The replacement project would also include railing and bullpen padding.

The $72,000 would be appropriated from the Maintenance Funds of the Scharbauer Sports Complex Operating Budget.

The City of Midland will be responsible for the maintenance of the field pads.

MIDLAND
Purchasing Division

THE CITY OF MIDLAND

CONTRACT
Contract No.4377-12

THIS CONTRACT, effective the 11th day of January, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and UCS, Inc., hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: $ 72,000.00 DOLLARS

2. **Scope of Work:** The Contractor shall perform all work described for Remove and Replace Fence Rail Pads at Citi Bank Ball Park 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 Tina Jauz or her 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 __60-75__ 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.

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" or "per policy" aggregate, including completed operations, and shall be on an occurrence basis.

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

The 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.

All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name the Owner as an additional insured on a claims occurred basis. All insurance required

pursuant to this Contract, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Owner.

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

> ***"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The 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."***

Owner 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. Owner shall not be required to provide any insurance whatsoever pursuant to this Contract.

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).

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.

Contract No: 4377-12

OWNER, City of Midland

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

CONTRACTOR

Contractor Corporate Acknowledgment: Contract: Contract No.4377-12

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ___ day of _____, 2012.

_____

Notary Public, State of Texas

MIDLAND
Purchasing Division

CITY OF MIDLAND

PURCHASING DIVISION DATE: 11/14/11

BID REQUEST PAGE: 01

(THIS IS NOT AN ORDER) **BID NO: 4377-12**

OPENING TIME: 11:00 AM **OPENING DATE: 12-07-11**

CITY OF MIDLAND
300 NORTH LORAINE
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. 12-07-11 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:
Citibank Ball Park, 5514 Champion Dr., Midland, Texas

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Removal and Replacement of Rail Pads at Citibank Ball Park in accordance with the attached proposal, specifications and contract. "As Specified"	$ 72,000.00	$ 72,000.00
				TOTAL	72,000.00

NOTICE TO BIDDERS:
1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
2. SEALED BIDS FAXED DIRECTLY TO THE CITY WILL BE REJECTED. FAX BIDS MAY BE SENT THROUGH A 3RD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.

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: UCS Inc
ADDRESS 511 Hoffman Rd
CITY Lincolnton ST NC ZIP 28092
PHONE NO. 704-732-9922 FAX NO. 704-732-9559

CASH DISCOUNT: NA % DAYS
DELIVERY CAN BE MADE 60-75 days
AUTHORIZED SIGNATURE [signature]

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

Delivery / Installation: Weather permitting and Facility access granted. UCS will not be responsible for inclement weather and natural disasters. Any days lost due to weather and No facility access will not count as calendar days

Exhibit "A"

MIDLAND
Purchasing Division

UCS Inc
Contractor's Name

PROPOSAL
Bid 4377-12

To: Purchasing Agent
City of Midland
Midland, Texas

Gentlemen: The undersigned bidder, having examined the plans, specifications and contract documents, the location of the proposed work and being fully advised as to the extent and character of the work proposes to furnish all materials, equipment and to perform all labor and work necessary for the complete work described by and in accordance with the attached plans, specifications and contract for the sum of:

Materials Portion Incorporated Into Project Forty-Two Thousand DOLLARS

Labor Portion Incorporated Into Project Thirty Thousand DOLLARS

Other Costs Not Incorporated Into Project N/A DOLLARS

Total Proposal Seventy-Two Thousand DOLLARS

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid and he further agrees to commence work within ten (10) days after the date of written notice to do so and to substantially complete same within _____ calendar days.

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

E-mail: purchasing@midlandtexas.gov

All vendors on the bid list will then be notified of the questions and presented an answer. Verbal responses shall not be considered binding.

AWARD
The City may award a contract or purchase order to the lowest responsible bidder or to the bidder who provides goods or services at the best value to the City.
The City will be solely responsible for the determination of what constitutes best value in accordance with the applicable Section 252.043 of the Local Government Code.

PROPOSAL TERM
Unless otherwise noted, this proposal shall be valid for 90 days.

BID WAIVERS:

A. WAIVER OF ATTORNEY FEES: BY SIGNING THIS PROPOSAL, BIDDER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OWNER, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH

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

BIDDER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE BIDDER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE CONTRACT. THE BIDDER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE OWNER AND THE BIDDER.

THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

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).

C. **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, Bidder 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 Bidder will settle, the physical and mailing addresses of Bidder at the time and date the claim was presented and the physical and mailing addresses of Bidder for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Bidder 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 Bidder that Bidder'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, Bidder's failure to comply with the requirements herein shall perpetually bar Bidder'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. Bidder agrees that the requirements of this entire Contract are reasonable.

By Signing 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.

SOVEREIGN IMMUNITY: By Executing this contract the City is not waiving its right of Sovereign immunity. the City is retaining its IMMUNITY from suit. the City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

VCS Inc	[signature]	704-732-9922
Bidder	Authorized Signature	Telephone
511 Hoffman Rd. Lincolnton, NC 28092	Mike Chappell	704-732-9559
Address, City and State	Please Print above Name	Fax

Bidder's Enclosure Check List: (Bidder - Please review the following list and check to ensure that you have included the documents with your bid.)

☒ PROOF OF AUTOMOBILE WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. (**Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision) including a waiver of subrogation as stated in the contract)**

☒ 5% BID BOND FOR CONTRACTS IN AMOUNTS OF $25,000 OR MORE. (ONLY WHEN EXHIBIT "C" IS INCLUDED IN THE CONTRACT).* **THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PROVIDE A PAYMENT BOND FOR BIDS IN EXCESS OF $25,000 AND A PERFORMANCE BOND FOR BIDS OVER $100,000. IF BOND FORMS WERE NOT INCLUDED, THEY MAY BE OBTAINED FROM THE OFFICE OF THE PURCHASING AGENT. Call (432) 685-7234 for information.**

PLEASE NOTE:

FAILURE TO INCLUDE ANY OF THE REQUIRED DOCUMENTS ON THE CHECK LIST, MAY CAUSE REJECTION OF YOUR BID.

***FAILURE TO PROVIDE LIABILITY OR WORKER'S COMPENSATION INSURANCE AND SUBSEQUENT CERTIFICATES; OR, PAYMENT AND/OR PERFORMANCE BONDS AS REQUIRED BY THE CONTRACT MAY CAUSE FORFEITURE OF YOUR BID BOND OR OTHER SURETY (I.E.- CASH OR CASHIERS CHECK).**

Scharbauer Sports Complex
Citibank Stadium
Field Pad Specs

It is recommended that all bidders visit the site to measure angle and size of all pads.

Field pads being replaced will have to be removed and disposed of.

- *All Pads must be covered with 21 oz. Knife coated Vinyl.*
- Vinyl fabric must contain anti-bacterial & anti-fungal inhibitors.
- U.V. resistant PVC pigments.
- Tear resistant in excess of 90 psi.
- Class A Flame retardant – Cold crack resistant minus 20 degree Fahrenheit.
-
- Weep holes that allow moisture to escape from the bottom.
- *Sewn closed with High Tenacity Polyester Thread.*
- *Color must be approved by City of Midland representative. (Green)*

Railing Padding – Mitered padding shaped to fit Rails and fence cap for the perimeter of outfield and both bull pins top rail padding. Grommets spaced 8" on center 938 lnr. Ft.
Foam: Square Poly-ethylene cross link foam - high density Mitered to wrap 1 ½" to 2" OD Fence Top Rail or typical Hand Rail. Foam cut to provide 1" thick high impact protection

Bullpen Fence Padding – Flat pads 6" wide with grommets no further than 12" on center, on fence posts in both bullpens. 321 lnr. Ft.

Stadium Wall Padding – Covers Perimeter walls of outfield. Bullpen pads made specific to site dimensions.

Construction

- **Wood and Foam** laminated and bonded with high-adhesion synthetic resin – water resistant, heat / cold resistant
- **Vinyl** fully encases foam and wood for maximum protection against the elements. Heat-sealed and hot melt exterior bead around seams. 3 weep holes to allow moisture to evaporate.
- **Wood Backing:** 3/4" exterior grade plywood water resistant treated
- **Foam:** 2 zone density poly-urethane foam - 3" Total poly-urethane foam comprised of a 2" layer of 1.5/90 lb. and 1" layer of 1.5/50 lb. ILD Foam
- **Mounting System** Mounted With "Z" Clips or an eye screw/washer system for attaching to chain linked fencing.

Additional Hardware included in Professional Installation:

- **Mounting to Concrete / Brick Fixture – Multi Clip Mounting System**

- Z-clips measured / laid out to offset across panels for seamless installation.
- Stainless steel ¼" x 1 ½" Bolts mount into ¼" Stainless Steel threaded inserts to secure aluminum Z-clips to wood backing and existing wall - dimensionally spaced based on specific measurements of Stadium / Padding.

- **Mounting to Chain Link or other suitable fencing**
  - Mounting hardware includes ¼" x 1 ½" stainless steel bolts screwed into ¼" threaded stainless steel rivet inserts with 1/8" x 6" square backing plates per panel
  - Secured to the top railing with Solid galvanized Eye-Screw System for added security with solid galvanized hardware.

Guarantee:

All pads must have a 10 Year Guarantee against defective materials and workmanship or better.

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.

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

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

EXHIBIT "D"

PREVAILING WAGE RATE SCHEDULE
BUILDING CONSTRUCTION TRADES
as of July 24, 2009
Attorney General, General Decision TX20080297

Classification	Rate/hr	Fringes
Acoustical Installers	$ 11.18	
Boilermaker	$ 26.02	$ 13.66
Bricklayers	$ 18.00	
Carpenters (Including Metal Stud Installation and Drywall Hanging)	$ 15.17	
Cement Mason/ Concrete Finisher	$ 13.89	
Drywall Hangers	$ 11.08	
Electrician	$ 13.63	$ 1.25
Elevator Mechanics	$ 32.66	18.285+a
Forklift Operator	$ 22.70	$ 9.35
HVAC mechanic (set unit only)	$ 10.00	
Ironworkers (reinforcing)	$ 20.90	$ 4.60
Ironworkers (structural)	$ 10.84	
Laborers, Common or General	$ 8.67	
Laborer, Mason Tender - Brick	$ 9.13	
Operator, Backhoe/ Excavator	$ 13.81	
Operator, Blade/ Grader	$ 12.97	
Operator, Front End Loader	$ 12.23	
Painter (Including Drywall Finishing)	$ 15.81	$ 4.56
Plasterer	$ 14.00	
Plumber (Including HVAC Work)	$ 19.20	$ 6.55
Roofer	$ 12.06	
Sheet Metal Worker (Including HVAC Work)	$ 10.00	
Sprinkler Fitters	$ 12.00	
Tile Setter	$ 8.50	
Truck Driver	$ 10.15	
Welders	*	

*Welders receive the rate prescribed for the craft performing the operation to which welding is incidental.

a under 5 years employment, 6% of BHR, over 5 years employment, 8%BHR.
Paid Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Labor Day, Thanksgiving Day, The Friday after thanksgiving and Christmas Day.

Unlisted classifications needed for the 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)(v)).

CERTIFICATE OF INSURANCE:

PRODUCER INSURANCE COMPANY PHONE	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE APPROVED BY THE POLICIES BELOW. COMPANIES AFFORDING COVERAGE
INSURED VENDOR COMPANY	COMPANY LETTER A COMPANY NAME COMPANY LETTER B COMPANY LETTER C COMPANY LETTER D COMPANY LETTER E

>COVERAGES**********

THIS IS TO CERTIFY THAT 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 THE 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 TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF DATE (MM/DD/YY)	POLICY EXP DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY					
A	[X] COMMERCIAL GEN LIABILITY	ABC123456789	00/00/00	00/00/00	GENERAL AGGREGATE	1000000*
	[ ] CLAIMS MADE [X] OCC.				PROD-COMP/OP AGG.	1000000*
	[ ] OWNER'S & CONTRACTOR'S PROTECTIVE				PERS. & ADV. INJURY	500000*
	PROTECTIVE				EACH OCCURRENCE	500000*
	[ ]				FIRE DAMAGE [ANY ONE FIRE]	50000*
	[ ]				MED. EXPENSE [ANY ONE PERSON]	5000*
	AUTOMOBILE LIAB				COMB. SINGLE LIMIT	250000*
A	[X] ANY AUTO	ABC123456789	00/00/00	00/00/00	BODILY INJURY [EACH PERSON]	
	[ ] ALL OWNED AUTOS					
	[ ] SCHEDULED AUTOS				BODILY INJURY [PER ACCIDENT]	
	[ ] HIRED AUTOS					
	[ ] NON-OWNED AUTOS					
	[ ] GARAGE LIABILITY				PROPERTY DAMAGE	
	EXCESS LIABIL8ITY					
	[ ] UMBRELLA FORM				EACH OCCURRENCE	
	[ ] OTHER THAN UMBRELLA FORM				AGGREGATE	
					{STATUTORY LIMITS}	
A	WORKERS' COMP	ABC123456789		00/00/00	EACH ACCIDENT	100000*
	AND				DISEASE-POL. LIMITS	500000*
A	EMPLOYERS' LIAB	ABC123456789		00/00/00	DISEASE-EACH EMP.	100000*
	OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS/ VEHICLES/ SPECIAL ITEMS

The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's 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 <**********	> CERTIFICATE HOLDER <**********
City of Midland P.O. BOX 1152 MIDLAND, TX 79702-1152	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES AUTHORIZED REPRESENTATIVE

--------ACORD 25-S (2001/08) *Insurance limits should be adjusted to the amounts required by the attached contract.----------

NOTE: The wording under "Description of Operations", must appear exactly as shown above. Otherwise it will be rejected and contract execution will be delayed until a properly worded certificate is received.

City of Midland - Bid Tabulation

BID NO.: 4377-12
FOR: Rail Pads at Citibank Ball Park
CLOSES: 12/7/2011

ITEM	QTY	DESCRIPTION	Promats Athletics, LLC 41155 State Highway 10 Delhi, NY 13753 Edward Rosa (607)746-1476		UCS 511 Hoffman Rd Lincolnton NC, 28092 Mike Chappell (704)732-9922	
			COST EA.	TOTAL	COST EA.	TOTAL
		Please see notes following this list.....				
1	1	Materials Portion Incorporated Into Project	$72,815.13000	$72,815.13	$42,000.000	$42,000.00
2	1	Labor Portion Incorporated Into Project	$15,000.000	$15,000.00	$30,000.000	$30,000.00
3	1	Other Costs Not Incorporated Into Project	$2,176.470	$2,176.47	Included	
		Work can be completed	21-28 Calendar Days		60 Calendar Days	
		TOTALS:		$89,991.60		$72,000.00
		Discount if all awarded to your company…**Discounted Total:**		**$ 89,991.60**		**$ 72,000.00**

Bidding Summary:

5 **Bid requests were issued.**

2 **Bids listed above**

0 **NO BIDS were received.**

3 **Bidders did not respond.**

Putterman Athletics, JayPro, Artistic Coverings Inc

x:\123wks\tabulations\2012\4254-12.xls

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF FIELD PADS AT CITIBANK BALL PARK FROM UCS, INCORPORATED, AT A TOTAL COST OF $72,000.00

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for the supply and installation of field pads at Citibank Ball Park; and

WHEREAS, Bid No. 4377-12 was opened on December 7, 2011, with the lowest and most responsible bid being submitted from UCS, Inc., 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 rail pads at Citibank Ball Park from UCS, Inc., at an estimated total price not to exceed $72,000.00, 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 UCS, Inc., for said rail pads from funds available in the Fiscal Year 2011 – 2012 Scharbauer Sports Complex (620) Sports Complex (620) Non-Departmental (0625) 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., 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:
THudson
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4516-12 (2) Tractors**

Purpose:

Approval of a resolution authorizing the purchase of a John Deere 6430 Cab Tractor and a John Deere 550D Utility Tractor for the Garage Division.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$73,377.21 Garage Fund

Discussion:

The John Deere 6430 tractor will have a boom mower attachment and will be used by the Transportation Division for mowing the draws. The John Deere 550D tractor will be used by the Hogan Park Golf Course to mow roughs. These pieces of equipment are available on the Houston-Galveston Area Council (H-GAC). We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider approval of a resolution authorizing the purchase of these 2 tractors through H-GAC from John Deere Construction Retail Sales of Moline, Illinois, for a total cost of $73,377.21.

RESOLUTION NO.

RESOLUTION APPROVING THE PURCHASE OF A JOHN DEERE 6430 CAB TRACTOR AND A JOHN DEERE 550D UTILITY TRACTOR THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (HGAC) FROM JOHN DEERE CONSTRUCTION RETAIL SALES, OF MOLINE, ILLINOIS, AT A TOTAL COST OF $73,378.00; AND THESE ITEMS WERE NOT BID BUT PURCHASED THROUGH A COUNCIL OF GOVERNMENTS

WHEREAS, the Houston-Galveston Area Council (HGAC) is a cooperative purchasing agency with which the City participates on purchases; and

WHEREAS, John Deere Construction Retail Sales of Moline, Illinois, has submitted a total proposed cost to the City of $73,378.00 for the purchase of a John Deere 6430 Cab Tractor and a John Deere 550d Utility Tractor ("Tractors") through the HGAC, as shown on the pricing worksheet attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by John Deere Construction Retail Sales through the HGAC for said Tractors to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said Tractors through the HGAC;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said Tractors referred to above through the Houston-Galveston Area Council, at a total estimated cost of $73,378.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said Tractors from funds available in the Fiscal Year 2011 – 2012 Garage Fund (750) General Services (040) Garage (0752) Construction Equipment (8421) 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., 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

HGACBuy	CONTRACT PRICING WORKSHEET For Catalog & Price Sheet Type Purchases	Contract No.:	GR01-10	Date Prepared:	12/8/2011

This Form must be prepared by Contractor and given to End User. End User issues PO to Contractor, and MUST also fax a copy of PO, together with completed Pricing Worksheet, to H-GAC @ 713-993-4548. Please type or print legibly.

Buying Agency:	CITY OF MIDLAND, TEXAS	Contractor:	JOHN DEERE COMPANY
Contact Person:	DENNIS YATES	Prepared By:	JOEY SANCHEZ
Phone:	432-685-7451	Phone:	915-764-2263
Fax:	432-685-7494	Fax:	915-764-2956
Email:	dyates@midlandtexas.gov	Email:	jsanchez@southplainsimplement.com

Catalog / Price Sheet Name:	HGAC CONTRACT_GR01-10
General Description of Product:	JOHN DEERE UTILITY TRACTORS

A. Catalog / Price Sheet Items being purchased - Itemize Below - Attach Additional Sheet If Necessary

Quan	Description	Unit Pr	Total
1	JOHN DEERE 6430 CAB TRACTOR	59035.91	59035.91
1	JOHN DEERE 5055D UTILITY TRACTOR	14341.3	14341.3
			0
			0
			0
			0
			0
			0
			0
			0
			0
			0
		Total From Other Sheets, If Any:	
		Subtotal A:	73377.21

B. Unpublished Options, Accessory or Service items - Itemize Below - Attach Additional Sheet If Necessary
(Note: Unpublished Items are any which were not submitted and priced in contractor's bid.)

Quan	Description	Unit Pr	Total
			0
			0
			0
			0
		Total From Other Sheets, If Any:	
		Subtotal B:	0

Check: Total cost of Unpublished Options (B) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).	For this transaction the percentage is:	0%

C. Other Allowances, Discounts, Trade-Ins, Freight, Make Ready or Miscellaneous Charges

Subtotal C:	0
Delivery Date:	**D. Total Purchase Price (A+B+C):** 73377.21

13.4

City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4517-12 Motor Grader**

Purpose:

Approval of a resolution authorizing the purchase of a Leeboy Model 635 Motor Grader for the Garage Division.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$141,975.00 Garage Fund

Discussion:

This motor grader will be used by the Transportation Division for grading the smaller alleys. This equipment is available on the Houston-Galveston Area Council (H-GAC). We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider approval of a resolution authorizing the purchase of a motor grader through H-GAC from Hi-Way Equipment Company of Euless, Texas, for a total cost of $141,975.00.

RESOLUTION NO.

RESOLUTION APPROVING THE PURCHASE OF A LEEBOY MODEL 635 GRADER THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (HGAC) AT A TOTAL COST OF $141,975.00; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COUNCIL OF GOVERNMENTS

WHEREAS, the Houston-Galveston Area Council (HGAC) is a cooperative purchasing agency with which the City participates on purchases; and

WHEREAS, Hi-Way Equipment Co. has submitted a total proposed cost to the City of $141,975.00 for the purchase of a Leeboy Model 635 Grader through the HGAC, as shown on the pricing worksheet attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Hi-Way Equipment Co. through the HGAC for said Leeboy Model 635 Grader to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said Leeboy Model 635 Grader through the HGAC;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said Leeboy Model 635 Grader referred to above through the Houston-Galveston Area Council, at a total estimated cost of $141,975.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said Leeboy Model 635 Grader from funds available in the Fiscal Year 2011 – 2012 Garage Fund (750) General Services (040) Garage (0752) Construction Equipment (8421) 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., 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

HGACBuy	CONTRACT PRICING WORKSHEET For Standard Equipment Purchases	Contract No.:	EM06-11	Date Prepared:	11/18/2011

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	City of Midland, Texas	Contractor:	Hi-Way Equipment Co./Bee Equipment Sales
Contact Person:		Prepared By:	Jim Rose/Mike Kuehn
Phone:		Phone:	817-283-2844/806-790-5144
Fax:		Fax:	
Email:		Email:	jrose@hiwayequip.com

Product Code:	23A	Description:	Leeboy Model 635 Motor Grader - Base Machine w/ Cab

A. Product Item Base Unit Price Per Contractor's H-GAC Contract: $128,000.00

B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
		Air Conditioning	$4,000.00
		Rear Wiper and Washer	$900.00
		Vandalism Package	$665.00
		Radio/CD/Speaker	$800.00
		dead engine steering	$1,760.00
		Circle Side Shift	$1,650.00
		Rear Mounted Scarfire	$1,050.00
		Subtotal From Additional Sheet(s):	
		Subtotal	$10,825.00

C. Unpublished Options - Itemize below - Attach additional sheet if necessary
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
		Subtotal From Additional Sheet(s):	
		Subtotal C:	$0.00

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). **For this transaction the percentage is:** 0%

D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	$138,825.00	=	Subtotal D:	$138,825.00

E. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
		Factory Freight	$2,200.00
		End Owner Delivery	$950.00
		Subtotal E:	$3,150.00

Delivery Date:	90 days from order	F. Total Purchase Price (D+E):	$141,975.00

14.4

City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Marv Esterly, Director of Airports**

SUBJECT: **Lewis Transportation Group, LLC dba Dollar Rent a Car/Thrifty Car Rental**

Purpose:

Consider a resolution authorizing the execution of a Terminal Rental Car Agreement between Lewis Transportation Group, LLC dba Dollar Rent a Car/Thrifty Car Rental and the City of Midland, Texas at Midland International Airport.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Minimum Annual Guarantee - **$85,812.00**

Discussion:

In 2005, the City of Midland executed five year agreements, with five one-year renewal options, with six (6) car rental agencies. Since that time, Advantage Rent a Car declared bankruptcy and ceased to operate at the Airport in 2009.

Lewis Transportation Group recently contacted the Department of Airports to enter into an agreement to provide car rental services at Midland International. Advantage's departure creates a vacancy for another rental car company to operate. Lewis Transportation plans to dual brand their operation at the counter inside the terminal building and include Ready/Return parking spaces and 14,500 sq. ft of land for a Service Center on Sloan Drive.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A SERVICE CENTER AGREEMENT WITH LEWIS TRANSPORTATION GROUP, LLC DBA DOLLAR RENT A CAR/THRIFTY CAR RENTAL AT THE MIDLAND INTERNATIONAL AIRPORT

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a Service Center Agreement with Lewis Transportation Group, LLC dba Dollar Rent a Car/Thrifty Car Rental at the Midland International Airport;

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

THAT the Mayor and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an agreement with the Lewis Transportation Group, LLC dba Dollar Rent a Car/Thrifty Car Rental. Said agreement being 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., 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

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Marv Esterly, Director of Airports

City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Marv Esterly, Director of Airports**

SUBJECT: **Empire Airlines Hangar Lease Agreement (Renewal)**

Purpose:

Consider a resolution authorizing the execution of a Commercial Hangar/Ground Lease Agreement (renewal) between Empire Airlines and the City of Midland, Texas at Midland International Airport.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Annual - $27,598.32

Discussion:

Empire Airlines (contracted to conduct business for Federal Express) desires to renew their agreement with the City of Midland. This renewal will allow Empire to occupy 14,954 square feet of hangar space in Hangar S13 and 40,535 square feet of ground space. Monthly installments in the amount of $2,299.86 shall be due and payable the first day of each month during the term of the Agreement. The Agreement will allow a five (5) lease term which would begin January 15, 2012.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A COMMERCIAL HANGAR/GROUND LEASE AGREEMENT WITH EMPIRE AIRLINES, FOR THE USE OF CERTAIN LAND AT THE MIDLAND INTERNATIONAL AIRPORT

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a Commercial Hangar/Ground Lease Agreement with Empire Airlines, for the use of certain land at the Midland International Airport;

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

THAT the City Manager and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a Commercial Hangar/Ground Lease Agreement with Empire Airlines. Said lease agreement being 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., 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

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Marv Esterly, Director of Airports

COMMERCIAL HANGAR LEASE AGREEMENT
BETWEEN CITY OF MIDLAND, TEXAS
AND EMPIRE AIRLINES, INCORPORATED

THIS LEASE AGREEMENT, made this _____ day of January, 2012, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter referred to as "City", and Empire Airlines, Incorporated, hereinafter referred to as "Lessee",

RECITALS

WHEREAS, the City owns and operates the Midland International Airport, located in the City of Midland, Texas hereinafter referred to as "Airport", and;

WHEREAS, Lessee desires to lease certain City-owned facilities and land at the Airport to engage in the business of aeronautics and provide certain aeronautical services, and Lessee desires to provide certain aviation services to the public as hereinafter permitted; and

NOW, THEREFORE, for and in consideration of the covenants and conditions herein stated, City and Lessee agree as follows:

ARTICLE 1. GRANT OF LEASE

1.01 **Leased Premises**: City agrees to lease to Lessee: Hangar S-13 and Tract 2-B located in Lot 1A, Block 13, Industrial Park Regional Air Terminal, Unit 12, Midland, Midland County, Texas, and being more particularly described on Exhibit "A", attached hereto and incorporated by reference. Hangar S-13 and Tract 2-B are hereinafter collectively referred to as the "Leased Premises."

1.02 **Easements**: This Agreement shall be subject to such easements, rights-of way, drill sites, or other rights or reservations affecting the Leased Premises which are of record or are clearly visible as of the date of this Agreement, or which are shown on Exhibit "A".

1.03 **Acceptance of Leased Premises**: Subject to the requirements of Section 6.01, BY EXECUTING THIS AGREEMENT THE LESSEE AGREES AND ACKNOWLEDGES THE LESSEE IS TAKING OR LEASING THE LEASED PREMISES **"AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE CITY, TEXAS THAT THE LEASED PREMISES ARE FIT FOR A PARTICULAR PURPOSE**. THE LESSEE ACKNOWLEDGES, BY EXECUTING THIS AGREEMENT, THAT LESSEE IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE CITY WITH RESPECT TO THE CONDITION OF THE LEASED PREMISES, BUT IS RELYING UPON LESSEE'S EXAMINATION OF THE LEASED PREMISES. LESSEE ALSO RECOGNIZES BY EXECUTING THIS AGREEMENT, THAT THE LESSEE IS AGREEING TO ACCEPT THE LEASED PREMISES **"AS IS"**, THAT LESSEE AGREES TO MAKE LESSEE'S OWN APPRAISAL OF THE LEASED PREMISES AND TO ACCEPT THE RISK THAT LESSEE MAY BE WRONG. THE CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE LEASED PREMISES SOLD. IN NO EVENT SHALL A LESSEE HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE LESSEE WILL TAKE THE LEASED PREMISES UNDER THE EXPRESS UNDERSTANDING THE LEASED

PREMISES ARE ACCEPTED **"AS IS"** AND WITH ALL FAULTS, EXCLUDING EXPRESS OR IMPLIED WARRANTIES. PROVISIONS OF THIS SECTION SURVIVE THE CLOSING.

ARTICLE 2. TERM OF AGREEMENT

2.01 **Lease Term**: The term of this Agreement shall commence on January 15, 2012, and terminate on January 14, 2017, ("the Lease Term") unless terminated earlier pursuant to the provisions of this Agreement.

2.02 **Holdover of Lessee**: If Lessee holds over or remains in possession of the Leased Premises after the termination of this Agreement and in the absence of a new lease agreement between the City and Lessee, such continuation beyond the date of termination, or the collection or acceptance of rent, fees and/or other charges by the City shall not be construed as a renewal or extension of this Agreement, but shall be construed solely as creating a tenancy at will and not for any other term whatsoever. During the term of such tenancy at will, Lessee shall pay to City the fees and charges herein reserved, and Lessee shall be bound by and comply with all the relevant provisions of this Agreement. The City shall terminate the tenancy at will giving Lessee thirty (30) days written notice thereof.

ARTICLE 3. RENT

3.01 **Amount of Base Rent**: During the Lease Term, Lessee agrees to pay monthly to City rent for the Leased Premises in the amount of $2,299.86, hereafter called the "Base Rent". The Base Rent shall be due on the first day of each month. For purposes of this agreement, the amount of square footage for ground and facilities being rented is agreed by the parties to be as set forth in Exhibit "A".

3.02 **Rental Adjustments**: It is agree and understood that provision must be made herein for an adjustment of rentals annually. Therefore, as of January 15, 2013, the Minimum monthly rent shall be increased only in the same proportion or percentage by which the cost of living has been increased as reflected by the Consumer PRICE Index for All Items, as maintained by the United States Government's Department of Labor, Bureau of Labor Statistics for the Dallas/Fort Worth SMA; such increase being measured by comparison with such cost-of-living indices at the end of the immediately preceding 12-month period of this lease, as compared with the indices at the commencement of the immediately preceding 12-month period of this lease. In no event shall the monthly payment due be less than $2,299.86.

3.03 **Delivery of Rent**: All payments required of Lessee by this Agreement shall be delivered by mail, or in person, to the Office of the Director of Airports, Midland International Airport, 9506 LaForce Boulevard, P. O. Box 60305, Midland, Texas 79711, or to such other location as specified in writing by the City from time to time, no later than the date such payment is due, unless such due date falls on a Saturday, Sunday, or City holiday, in which case such rent shall be due on the first City business day following the date such payment is due.

3.04 **Delinquent Rent Payments**: In the event that payments to the City for rent or other fees or charges are not received by the City on or before the 10th day following the due date, Lessee shall pay a late rental charge of ten percent (10.0%) of the rent amount due for that month. All rent and other payments which are past due more than thirty (30)

days shall accrue simple interest at the rate of ten percent (10.0%) annually or (b) the maximum percentage rate allowed by law, whichever is less. Notwithstanding anything to the contrary in this Section 3.04, if at the time performance of the provisions set forth in this Section 3.04 becomes due the interest to be paid in accordance with this Section 3.04 exceeds the limits on the payment of interest established by law, then the amount of interest to be paid shall be reduced to the maximum limit allowed by law; furthermore, if, from any circumstances, City should ever receive as interest an amount that would exceed the highest lawful rate, the amount that would be excessive interest shall be applied to the payment of rent owing pursuant to the provisions of this Lease Agreement and not to the payment of interest.

ARTICLE 4. USE OF LEASED PREMISES

4.01 **Permitted Uses**: Lessee shall be permitted to use the Leased Premises for the purpose of conducting for-profit commercial services or activities consisting of any or all of the following operations and no others:

(a) Operation of warehouse, freight distribution and storage services for commercial and non-commercial activities;

(b) Repair and maintenance service for aircraft, airframe, power plant, avionics, instruments, and related equipment;

(c) Sales of aircraft parts and equipment, and pilot supplies;

(d) Storage of such equipment and apparatus as may be incidental and/or necessary to Lessee's operations, including motor vehicles operated and/or owned by Lessee; and

(e) Such other uses as may be permitted in writing by the City.

4.02 **Prohibited Uses**: Lessee agrees at all times to comply with the following:

(a) Lessee shall at no time use, or permit the use of, the Leased Premises in a manner that is contrary to applicable federal, state, or local laws, ordinances, rules, or regulations, which shall include, but not be limited to, applicable Federal Aviation Administration rules and regulations and applicable regulations for the use of the Airport as may from time to time be promulgated by the City;

(b) Lessee shall not permit any permanent, unshielded light or illumination source to cause glare as viewed from any street, adjacent properties or operating aircraft;

(c) Lessee shall not cause or permit the burial of storage above ground on the Leased Premises of any hazardous waste or materials, as defined by federal or state law, except in accordance with applicable Federal, State, or local laws, ordinances, regulations and rules, as may be adopted or amended from time to time;

(d) Lessee shall not cause or permit any use or activity on the Leased Premises which would create a hazardous condition for aircraft operating at the Airport;

(e) Lessee shall not allow the Leased Premises to be used for parking of motor vehicles, motorcycles, or motor driven equipment by anyone other than customers, employees, or contractors of Lessee except as may be authorized by the Director of Airports, with all such parking being limited to areas designated by the Department of Airports for such parking. Lessee shall not be in default for the improper parking of vehicles over which neither Lessee nor any of its subtenants, customers, employees, or contractors have any control;

(f) Less shall not operate, nor permit the operation of, a car rental business from the Leased Premises, unless the Lessee or the operator of said car rental business has executed a car rental concession or permit agreement with the City;

(g) Lessee shall not allow schedules airline passenger operations to be conducted on the Leased Premises; and

(h) Lessee shall at no time use, or permit the use of, the Leased Premises as living quarters.

4.03 **Prohibited Uses**: All activities conducted upon the Leased Premises, whether by Lessee or its sublessees, shall be in substantial conformance with the City's Minimum Standards for Aeronautical Activities, as such standards exist or may be duly amended from time to time by the City Council to the extent that such Minimum Standards may apply to Lessee's operations. City agrees to provide Lessee with written notice not later than 30 days prior to adoption of substantive changes to the Minimum Standards for Aeronautical Activities which would apply to Lessee's operations.

4.04 **Non-exclusive Uses**: Lessee understands and acknowledged that, as to that part of the Airport not included within the Leased Premises, the allowable uses permitted herein are on a non-exclusive basis with respect to other potential providers of aeronautical services at the Airport.

ARTICLE 5. OBLIGATIONS OF LESSEE WITH REGARD TO CONSTRUCTION OF IMPROVEMENTS

5.01 **Approval of Plans Not Assurance of Design Quality:** The approval by the Director of Airports of any plans and specifications applies only to the conformity of such plans to the general architectural and operational plan for the Leased Premises and the Airport. The approval of the Director of Airports does not constitute approval of the quality of the architectural or engineering work performed. Neither City nor the Director of Airports assumes any liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications. Construction of any contemplated improvements shall be in accordance with the plans presented to and approved by the Director of Airports. All construction work shall be subject to inspection by a representative employed by the City or an inspector from the Code Enforcement Department of the City, or both, to determine that such work conforms to the plans and specifications approved by the City.

5.02 **Contractor's Insurance; Bonds:** At any time construction activities are undertaken on the Leased Premises, Lessee shall require that its contractor or contractors keep in force insurance issued by a responsible insurance company or companies authorized to conduct business in the State of Texas insuring the improvements during construction under Completed Builder's All Risk Insurance, including fire, extended coverage,

vandalism and malicious mischief, in an amount equal to the full insurable value of such construction as the same progresses in order to insure continuity of construction and ultimate completion despite damage or destruction suffered during the course thereof. All insurance shall name the City as additional insured and co-payee and provide for a waiver of subrogation in favor of the city. Lessee shall require all contractors performing construction work on the Leased Premises to provide payment and performance bonds issued by a responsible bonding company or companies authorized to conduct business in the State of Texas for the full amount of the cost of the construction to be performed on forms which are in compliance with Tex. Gov't Code Art. 2253, as amended. The foregoing shall be made a part of any contract between Lessee and its contractor or contractor. In the event Lessee does not complete the construction work itself; it shall comply with the al-risk insurance provisions hereof.

5.03 **Compliance With Building Codes and Federal Standards**: All improvements made to the Leased Premises by Lessee shall comply with all applicable City Building Codes and Federal standards for construction of airport improvements in effect at the time construction commences as well as all other applicable federal aviation regulations, if any.

5.04 **Encumbrance of Leasehold Estate**: Lessee shall at no time encumber or attempt to encumber its leasehold interest in the Leased Premises by deed of trust, mortgage, security agreement or other security interest.

5.05 **Ownership of Buildings, Improvements and Fixtures**: Any and all buildings, improvements (including, but not limited to all aprons, taxiways and roadways), additions, alterations, and fixtures existing on the Commencement Date or constructed or placed on any part of the Leased Premises during the Lease Term by City or Lessee, shall be considered part of the real property of the Leased Premises, shall remain on the Leased Premises, and shall not be removed by Lessee or any sublessee without the written consent of City. All improvements, additions, alterations, and fixtures on the Leased Premises shall become the sole property of City upon termination of this Agreement without compensation to lessee, it being understood and agreed by Lessee that the improvements located on the Leased Premises at the end of the Lease Term are additional consideration for this Agreement. Notwithstanding the above, Lessee shall have the right at any time during Lessee's occupancy of the Leased Premises, or within a reasonable time thereafter, to remove any and all furniture, machinery, equipment, but not fixtures owned or placed by Lessee, in, under, or on the Leased Premises; provided, however, prior to the termination of the Lease Term, Lessee shall repair any damage to any buildings or improvements on the Leased Premises resulting from their removal. Any such personal property items which are not removed within sixty (60) days after the termination date of this Agreement shall become the property of City as of that date.

ARTICLE 6. REPAIRS, MAINTENANCE AND RESTORATION

6.01 **Maintenance by City**: City shall, at City's sole discretion and expense, keep in good repair, condition and appearance the taxiways and roadways which have been or may be constructed by City. City may commence required repairs as soon as reasonably practicable after receiving written notice from Lessee thereof. Except as provided in this Section, City shall not be obligated to make repairs, replacements or improvements of any kind upon the Leased Premises, or to any equipment, merchandise, facilities or

fixtures therein, all of which shall be Lessee's responsibility. The amount and extent of the repairs to be made by City are in the City's sole discretion.

6.02 **Maintenance by Lessee**: Lessee shall, at Lessee's sold expense, keep the Leased Premises and all improvements of any kind, which may be existing at the commencement of the Lease Term, not required herein to be maintained by City, in good repair, condition and appearance. Without limitation of the foregoing sentence, Lessee specifically acknowledges its obligations, at its sole expense, to keep in good repair, condition and appearance the foundation, roof, exterior walls and structural portions of the interior walls of the hangar located on the Leased Premises. This section shall not apply in case of damage or destruction by fire or other casualty, in which event the City shall be obligated to repair as provided in Sections 6.03 and 6.04. Lessee shall keep mowed and in a slightly condition all landscaping and grass areas within the Lease Premises. City shall be the sole judge of the quality of Lessee's maintenance; provided, however, City shall not unreasonably withhold acceptance of said repairs or maintenance. Upon written notice by City to Lessee, Lessee shall be required to perform such reasonable maintenance under this Section 6.02, as City considers necessary. If Lessee does not undertake such maintenance within ten (10) days after receipt of written notice, City shall have the right to enter on the Leased Premises and perform the necessary maintenance, the cost of which shall be borne by Lessee. Other items of maintenance for which Lessee shall be solely responsible shall include, but not be limited to, the following:

(a) Janitorial services, providing janitorial supplies, window washing, rubbish and trash removal;

(b) Supply and replacement of light bulbs in and on all buildings (except lighting removed for causing obstructions or glare);

(c) Replacement of cracked or broken glass in all buildings;

(d) Cleaning of interior stoppages in interior plumbing fixtures and drain lines up to the first manhole or clean out outside of the exterior of the building where the stoppage occurred;

(e) Replacement of floor covering;

(f) Maintenance of all doors and door operating systems, including weather stripping and glass replacement;

(g) Painting, repairing and replacement of interior walls not resulting from structural failure;

(h) Landscaping and grass cutting services within the Leased Premises, including, but not limited to, repair or replacement of exterior building flood lights and planter lights;

(i) Repair or replacement of heating, air conditioning, ventilation, electrical, plumbing, or mechanical systems, or their respective components;

(j) Maintenance of all aprons, ramps, and roadways that are constructed by Lessee.

Subject to the provisions of Section 5.05, on the last day of the term hereof, or on any soon termination, Lessee shall surrender the Leased Premises to City in the same condition as received, except for fire and casualty, ordinary wear and tear, clean and free of debris.

6.03 **Substantial Damage or Total Destruction**: If the Leased Premises or any building or buildings located on the Leased Premises are destroyed or substantially damaged by fire or any other cause, the City shall have the option to either (a) terminate this Lease as to the building or buildings damaged or destroyed, or (b) to rebuild the destroyed or substantially damage building or buildings as expeditiously as possible (but in no event more than one hundred eighty (180) days after the date of such damage), and to treat this Lease as continuing in effect, except that Lessee's obligation to pay rent for use of the Leased Premises during such period of rebuilding shall be abated as to the building or buildings being rebuilt and the property on which the building or buildings are located. If (I) Lessee has not received written notice from City of which alternative it elects within thirty (30) days after the date of such damage, or (II) the building or buildings which have been substantially damaged or destroyed cannot be rebuilt within one hundred eighty (180) days after the date of such damage, Lessee shall have the right to terminate this Lease as of the date of such damage as to the building or substantially damaged or destroyed and the land on which the building or buildings were located. In the event the City elects to treat this Lease as continuing in effect as to that building or buildings, the City is not obligated to provide to Lessee temporary facilities. In the event City elects to terminate this Lease as to the building or buildings substantially damaged or destroyed, Lessee's obligation to pay rent hereunder shall terminate as of the date of the building's substantial damage or destruction. If this Lease is terminated in its entirety as of the date of such damage, City shall promptly reimburse Lessee for any rent paid by Lessee attributable to the period following the date of such damage. If this Lease is terminated as to some buildings as of the date of such damage, any reimbursement of rent shall be credited toward the rent otherwise due during the remainder of the Lease Term. If any dispute arises with respect to whether any such damage is susceptible of repair within the one hundred eighty (180) day period, the ability of City to obtain a contract for the completion of such repairs within the one hundred eighty (180) day period shall be determinative of whether such damage is susceptible to repair within such period.

6.04 **Partial Damage of Leased Premises (Usable):** In the event that any part of the building or buildings on the Leased Premises are partially damaged by fire or other cause so as to require repair, but remain usable for the purposes permitted by this Agreement, then City shall repair any such damage as expeditiously as possible (but in no event more than one hundred eighty (180) days after the date of such damage) and without cost to lessee. Lessee shall remain obligated to pay rent and comply with all other provisions of this Agreement.

6.05 **Trash and Waste Removal**: Lessee agrees to cause to be removed from the Leased Premises, at its own expense, all waste, garbage and rubbish, and agrees not to deposit same on the Leased Premises except temporarily in waste or garbage containers provided by Lessee at Lessee's expense. Lessee further agrees that Lessee will store all parts, supplies, and other materials on the interior of buildings located on the Leased Premises, provided, however, that any parts or supplies which must be kept outside because of volatility of the supply item or the size of the part will be kept out of view of the public traveling on public rights of way or other surrounding tenants by installation of fencing or other means of screening approved by the Director of Airports.

ARTICLE 7. ACCESS TO AND USE OF AIRPORT

7.01 **Access to Airport:** City shall maintain all roads on the Airport giving access to the Leased Premises in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Leased Premises over said roads at all times; provided however, City shall not be in default of this Agreement if access is interrupted.

7.02 **Right to Use Airport:** Lessee and Lessee's employees, sublessees, and guests shall have the right to use that part o the Airport and its facilities not included within the Leased Premises in common with others authorized to do so. Such use shall be subject to any and all applicable federal, state or local laws, ordinances, statutes, rules, regulations, or orders of any governmental authority, lawfully exercising jurisdiction over the Airport or the activities and business operations of Lessee, including any limitations, restrictions or prohibitions affecting the aviation activities or operations of Lessee.

7.03 **Vehicular Operations on the Airfield**: No vehicles of Lessee, its employees, customers or invitees will be allowed to operate on, or cross, the runways and taxiways and their respective safety areas of the Airport. When necessary, Airport Operations Control Center personnel will provide Lessee escorted access to and from the airfield area.

7.04 **Airport Security Rules and Regulations**: Lessee, its directors, officers, employees, and contractors shall comply with all federal and local Airport Security Regulations adopted by the City or the Department of Airports as such rules and regulations exist or may hereafter be amended. **LESSEE AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS AND EMPLOYEES**, from any charges, fines or penalties that may be assessed or levied by the FAA by reason of the **NEGLIGENT OR INTENTIONAL FAILURE OF LESSEE, ITS DIRECTORS, OFFICERS, EMPLOYEES, OR CONTRACTORS** to comply with such Airport Security Regulations.

7.05 **14 C.F.R. Part 77 Requirements**: Lessee agrees to comply with the notification and review requirements set forth in Part 77 of the Federal Aviation Regulations [14 CFR Part 77] in the event any future structure, antenna or building is planned for the Leased Premises, or in the event of any planned modification of any present or future building, antenna or structure located on the Lease Premises.

7.06 **Control of Structures**: Lessee shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Leased Premises which highest point is above a mean sea level elevation established by the FAA and City as a height limitation on such structures or objects. City reserves the right to enter upon the Leased Premises and to remove the offending structure or object and cut the offending tree at Lessee's expense.

7.07 **Aerial Approaches**: City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on or adjacent to the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

7.08 **Right of Overflight**: There is hereby reserved to the City, for the use and benefit of the public, a right of flight for the passage of aircraft above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace for landing at, taking off from or operating on the Airport.

ARTICLE 8. INSURANCE

8.01 **Lessee's Minimum Insurance Amounts:** Lessee shall obtain and maintain continuously in effect at all times during the Lease Term, at Lessee's sole expense, at least the following minimum insurance with a carrier or carriers licensed to do business in the State of Texas and satisfactory to the City:

(a) Property and Casualty Insurance insuring against loss or damage to Lessee's improvements and any and all property being maintained or repaired by Lessee due to fire, lightning and all other perils included in standard extended coverage policies, and vandalism and malicious mischief, all in amounts of not less than one-hundred percent (100%) of replacement value;

(b) Commercial General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Leased Premises, or any other portion of the Airport, in at least the amount of $1,000,000.00 per individual, $1,000,000.00 per occurrence and $1,000,000.00 with respect to property, and the statutory limits with respect to worker's compensation.

8.02 **Lessee's Coverage Primary:** All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which the Lessee may carry. Insurance provided pursuant to Section 8.01 shall name the City as an additional insured or loss payee as the case may be and provide for a waiver of subrogation in favor of the City. The comprehensive general liability policy as provided in Paragraph 8.01(b) shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by Lessee in the indemnity and hold harmless provisions included in Article 9 of this Agreement. The Lessee's insurance policies as required by this Agreement shall apply separately to the City as if separate policies had been issued to Lessee and City.

8.03 **Contents of General Liability Policy:** Lessee's Comprehensive General Liability policy shall protect the City and Lessee against any and all liability to any person or persons whose property damage or personal injury arises out of or is in connection with the occupation, use, or condition of the Leased Premises or resulting from any injury or damage occurring on or about the roads, driveways or other public areas of the Leased Premises used by Lessees, its trustees, officers, employees, students, invitees, and contractors at the Airport, whether or not such damage or injury is the result of negligence of the Lessee or its officers, employees, representatives, invitees, licensees, contractors, agents, guests, or students.

8.04 **Cancellation:** Certificates of Insurance: Lessee's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least thirty (30) days written notice has been provided to the City. Lessee shall furnish to the City, annually, Certificates of Insurance showing City as an additional insured and evidencing that all of the herein-stated requirements have been met.

8.05 **Insurance Not Limitation on Indemnity:** The amount or amounts of all required policies shall not be deemed a limitation of the Lessee's agreement to indemnify and hold harmless the City, its officers and employees in the event Lessee or City, its officers or employees shall become liable in an amount in excess of the amount or amounts of such policies.

8.06 **City's Right to Purchase Insurance:** In the event such insurance as required by Section 8.01, above, shall lapse, the City reserves the right to obtain such insurance at Lessee's expense. Upon demand from City, Lessee shall reimburse City for the full amount of the premium paid on Lessee's behalf.

ARTICLE 9. INDEMNITY

LESSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSEE, its agents or employees, or any subcontractor, arising out of, or resulting from, Lessee's use of, or activities on, the Agreement Premises, and Lessee will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

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

ARTICLE 10. UTILITIES

Lessee shall be solely responsible for the payment of all electric, telephone, water, refuse, natural gas and other public utility services used on the Leased Premises.

ARTICLE 11. SIGNS

11.01 **Consent Required:** Except with the prior written consent of the Director of Airports, which shall not be unreasonably withheld, Lessee shall not erect, maintain or display any signs or any advertising at, or on, the exterior part of structures on the Leased Premises,

or inside any buildings located on the Leased Premises so as to be visible through the window or exterior doors thereof.

11.02 **Removal on Termination:** Upon the termination of this Agreement, Lessee shall remove, obliterate or paint out, as the City may direct, any and all signs and advertising on the Leased Premises or elsewhere at the Airport, and in connection therewith shall restore the Leased Premises to the same condition as prior to the placement of any such signs or advertising. In the event that there is a failure by Lessee to so remove, obliterate or paint out each and every sign or advertising and so to restore the Leased Premises, the City may, at its option, perform the necessary work at the expense of Lessee, and the charge therefor shall be paid by Lessee to the City on demand. In certain circumstances, the City may elect to allow specific signs to remain as existing at the termination of this Agreement. Such signs shall be identified and agreed upon mutually, in writing, by Lessee and City.

ARTICLE 12. ASSIGNMENT AND SUBLEASING

Lessee 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.

ARTICLE 13. TAX LIENS

Lessee shall be solely responsible for the collection and payment of all applicable federal, state, and local taxes, including, but not limited to, sales, use, amusement, or excise tax required to be collected and paid over by Lessee to the appropriate taxing authority. Furthermore, Lessee shall be responsible for the payment of any applicable ad valorem taxes and any taxes on Lessee's personal property located on the Leased Premises. Lessee shall at no time permit the foreclosure of any tax liens to Lessee's leasehold interest in the Leased Premises or the buildings, fixtures, or other improvements located on the Leased Premises. The City shall have the right to pay such taxes due after Lessee's refusal to pay such taxes, and upon demand Lessee shall reimburse the City for the amount of taxes paid plus any penalties, interests, and attorney's fees incurred, subject to Lessee's right to challenge the validity of such taxes in whole or in part. In the event that Lessee is successful in any challenge regarding the payment of any tax, the City shall be subrogated to any recovery obtained by Lessee to the extent of the amount of taxes, interests, penalties, and attorneys fees previously paid by the City and not already reimbursed by Lessee.

ARTICLE 14. DEFAULT AND REMEDIES

14.01 **Default by Lessee:** The following shall be deemed to be events of default by Lessee under this Agreement:

(a) Lessee shall fail to pay when due any installment of rent or any other payment required pursuant to this Agreement;

(b) Lessee shall abandon any substantial portion of the Leased Premises;

(c) Lessee or any guarantor of Lessee's obligations hereunder shall file a petition or be adjudged bankrupt or insolvent under any applicable federal or state

bankruptcy or insolvency law or admit that it cannot meet its financial obligations as they become due, or a receiver or trustee shall be appointed for all or substantially all of the assets of Lessee of any guarantor of Lessee's obligations hereunder;

(d) Lessee or any guarantor of Lessee's obligations hereunder shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors;

(e) Lessee shall do or permit to be done any act which results in a lien being filed against the Leased Premises;

(f) The liquidation, termination, dissolution of Lessee or any guarantor of Lessee's obligations hereunder; or

(g) Lessee shall be in noncompliance with any other term, provision or covenant of this Agreement, other than those specified in subparts (a) through (f) above.

14.02 **Termination Upon Lessee's Default**: Except for an event of default resulting from the filing of a petition in bankruptcy, if an event by Lessee shall continue for ten (10) days after service of notice of such event of default, City may give notice of its election to terminate this Agreement, and thirty (30) days after service of such notice of election to terminate, this Agreement shall cease and terminate as if the day of City's election were the day originally fixed for termination of this Agreement. Such election to terminate by City shall not be construed as a waiver of any claim it may have against the Lessee consistent with such termination. If, however, the event of default is of such nature that it cannot reasonably be remedied within ten (10) days after receipt of notice, and if the Lessee shall have commenced curing such event of default within ten (10) days after receipt of such notice, and shall continuously and diligently proceed in good faith to cure such event of default, then the period for curing the event of default shall be extended for such length of time as is reasonably necessary to cure the event of default. Furthermore, if the event of default is the result of Lessee filing a petition in bankruptcy, then termination shall not occur unless the trustee in bankruptcy has failed to ratify this lease within sixty (60) days following the date of filing of the petition in bankruptcy.

14.03 **Abandonment of Business by Lessee:** Lessee further agrees that the abandonment for a period of thirty (30) days by Lessee of the conduct of its business activities at the Airport shall terminate Lessee's rights under this Agreement. By so terminating this Agreement, City does not waive any other claim or rights against Lessee. For the purposes of this paragraph, the term "abandonment" shall mean the failure of Lessee to be open for business on the Leased Premises except in the case of war, strike, catastrophe or causes beyond Lessee's control.

14.04 **No Remedy Exclusive:** No remedy herein conferred upon or reserved to the City or Lessee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or hereafter existing under law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City and Lessee to exercise any remedy reserved to it in this section, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

14.05 **No Waiver of Breach:** City's failure or delay in declaring the existence of an event of default by Lessee shall not be construed as a waiver thereof, nor shall it be construed so as to waive or to lessen the right of the City to insist upon the performance by Lessee of any term, covenant or condition hereof, or to exercise any rights given it on account of any such event of default. A waiver of any particular event of default shall not be deemed to be a waiver of the same, similar of any other subsequent event of default.

14.06 **Expeditious Action**: Notwithstanding any provision as to notice in this Agreement herein contained, if in City's reasonable judgment the continuance of any event of default by Lessee for the full period of the notice to cure the event of default will jeopardize the operation of the Airport or the rights of the City or the other Airport tenants, City may, without notice, elect to perform those acts in respect to which Lessee is in default. Lessee shall reimburse City for any reasonable and necessary costs incurred by the City pursuant to this Section 14.06.

14.07 **Default in Rent Payment**: Notwithstanding anything to the contrary above, if there should be any default in the payment by Lessee of any rates, fees or charges due to City as provided herein, the City may give Lessee a ten (10) day written notice to pay all sums then due or cease operations, and if such payment is not made within such ten (10) day period or such longer time as City may set forth, Lessee's rights under the Agreement shall terminate. By so terminating this Agreement, the City does not waive any other claim or rights against Lessee. However, if such monetary default consists only of underpayment of a disputed and unliquidated sum, under $1,000.00, the termination of this Agreement may be forestalled by tender of the liquidated sum and deposit of the amount in controversy in escrow.

ARTICLE 15. TERMINATION BY LESSEE

15.01 Except for the payment by Lessee to City of rents or other amounts past due accrued but not yet due, Lessee shall have the right to terminate this Agreement in its entirety, and all rights and obligations ensuing therefrom immediately upon the occurrence of the following:

(a) The issuance of any order, rule or regulation of the Federal Aviation Administration, or its successor Federal Agency, or other competent government authority, Federal or State, or the issuance and execution of any judicial process by any court of competent jurisdiction, materially restricting for a period of at least sixty (60) days, the use of the airport for aeronautical purposes; provided that non of the foregoing is due to any fault of Lessee; or

(b) The material restriction of the City's operation of the Airport by action of the Federal Government, or any department or agency thereof, under its wartime or emergency powers, and the continuance thereof for a period of not less than sixty (60) days; provided, however, that without prejudice to the rights of Lessee to terminate as above provided, the City and Lessee may mutually agree to adjust fees and charges; or

(c) Material restriction of the operation of the Airport arising from City's failure to maintain and keep in repair the landing area of the Airport.

15.02 If Lessee terminates this Lease for any of the reasons set forth in (a) through (c) of Article 15, City shall promptly repay Lessee any rent previously paid by Lessee attributable to the period following the date of such termination. Lessee shall also have the right, in its sole discretion to terminate this Agreement in its entirety for any reason upon giving City thirty (30) days written notice.

ARTICLE 16. MISCELLANEOUS PROVISIONS

16.01 **Release**: **NOTWITHSTANDING ANY OTHER PROVISIONS, LESSEE 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 LESSEE 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.**

16.02 **Quiet Enjoyment:** Upon the performance of the covenants and agreements on the part of the Lessee to be performed hereunder, the Lessee shall peaceable have and enjoy the Leased Premises, appurtenances, facilities, licenses and privileges granted in this Agreement.

16.03 **Force Majeure:** Neither the City nor Lessee shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder except the obligation to pay rent by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, act of God, acts of the public enemy, act of superior governmental authority, weather conditions, floods, riots, rebellions, acts of sabotage or any other circumstances for which it is not responsible or which are not in its control.

16.04 **No Partnership, Agency, Joint Venture:** It is expressly understood and agreed that Lessee 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 Lessee 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 Lessee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Lessee. No person performing any of the work and services described hereunder 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.

16.05 **Inspection by City:** City may enter upon the Leased Premises at any reasonable time for any purpose necessary, incidental to or connected with the performance of City's obligations hereunder, or in the exercise of its governmental functions, for fire protection or security purposes, or for inspecting or maintaining the Leased Premises, or doing any and all things City is obligated to do, or which may be deemed by City necessary or desirable for the proper conduct and operation of the Airport or the protection of City's interests.

16.06 **On-Site Representatives:** Lessee shall select and appoint a representative or representatives for its operations at the Airport. The representatives shall be qualified and experienced, and vested with the full power and authority to act in the name of the Lessee with respect to the method, manner and conduct of the operation of Lessee to be performed under this Agreement. City's on-site representative shall be the City's Director of Airports.

16.07 **Conformance with Rules and Regulations**: The use of the Airport by Lessee shall be subject to any and all rules, regulations and ordinances which are now in force or which may be hereafter adopted by the City with respect to the operation and use of the Airport, but no such rules, regulations, or ordinances shall increase the Base Rent or Additional Rent payable by Lessee under this Lease or otherwise materially and adversely affect Lessee's tenure of the Leased Premises under this Lease. Furthermore, this Agreement and Lessee's use of the Airport shall be subject to any and all applicable laws, ordinances, resolutions, statutes, rules, regulations or orders of any Federal, State or local governmental authority lawfully exercising jurisdiction over the Airport or the activities and business operations of Lessee, including any limitations, restrictions or prohibitions affecting the aviation activities or operations of Lessee.

16.08 **Licenses and Permits**: Lessee hereby agrees that it shall, at its own expense and cost, procure and obtain all lawfully required licenses and permits, certificates and other authorizations required by any governmental authority, in connection with or covering the operations or activities permitted to be performed by it under the provisions of this Agreement.

16.09 **Notices**: Notices provided for in this Agreement shall be either hand delivered or sent by certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

If to City:	Director of Airports P. O. Box 60305 9506 LaForce Boulevard Midland, Texas 79711
With Copy To:	City Manager P. O. Box 1152 300 North Loraine Midland, Texas 79702
If to Lessee:	Empire Airlines, Inc. Timothy D. Komberec, President 2115 Government Way Coeur d'Alene, Idaho 83814

The parties may change the representative or address for delivery of notices from time to time by sending written notices to the other party. All notices shall be in writing and effective only upon actual receipt.

16.10 **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.

16.11 **Severability**: If any provision of this Agreement is invalid or unenforceable, this Agreement shall be considered severable as to such provision, and the remainder of this Agreement shall remain valid and binding as though such invalid or unenforceable provisions were not included herein.

16.12 **Captions**: Section headings are inserted herein only as a matter of convenience and for reference, and in no way defines, limits or describes the scope or intent to any provision herein.

16.13 **Use of Language**: Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

16.14 **Counterparts**: This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which constitute but one and the same instrument.

16.15 **Maintenance of the Airport**: City agrees to main and keep in repair the landing area of the Airport (including, but not limited to, runways, taxiways, landing lights, signals, signs and other conveniences for the takeoff, flying and landing of aircraft) and to maintain the Airport as a commercial airport; provided, however, if City decides to relocate the Airport, City may cancel this Agreement by providing Lessee notice of termination not later than 180 days prior to the date of termination. If City gives notice to Lessee of cancellation of the Agreement because of a planned relocation of the Airport, and the Airport continues to exist and remain in operation at its present location after the effective date of the termination, then this Agreement shall continue as a month-to-month tenancy.

16.16 **Development of the Airport**: Future development, changes, alterations, modifications or improvement to the Airport shall be at the sole discretion of the City, subject only to such notification to Lessee that the Federal Aviation Administration may dictate. The City will strive not to hinder the Lessee's operations in carrying out the provisions of this paragraph.

16.17 **Subordination to Federal Agreements**: This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, relative to the development, operation or maintenance of the Airport.

16.18 **No Exclusivity on Aeronautical Services**: Nothing herein contained shall be construed to grant or authorize the granting of the exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended.

16.19 **Termination At Will:** City may terminate this Agreement at will for no or any reason upon giving one hundred and twenty (120) days written notice to the Lessee. The parties to this Lease understand and agree that it is in City's sole discretion to cancel the Lease during the term of the Lease without penalty to City. The parties have no expectation and have received no guarantees that this Lease will not be terminated

before January 15, 2017. The parties have bargained for the flexibility of terminating this Lease upon tender of the requisite notice at any time during the term of this Lease.

All work and services under this Lease shall be suspended immediately upon termination of the Lease becoming effective.

16.20 **Discrimination Prohibited**: The Lessee, for itself, its trustees, officers, legal representatives, successors-in-interest and assigns, as a part of the consideration hereof, agrees (1) that no person on the grounds of race, color, sex, national origin, veteran status or disability shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of the Leased Premises; (2) that in the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, sex, color, national origin, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (3) that the Lessee shall use the Leased Premises and the Airport in compliance with all other requirements imposed by, or pursuant to, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the City shall have the right to terminate this Agreement and to re-enter and repossess the Leased Premises and the improvements thereon, and hold the same as if said Agreement were terminated by its own term pursuant to Section 2.01, above.

16.21 **Affirmative Action Program**: Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, sex or disability be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Agreement.

16.22 **Entire Agreement**: This Agreement embodies the entire agreement between the City and Lessee, and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. This Agreement shall not be changed, modified, discharged or extended, except by written instrument duly executive by City and Lessee. The parties agree that no representations or warranties shall be binding upon either party unless expressed in writing in the aforesaid Agreement.

16.23 **Attorney's Fees: BY EXECUTING THIS AGREEMENT, LESSEE 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 LESSEE SPECIFICALLY AGREES THAT IF THE LESSEE 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 LESSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LESSEE MIGHT OTHERWISE BE ENTITLED.

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

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

16.24 **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.

16.25 **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.

16.26 **Notice of Alleged Breach**: **As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Lessee or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred and twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Lessee will settle, the physical and mailing addresses of Lessee at the time and date the claim was presented and the physical and mailing addresses of Lessee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Lessee 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 Lessee that Lessee'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,

Lessee's failure to comply with the requirements herein shall perpetually bar Lessee'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. Lessee agrees that the requirements of this entire agreement are reasonable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed in duplicate this _____ day of _____, 2012.

THE CITY OF MIDLAND, TEXAS

BY: _____
Courtney Sharp, City Manager

EMPIRE AIRLINES, INCORPORATED

BY: _____
Timothy D. Komberec, President

ATTEST:

_____
Amy Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Marv Esterly, Director of Airports

THE STATE OF _____§

THE COUNTY OF _____§

BEFORE ME, the undersigned authority on this day personally appeared Timothy D. Komberec, President of Empire Airlines, Incorporated, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Empire Airlines, Incorporated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2012.

_____
Notary Public, State of _____

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City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL / CITY MANAGER**

FROM: **Sharlett Chowning, CIO**

SUBJECT: **Midland Emergency Communication District**

Purpose:
To approve an Interlocal Agreement with the Midland Emergency Communication District (MECD).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

None

Discussion:

Midland Emergency Communication District (MECD), through its Board of Managers, has committed to provide the citizens of Midland County with state-of-the-art emergency communications equipment.

MECD will purchase a DSS 3U Recording System to be located in the Primary Public Safety Answering Point (PSAP), the City of Midland Communications Center, located at 601 N Loraine. The equipment will be used to record all 9-1-1 trunk activity, including several (7) digit emergency lines, within the PSAP.

Maximum cost to be expended by MECD for purchase and installation of the recorder is $150,000.

INTERLOCAL AGREEMENT

This Interlocal Agreement (this "Agreement") is made and entered into by and between the Midland Emergency Communication District, hereinafter referred to as "MECD," acting herein by and through its Board of Managers, and the City of Midland, hereinafter referred to as "City," effective the 18th day of November, 2011.

WITNESSETH

WHEREAS, it is the desire of both the MECD and the City to provide the most effective Enhanced 9-1-1 emergency communications system for the citizens of Midland County, including maintaining state-of-the-art equipment.

NOW THEREFOR, the parties agree as follows:

I.

MECD will purchase a DSS 3U recording System to be located in the Primary Public Safety Answering Point (PSAP), City of Midland Communications Center, located at 601 N. Loraine basement (the "Recorder"). The Recorder will be used to record all 9-1-1 trunk activity, including seven (7) digit emergency lines, within the PSAP in addition to activity deemed necessary by the City of Midland. Maximum cost to be expended by MCED for purchase and installation of the Recorder is $150,000.00. The Recorder is necessary to facilitate legal requirements of both the MECD and the City of Midland Communications Center. Installation and labor charges will be included in the above figure paid by MECD. Except as provided in Section I, MECD will have no further obligation with respect to the Recorder or any other matter under this Agreement.

II.

Ownership of the Recorder is the sole property of MECD. However, any recordings, replacement, repair, maintenance and upgrades to the Recorder remain the sole obligation/property of the City. The City shall not be obligated to pay MECD for services related to this Agreement.

III.

This Agreement shall continue until terminated by either party with at least one hundred and eighty (180) days written notice. At the termination of this Agreement, the Recorder will be returned to MECD.

IV.

This Agreement represents the entire agreement of the parties as it pertains to the subject matter of this Agreement and no changes or modifications of this Agreement will be valid unless evidenced by an instrument in writing signed by the parties.

V.

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. This Agreement shall be governed by the laws of the State of Texas.

VI.

This Agreement shall be subject to the applicable provisions of the Health and Safety Code, the Interlocal Cooperation Act, and any other applicable statute or regulation.

VII.

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.

WITNESS OUR HANDS this ____ day of _____, 20___.

CITY OF MIDLAND, TEXAS

By:_____
W. Wesley Perry, Mayor

MIDLAND EMERGENCY
COMMUNICATIONS DISTRICT

By:_____
Pat Moore, Chairman
MECD Board of Managers

ATTEST:

_____
Amy M. Turner, City Secretary

_____
Price Robinson, Police Chief

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

L:\Contracts\Administration\2012\MECD Interlocal.wpd

RESOLUTION NO.

RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE MIDLAND EMERGENCY COMMUNICATION DISTRICT REGARDING THE PURCHASE AND MAINTENANCE OF 9-1-1 EMERGENCY SYSTEM RECORDING EQUIPMENT TO BE HOUSED AT THE CITY OF MIDLAND COMMUNICATIONS CENTER

WHEREAS, the City of Midland and the Midland Emergency Communication District desire to enter into an interlocal agreement regarding the purchase and maintenance of 9-1-1 Emergency System recording equipment to be housed at the City of Midland Communications Center; and

WHEREAS, the Midland City Council finds that the agreement serves a beneficial public purpose;

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, an interlocal agreement with the Midland Emergency Communication District regarding the purchase and maintenance of 9-1-1 Emergency System recording equipment to be housed at the City of Midland Communications Center, said agreement being 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., 2011, 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:
THudson
City Manager's Office

MEETING DATE: **JANUARY 10, 2012**

TO: **CITY COUNCIL / CITY MANAGER**

FROM: **TINA JAUZ, COMMUNITY SERVICES DIRECTOR**

SUBJECT: **APPROPRIATE FUNDS TO SSC FUND**

Approval of a resolution appropriating funds from the Scharbauer Sports Complex Sales Tax Fund to the Scharbauer Sports Complex Operating Budget for the purpose of purchasing a boom lift.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

$120,340 from the 4B sales tax.

Discussion:

During the December 13, 2011, meeting, City Council recommended purchase of a telescopic boom lift for use at the Scharbauer Sports Complex. It was recommended that the equipment be purchased with 4B sales tax funds instead of through the General Fund.

This item simply transfers the needed funds from the 4B sales tax unappropriated fund to the Scharbauer Sports Complex operating budget.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE APPRORIATION AND ALLOCATION OF FUNDS FROM THE SCHARBAUER SPORTS COMPLEX SALES TAX FUND TO THE SCHARBAUER SPORTS COMPLEX OPERATING BUDGET IN ORDER TO PURCHASE A TELESCOPIC BOOM LIFT

WHEREAS, on December 13, 2011, the City Council recommended the purchase of a telescopic boom lift at the Scharbauer Sports Complex; and

WHEREAS, the City Council recommended the purchase of a telescopic boom lift be purchased with 4B sales tax funds instead of through the General Fund; and

WHEREAS, the City Council finds it to be in the public interest to authorize the appropriation and allocation of necessary funds in order to purchase a telescopic boom lift;

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

SECTION ONE. That the sum of $120,340 is hereby appropriated from the Scharbauer Sports Complex Sales Tax Revenue Fund (621) Unappropriated Fund Balance (5650) to Scharbauer Sports Complex Sales Tax Revenue Fund (621) Sports Complex (620) Interfund Transfer (0629) Scharbauer Sports Complex (6378)account.

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., 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:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **David D. Beard, P.E., City Engineer**

SUBJECT: **Consider a resolution to assign a project number and allocate money from the General Fund for the design and construction of drainage and paving improvements for Mockingbird Ln. from Mayfield Pl. to Whitman Dr. (District #1 - Sparks).**

Purpose:

Consider a resolution to assign a project number and allocate funds from the General Fund for the design and construction of drainage and paving improvements for Mockingbird Ln., from Mayfield Pl. to Whitman Dr.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

That the sum of $19,478 is hereby appropriated from to the General Fund (001) Unappropriated Fund Balance (5650) to the Mockingbird Paving and Drainage Improvements Project (8977)

Discussion:

At the October 25, 2011 council meeting, the council authorized staff to collect $19,478 from the developer of the Northview Addition – Section 12 for arterial street construction and water main improvements along the right-of-way adjacent the subject property. The money was accepted through a development agreement and deposited into the General Fund. The approval of this resolution will allow the money collected from this development agreement to be reallocated from the General Fund to the newly created project.

ENGINEERING DIVISION

Mockingbird Lane

N

MIDLAND Engineering Services

Map by DDB 12/15/2011

RESOLUTION NO.

RESOLUTION APPROPRIATING $19,478 FROM THE GENERAL FUND (001) UNAPPROPRIATED FUND BALANCE (5650) TO THE MOCKINGBIRD PAVING AND DRAINAGE IMPROVEMENTS PROJECT (8977) FOR IMPROVEMENTS TO MOCKINGBIRD LANE FROM MAYFIELD PLACE TO WHITMAN DRIVE

WHEREAS, the City Council finds it to be in the public interest to appropriate $19,478 to the Mockingbird Paving and Drainage Improvements Project (8977) for improvements to Mockingbird Lane from Mayfield Place to Whitman Drive;

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

THAT the sum of $19,478.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Mockingbird Paving and Drainage Improvements Project (8977) for improvements to Mockingbird Lane from Mayfield Place to Whitman Drive.

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., 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:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **David D. Beard, P.E. – City Engineer**

SUBJECT: **Consider a motion on a request by Parkhill, Smith & Cooper for Devon Addition (Section 3), to approve items requested for deferral, and to waive the associated public improvement guarantee. This subdivision is positioned inside the City Limits generally located near the Midland Airport at the northeast corner of the intersection of FM 1788 and Younger Rd. (District #4 - Trost).**

Purpose:

To recommend approval for deferral of the following items:

Sidewalk Improvements	$30,000.00

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Total value of deferral (recommended items)	**$30,000.00**

Staff will be working with council, in the near future, to develop a policy to trigger when the deferred improvements will be required to be constructed.

Discussion:

The Devon Addition (Section 3) is located near the Midland Airport at the northeast corner of the intersection of FM 1788 and Younger Rd.

Parkhill, Smith & Cooper is proposing to plat the property and defer the construction of sidewalk improvements. Below is a summary of the deferral request along with a discussion of public improvements related to the development of land associated with this plat:

Deferral Request

1. Sidewalk: The applicant is proposing to construct a sidewalk along the FM 1788 frontage and defer the construction of sidewalks along the south and east property boundary. The current plans for the site include construction of an administration building and a maintenance facility. The present anticipated need for sidewalks is limited. However, future plans for the site include an intermodal transfer station, the need for sidewalks will be readdressed as future development of the site is planned.

Public Improvements

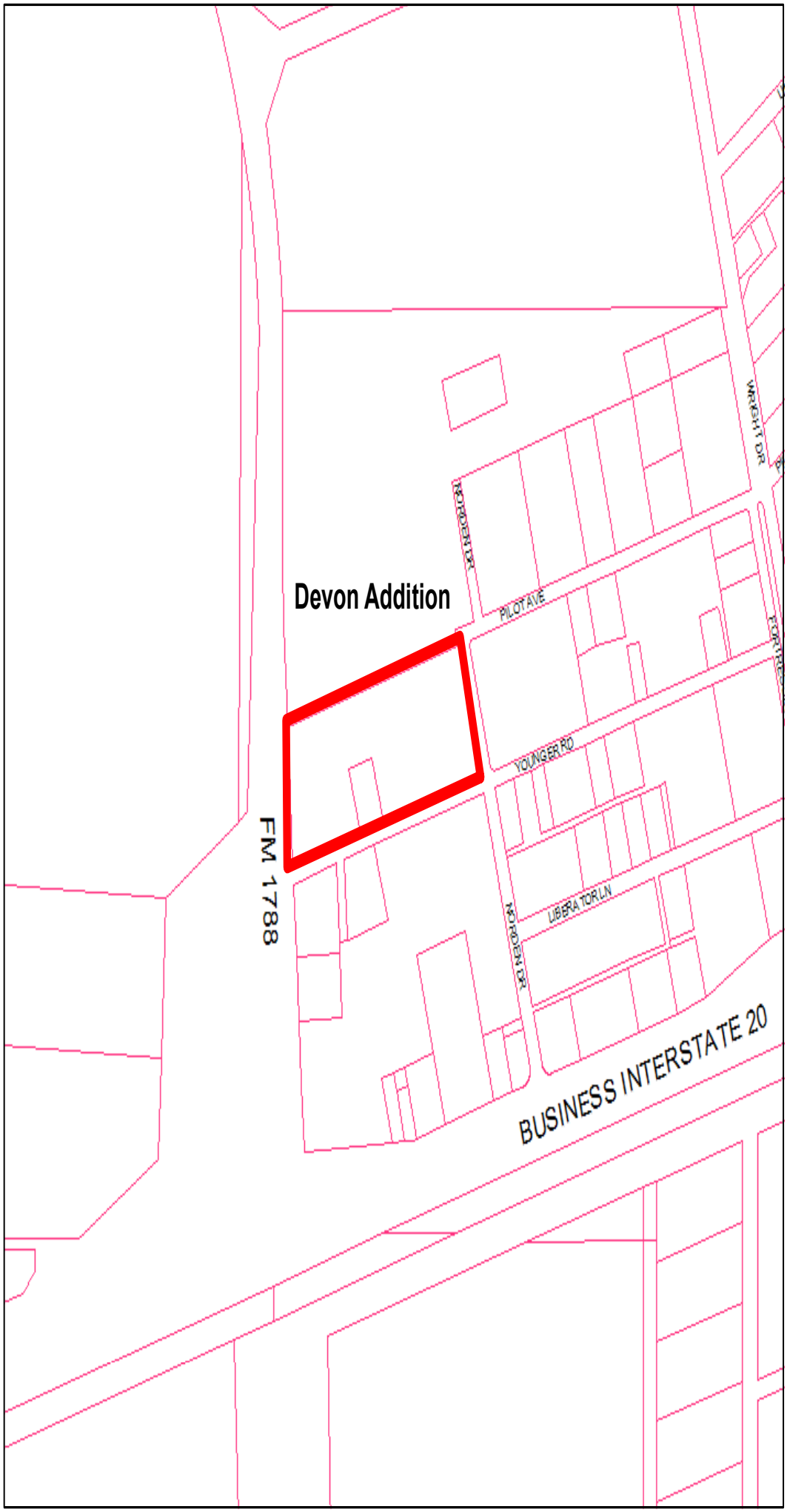
1. Water Distribution: The applicant is proposing to construct a water line along the FM 1788 frontage and a portion of the north boundary of the property to complete the water line loop.

2. Wastewater Collection: City of Midland wastewater service is available and accessible.

3. Paving: All streets adjacent to the subject property have been paved to the City of Midland standard.

4. Drainage: The applicant is proposing to direct the increase in stormwater runoff due to the proposed construction to an on-site detention facility.

Attached is a location map, along with a deferral justification, and cost estimate from Parkhill, Smith & Cooper.



ENGINEERING DIVISION

Devon Addition (Section 3)

Request for Deferral

N

MIDLAND Engineering Services

Map by DDB 01/04/2012

PARKHILLSMITH&COOPER

PSC

January 5, 2012

David Beard, P.E.
City Engineer
City of Midland
P.O. Box 1152
Midland, TX 79702

CITY OF MIDLAND
CITY ENGINEER'S OFFICE
APPROVED: DDB 1/5/2012
☒ As submitted
☐ Subject to changes as indicated
☐ Rejected
Review based on applicants submitted information.

Re: Devon Addition - Section 3

Dear David:

This letter is a request for a deferral of 1,110 linear feet of sidewalk on Younger Drive and Norden Street for Devon Addition, Section 3. A deferral for sidewalk on FM 1788 is not requested; as that sidewalk will be installed with the development. The value of the deferred sidewalk is approximately $30,000.

The attached drawing shows Phase I construction on the site. This is an administration building and a maintenance facility. The right-of-way areas are proposed to be landscaped with trees and rock mulch. The rock mulch will have broken faces and will be compacted. It should provide a walkable surface. A later phase will add an intermodal transfer station at the corner of Younger Road and FM 1788.

Sewer and paving are complete at this location. Water line requires a loop, which will be installed with this subdivision. All drainage facilities will be onsite and constructed with the first phase.

Sidewalk in the vicinity of the airport is limited. There appear to be two activities that would generate foot traffic near this facility. First, when the intermodal facility is constructed, there might be pedestrian traffic from the airport terminal. The distance is around 6,350 feet, of which only 1650 feet currently has a sidewalk or a parking lot paved to back of curb which could be walkable. It would appear that a major sidewalk project or shuttle service would be needed to make this route usable.

Second, there may be future development along FM 1788 that would attract pedestrian traffic. Pedestrians wishing to use the overpass over Business I-20 to the south will find they must walk on the road shoulder with only a low vehicle guardrail, so foot traffic would mostly flow northward. Currently all development in the subdivision is commercial or industrial and would not be expected to generate much foot traffic. Nevertheless, we have proposed to install the FM 1788 sidewalk in the expectation that some retail development might occur on that roadway.

RF/dk
Enclosures
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Amarillo
El Paso
Las Cruces
Lubbock
Midland
1700 W. Wall Street Suite 100 Midland, Texas 79701 432.697.1447 Fax 432.697.9758

Thank you for your consideration of this request. Please contact me with any questions.

Sincerely,

PARKHILL, SMITH & COOPER, INC.

By René Franks

René Franks, P.E.
Engineer

cc: Alonda Massey, MOUTD

PARKHILLSMITH&COOPER

PSC

January 5, 2012

CALCULATION OF SIDEWALK WAIVER VALUE

ITEM	UNIT COST	UNIT	QUANTITY	TOTAL COST
1 Sidewalk along Norden Dr. and Younger Rd.	$4.65	S.F.	5550	$25,808
2 Administration and Engineering	$4,192	L.S.	1	$4,192
Total				$30,000

PARKHILL SMITH & COOPER, INC. F-560
STATE OF TEXAS
RENÉ FRANKS
69100
LICENSED
PROFESSIONAL ENGINEER

René Franks

1/05/12

Amarillo
El Paso
Las Cruces
Lubbock
Midland

1700 W. Wall Street Suite 100 Midland, Texas 79701 432.697.1447 Fax 432.697.9758

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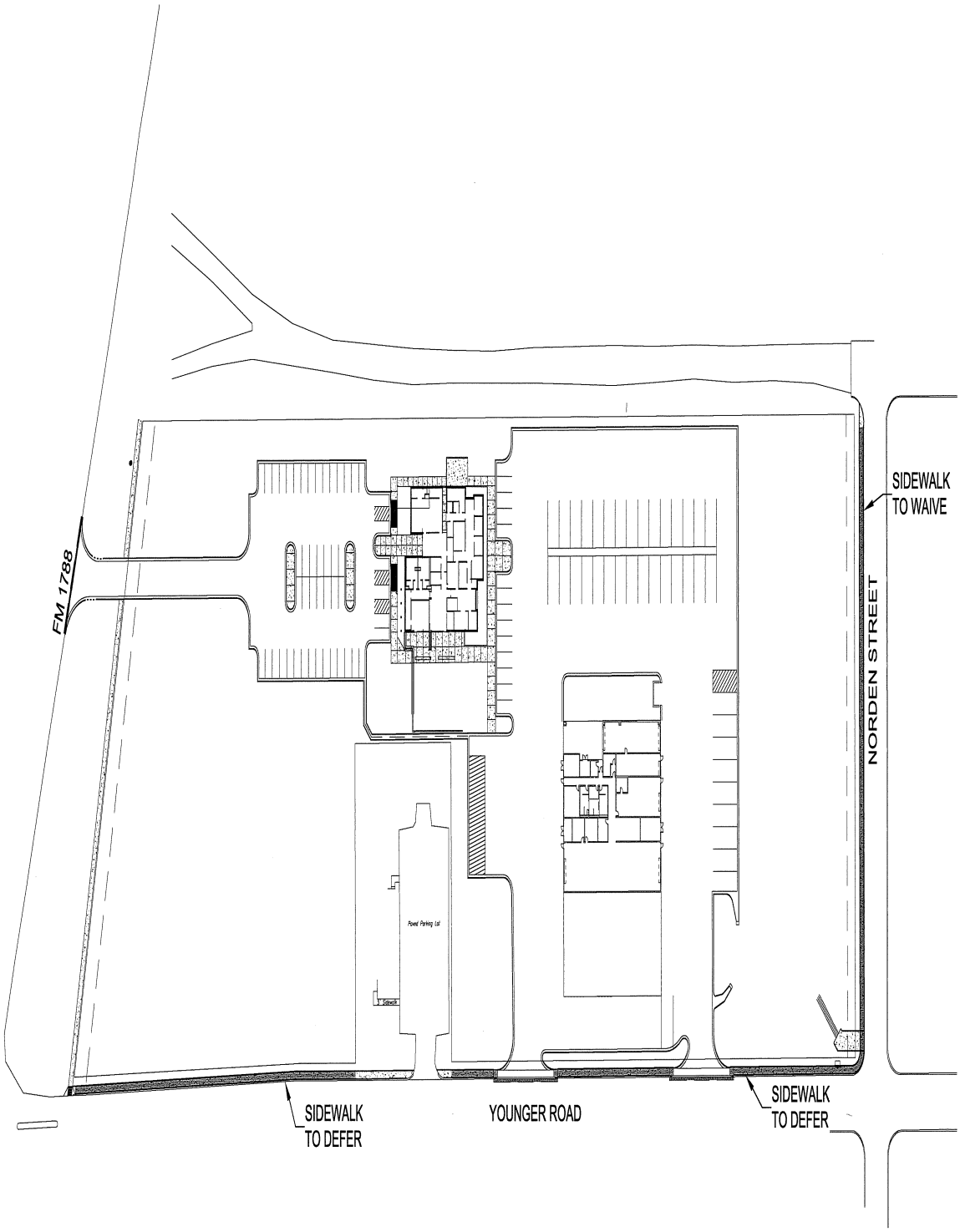

PARKHILL SMITH & COOPER, INC. F-560
STATE OF TEXAS
RENÉ FRANKS
69100
LICENSED PROFESSIONAL ENGINEER
1/5/2012
René Franks

0 100' 200'

DEVON ADDITION, SECTION 3
MOUTD

PARKHILL SMITH & COOPER

PSC

SIDEWALK WAIVER REQUEST

Issue:	Ex-01	Date:	1/5/2012
Project No:	9600.10	Sheet:	20.7

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City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Robert Isbell, Fire Chief**

SUBJECT: **Acceptance of $10,893 from Midland College and appropriation of funds**

Purpose: Acceptance of funds from Midland College pursuant to terms of training agreement dated August, 2003 in the amount of $10,893.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
The sum of $10,893 would be appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Midland College Fire Training Project #8 (8978)

Discussion:
In August 2003, City Council passed a resolution approving a training agreement between the City of Midland and Midland College. The purpose of the agreement was to recognize and support the need to promote Midland as the regional center for firefighter and EMS training. One of the duties of Midland College is to pay the Midland Fire Department one-half of actual funds received by the college for in-service training related to the program. These funds are vital support to our internal training and training equipment needs.

The Texas Legislature approved payment of $21,786 to Midland College, due to the above provision, and the college is returning one-half of that amount to the fire department.

RESOLUTION NO.

RESOLUTION ACCEPTING AND APPROPRIATING FUNDS IN THE AMOUNT OF $10,893.00 FOR THE MIDLAND COLLEGE FIRE TRAINING PROJECT IN ORDER TO RECOGNIZE AND PROMOTE THE CITY OF MIDLAND FIRE DEPARTMENT AS THE REGIONAL CENTER FOR FIREFIGHTER AND EMS TRAINING

WHEREAS, the City of Midland and the Midland Community College District have entered into an agreement to train firefighters and Emergency Medical Services personnel; and

WHEREAS, the Midland Community College District has received $21,786.00 from the State of Texas for the training project, one-half, or $10,893.00, of which is payable to the City under the agreement; and

WHEREAS, the Council finds it to be in the public interest to accept and appropriate said funds for the Midland College Fire Training Project #8;

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

SECTION ONE. That the City of Midland, Texas, acting through its Mayor and City Council, hereby accepts the amount of $10,893.00 from the Midland Community College District.

SECTION TWO. That the sum of $10,893.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Midland College Fire Training Project #8 (8978).

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., 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

_____
Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Price Robinson, Chief of Police**

SUBJECT: **Resolution request to appropriate funds**

Purpose:

To appropriate proceeds from the sealed bid sale of old service weapons and court awarded weapons. Proceeds will be used to purchase equipment and technology essential to the law enforcement function.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Discussion:

The City of Midland recently received proceeds totaling $25,920 from a sealed bid sale of old service weapons and weapons awarded to the department by the courts.

RESOLUTION NO.

RESOLUTION APPROPRIATING PROCEEDS FROM THE SALE OF OLD SERVICE WEAPONS AND COURT AWARDED WEAPONS IN THE AMOUNT OF $25,920.00 TO THE MIDLAND POLICE DEPARTMENT; THE PROCEEDS WILL BE USED TO PURCHASE EQUIPMENT AND TECHNOLOGY ESSENTIAL TO THE LAW ENFORCEMENT FUNCTION FOR THE MIDLAND POLICE DEPARTMENT

WHEREAS, the City of Midland Police Department received proceeds from a sealed bid sale of old service weapons and weapons awarded to the department by the courts; and

WHEREAS, the City Council finds it to be in the public interest to appropriate said funds to provide funding for the purchase of needed equipment and technology for the Midland Police Department;

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

THAT the sum of $25,920.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Equipment and Technology Acquisition Project (8820).

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., 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

_____
Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Stuart T. Purvis, Director of Utilities**

SUBJECT: **Approve the Execution of a Task Order Contract with Arcadis U.S., Inc. and Appropriate Funds**

Purpose:

Consider a resolution approving the execution of a Task Order Contract with Arcadis U.S., Inc. and appropriate funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Award amount is $287,600 from the Water and Sewer Fund.

Discussion:

The City of Midland received a letter from the Texas Commission on Environmental Quality (TCEQ) dated November 5, 2009 stating that they have found evidence that our effluent farming operations at Spraberry may be contaminating the groundwater. Specifically that nutrients applied to the surface had saturated the soil column and were now in the groundwater. They assigned the City several tasks to prove or disprove these findings. One of the requirements was to develop a management plan for all of the City's effluent farms to insure no future migration of nutrients to the groundwater. This task was to be performed by a soil scientist licensed in the state of Texas.

During the May 10, 2011 Council meeting, an amendment was made to the Arcadis U.S., Inc. contract to address this issue. Since that time, Arcadis has secured the services of a firm, Agri-Waste Technology, Inc. (AWT), licensed in the state of Texas, with the agronomic capabilities to develop a management plan. Significant sampling and evaluation of existing conditions has taken place in Phase 1. The additional work to be completed in Phase 2 includes:

- Calibration of all irrigation systems at both the Plant farm and Spraberry. This is necessary to adequately predict the nutrients applied from the wastewater effluent.
- Additional soil sampling, both shallow and deep, to determine the distribution of nutrients in

the soil to develop the portion of the plan relating to crop recommendations and rotations. Basically, crops must absorb all the nutrients applied so as to leave none to migrate to groundwater.

- Replacement of a monitoring well, MW-22, as the existing well has gone dry and our permit requires we collect groundwater samples in this area. It will be re-drilled into the groundwater.

The result of this effort will be a management plan for all the City's effluent farms that will insure we meet regulatory requirements as well as insuring the long-term viability of the farms.

The total cost of this addendum is $287,600.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT TASK ORDER WITH ARCADIS U.S., INCORPORATED, FOR PROFESSIONAL GROUNDWATER EVALUATION SERVICES, AT AN ESTIMATED TOTAL COST OF $287,600.00; AND APPROPRIATING FUNDS

WHEREAS, the City Manager advertised a Request for Qualifications for professional groundwater evaluation services ("Professional Services"); and

WHEREAS, Arcadis U.S., Inc., has agreed to perform said Professional Services for an estimated $287,600.00; and

WHEREAS, the Council finds that Arcadis U.S., Inc., is qualified to perform said Professional Services; and

WHEREAS, the Council finds that the professional fees proposed by Arcadis U.S., 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 Council finds that Arcadis U.S., Inc., provides professional services for a fair and reasonable price; and

WHEREAS, the Council finds it to be in the public interest to execute a professional services agreement task order with Arcadis U.S., Inc., as the most highly qualified provider for such 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 Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional services agreement task order with Arcadis U.S., Inc., for said Professional Services, said agreement being attached hereto as Exhibit "1" and incorporated herein for all legal purposes.

SECTION TWO. That the sum of $287,600.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Spraberry Groundwater Project (8927).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to Arcadis U.S., Inc., for professional services pursuant to the terms of said Agreement in an amount not to exceed $287,600.00 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., 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

PROFESSIONAL SERVICES AGREEMENT TASK ORDER FOR PERFORMANCE OF ENGINEERING SERVICES

THIS AGREEMENT is made and effective the 11th day of January, 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City,"and ARCADIS U.S., INCORPORATED, hereinafter referred to as "Company."

ARTICLE I.
PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Company shall perform Professional Engineering Services as enumerated on the Scope of Work attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

ARTICLE II.
SERVICES TO BE PERFORMED

1. Company shall provide those services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

2. Company shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same types of projects. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A."

ARTICLE III.
FINANCIAL CONSIDERATIONS

City agrees to pay Company in an amount not to exceed $287,600.00 for the professional services described in Exhibit "A." City agrees to pay Company for Labor, Incidental Direct Costs and SubCompany Costs as set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out Labor fees for the month and those Incidental Direct Costs and SubCompany Costs described in Exhibit "A"incurred during the previous month. The City Manager or Interim City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. City in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV.
TERM

The term of this Agreement shall be from January 11, 2012, until January 10, 2014, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V.
TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party One Hundred Eighty (180) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice.

ARTICLE VI.
CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that any necessary engineering services shall be subcontracted by the Company.

ARTICLE VII.
OWNERSHIP AND CONFIDENTIALITY OF DOCUMENTS AND OTHER WORK PRODUCT

All reports, information and other data ("instruments of service"), given to, prepared or assembled by Company under this Agreement, and any other related documents or items shall become the sole property of City and shall be delivered to City, without restriction, except that Company may make copies of any and all instruments of service for its files. The City shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of Company, which consent shall not be unreasonably withheld.

ARTICLE VIII.
INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Company 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 Company 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 Company, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Company. No person performing any of the work and services described hereunder by Company shall be considered an officer, agent, servant or employee of 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. Company 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 Company's work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.

ARTICLE IX.
INSURANCE

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

Commercial General Liability (including Contractual liability):

-Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
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 Workers' Compensation coverage provided by Company shall inure to the benefit of employees injured during the course and scope of their employment by Company pursuant to this Agreement.

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

All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the City 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 City.

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

> ***"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Company 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."***

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

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

occurred basis (except workers compensation).

ARTICLE X.
ATTORNEY FEES

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

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

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

ARTICLE XI.
SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and

retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY**.

ARTICLE XII.
NO THIRD PARTY BENEFICIARIES

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.

ARTICLE XIII.
RELEASE

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

ARTICLE XIV.
GENERAL PROVISIONS

A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. Governing Law and Venue. 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.

C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice

by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City:	City Manager's Office P.O. Box 1152 Midland, Texas, 79702
If to Company:	Arcadis U.S., Inc. Attn: Hugh B. Robotham, P.E., P.G. 1004 N. Big Spring Street, Ste. 300 Midland, Texas, 79701

The parties hereto may change the above designated addresses by giving notice pursuant to the terms of this Section.

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.

F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

ARTICLE XV.
NOTICE OF ALLEGED BREACH: STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Company or his legal representative, shall give the City Manager, or any other reasonable official of the City,

notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-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 Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Company 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 Company that Company'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, Company's failure to comply with the requirements herein shall perpetually bar Company's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Company agrees that the requirements of this entire Agreement are reasonable.

ARTICLE XVI.
ASSIGNMENT

Company 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.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By:_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Company :
ARCADIS U.S., INC.

By: _____

Title: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____ _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of ARCADIS U.S., INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2012

_____
Notary Public, State of Texas

_____
Printed Name

My Commission Expires:_____

L:\Contracts\Utilities\Task Order Ks.wpd\2012\PSA TO Arcadis Groundwater Evaluation.wpd

ARCADIS

Infrastructure, environment, facilities

Exhibit "A"

ARCADIS U. S., Inc.
1004 N. Big Spring Street
Suite 300
Midland, Texas 79701
Tel 432-687-5400
Fax 432-687-5401

Mr. Stuart Purvis
Director of Utilities
City of Midland
P. O. Box 1152
Midland, Texas 79702-1152

WATER

Subject:
Phase 2 Recommended Scope of Work for Agronomist Study / Nitrate Assessment at the City of Midland Effluent Application Sites 1 & 2, TCEQ Wastewater Permit #WQ0010223001

Midland, Texas
27 December 2011

Contact:
Hugh B. Robotham

Extension: 163
432-687-5400

Dear Mr. Purvis:

The purpose of this letter is to discuss Phase 2 recommended work for the agronomist study being performed by Agri-Waste Technology, Inc. (AWT) regarding the nitrate assessment of the City's Effluent Application sites. These recommendations include work at the plant farm (Site 1) in view of the fact that Site 1 & Site 2 operates under the same TCEQ permit and the operations at both sites are intimately linked.

In June 2011, ARCADIS teamed with AWT to work with the City to address the nitrate issues for the Spraberry effluent application site as well as to assess and support the City in the ongoing operation of the effluent application and crop cultivation at both effluent application sites as required by the TCEQ permit.

The initial (Phase 1) scope of work by the ARCADIS-AWT team included the following tasks:

- Review of available information for the site including Dr. Thompson's scope of work that was prepared earlier and was approved by the TCEQ, work previously done by Dr. Thompson and / or reports previously submitted to the TCEQ, the ARCADIS 2010 groundwater assessment report, the TCEQ wastewater permit and any other information that provided a good understanding of the site and the issues that need to be addressed.

- Develop an appropriate scope of work to address assessment of the nitrate impact at the site to satisfy the TCEQ requirements. This was done in May, 2011 and submitted by the City to the TCEQ for review and approval in June, 2011.

- Conduct a site visit to collect site-specific information about the irrigation plots, the crops and the condition of the fields.

- Using the available information, make preliminary calculations of the nitrogen / water balance for each field (depending on data availability) and develop recommendations for additional data and information to be collected to complete the assessment (including providing recommendations for the ongoing operation

of the effluent application sites).

Following the preparation and submittal of the scope of work to the TCEQ, the ARCADIS-AWT team obtained and reviewed available information for both the plant farm (Site 1) and the Spraberry effluent application site (Site 2) and conducted a site visit to gather first hand information about the irrigation plots including the crops grown and the condition of the crops and fields. Recent shallow soil sampling data and wastewater / sludge sampling data were also provided by the City per the request of AWT. This data has also been reviewed and evaluated. Assessment of the available data indicates the following:

- Shallow soil sampling data and information obtained and reviewed to date for both Sites 1 and 2 indicate that available nitrogen in the shallow soils is very high based on the nitrate-N data for the plots for which data are available. Furthermore, the ammonia-N levels in the shallow soils have not been adequately determine which means that available nitrogen in the shallow soils has not been fully characterized.

- Actual effluent application rates for the irrigated areas are not known at this time. Rough estimates of the application rates can be made based on the specifications for each sprinkler (center pivot or side roll). However, actual application rates are needed in order to perform an adequate water balance and make recommendations regarding the application rates needed to accomplish a proper nitrogen balance in the shallow soils based on the crops that are grown.

PHASE 2 RECOMMENDED WORK

Based on the results of the work performed during Phase 1, consisting of review and assessment of the available data and information and observations made during the site visit that was conducted in late-September, 2011, it has become clear that additional data is needed to fully characterize the land application sites at both Sites 1 and 2 especially with respect to the amount of nitrogen in the soil and the effluent application rates for the irrigated plots. To better characterize both sites, it is recommended that the following additional data and information be collected:

- Irrigation system calibration by plot for both the Spraberry and Plant Farm sites;

- Soil nitrogen series (nitrate-N and ammonium-N), potassium and phosphorus for plots at both the Spraberry and Plant Farm sites; and

- Deep soil profile (to the water table) for selected plots at both the Plant Farm and the Spraberry site and the samples analyzed for nitrate-N, ammonia-N, potassium, phosphorus, specific conductance and chloride.

Additionally, elevated nitrate levels above the maximum contaminant level (MCL) have been found in the groundwater at various locations beneath the Spraberry site as discussed in the May 2010 groundwater assessment report for the Spraberry effluent application site and a subsequent letter dated May 31, 2011 addressing responses to

TCEQ inquiries about the current status of the groundwater assessment at the Spraberry effluent disposal system. Both documents discussed the potential for off-site migration of nitrate-impacted groundwater to the northeast, north and northwest into areas previously with limited groundwater (based on elevated nitrate levels found in MW-32, 33, 34, 35 and 41 and the direction of groundwater flow in the same direction). To assess off-site impact (if any) in this area, it was recommended that existing water wells (if any) within a half mile of the site boundary to the north be indentified and groundwater samples collected for nitrate analysis. Both documents also discussed the occurrence of nitrate-impacted groundwater in MW-28 and MW-42 which are located along the western boundary of the Spraberry effluent application site. The City of Midland owns the adjoining sections to the west (Sections 4, 9 and 16, Block 37, T-3-S, T&P Railway Company Survey) and it does not appear that nitrate-impacted groundwater in MW-28 and 42 extends beyond these sections onto private property. However, it was recommended that water wells in Sections 4, 9 and 16 be sampled and analyzed for nitrate to assess the lateral extent of groundwater impact.

The collection and evaluation of the data and information recommended above will facilitate and enable better characterization of the two effluent application sites. Upon characterization of the sites, the following items / information will be developed based on the results of the assessment:

- A report containing the results, conclusions and recommendations of the study;
- A crop management plan for the sites;
- A sampling and monitoring plan for soil, wastewater, sludge, weather data, reservoir levels, flow and plot specific applications; and
- A water / nitrogen balance model for ongoing operation of the effluent application sites.

Replacement of MW-22

Information provided by Mr. Johnny Womack at the Wastewater treatment plant indicates that MW-22 has not been sampled for the last three semiannual sampling events due to the fact that it has not had any water in it. The TCEQ wastewater permit requires that if a monitor well remains dry or inaccessible for an extended period of time whereby a water sample cannot be collected, the well should either be reworked or a new well drilled that will allow collection of a sample. MW-22 is located in the southeast corner of Section 13, Blk 37, T-3-S, T&P RR Co Survey and at the very southeast corner of the irrigated property. There are no suitable wells in the vicinity of MW-22 that can be used as a replacement well for MW-22. The closest monitor well in the area is situated 1,550 feet to the north and there are no other monitor wells in the vicinity.

Based on discussions with Mr. Womack and you, we have included construction of a replacement well for MW-22 in this scope of work.

Preparation and Submittal of Groundwater Elevation Maps with Future Semi-annual Groundwater Monitoring Reports

The TCEQ letter dated November 5, 2009, which contained TCEQ's comments following review of the City's Groundwater Monitoring Report for the September 9, 2009 sampling event, requires that the City submit a current groundwater elevation map with each future groundwater monitoring report. To comply with this requirement, ARCADIS can prepare the map for each sampling event along with a summary table with the water level data and provide them to the City for submittal to the TCEQ.

FURTHER DISCUSSION OF PHASE 2 TASKS

Further information regarding the Phase 2 tasks identified above (including collection of additional data for site characterization, off-site groundwater sampling at Site 2, construction of the replacement well for MW-22 and preparation of groundwater elevation maps for Site 2) is provided below. A work plan will be prepared that will contain detailed guidance and procedures for conducting the anticipated field activities consisting of irrigation system calibration, shallow and deep soil sampling, off-site groundwater sampling and MW-22 replacement.

Irrigation System Calibration

In order to determine actual delivery rates of wastewater to the irrigation plots, it is recommended that calibration tests be performed at selected representative center pivot and side roll systems. In view of irrigation system similarities for several center pivots and side rolls, it is recommended that 4 side rolls (2 at the plant farm and 2 at the Spraberry site) and 11 center pivots at the Spraberry site be tested as a minimum. We propose to develop the procedure for the tests based on *Field Calibration Procedures for Wastewater Application Equipment: Center Pivot and Stationary Sprinkler* (North Carolina State Cooperative Extension/NC State University). ARCADIS plans to perform the tests unless this is something that can be done by City personnel.

Shallow Soil Sampling for Analysis of Soil Nitrogen Series (nitrate-N and ammonium-N), Phosphorus and Potassium

The results of recent soil nitrogen series (nitrate-N and ammonia-N) sampling performed by the City (per request from AWT) were provided Mr. Johnny Womack for a number of plots at the Spraberry site. Due the variability of the results and the high amount of available nitrogen found in these samples, it is recommended that all of the plots be sampled and analyzed for nitrate-N, ammonium-N, potassium and phosphorus with low detection and reporting limits to allow for accurate detections. The plots for which shallow soil sampling is recommended and the sampling intervals are identified below.

Plant Farm – Site 1 (0-6" and 6-24" depths)

- Plots F, G, I, J, K, L, M, O and P.

The sample for each depth interval will consists of a composite sample of all subsamples collected at that depth interval for the specific plot. Subsamples will be collected based on the permit requirements of 10 – 15 subsamples per 80 acres for the plant farm. We anticipate the collection of at least 190 subsamples and 20 composite samples for the plant farm.

Spraberry – Site 2 (0-6", 6-18", 18-30" depths)

- Plots 2-3, 2-4, 3-1, 3-2, 3-4, 10-1, 10-2, 10-3, 10-4, 11-1, 11-2, 11-3, 11-4, 12-1, 12-1s, 12-2, 13-1, 13-2, 13-1s, 13-2s, 14-1, 14-2, 14-3, 14-4, 14-1s, 14-2s, 14-3s, 15-1, 15-2, 15-3, 15-1s and 15-2s.

As is the case for the Plant Farm, the sample for each depth interval will consists of a composite sample of all subsamples collected at that depth interval for the specific plot. Subsamples will be collected for the Spraberry site based on 10 – 15 subsamples per 80 acres which is similar to distribution at the Plant Farm. We estimate the collection of approximately 1,160 subsamples and 140 composite soil samples for the Spraberry site.

Deep Soil Sampling

Based on the analytical results (nitrate-N, TDS and chloride) for the latest set of monitoring well samples collected by in 2011 (for Sites 1 and 2) as well as the results contained in the 2010 groundwater assessment report for Site 2 coupled with the high amount of plant available soil nitrogen found in the root zone for several plots at both sites, it would be helpful to ascertain the movement and profile of these parameters below the root zone to the water table. As such, it is recommended that soil borings be advanced from the ground surface to the water table for a cross section of the plots at the Plant Farm and the Spraberry site. The plots recommended for deep soil borings are identified below.

- Plant farm – Plots F, K and M.

- Spraberry Site – Plots 2-3, 10-4, 12-1, 13-2 and 15-3.

The samples will be composited for each boring in four foot intervals until the water table is reached. For example, if the water table is reached at 17.5', then there would be composite samples for the following intervals, 0-4', 4-8', 8-12', 12-16' and 16-17.5'. These composite samples will be analyzed for ammonia-N, nitrate-N, potassium, phosphorus, specific conductance and chloride. We anticipate the collection of up to 20 composite soil samples from the deep soil borings for the plant farm and up to 25 composite soil samples for the Spraberry site.

Once the appropriate composite soil samples are collected from the soil borings they will be drilled about 5 to 10 feet into the upper part of the water table. If feasible, the holes will be temporarily cased and developed and a groundwater sample collected for analysis of nitrate-N, chloride, sulfate, total dissolved solids (TDS) and specific conductance. Upon collection of the groundwater samples, the temporary casing will be removed and the holes plugged with bentonite and/or cement.

Off-site Groundwater Sampling at the Spraberry Site

To assess off-site impact (if any) to the northeast, north and northwest into areas previously with limited groundwater, existing water wells (if any) within a half mile of the site boundary to the north will be indentified and groundwater samples collected for analysis of nitrate-N, chloride, sulfate, total dissolved solids (TDS) and specific conductance.

To assess the lateral extent of groundwater impact along the western boundary of the Spraberry site, water wells in Sections 4, 9 and 16, Block 37, T-3-S, T&P Railway Company Survey will be sampled and analyzed for nitrate-N, chloride, sulfate, total dissolved solids (TDS) and specific conductance.

MW-22 Replacement

As stated earlier, construction of a replacement well for MW-22 is necessitated by the permit requirements to allow for the ongoing collection of a groundwater samples in the vicinity of this well. MW-22 is located in the southeast corner of Section 13, Blk. 37, T-3-S, T&P RR Co Survey and at the very southeast corner of the irrigated property. The City owns the section directly to the south (Section 24) and the section to the southeast (Section 19, Blk. 36). We would recommend a location 100 to 200 feet to the north of MW-22 for a replacement well. If the City owns Section 19 (Block 36) to the south, a new monitor well located in the northwest corner of this section would probably work also. However, it should be noted that this whole area is very close to Johnson Draw and when it rains this area may be very difficult to access.

The replacement monitor well will be drilled to the top of the Triassic red beds and completed with 4-inch PVC casing, screen, gravel pack, cement, locking steel sleeve, etc. similar to the other existing monitor wells. The new well will be developed and disinfected then placed into service.

Preparation and Submittal of Groundwater Elevation Maps with Future Semi-annual Groundwater Monitoring Reports

As stated earlier, the TCEQ letter dated November 5, 2009 requires that the City submit a current groundwater elevation map with each groundwater monitoring report. To comply with this requirement, ARCADIS plans to obtain the necessary information from the City, prepare the map for each sampling event along with a summary table with the water level data and provide them to the City for submittal to the TCEQ.

Report Preparation

A report will be prepared containing the results of the work and assessment performed in Phases 1 and 2, the conclusions reached and recommendations for the proper ongoing management of the Plant Farm and the Spraberry site. The report will contain recommendations regarding grazing, effluent and sludge application, fertilizer application, development of plans for sampling (soil, sludge, effluent and plant tissue), crop management and a water / nitrogen balance model.

The report will also contain recommendations for addressing groundwater issues relating to potential off-site migration of groundwater impacted by nitrate along the northern and western boundaries of the Spraberry site.

Development of Crop Management Plan

Work in Phase 2 includes the development of a crop management plan for the effluent application sites. The crop management plan will set forth a plan for the City to use going forward to govern crop selection and management of those crops. It will address growing and harvesting requirements for crops, crop rotation plus sampling and monitoring requirements (including plant tissue sampling and crop yield).

Development of Sampling and Monitoring Plan

The results of Phase 1 work indicates that soil sampling and monitoring at the Plant Farm and the Spraberry site to meet the TCEQ permit requirements do not adhere to typical soil sampling recommendations (extension and university) for obtaining representative soil samples of the plots. Furthermore, the soil, sludge and effluent sampling parameters required in the TCEQ permit are not adequate for properly managing the Plant farm and Spraberry site.

Phase 2 work includes the development of a sampling and monitoring plan that will provide representative samples for each field, meets permit requirements and allows for proper management of the Plant Farm and Spraberry site. The sampling and monitoring plan will include soil, wastewater, sludge, crop tissue, weather data, reservoir levels, flow and plot specific applications.

Development of Water / Nitrogen Balance Model

Effluent and sludge applications at the Plant Farm and the Spraberry site should be governed by a water / nitrogen balance model in order to more appropriately meet crop seasonal water / nitrogen needs and to minimize the potential for nitrogen to move out of the crop root zone and into the underlying groundwater.

Included in the Phase 2 work is the development of a water / nitrogen balance model that the City will be able to use in determining weekly (or other appropriate interval) application rates on a plot specific basis.

Other Tasks

Other related Phase 2 work includes:

- Interactions and interfacing with the City regarding the recommendations contained in the report to arrive at agreed upon action items. This could include a face-to-face meeting in Midland with city personnel and a presentation by the ARCADIS-AWT team.

- Interactions and interfacing with the TCEQ regarding the action items determined at the conclusion of discussions with the City. This likely will consist of a face-to-face meeting in Austin with the TCEQ and a presentation by the ARCADIS-AWT team.

- Assist the City in the development of new permit language. This could include exchanges between the ARCADIS-AWT team, the City and the TCEQ to arrive at language that is workable for Midland and acceptable to the TCEQ.

- As appropriate, assist the City in the development of contract language for farming contracts at the Plant Farm and Spraberry.

- Associated travel.

WORK PLAN PREPARATION

As stated earlier, ARCADIS-AWT plans to prepare work plans containing detailed guidance and procedures for conducting the anticipated field activities consisting of the irrigation system calibration tests, shallow soil sampling, soil nitrate profiling to the water table, construction of replacement monitor well for MW-22 and off-site groundwater sampling.

SCHEDULE

ARCADIS-AWT plans to begin performance of the work in a timely manner contingent upon authorization by the City as wells as other factors such as drilling contractor availability, weather, etc. Due to the large number of subsamples that are required, the shallow soil sampling is expected to take several weeks to complete. We plan to begin this task in the latter part of January, 2012 assuming that the City Council approves the scope of work in early-January, 2012. The irrigation system calibration testing can begin once the logistics are worked out with the City. The installation of deep soils borings and the construction of the replacement well for MW-22 are planned following the shallow soil sampling. We anticipate completion of all the tasks (including the report, sampling and monitoring plan, crop management plan and water / nitrogen model) in approximately five months assuming no unforeseen circumstances arise.

BUDGET ESTIMATE FOR PHASE 2

A budget estimate for performing the scope of work outlined above has been prepared based on our approximation of the amount of time and material needed to complete the work. The cost estimate includes ARCADIS-AWT cost for labor and expenses to perform the planned activities and subcontractor costs (including drilling contractor, surveyor, analytical laboratory, equipment rental, field supplies, etc.), data compilation, analysis & evaluation, report preparation, water / nitrogen model development and preparation of plans (crop management and sampling). It also includes project planning, coordination and management activities (including work plan, HASP and QCP preparation) by ARCADIS.

The estimated costs for the tasks described above for which funds are being requested are summarized below:

- Irrigation system calibration testing..... $38,900.00
- Shallow soil sampling..... $87,000.00
- Deep soil sampling, temp MWs & MW-22..... $47,900.00
- Off-site groundwater sampling..... $7,000.00
- Data compilation, analysis & evaluation, etc..... $17,700.00
- Report preparation..... $12,900.00
- Develop crop management plan, sampling plan for soil, effluent, sludge, etc., water / nitrogen balance model and associated tasks..... $57,800.00
- Prepare & submit groundwater elev. maps (2012)..... $2,500.00
- Meetings..... $6,800.00
- Project management, coordination, budgeting, etc..... $9,100.00
- **Total Estimate..... $287,600.00**

The attached table shows a summary of personnel class, the labor rate range for a given personnel class and the estimated number of projected hours for the each personnel class and the project.

The actual cost to perform the above work may be more or less than this budget estimate depending on the actual amount of time and materials used and the actual work performed and other currently unplanned or unanticipated activities.

All work under this agreement will be performed under the supervision of a State of

Texas registered professional engineer, geoscientist and / or soil scientist who is experienced in groundwater, environmental and effluent application issues in west Texas and is knowledgeable of current TCEQ rules and requirements. The work will be performed in accordance with the terms of the Professional Services Agreement between ARCADIS, U. S., Inc. and the City of Midland.

Please review the scope of work, schedule and cost information and let us know if you have any comments or questions regarding this matter.

Very truly yours,

ARCADIS U. S., Inc.

Hugh B. Robotham

Hugh B. Robotham, P.E., P.G.
Project Manager

Steven P. Tischer

Steven P. Tischer, P.G.
Associate Vice President

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Stuart T. Purvis, Director of Utilities**

SUBJECT: **Approve the Execution of a Task Order Contract with Camp Dresser & McKee, Inc. and Appropriate Funds**

Purpose:

Consider a resolution approving the execution of a Task Order Contract with Camp Dresser & McKee, Inc. and appropriate funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Award amount is $466,912 from the Water and Sewer Fund.

Discussion:

This Task Order Contract is to cover costs to Camp Dresser & McKee, Inc. (CDM) in four areas. They are:

1. Resident project representative services for the Raw Water Project. This project is scheduled to last for 600 calendar days. During this time, inspection services will be required on-site to insure that the designs generated by the engineer and approved by the City are carried out correctly. This person will provide these services as well as acting to quickly resolve discrepancies between the engineer or the city and the contractor. The cost of this service is $261,912. This cost will be paid on a per hour rate based on actual hours worked.
2. Final services on the Midland WPP Improvements Project. CDM was contracted to perform construction support through March of 2011. This project will continue through December for this year. This cost is to cover their additional expenses. It is an additional cost of $12,000.
3. CDM support for the Raw Water Project. Additional items were added to this project that

required additional design services. This resulted in additional design fees of $72,000. CDM must also be contracted to provide construction services as well. These services include materials testing, review of submittals, and all services necessary for the timely and accurate completion of this project. This results in an additional cost of $138,000.

4. Application Engineering Services. CDM has acted as the system integrator for our computer control or SCADA system. As part of this activity, they will need to program additional data into our existing system as part of the Raw Water Project. This is an additional cost of $55,000.

To summarize:

	Cost
1.	$261,912.00
2.	$12,000.00
3.	$138,000.00
4.	$55,000.00
Total	$466,912.00

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT TASK ORDER WITH CAMP DRESSER & MCKEE INC, FOR PROFESSIONAL ENGINEERING SUPPORT SERVICES, AT AN ESTIMATED TOTAL COST OF $466,912.00; AND APPROPRIATING FUNDS

WHEREAS, the City Manager advertised a Request for Qualifications for professional engineering support services ("Professional Services"); and

WHEREAS, Camp Dresser & McKee Inc has agreed to perform said Professional Services for an estimated $466,912.00; and

WHEREAS, the Council finds that Camp Dresser & McKee Inc is qualified to perform said Professional Services; and

WHEREAS, the Council finds that the professional fees proposed by Camp Dresser & McKee 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 Council finds that Camp Dresser & McKee Inc provides professional services for a fair and reasonable price; and

WHEREAS, the Council finds it to be in the public interest to execute a professional services contract with Camp Dresser & McKee Inc as the most highly qualified provider for such 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 Mayor 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 Camp Dresser & McKee Inc for said Professional Services, said agreement being attached hereto as Exhibit "1" and incorporated herein for all legal purposes.

SECTION TWO. That the sum of $466,912.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Distribution System Pipelines Project (8758).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to Camp Dresser & McKee Inc for professional services pursuant to the terms of said Agreement in an amount not to exceed $466,912.00 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., 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

PROFESSIONAL SERVICES AGREEMENT TASK ORDER FOR PERFORMANCE OF ENGINEERING SERVICES

THIS AGREEMENT is made and effective the 11th day of January, 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City,"and CAMP DRESSER & MCKEE INC, hereinafter referred to as "Company."

ARTICLE I.
PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Company shall perform Professional Engineering Services as enumerated on the Scope of Work attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

ARTICLE II.
SERVICES TO BE PERFORMED

1. Company shall provide those services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

2. Company shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same types of projects. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A."

ARTICLE III.
FINANCIAL CONSIDERATIONS

City agrees to pay Company in an amount not to exceed $466,912.00 for the professional services described in Exhibit "A." City agrees to pay Company for Labor, Incidental Direct Costs and SubCompany Costs as set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out Labor fees for the month and those Incidental Direct Costs and SubCompany Costs described in Exhibit "A"incurred during the previous month. The City Manager or Interim City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. City in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV.
TERM

The term of this Agreement shall be from January 11, 2012, until January 10, 2014, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V.
TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party One Hundred Eighty (180) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice.

ARTICLE VI.
CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that any necessary engineering services shall be subcontracted by the Company.

ARTICLE VII.
OWNERSHIP AND CONFIDENTIALITY OF DOCUMENTS AND OTHER WORK PRODUCT

All reports, information and other data ("instruments of service"), given to, prepared or assembled by Company under this Agreement, and any other related documents or items shall become the sole property of City and shall be delivered to City, without restriction, except that Company may make copies of any and all instruments of service for its files. The City shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of Company, which consent shall not be unreasonably withheld.

ARTICLE VIII.
INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Company 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 Company 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 Company, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Company. No person performing any of the work and services described hereunder by Company shall be considered an officer, agent, servant or employee of 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. Company 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 Company's work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.

ARTICLE IX.
INSURANCE

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

Commercial General Liability (including Contractual liability):

-Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
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 Workers' Compensation coverage provided by Company shall inure to the benefit of employees injured during the course and scope of their employment by Company pursuant to this Agreement.

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

All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the City 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 City.

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

> ***"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Company 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."***

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

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

occurred basis (except workers compensation).

ARTICLE X.
ATTORNEY FEES

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

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

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

ARTICLE XI.
SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and

retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY**.

ARTICLE XII.
NO THIRD PARTY BENEFICIARIES

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.

ARTICLE XIII.
RELEASE

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

ARTICLE XIV.
GENERAL PROVISIONS

A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. Governing Law and Venue. 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.

C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice

by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City:	City Manager's Office P.O. Box 1152 Midland, Texas 79702
If to Company:	Camp Dresser & McKee Inc Attn: J. Dan Shannon, PE 777 Taylor Street, Ste. 1050 Fort Worth, Texas 76102

The parties hereto may change the above designated addresses by giving notice pursuant to the terms of this Section.

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.

F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

ARTICLE XV.
NOTICE OF ALLEGED BREACH: STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Company or his legal representative, shall give the City Manager, or any other reasonable official of the City,

notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-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 Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Company 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 Company that Company'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, Company's failure to comply with the requirements herein shall perpetually bar Company's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Company agrees that the requirements of this entire Agreement are reasonable.

ARTICLE XVI.
ASSIGNMENT

Company 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.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By:_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Company :
CAMP DRESSER & MCKEE INC

By: _____

Title: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____ _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of CAMP DRESSER & MCKEE INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2012

_____
Notary Public, State of Texas

_____
Printed Name

My Commission Expires:_____

L:\Contracts\Utilities\Task Order Ks.wpd\2012\PSA CDM Water Pressure Engineering.wpd

CDM

777 Taylor Street, Suite #1050
Fort Worth, Texas 76102
tel: 817 332-8727
fax: 817 332-6870

Exhibit "A"

December 27, 2011

Mr. Stuart Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, TX 79701

Subject: City of Midland
Water System Pressure Assessment and Improvements Project
Scope of Work Proposal for Additional Engineering Services
(Revision 1)

Dear Mr. Purvis:

Camp Dresser & McKee Inc. (CDM) is currently contracted with the City of Midland to perform distribution system modeling, design and construction services for the City's water supply system. The contract, as previously amended, includes the following current projects:

1. General Services during Construction for the Midland Water Purification Plant (WPP) Improvements Project.

2. General Services during Construction for the Airport and Paul Davis Wellfield Improvements Project.

3. Design and General Services during Construction for the Midland WPP Raw Water Project.

The City has requested CDM to provide resident project representative services for the Raw Water Project. Additionally, CDM has performed or will perform additional work for some of these projects that is beyond the current scope of our contract. CDM requests an amendment to our contract to cover the additional costs as described below:

RPR Services

The City has requested CDM to provide resident project representative (RPR) services for the construction phase of the Midland Raw Water Project. This project is scheduled to be substantially completed in 18 months with final completion in 20 months. CDM proposes to contract with the McCluskey Group to provide these RPR services. Richard McCluskey will be the onsite RPR, reporting to CDM. He has previously served as the RPR for the Water Purification Plant Improvements and Airport and Paul Davis Well Sites Improvements projects. These services include providing on-site project representation and construction

CDM

observation. CDM proposes to provide 18 months of RPR services initially, through substantial completion of the project. If the City desires additional services beyond this time, an amendment to the contract can be executed.

The McCluskey Group will bill $77/hour. This rate includes typical expenses. They will also invoice for mobilization and move-in costs, including filing permits, office-set up and job start-up costs; move-out costs, including demobilization and removal of materials from the jobsite; and for insurance. CDM requests additional funding for the RPR services as follows:

RPR Labor:	78 wks x 40 hr/wk x $77/hour	$ 240,240
Move-in Costs:		$ 1,500
Move-out Costs:		$ 1,500
Insurance:		$ 6,200
SubTotal:		**$ 249,440**
5% Markup:		**$ 12,472**
Total:		**$ 261,912**

Midland WPP Improvements Project

CDM was contracted to perform general services during construction through March 2011. Construction has been substantially completed, but it is anticipated that coordination of final punch list and warranty items will continue through the end of 2011. The additional coordination effort by CDM includes:

Labor:	72 hours	$ 10,000	
Expenses:		$ 2,000	
Total:			**$ 12,000**

CDM

Midland Raw Water Project

The Midland Raw Water Project includes design and services during construction at the Water Purification Plant (WPP), the Edgewood Booster Pump Station, and Lake Peggy Sue. The original contract was later amended to cover additional items. Since that time, additional scope items have been added, requiring additional design effort. The construction schedule and associated numbers of submittals for review have also increased. The additional scope items include the following:

- New roof structure for the Flocculator Drive Pit
- New ventilation system for the Flocculator Drive Pit
- Additional civil/sitework, including fencing replacement and fence curb
- Drain pipe modifications at the Wadley Tank
- Flow control valve and bypass piping for the Paul Davis pipeline at the WPP
- Ventilation improvements for the Polymer Building
- Addition of arsenic analyzers
- Additional instrumentation and control required for these improvements
- Additional structural design for these improvements
- Additional electrical design for these improvements

CDM requests additional funding to provide design for the additional items and general services during construction for this project. These costs are summarized below:

Labor:	480 hours	$ 72,000 (Design)
	240 hours	$ 36,000 (Construction)
Expenses:		$ 10,000
Materials Testing:		$ 20,000
Total:		**$ 138,000**

Applications Engineering Services

CDM has provided applications engineering services for the Water Purification Plant Improvements Project, the Airport and Paul Davis Wellfield Improvements Project, Edgewood Booster Pump Station Project, and the Northwest Elevated Storage Tank Project. Additional applications engineering services will be required to program the PLCs and plant

CDM

HMI for the Raw Water Project facilities for monitoring and control purposes. The costs associated with this additional scope of work are summarized below:

Labor:	300 hours	$ 48,000	
Expenses:		$ 7,000	
Total:			**$ 55,000**

A summary of the proposed engineering services fees for the additional scope of work is presented below:

1.	RPR Services for Raw Water Project	**$ 261,912**
2.	Midland Water Purification Plant Improvements Project	**$ 12,000**
3.	Midland WPP Raw Water Project	**$ 138,000**
4.	Applications Engineering Services for Raw Water Project	**$ 55,000**
	Total Fee	**$ 466,912**

Upon review of this proposal please let me know if you have any questions or comments. We appreciate the opportunity to continue our working relationship with you and your staff.

Sincerely,

J. Dan Shannon, P.E.
Project Manager
Camp Dresser & McKee Inc.

File: CO-1.0

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Stuart T. Purvis, Director of Utilities**

SUBJECT: **Approve the Funding of the Interlocal Agreement Between the City of Midland, the City of San Angelo and the City of Abilene as Approved on April 8, 2011and Appropriate Funds**

Purpose:

Consider a resolution approving the funding of the Interlocal Agreement between the Cities of Midland, San Angelo and Abilene as approved on April 8, 2011 and appropriate funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Award amount is $125,000 from the Water and Sewer Fund.

Discussion:

This project will fund the initiative with the cities of San Angelo and Abilene to develop long-term, sustainable water supplies for the City of Midland. The City of Midland will be responsible for 1/3 of the total cost of this effort. This is to include engineering and legal costs to identify and evaluate possible options with the final product being a path forward to provide water to the City for the next 100 years.

RESOLUTION NO.

RESOLUTION APPROVING THE FUNDING OF THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF MIDLAND, THE CITY OF SAN ANGELO AND THE CITY OF ABILENE AS APPROVED ON APRIL 8, 2011 REGARDING LONG-TERM WATER SUPPLIES; AND APPROPRIATING $125,000.00

WHEREAS, the City Council finds it to be in the public interest to approve the funding of the Interlocal Agreement between the City of Midland, the City of San Angelo and the City of Abilene as approved on April 8, 2011 and to appropriate $125,000.00 therefor;

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

SECTION ONE. That the funding of the Interlocal Agreement between the City of Midland, the City of San Angelo and the City of Abilene as approved on April 8, 2011 is hereby approved.

SECTION TWO. That the sum of $125,000.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Midland / Abilene / San Angelo Interlocal Agreement Project (8980).

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., 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:
THudson
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL / CITY MANAGER**

FROM: **Tommy T. Hudson, Deputy City Manager**

SUBJECT: **Appropriate reimbursed fees to project**

Purpose:

Consider a Resolution appropriating funds to Atmos RRM (Rate Review Mechanism) Project 8923

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Appropriate $25,000.00 to Project 8923.

These funds represent reimbursements from Atmos for consulting/legal fees associated with analysis of various Atmos GRIP and Rate Review Mechanism costs. Funds will be appropriated from the General Liability Self-Insurance Fund. There is no impact to General Fund.

Discussion:

The City is a member of the Steering Committee of Cities Served by Atmos West Texas ("Steering Committee"). Steering Committee membership includes almost all cities north of Midland-Odessa (except Lubbock and Amarillo, which have separate rates and services) served by the West Texas Division of Atmos Energy ("Atmos" or "Company").

The original project was funded by a $0.12 per capita fee assessed to the West Texas member cities. Those funds have been used to pay on-going legal fees associated with the various GRIP and RRM challenges. Funds being appropriated today are reimbursement of those fees and should be placed back into the project.

RESOLUTION NO.

RESOLUTION APPROPRIATING FUNDS FROM THE GENERAL LIABILITY SELF-INSURANCE FUND TO THE ATMOS RATE REVIEW MECHANISM PROJECT (8923) IN THE AMOUNT OF $25,000.00; 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

WHEREAS, the City is a member of the Steering Committee of Cities served by Atmos West Texas; and

WHEREAS, the Atmos Rate Review Mechanism (RRM) Project (8923) funds have been used to pay on-going consulting/legal fees associated with the various GRIP and RRM challenges; and

WHEREAS, the City Council finds it to be in the public interest to appropriate $25,000.00 to the Atmos RRM Project (8923) as reimbursement of consulting/legal fees;

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

SECTION ONE. That the sum of $25,000.00 is hereby appropriated from the General Liability Self-Insurance Fund to the Atmos RRM Project (8923).

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., 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

_____
Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City of Midland

CITY ATTORNEY'S OFFICE

Office Memorandum

DATE: January 3, 2012

TO: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, First Assistant City Attorney

SUBJECT: Termination of the Economic Development Agreement between the Midland Development Corporation ("MDC") and Sentry Pumping Units International, Inc. ("Sentry")

The City Attorney's Office represented the MDC's interests in regard to Sentry's default under the economic development agreement between the parties. Sentry has now repaid the MDC $100,000, which represents all funds owed to the MDC. The MDC approved termination of the agreement at its last meeting.

The proposed resolution approves the termination of the agreement between the MDC and Sentry.

If you have any questions about this matter, please do not hesitate to contact me or Keith Stretcher at 685-7253.

JO/lo

RESOLUTION NO.

RESOLUTION APPROVING THE TERMINATION OF THE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND SENTRY PUMPING UNITS INTERNATIONAL, INC.

WHEREAS, the Midland Development Corporation ("MDC") and Sentry Pumping Units International, Inc. ("Sentry") previously entered into an economic development agreement and an amendment thereto under which the MDC agreed to provide three (3) forgivable loans to Sentry in exchange for certain employment increases and capital investments to be made by Sentry; and

WHEREAS, Sentry is unable to meet its obligations under the agreement, as amended; and

WHEREAS, Sentry has repaid the MDC $100,000.00, which represents all funds owed to the MDC by Sentry pursuant to the terms of the agreement, as amended; and

WHEREAS, pursuant to a written request by Sentry, the MDC Board of Directors approved the termination of the agreement, as amended; and

WHEREAS, the City Council finds it to be in the public interest to approve the termination of said economic development agreement, as amended;

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

THAT the termination of the economic development agreement, as amended, between the Midland Development Corporation and Sentry Pumping Units International, Inc. is hereby approved.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 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:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker**

SUBJECT: **Z-11-046, Rodney Roberts**

Purpose:

Consider an ordinance on second reading on a request by Rod Roberts for a zone change from AE, Agriculture Estate District to LR-2, Local Retail District.

Recommended City Council Action

X Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No City funds are required to review this application.

Discussion:

This lot contains 3.3 acres, and is located at the northeast corner of Holiday Hill Road and Mockingbird Lane. It was platted with the original Green Hill Terrace subdivision in 1959. Upon annexation in 1980, it was zoned AE District, based upon the surrounding land uses. The owner is requesting a zone change to an LR-2 District for a potential retail use. The Comprehensive Plan recommends that retail zoning be located at the intersection of arterial streets. This lot meets this guideline. Additionally, Midland is experiencing growth in this general area. Approval of this request will provide convenient shopping opportunities for this growing neighborhood. The Planning and Zoning Commission recommended unanimous approval of this request, and no public opposition was noted. Mr. Roberts will construct a 6' fence with brick pilasters on 12-18' spacing matching the existing fence along the east side of Holiday Hill Road; this fence would be located on the east and north sides of the property and will be constructed at the time of development.

Attachments:
Proposed Ordinance

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker**

SUBJECT: **Z-11-046, Rodney Roberts**

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Rod Roberts for a zone change from AE, Agriculture Estate District to LR-2, Local Retail District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No City funds are required in association with this application.

Discussion:

This 3.3-acre lot is located at the northeast corner of Holiday Hill Road and Mockingbird Lane. It was platted with the original Green Hill Terrace subdivision in 1959. Upon annexation in 1980, it was zoned AE District, based upon the surrounding land uses. The owner is requesting a zone change to an LR-2 District for a potential retail use. The Comprehensive Plan recommends that retail zoning be located at the intersection of arterial streets. This lot meets that guideline. Additionally, Midland is experiencing growth in this general area and retail development is appropriate to serve this growth. The Planning and Zoning Commission recommended unanimous approval of this request and no public opposition was noted.

Attachments:
October 31, 2011 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 LOT 1, BLOCK 2, GREEN HILL TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTHEAST CORNER OF HOLIDAY HILL 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, and it shall be used as an LR-2, Local Retail District, said property being described as follows:

Lot 1, Block 2, Green Hill Terrace, City and County of Midland, Texas.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are

used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker**

SUBJECT: **Z-11-046, Rodney Roberts**

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Rod Roberts for a zone change from AE, Agriculture Estate District to LR-2, Local Retail District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No City funds are required in association with this application.

Discussion:

This 3.3-acre lot is located at the northeast corner of Holiday Hill Road and Mockingbird Lane. It was platted with the original Green Hill Terrace subdivision in 1959. Upon annexation in 1980, it was zoned AE District, based upon the surrounding land uses. The owner is requesting a zone change to an LR-2 District for a potential retail use. The Comprehensive Plan recommends that retail zoning be located at the intersection of arterial streets. This lot meets that guideline. Additionally, Midland is experiencing growth in this general area and retail development is appropriate to serve this growth. The Planning and Zoning Commission recommended unanimous approval of this request and no public opposition was noted.

Attachments:
October 31, 2011 P&Z Staff Report
Proposed Ordinance

Planning and Zoning Commission
Minutes
October 31, 2011

Z-11-046 - Hold a public hearing and consider a request by **Rodney Roberts** for a *zone change* from AE, Agriculture Estate District to LR-2, Local Retail District on Lot 1, Block 2, Green Hill Terrace, City and County of Midland, Texas. (Generally located northeast corner of the intersection of Holiday Hill Road and Mockingbird Lane.)

The applicant yielded to the staff. Planning Division Manager Cameron Walker stated that the property for the proposed retail district is located at the intersection of two arterial streets.

Chairman Carney opened the public hearing for those in favor to speak.

Richard Dunham, 4400 N. Big Spring, C-28, spoke in support of the rezoning request.

There being no one else wishing to speak in favor or in opposition, Chairman Carney closed the public hearing.

A motion for approval was made by Commissioner Ferguson; seconded by Commissioner Wolf. The motion carried by the following vote: AYE: Wolf, York, Gatten, Carney, Ferguson, Wilton and Watkins. NAY: None. ABSTAIN: None. ABSENT: Lanning and Woodruff

PLANNING AND ZONING COMMISSION

October 31, 2011

CASE: Z-11-046.

REQUEST: Hold a public hearing and consider a request for a zone change from AE, Agriculture Estate District to LR-2, Local Retail District.

APPLICANT: Rodney Roberts.

OWNER: Hemingway Holdings, LLC.

REPRESENTATIVE: Rodney Roberts.

LEGAL DESCRIPTION: Lot 1, Block 2, Green Hill Terrace, City and County of Midland, Texas.

LOCATION: Northeast corner of Mockingbird Lane and Holiday Hill Road.

DETAILS OF REQUEST:

1. The subject lot is part of the original Green Hill Terrace subdivision, which was approved by the County Commissioners Court in 1959. Upon annexation by the City Council in 1980, this land was zoned AE District, and has since remained vacant. Staff has received a request to rezone this 3.3-acre lot to an LR-2, Local Retail District.

SURROUNDING ZONING AND LAND USE:

2. This property is located at the intersection of two arterial streets. The lot is surrounded by AE District zoning, except for the northwest corner of the intersection, which was zoned FD District upon annexation in 2007. The areas to the north and east are developed with single-family homes; however, the lot sizes are much smaller than the minimum lot area of the AE District requirement of two acres. The AE District was chosen in 1980 because of the rural character of the area. A request for a zone change and preliminary plat for the land to the south is anticipated to be presented to the Planning Commission on November 14th.

ANALYSIS:

3. The Comprehensive Plan recommends arterial street intersections as the appropriate location for retail zoning. Arterial streets are best able to accommodate the higher traffic volume associated with retail uses. The location of this lot meets this criterion. This part of Midland is experiencing residential and non-residential growth what will create demand for retailers. We find this request to be appropriate.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from AE, Agriculture Estate District to LR-2, Local Retail District.

_____
Cameron Walker, AICP
Planning Division Manager
Department of Development Services

_____
Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: Z-11-046

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

RODNEY R. ROBERTS rodney@rodricproperties.com
Applicant Name (Phone/e-mail)

210 N. MAIN ST. MIDLAND, TX 79701
Address Zip Code

HEMINGWAY HOLDINGS LLC 432-687-1272
Property Owner Name (Phone/e-mail)

310 W. WALL SUITE 803, MIDLAND, TX 79701
Address Zip Code

KARL REITER, MANAGER 432-687-1272
Representative Name (Phone/e-mail)

310 W. WALL SUITE 803, 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. 5306 MOCKINGBIRD LANE
3.306 ACRES, BLK: 002, LOT: 601
ADDN: GREEN HILL TERRACE

PRESENT ZONE: AE REQUESTED ZONE: LR-2
(List by tracts if more than one district is requested)

Reason for Zone Change Request: INTENT TO DEVELOPMENT CONVENIENCE STORE & RETAIL CENTER.

Present Use of Property: VACANT

Proposed Use of Property: CONVENIENCE STORE & RETAIL CENTER

How will zone change affect the public health, safety and welfare? NO AFFECT

Describe how conditions affecting the property have changed since present zoning designation:
PROPERTY WAS VACANT SINCE PLATTING IN 1950's.
THE CITY HAS DOUBLED IN SIZE SINCE & GROWN TO PROPERTY.

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: 9-30-11

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 RODNEY R. ROBERTS who, being by me duly sworn, upon oath says: That (s)he is authorized by KARL REITER, 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)

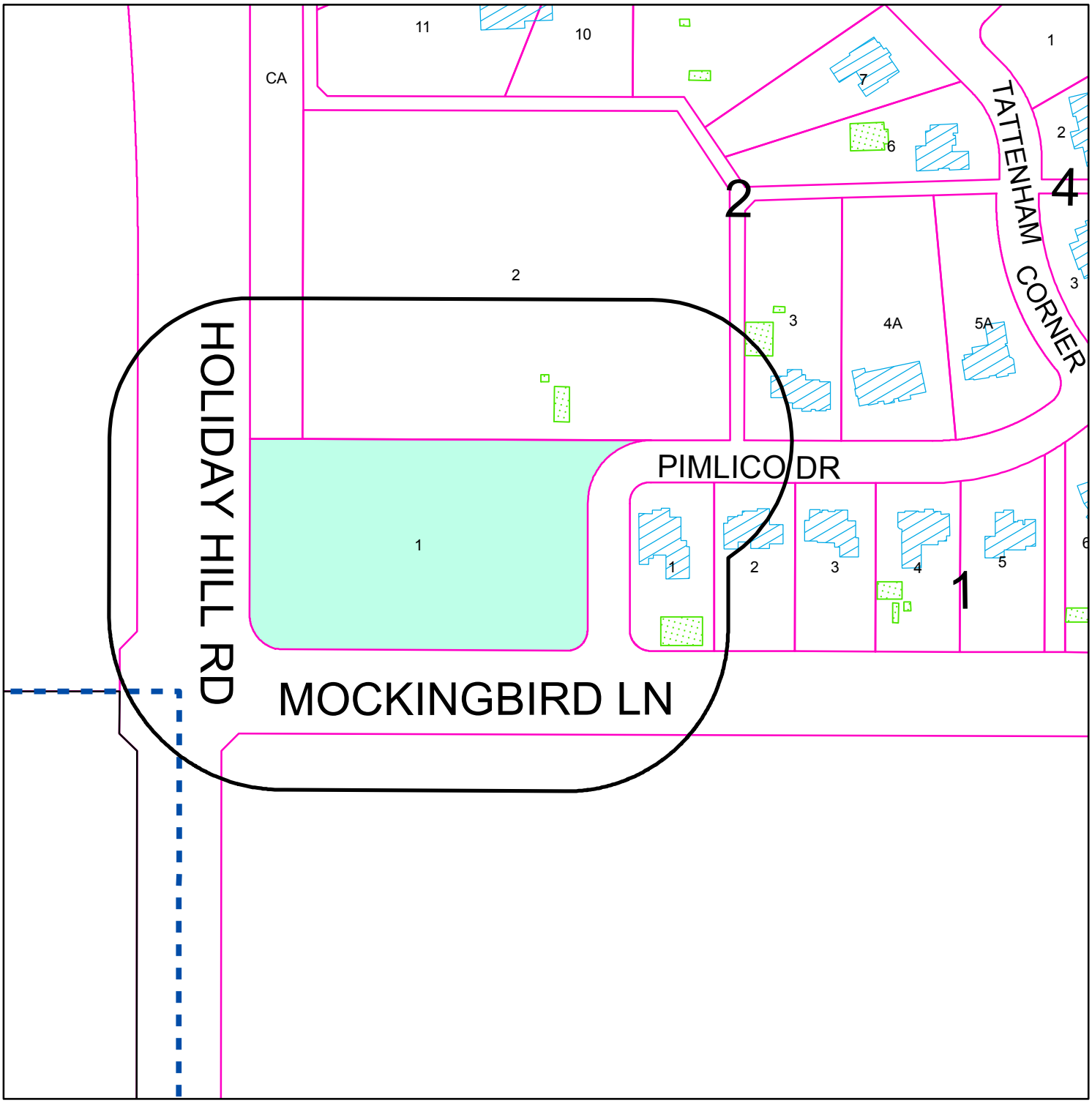
Subscribed and sworn to before me, this 30 day of September, 20 11, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: CW	Date: 9/30/11
Assigned: JV	
For: PZ	On: 10/31/11

RUBY ALVARADO
MY COMMISSION EXPIRES
July 14, 2014

****Application will not be considered for scheduling until reviewed by a planner.****



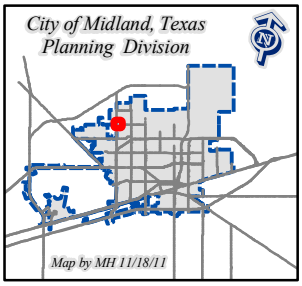
PROPERTY OWNER NOTIFICATION MAP

Z - 11 - 046 **Scale: 1" = 200'**

Consider a request for a zone change from AE, Agriculture Estate District, to LR-2, Local Retail District on Lot 1, Block 2, Green Hill Terrace, 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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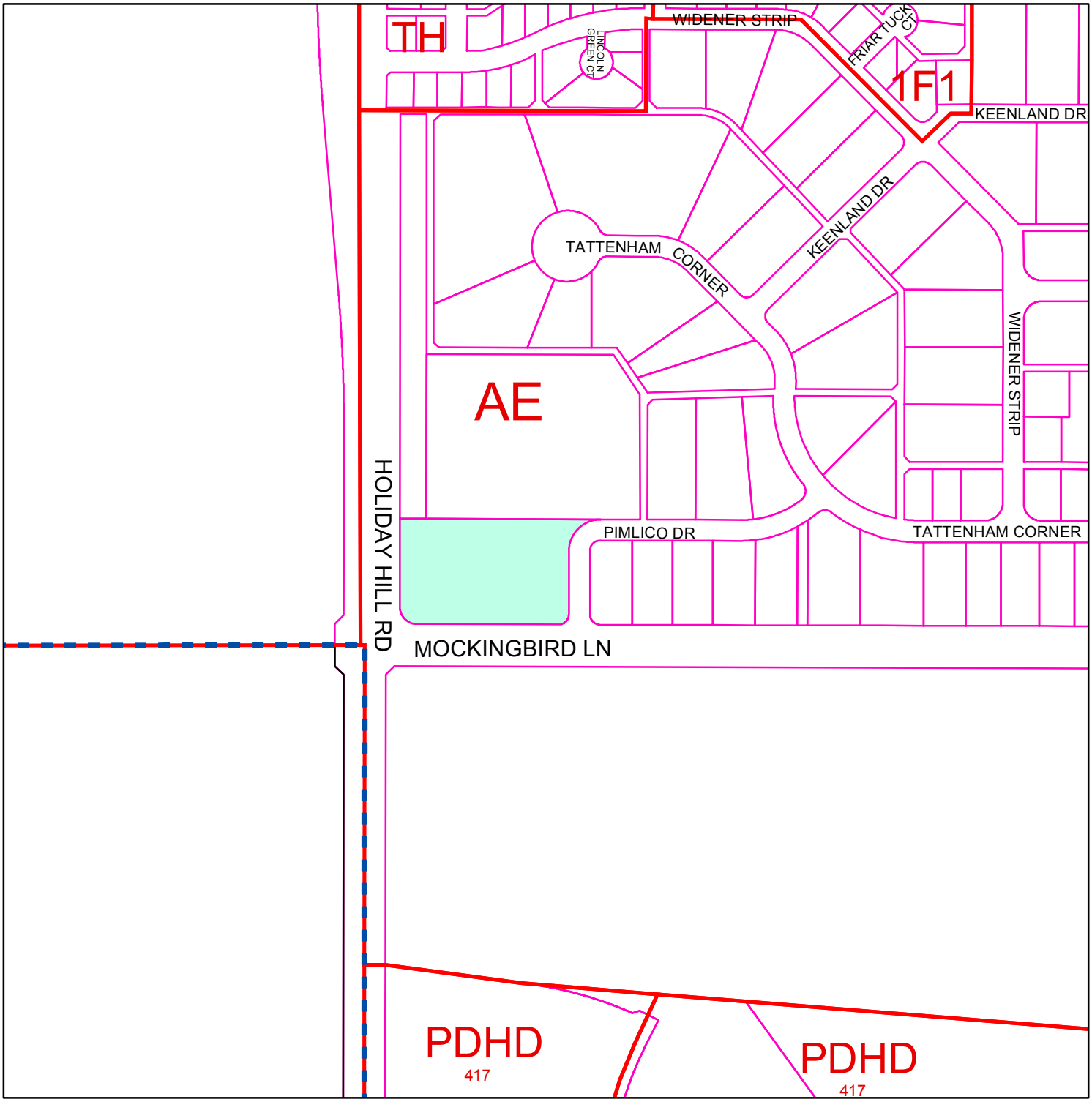


ZONING MAP

Z - 11 - 046 **Scale: 1" = 400'**

Consider a request for a zone change from AE, Agriculture Estate District, to LR-2, Local Retail District on Lot 1, Block 2, Green Hill Terrace, City and County of Midland, Texas.

LEGEND

ZONING — CITY PARCELS
CITY LIMITS — COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 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

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-047, Midland Bible Church**

Purpose:

This is the second reading to consider an ordinance on a request by Midland Bible Church for a zone change from PD, Planned District for a Housing Development, to a PD, Planned District for an Office Center. No changes have been made to this item since its first reading on December 13, 2011.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

Midland Bible Church is planning to construct a church 65 feet in height on 15.27-acres. The current Planned District is governed by 1F-1, One-Family Dwelling District regulations with a height limitation of 38 feet. The applicant's request to rezone to a Planned District for an Office Center, subject to O-2 regulations would permit the requested building use and height of 64'. Staff recommends this zone change, subject to development in accordance with Exhibits A & B, as the project is suitably fit for this neighborhood. With the church more than 200 feet from the road and the tiered design leading to its maximum height; the structure will appear modestly scaled on this large lot.

Attachments:

Maps
October 31, 2011 Planning & Zoning Commission Staff Report
Exhibit A – Site Plan
Exhibit B – Elevations
Proposed Ordinance

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-047, Midland Bible Church**

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Midland Bible Church for a zone change from PD, Planned District for a Housing Development, to a PD, Planned District for an Office Center.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

Midland Bible Church is planning to construct a church 65 feet in height on 15.27 acres of land. The current Planned District is governed by 1F-1, One-Family Dwelling District regulations with a height limitation of 38 feet. The applicant's request is to rezone to a Planned District for an Office Center, subject to O-2 regulations which would permit the desired building use and height of 64'. Staff supports this zone change, subject to development in accordance with Exhibits A & B, as the project would be suitably fit for this neighborhood. With the church more than 200 feet from the road and the tiered design leading to its maximum height; the structure will appear modestly scaled on this large lot.

Attachments:

Maps
October 31, 2011 Planning & Zoning Commission Staff Report

Exhibit A – Site Plan
Exhibit B – Elevations
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 LOT 1, BLOCK 4, MAYFIELD PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF WHITMAN DRIVE, APPROXIMATELY ½ MILE NORTH OF MOCKINGBIRD LANE); 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:

Lot 1, Block 4, Mayfield Place Addition, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this planned district shall be governed by O-2, Office District regulations.

2. That this property shall be developed in accordance with the site plan attached hereto as Exhibits "A" and "B" and incorporated herein.

3. That the future parking lot and/or the future church ministry building shown on Exhibit "A" shall be subject to administrative site plan review.

4. That, except as noted above, any subsequent changes to the attached site plan shall be approved prior to obtaining a building permit in the same manner as a zone change.

5. That the landscaping shall conform to City of Midland regulations in place at the time of development.

6. That a blanket refuse collection easement is granted to the City of Midland for access to and removal of waste from this property.

7. That the air conditioners and dumpsters shall be appropriately screened.

8. That all signage shall be in compliance with City of Midland regulations.

9. That City of Midland Ordinance No. 8444 is hereby amended by this ordinance.

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., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-047, Midland Bible Church**

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Midland Bible Church for a zone change from PD, Planned District for a Housing Development, to a PD, Planned District for an Office Center.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

Midland Bible Church is planning to construct a church 65 feet in height on 15.27 acres of land. The current Planned District is governed by 1F-1, One-Family Dwelling District regulations with a height limitation of 38 feet. The applicant's request is to rezone to a Planned District for an Office Center, subject to O-2 regulations which would permit the desired building use and height of 64'. Staff supports this zone change, subject to development in accordance with Exhibits A & B, as the project would be suitably fit for this neighborhood. With the church more than 200 feet from the road and the tiered design leading to its maximum height; the structure will appear modestly scaled on this large lot.

Attachments:

Maps
October 31, 2011 Planning & Zoning Commission Staff Report

Exhibit A – Site Plan
Exhibit B – Elevations
Proposed Ordinance

Planning and Zoning Commission
Minutes
October 31, 2011

Z-11-047 - Hold a public hearing and consider a request by **Midland Bible Church** for a *zone change* from PD, Planned District for a Housing Development to an Amended Planned District on Lot 1, Block 4, Mayfield Place Addition, City and County of Midland, Texas. (Generally located on the east side of Whitman Drive, approximately ½ mile north of Mockingbird Lane.)

The applicant yielded to the staff. Mr. Van Dyne explained that the requested zone change was for the purpose of constructing a 40,400 square foot church building on 15.27 acres in the north part of Midland. He stated that the purpose of the request is to allow a 65-foot tall church.

Chairman Carney opened the public hearing and there being no one wishing to speak in favor or in opposition to the item, closed the public hearing.

Following a brief discussion, a motion for approval, subject to Conditions A-H, was made by Commissioner Ferguson; seconded by Commissioner York. The motion carried by the following vote: AYE: Wolf, York, Gatten, Carney, Ferguson, Wilton and Watkins. NAY: None. ABSTAIN: None. ABSENT: Lanning and Woodruff

PLANNING AND ZONING COMMISSION

October 31, 2011

CASE: Z-11-047.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Housing Development, to a PD, Planned District for an Office Center.

APPLICANT: LCA.

OWNER: Midland Bible Church.

LEGAL DESCRIPTION: Lot 1, Block 4, Mayfield Place Addition, City and County of Midland, Texas.

LOCATION: Generally located at the east side of Whitman Drive, approximately ½ mile north of Mockingbird Lane.

CURRENT ZONING: PD, Planned District for a Housing Development.

ASSOCIATED CASE: Z-06-017.

DETAILS OF REQUEST:

1. This 15.27-acre property is being proposed for the location of a new building by Midland Bible Church. The current zoning will accommodate the use of this property for a church site, however, the maximum height for this Planned District is governed by its underlying zoning designation, 1F-1, One-Family Dwelling District, which allows a maximum height of 38 feet. The proposed church building has a maximum height of nearly 65 feet; therefore, the applicant requests a zone change to a PD, Planned District for an Office Center. A Planned District with an underlying zoning designation, O-2, Office District will accommodate both the use and the additional height of the church. Therefore, the purpose of this zone change is to allow for this new structure and adopt a site plan for a PD, Planned District for an Office Center.

SURROUNDING ZONING AND LAND USE:

2. This property is located on the east side of Whitman Drive, north of the Midland Classical Academy. West of Whitman Drive is a Planned District for a Housing Development that is built-out to about fifty-percent completion. North is an undeveloped AE, Agricultural Estates District, with an undeveloped 1F-1, One-Family Dwelling District to the east of the subject property.

ANALYSIS:

3. The underlying zoning for the property's proposed Planned District for Office Center is the O-2, Office District. Staff recommends this rezoning which will accommodate the proposed new structure and use while maintaining the property's suitability within the area by also requiring a site plan. At over 15 acres, we believe that this is a large enough area to stand on its own and should not be considered spot zoning.

SITE PLAN:

4. The proposed church is a 40,400 square foot building positioned near the center of the southern half of this 15.27-acre lot. This positioning of the building is to avoid a large pipeline easement running from the north to the east property line and a proposed drainage easement that will run west to east near the north property line (Exhibit A – Site Plan). The two parking lots planned for in this phase on the east and west sides of the building provide 203 parking spaces which is more than the current 182 spaces the facility requires. The phase two parking lot and future building to the north should be considered illustrative and any subsequent site plan will be subject to administrative review. The building façade is primarily a masonry veneer CMU block with angled metal roofing (Exhibit B – Elevations). With the church more than 200 feet from the road and the tiered design leading to its maximum height; the structure will appear modestly scaled on this large lot. HVAC units are roof mounted, but are appropriately screened for appearance and sound buffering.

5. Landscaping on the site is adequate in terms of tree-count given the number of current parking spaces proposed and the lot's street frontage. However, landscape regulations state that the placement of the trees attributable to the linear street frontage require that those trees are visible from the street. Landscaping should therefore be considered illustrative and staff will work with the developer to space/cluster the requisite number of trees along Whitman Drive as required by the landscaping code at the time of development.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from a PD, Planned District for a Housing Development, to PD, Planned District for an Office Center subject to the following conditions:

A. This Planned District shall be governed by O-2, Office District regulations;

B. Except as noted, this property shall be developed in accordance with Exhibits A and B;

C. Except as noted, any subsequent changes to the attached site plan must be approved prior to obtaining a building permit in the same manner as a zone change;

D. That the landscaping shall conform to City regulations in place at the time of development;

E. **That a blanket refuse collection easement is granted to the city for this site;**

F. **That the air conditioners and dumpsters shall be appropriately screened;**

G. **All signage must be in accordance with city regulations;**

H. **That Ordinance 8444 is amended by this action.**

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A – Site Plan
Exhibit B – Elevations

Case Number: Z-11-047

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: LCA

Address: 521 N. Texas Ave. 432-332-5058 lca@lcaodessa.com
Street Address (Phone/e-mail)
Odessa, Texas 79762
City State Zip Code

Property Owner: Midland Bible Church

Address: 2800 N. A. Street 432-684-9722
Street Address (Phone/e-mail)
Midland Texas 79705
City State Zip Code

Street address and Legal Description of Planned District (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description:

LOT 1, BLK. 4, MAYFIELD PLACE

Current PD Classification: PDHD

Requested PD Classification: ~~PDHD~~ PDOC
(List by tracts if more than one zoning district is requested)

Reason for amendment request: Amend height restriction to maximum of 65'

Describe how conditions affecting the property have changed since it was designated its present zone: Design development for building

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? ____ Yes X No

FEES:
Single, Planned District amendment: **$550**. Multiple, PD proposal: add **$75** per district.

SUBMITTALS:

16 copies of the PD site plan (FOLDED): _____

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 Joe M. Tucker, P.E. who, being by me duly sworn, upon oath says: That (s)he is authorized by Midland Bible Church 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.

Joseph M. Tucker
Authorized Agent (*signature*)

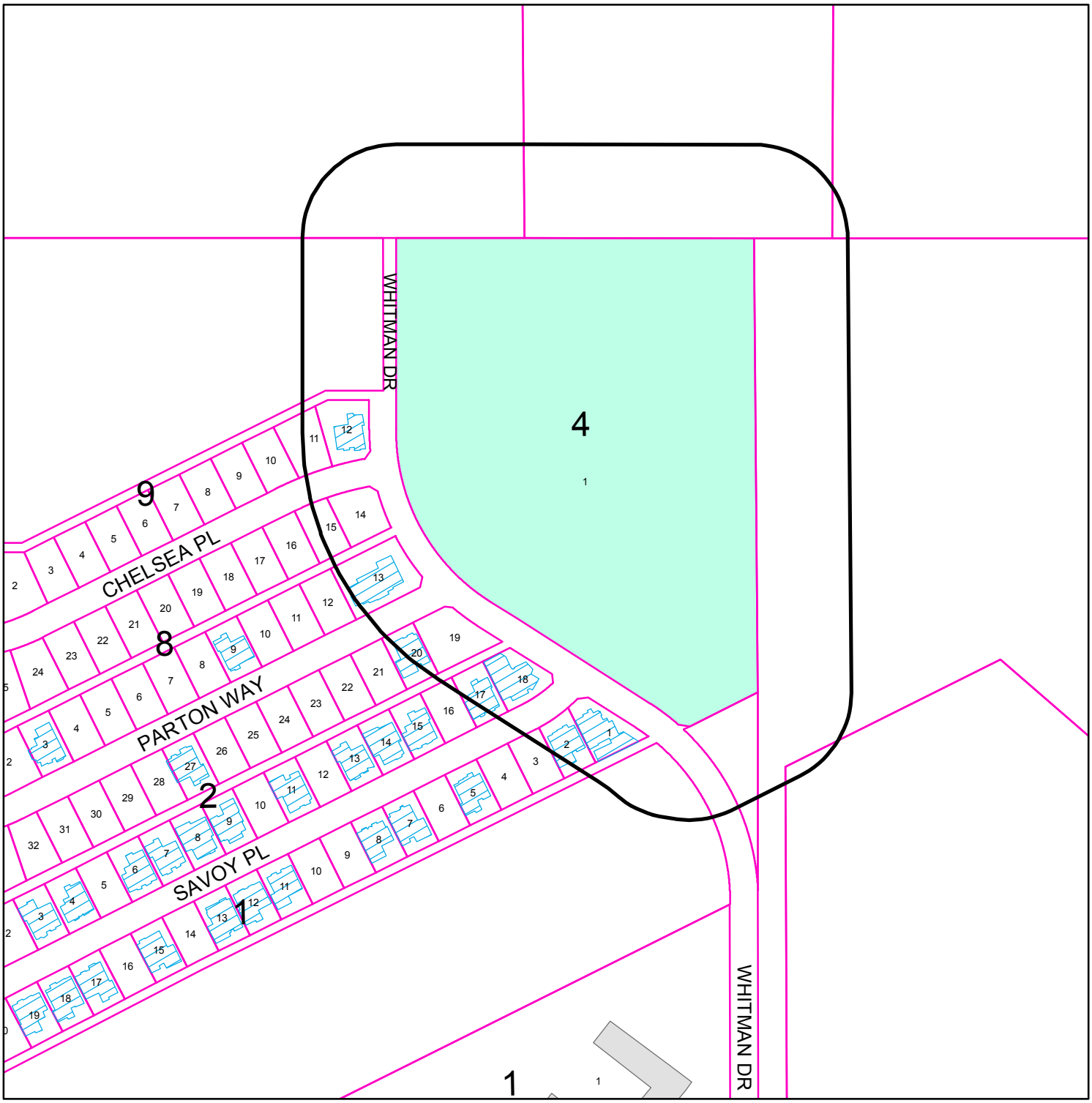
Subscribed and sworn to before me, this 30th day of September, 20 11, to certify ~~which witness my hand and~~ seal of office.

LENA ANN RENFRO
MY COMMISSION EXPIRES
July 1, 2012

Lena A. Renfro
NOTARY PUBLIC, ~~MIDLAND~~ COUNTY, TEXAS
ECOR

FOR OFFICE USE ONLY
Rec'd By: GW Date: 9/29/11
Assigned: KV
For: P+Z On: 10/31/11
CC 11/8/11

****Application will not be considered for scheduling until reviewed by a planner. ****



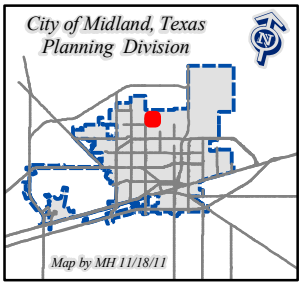
PROPERTY OWNER NOTIFICATION MAP

Z - 11 - 047 **Scale: 1" = 300'**

Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lot 1, Block 4, Mayfield Place Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS



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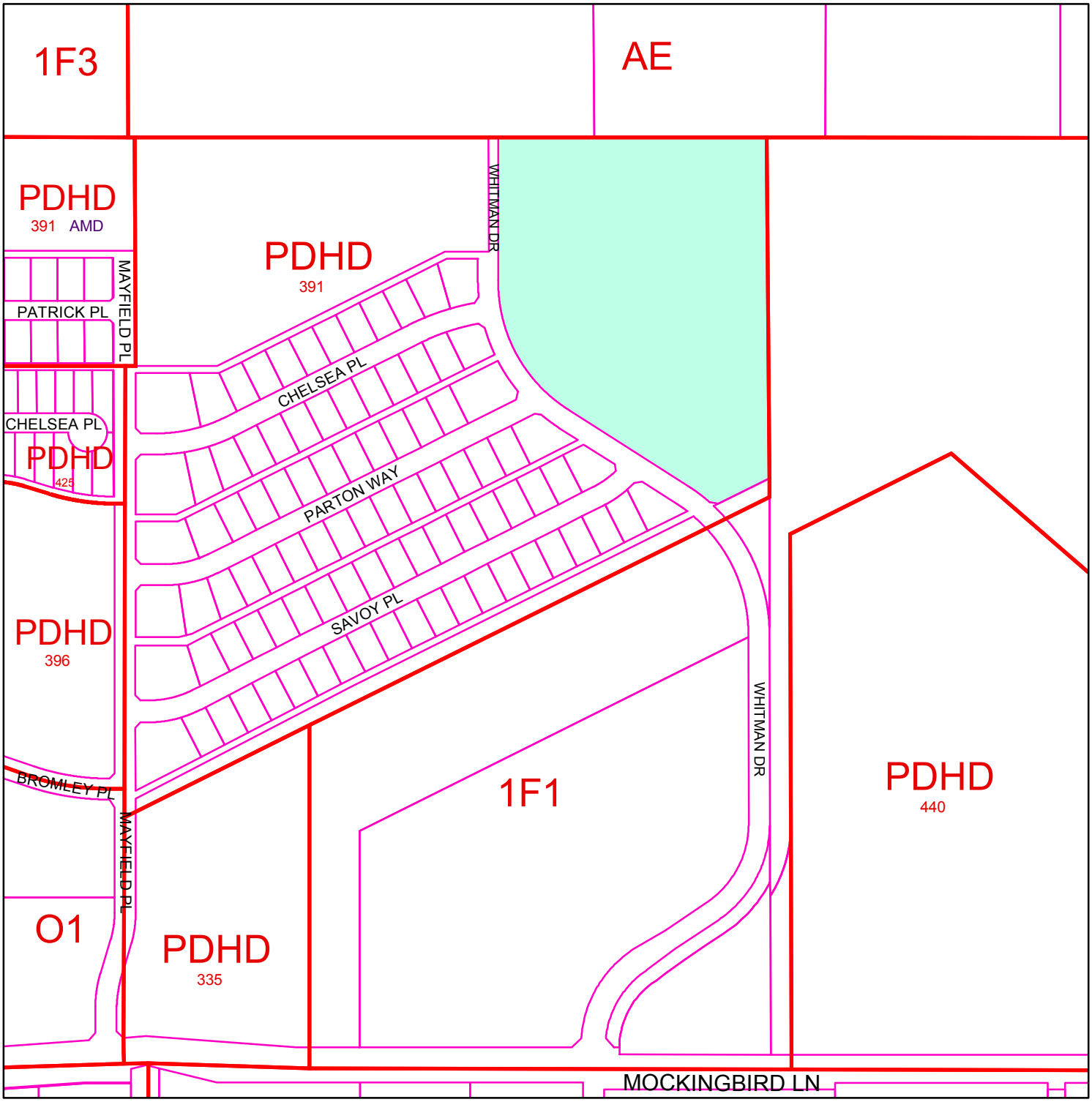
WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENE THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, SITING, OR OTHER DECISIONS BAS SOLELY ON THE INFORMATION CONTAINED HEREIN.



ZONING MAP

Z - 11 - 047 **Scale: 1" = 400'**

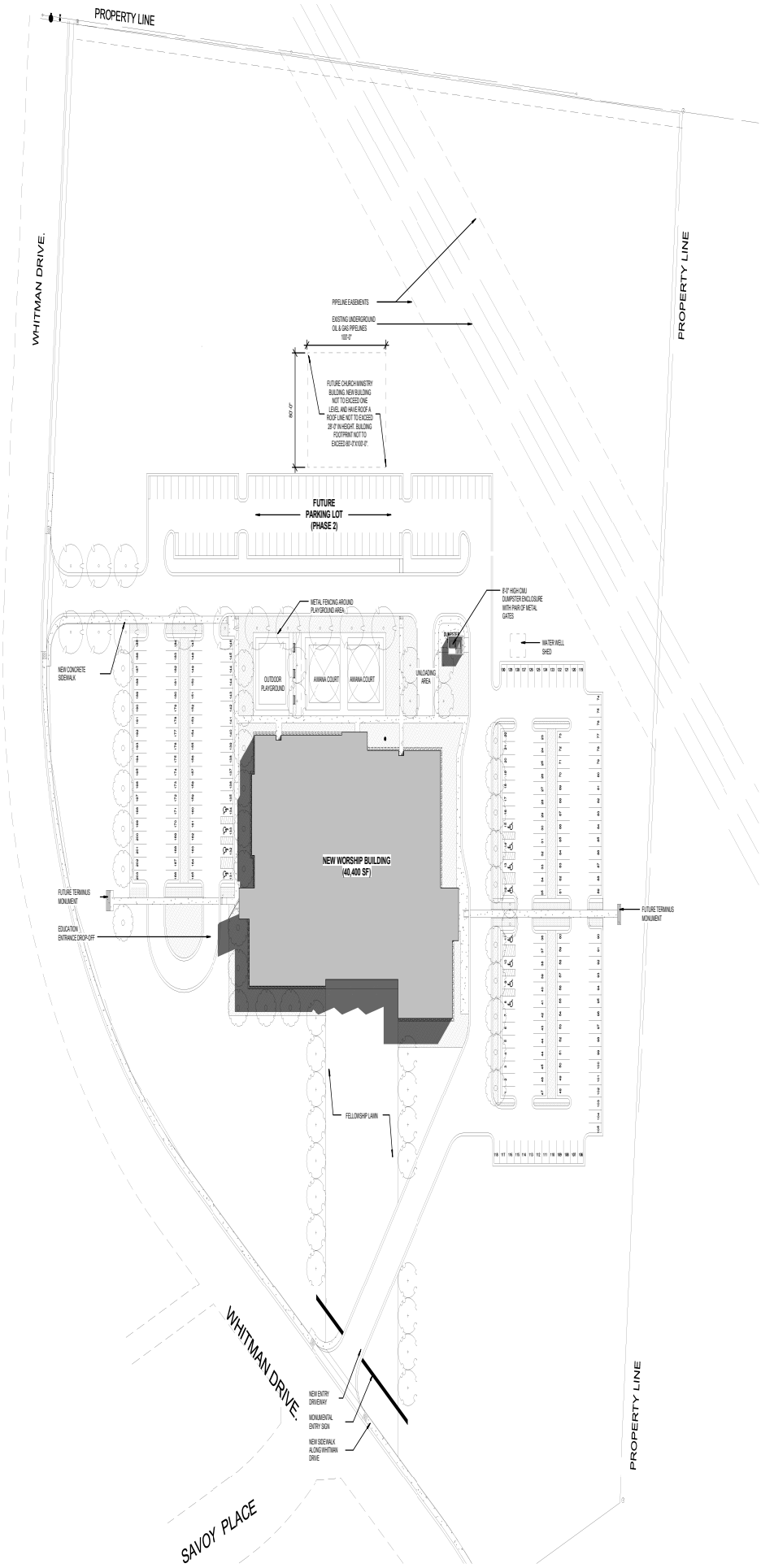
Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lot 1, Block 4, Mayfield Place Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 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



1 ARCHITECTURAL SITE PLAN 1" = 40'-0"

Midland Bible Church

Beck Architecture
1807 Ross Ave.
Suite 500
Dallas, TX 75201
214.303.4200
214.303.4300
www.beckarchitecture.com

RICHARD WALKER
STATE REGISTRATION #
10484

ARCHITECT SEAL 10.14.2011

CURRENT SUBMISSION:

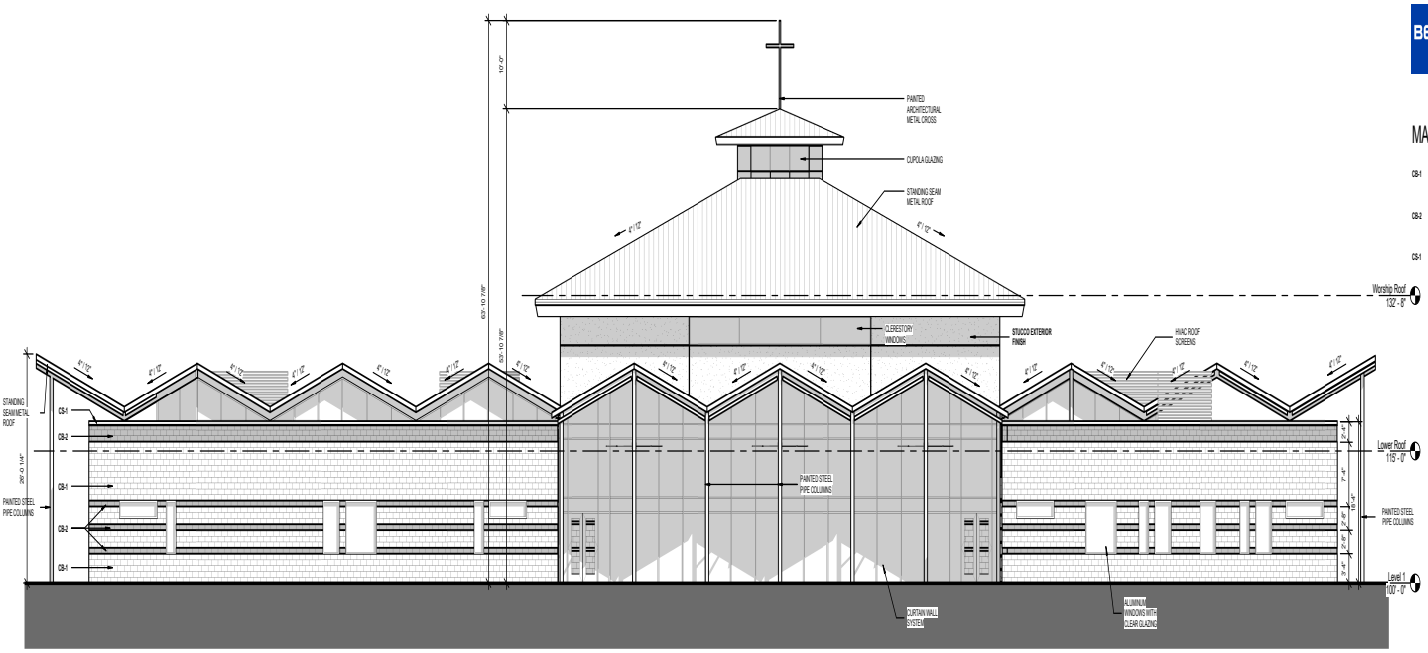
#	DATE	SUBMISSION

MIDLAND BIBLE CHURCH

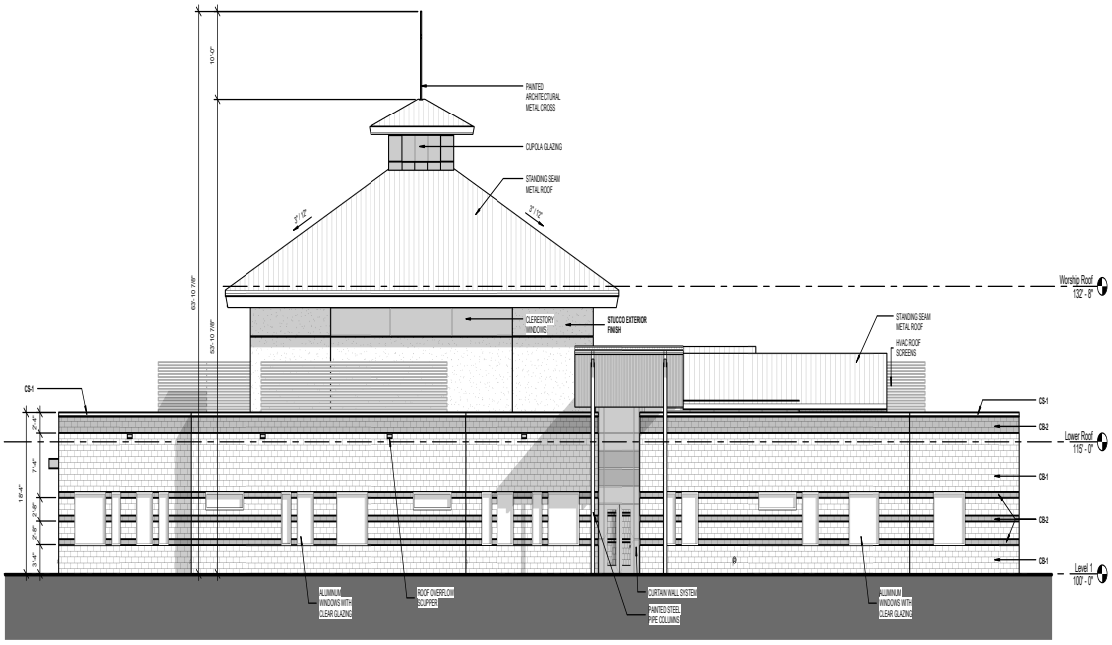
ARCHITECTURAL SITE PLAN

165987.1
JOB NO. 29.18

A1.00



2 SOUTH ELEVATION 1/8" = 1'-0"



1 WEST ELEVATION 1/8" = 1'-0"

mbc
Midland Bible Church

BECK

Beck Architecture
1807 Ross Ave.
Suite 510
Dallas, TX 75201
214.303.4200
214.303.4300
www.beckarchitecture.com

MATERIAL NOTES:

CS-1 INTEGRAL COLORED SPLIT-FACE MASONRY, 3-5/8" VENEER CMU BLOCK, RUNNING BOND COURSING, EQ. TO FEATHERLITE "TEXAS SHELL" COLOR

CS-2 INTEGRAL COLORED SMOOTH-FACE MASONRY, 3-5/8" VENEER CMU BLOCK, RUNNING BOND COURSING, EQ. TO FEATHERLITE "WESTERN GOLD" COLOR

CS-1 4" HIGH CAST STONE PARAPET CAP

RICHARD WALKER
STATE REGISTRATION #
10484

INCOMPLETE DOCUMENTS FOR INTERIM REVIEW ONLY. NOT FOR REGULATORY APPROVAL, PERMIT, OR CONSTRUCTION.

ARCHITECT SEAL 9/12/2011 9:36:39 AM

CURRENT SUBMISSION:

#	DATE	SUBMISSION
	03.03.11	Schematic Design
	05.20.11	Design Development
	09.07.11	Amended PD Submittal

MIDLAND BIBLE CHURCH

EXTERIOR ELEVATIONS

165987.
JOB NO. 29.19

A7.02

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-11-017, Gary Dawson**

Purpose:

Consider an ordinance on second reading on a request by Gary Dawson for a Specific Use Permit for an Accessory Building to be used as a Living and Sleeping Quarters.

Recommended City Council Action

X Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to consider this application.

Discussion:

Mr. Dawson owns a 20-acre lot on the west side of Elkins Road, one mile north of Business 20. The land is zoned AE District. He wishes to construct another residential structure; however, he does not wish to subdivide his lot at this time. Consequently, he has submitted this application. The accessory building (1,780 square feet) would not exceed 35 percent of the size of the residential structure, there is no vehicular access from the rear of the property, the residence would only be occupied by family members or guests and the property cannot be rented as a separate dwelling. The Planning and Zoning Commission recommended unanimous approval, and no opposition was expressed at that meeting. No changes have been requested regarding this zone change since first reading.

Attachments:
Proposed Ordinance

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-11-017, Gary Dawson**

Purpose:

Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Gary Dawson for a Specific Use Permit for an Accessory Building to be used as a Living and Sleeping Quarters.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this application.

Discussion:

Mr. Dawson owns a 20-acre lot on the west side of Elkins Road, one mile north of Business 20. The land is zoned AE District. He wishes to construct another residential structure on his property, however, he does not wish to subdivide his lot at this time. Consequently, he has submitted this permit request. The size of the proposed accessory building (1,780 square feet) would be less than 35% of the existing residential structure. There is no vehicular access from the rear of the property and the residence would only be occupied by family members or guests. Approval of this permit request would be conditioned upon the property not being utilized as a separate rental dwelling. The Planning and Zoning Commission recommended unanimous approval, and no public opposition was expressed at that meeting.

Attachments:
October 31, 2011 P&Z Staff Report
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 1, BLOCK 1, CAMELOT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ELKINS ROAD, APPROXIMATELY ONE MILE NORTH OF BUSINESS INTERSTATE 20), WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings and affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the health, safety and general welfare will be best served by the granting of a Specific Use Permit Without Term, set out hereinafter, subject to the special conditions and restrictions set out hereinafter on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned AE, Agriculture Estate District, to wit:

Lot 1, Block 1, Camelot Addition, City and County of Midland, Texas;

is hereby changed to permit same to be used under a Specific Use Permit Without Term for an accessory building to be used for living or sleeping quarters, together with the uses

permitted in an AE, Agriculture Estate District, subject to the following conditions:

1. That the accessory building shall be located as shown on Exhibit "A", which is attached hereto and incorporated herein.

2. That the accessory building shall not exceed 1,800 contiguous square feet in area.

3. That the use of the accessory building for living or sleeping quarters shall be limited to family members or guests of the occupant of the primary residence; the accessory building shall not be rented out as a separate residence or used for any commercial purpose.

4. That the applicant shall obtain all necessary permits from the City of Midland related to the construction of the accessory building.

SECTION TWO. 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 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 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., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-11-017, Gary Dawson**

Purpose:

Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Gary Dawson for a Specific Use Permit for an Accessory Building to be used as a Living and Sleeping Quarters.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this application.

Discussion:

Mr. Dawson owns a 20-acre lot on the west side of Elkins Road, one mile north of Business 20. The land is zoned AE District. He wishes to construct another residential structure on his property, however, he does not wish to subdivide his lot at this time. Consequently, he has submitted this permit request. The size of the proposed accessory building (1,780 square feet) would be less than 35% of the existing residential structure. There is no vehicular access from the rear of the property and the residence would only be occupied by family members or guests. Approval of this permit request would be conditioned upon the property not being utilized as a separate rental dwelling. The Planning and Zoning Commission recommended unanimous approval, and no public opposition was expressed at that meeting.

Attachments:
October 31, 2011 P&Z Staff Report
Proposed Ordinance

Planning and Zoning Commission
Minutes
October 31, 2011

S-11-017 - Hold a public hearing and consider a request by **Gary Dawson** for a *Specific Use Permit Without Term* for an accessory building for living or sleeping quarters on Lot 1, Block 1, Camelot Addition, City and County of Midland, Texas. (Generally located on the west side of Elkins Road, approximately 1 mile north of Business I-20.)

Mr. Compton explained that the applicant wishes to construct an additional small residence on the lot, that current zoning allows for only one residence on the lot, but the specific use permit will allow for the requested residence. He stated that an accessory building may not be rented as a separate living unit.

Chairman Carney opened the public hearing and there being no one wishing to speak in favor or in opposition to the item, closed the public hearing.

A motion for approval, subject to Conditions A-D, was made by Commissioner Watkins, seconded by Commissioner Gatten. The motion carried by the following vote: AYE: Wolf, York, Gatten, Carney, Ferguson, Wilton and Watkins. NAY: None. ABSTAIN: None. ABSENT: Lanning and Woodruff

PLANNING AND ZONING COMMISSION

October 31, 2011

CASE: S-11-017.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit, Without Term, for an Accessory Building for Living and Sleeping Quarters.

APPLICANT/OWNER: Gary Dawson.

LEGAL DESCRIPTION: Lot 1, Block 1, Camelot Addition, City and County of Midland, Texas.

LOCATION: West side of Elkins Road, approximately one mile north of Business I-20.

CURRENT ZONING: AE, Agriculture Estate District.

DETAILS OF REQUEST:

1. Mr. Dawson owns a 19.67-acre lot on the west side of Elkins Road. He wishes to construct another small residence on this lot. Since the AE District only allows one residence per lot, he is requesting a specific use permit to allow an accessory building that can be used for living and sleeping quarters. The accessory building is proposed to be 1,780 square feet in area, and is located as shown on the attached Exhibit A.

SURROUNDING ZONING AND LAND USE:

2. This lot is located on the west side of Elkins Road. The land on the east side is outside the City limit, and is generally vacant except of an oil well. The land to the north, west and south of this property is zoned AE District, and is generally vacant with the exception of the occasional pump jack. The nearest residence is over one-quarter mile from the applicant's home.

ANALYSIS:

3. The Planning and Zoning Commission has developed several policies that are helpful in reviewing applications for accessory buildings that are used as a living and sleeping quarter:

   A. The maximum floor area should not exceed 600 square feet, or 35 percent of the size of the principle residence, whichever is larger.

B. Vehicular access to the accessory building should not be allowed from the rear of the lot.

C. The specific use permit should delineate who is allowed to stay in the accessory building.

In addition to these policies, the Zoning Code prohibits the use of the accessory building as rental property.

4. The principle residence contains 6,250 square feet, while the accessory building is proposed to be 1,780 square feet, which represents 28 percent the principle residence. With no alley system serving this lot, all access to the accessory building must be through the front of the lot. The applicant indicates that the guesthouse will only be occupied by family members or guests, and he has been advised that it cannot be rented as a separate dwelling unit. We find that this application meets the policy guidelines and regulations of the Zoning Code. Further, there are no nearby residences that could be negatively impacted by approval of this request.

STAFF RECOMMENDATION:

We recommend approval of this request for a Specific Use Permit, Without Term, to allow an accessory building to be used as a living and sleeping quarters, subject to the following conditions:

A. That the accessory building shall not exceed 1,800 square feet in area.

B. That the accessory building shall be located in the location illustrated on Exhibit A.

C. That the accessory building may be occupied only by family members or guests of the owner. It may never be rented as a separate dwelling unit.

D. The owner shall obtain all of the necessary permits from the City of Midland related to the construction of the accessory building.

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: 5-11-017

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

GARY DOWSON — 432 352 5365
Applicant Name — Contact Phone #s

3201 ELKINS Rd — 79705
Address — Zip Code

E-Mail address: joshua.gd1977@yahoo.com

SAA — —
Property Owner Name — Contact Phone #s

— —
Address — Zip Code

E-Mail address: —

— —
Operator (if different from Applicant or Property Owner) — Contact Phone #s

— —
Address — Zip Code

Type of Permit: SPECIFIC USE ACCESSORY LIVING QUARTERS

SUP with Term: ____Yes ____No
(For Office Use)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)
3201 ELKINS Rd Lot 1 Blk. 1 CAMELOT SUB.

Current Zoning: AE

Maximum Floor Area: 1780 sq Ft. Max. Occupancy: 1 Adult

Proposed hours and days of use or operation: NA

Reason for request: Family or Friend. place to stay

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: NO NEIGHBORS within 1/2 mile property is 20 Ac in size this will be the ONE AND ONLY out building used as a living quarters

REQUIRED SUBMITTALS

1. Application fee: **$300.** (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.)
2. Site plan – 16 copies (FOLDED)
3. On a CD in .pdf and .jpg format.

SIGNATURES:

Applicant: _____ Date: 9/15/11

Property Owner: _____ Date: 9/15/11

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.

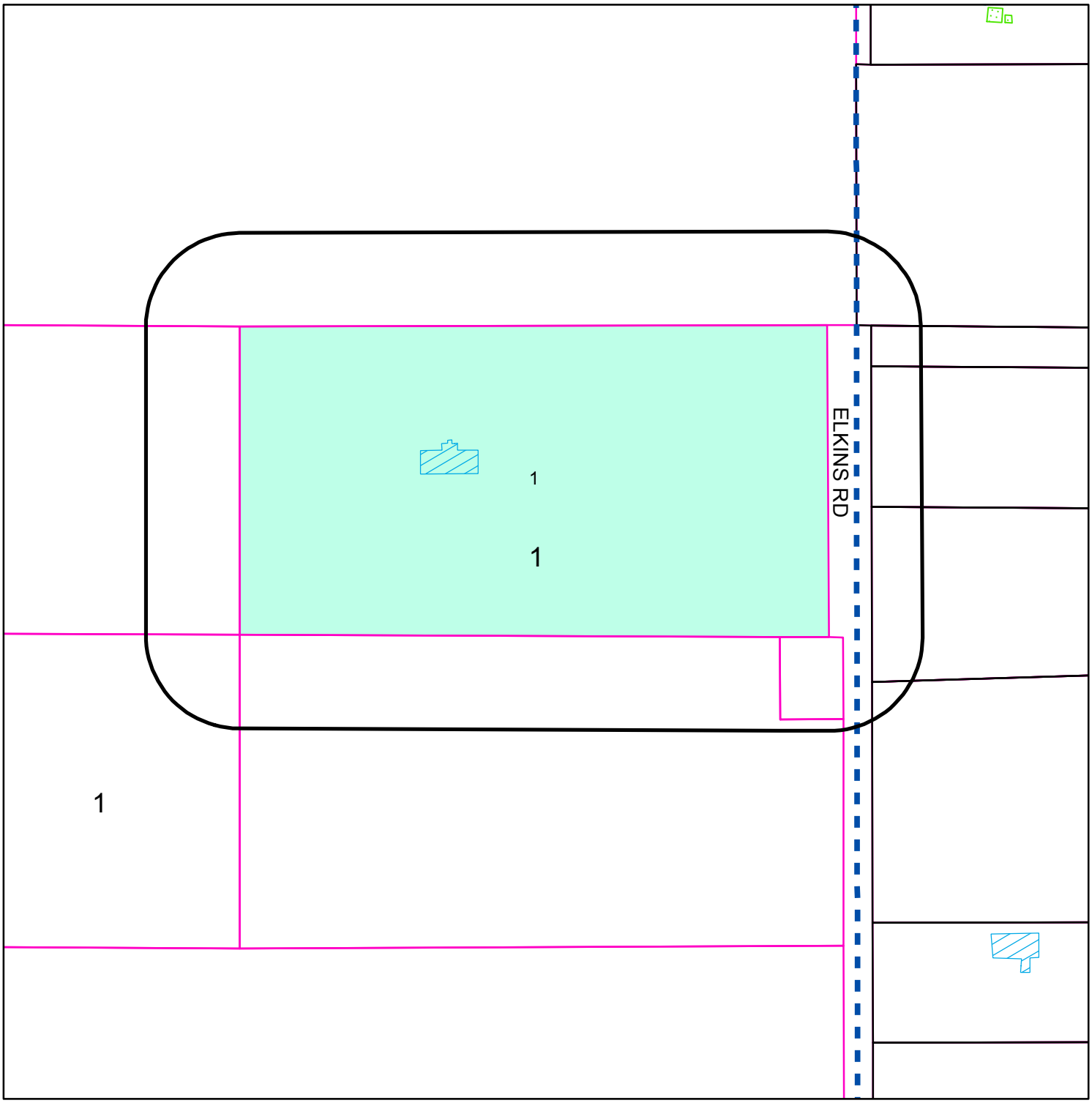
Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

Rec'd By: BCh Date: 09/16/11
Assigned: JC
For: P+Z On: 10/3/11

****Application will not be considered for scheduling until reviewed by a planner.****



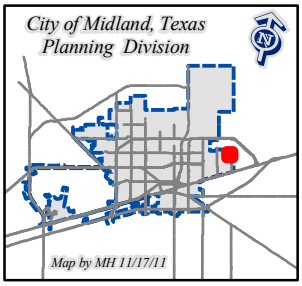
OWNER NOTIFICATION WITHIN CITY LIMITS ONLY

S - 11 - 017 **Scale: 1" = 300'**

Consider a request for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 1, Block 1, Camelot Addition, 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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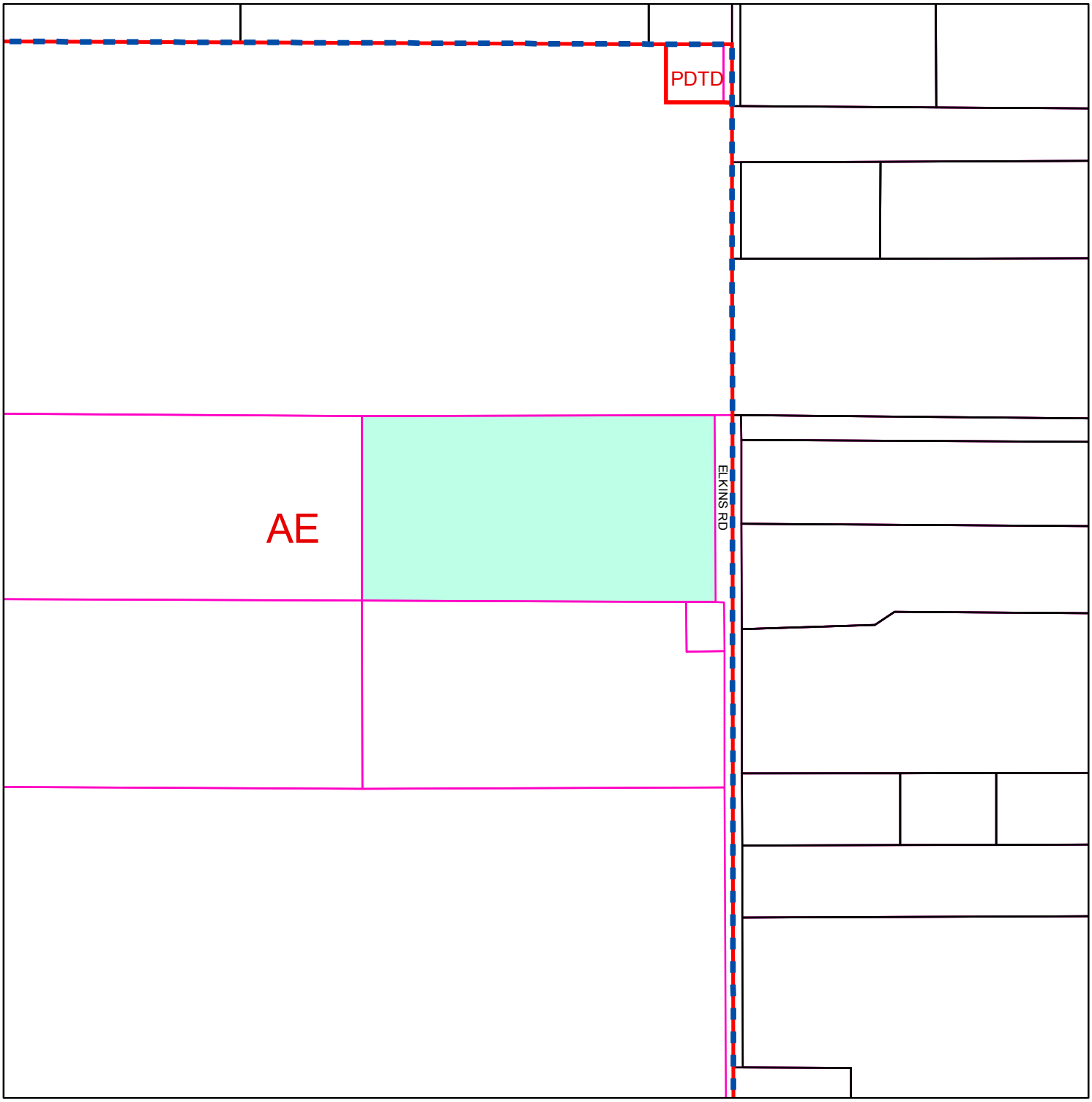
WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENE THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, SITING, OR OTHER DECISIONS BAS SOLELY ON THE INFORMATION CONTAINED HEREIN.



ZONING MAP

S - 11 - 017 **Scale: 1" = 500'**

Consider a request for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 1, Block 1, Camelot Addition, City and County of Midland, Texas.

LEGEND

ZONING | PARCELS | COUNTY PARCELS

CITY LIMITS | SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 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

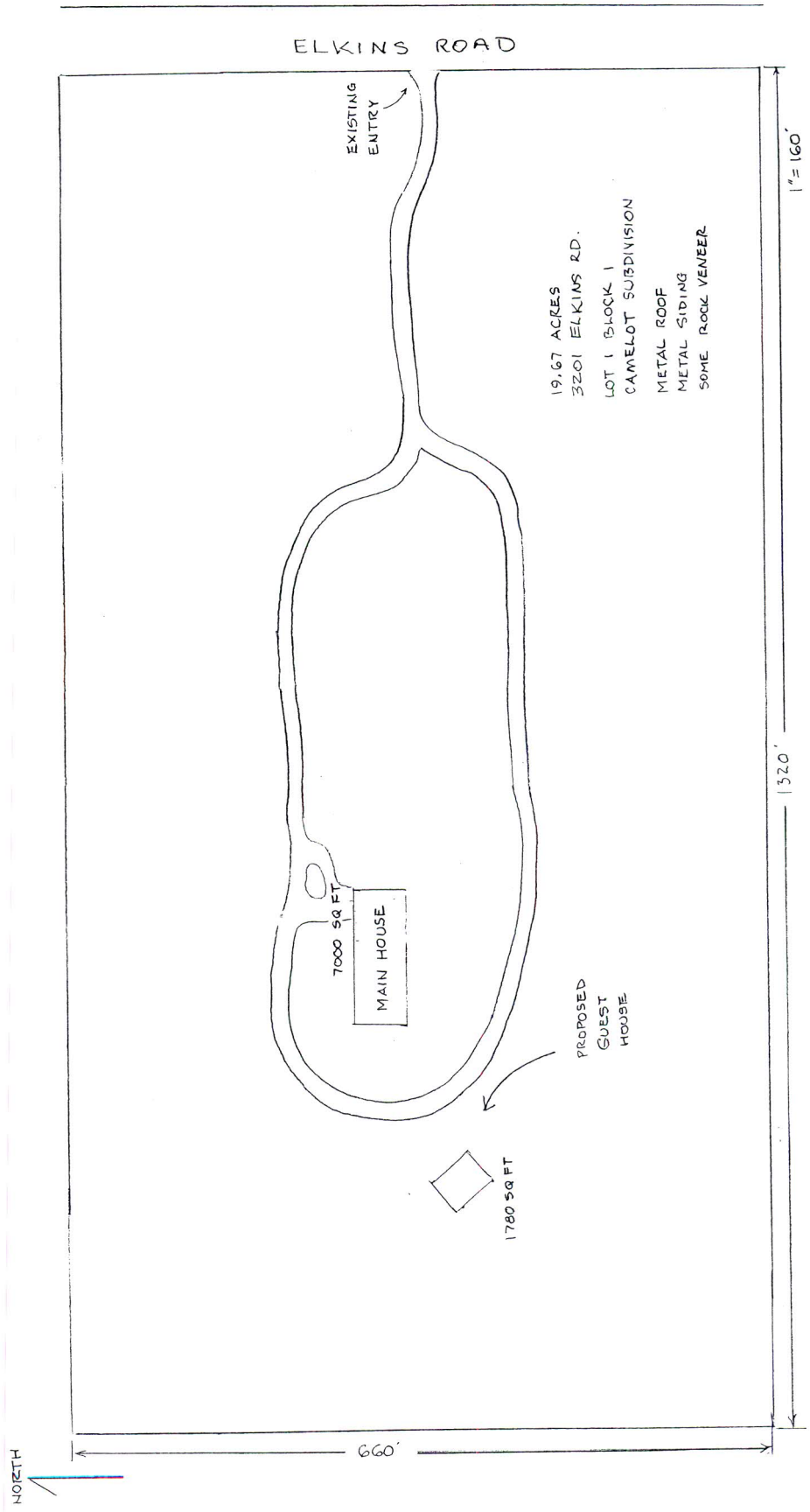


EXHIBIT A

S-11-017

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-11-018, Sonny Aguilar.**

Purpose:

This is the second reading to consider an ordinance on a request by Sonny Aguilar for a Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a lounge. No changes have been made to this item since its first reading on December 13, 2011.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

The applicant plans to renovate a vacant building for the purpose of opening a new lounge offering alcoholic beverages for on-premise consumption in addition to providing a full-service menu for food and other beverages in a 3,500 square area of the building and enclosed patio. Proposed hours of operation are Mondays through Saturdays 11:00 a.m. to 2:00 a.m. and Sundays 12 noon to 9:00 p.m., with a maximum occupancy of 240 persons. Staff concurs with the Planning & Zoning Commission that the proposal fits in with on-going efforts to revitalize the downtown.

Attachments:

October 31, 2011 Planning & Zoning Commission Staff Report
Proposed Ordinance
Two Letters of Opposition were rec'd (one person spoke against at P&Z)

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-11-018, Sonny Aguilar.**

Purpose:

Hold a public hearing at approximately 10:42 a.m. and consider an ordinance on a request by Sonny Aguilar for a Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a lounge on Lots 2 and 3, Block 27, Original Town, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of N. Colorado Street and W. Ohio Avenue.)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

The applicant plans to renovate a vacant building for the purpose of opening a new lounge offering alcoholic beverages for on-premise consumption in addition to providing a full-service menu for food and other beverages in a 3,500 square area of the building and enclosed patio. Proposed hours of operation are Mondays through Saturdays 11:00 a.m. to 2:00 a.m. and Sundays 12 noon to 9:00 p.m., with a maximum occupancy of 240 persons. The proposed name for Mr. Aguilar's business is "The Brass Munkey" (spelling correct as proposed). The Planning & Zoning Commission noted that this proposal fits with on-going efforts to revitalize the downtown. Staff concurs and is recommending approval.

Attachments:
October 31, 2011 Planning & Zoning Commission Staff Report
Proposed Ordinance
Two Letters of Opposition were rec'd (one person spoke against at P&Z)

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOTS 2 AND 3, BLOCK 27, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST OHIO AVENUE), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A LOUNGE FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned C-1, Central Area District, to-wit:

Lots 2 and 3, Block 27, Original Town, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premises consumption in a lounge, together with

the uses permitted in the present C-1, Central Area District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

A. That the maximum area of the lounge shall be 3,500 square feet and the maximum occupancy shall be 250 persons.

B. That all applicable provisions of the Building Code and Fire Code must be complied with prior to commencing business operations.

C. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through Saturday, 11:00 a.m. to 2:00 a.m. of the following day, and Sunday, 12:00 p.m. (Noon) to 9:00 p.m., unless otherwise prohibited by law.

D. That the operation of the lounge shall conform to all applicable laws established by the City of Midland and the State of Texas.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by

the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-11-018, Sonny Aguilar.**

Purpose:

Hold a public hearing at approximately 10:42 a.m. and consider an ordinance on a request by Sonny Aguilar for a Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a lounge on Lots 2 and 3, Block 27, Original Town, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of N. Colorado Street and W. Ohio Avenue.)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

The applicant plans to renovate a vacant building for the purpose of opening a new lounge offering alcoholic beverages for on-premise consumption in addition to providing a full-service menu for food and other beverages in a 3,500 square area of the building and enclosed patio. Proposed hours of operation are Mondays through Saturdays 11:00 a.m. to 2:00 a.m. and Sundays 12 noon to 9:00 p.m., with a maximum occupancy of 240 persons. The proposed name for Mr. Aguilar's business is "The Brass Munkey" (spelling correct as proposed). The Planning & Zoning Commission noted that this proposal fits with on-going efforts to revitalize the downtown. Staff concurs and is recommending approval.

Attachments:
October 31, 2011 Planning & Zoning Commission Staff Report
Proposed Ordinance

Two Letters of Opposition were rec’d (one person spoke against at P&Z)

Planning and Zoning Commission
Minutes
October 31, 2011

S-11-018 - Hold a public hearing and consider a request by **Sonny Aguilar** for a *Specific Use Permit with Term* for the sale of all alcoholic beverages, for on-premises consumption, in a lounge, on Lots 2 and 3, Block 27, Original Town, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of N. Colorado Street and W. Ohio Street.)

The applicant yielded to the staff. Mr. Van Dyne explained the request to sell alcoholic beverages in a lounge, stating that the applicant wishes to renovate a two-story building located near Colorado and Ohio.

Chairman Carney opened the public hearing for those in favor to speak.

Gloria Salazar, 2504 Candle Tree Cove, spoke in favor of the request, stating that she believed this business to be in line with the entertainment aspect for the revitalization of downtown.

There being no one else wishing to speak in favor, Chairman Carney asked for anyone in opposition to speak.

Jerri Hawley, 1801 W. Texas, stated that this building is across the street from the historic original Midland Hospital and felt that this type of business would devalue the property.

The applicant, Sonny Aguilar, 4120 Springfield Court, spoke in favor of the request, stating that the name of the restaurant will be "The Brass Munky".

There being no one else wishing to speak either in favor or in opposition, Chairman Carney closed the public hearing.

A motion for approval was made by Commissioner Ferguson, seconded by Commissioner Gatten. The motion carried by the following vote: AYE: York, Gatten, Carney, Ferguson, Wilton and Watkins. NAY: None. ABSTAIN: Wolf. ABSENT: Lanning and Woodruff

PLANNING AND ZONING COMMISSION

October 31, 2011

CASE: S-11-018.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a Lounge.

APPLICANT: Sonny Aguilar.

OWNER: Maria Chavez.

LEGAL DESCRIPTION: Lots 2 and 3, Block 27, Original Town, City and County of Midland, Texas.

LOCATION: Generally located near the southwest corner of the intersection of N. Colorado Street and W. Ohio Avenue.

CURRENT ZONING: C-1, Central Area District.

DETAILS OF REQUEST:

1. The applicant plans to open a lounge offering alcoholic beverages for on-premise consumption in addition to providing a full-service menu for food and other beverages in a 3,500 square area of the proposed building and enclosed patio. Proposed hours of operation are Mondays through Saturdays 11:00 a.m. to 2:00 a.m. and Sundays 12 noon to 9:00 p.m., with a maximum occupancy of 240 persons.

SURROUNDING ZONING AND LAND USE:

2. The proposed building and the surrounding area is zoned C-1, Central Area District. Located on N. Colorado Street just south of W. Ohio Avenue, this building is currently vacant as is the adjacent building to the north. The other adjacent building has the active business, Reynolds Brothers Reproduction, positioned to the south. Immediately behind the subject property is Johnny's Barbecue with its frontage on Big Spring Street. Other properties in the area include a bank across the intersection to the northeast and there are a number of offices and surface parking lots within the area.

ANALYSIS:

3. The request is to sell alcoholic beverages at this downtown building, which would require redeveloping a vacant structure for this proposed use. The lot offers very little on-site parking; however, there are no minimum parking spaces required in the C-1, Central Area District. Staff concurs that the proposal fits in with on-going efforts to revitalize the downtown. Additionally, while the basis of this request is for the sale of alcohol, the applicant's plans to offer a full-service food menu which would provide another offering to the selection of restaurants currently within walking distance for downtown office workers.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a Specific Use Permit with Term for the sale and on-premise consumption of alcoholic beverages in a Lounge, subject to the following conditions:

A. That the maximum area of the Lounge shall be 3,500 square feet and the occupancy shall be 250 persons;

B. All applicable Building and Fire Codes must be met prior to business operations;

C. That the days and hours of alcoholic beverage sales and consumption shall not exceed the following: Mondays through Saturdays 11:00 a.m. to 2:00 a.m. and Sundays 12 noon to 9:00 p.m.;

D. That the operation of the Lounge shall conform to all laws established by the City of Midland and the State of Texas.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Site Plan – Exhibits A & B
Maps

Case Number: S-11-018

CITY OF MIDLAND
Planning Division

APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISE CONSUMPTION

Sonny Aguilar — 432-352-6386 sonnyaguilar22@gmail.com
Applicant Name — Phone/e-mail

P.O Box 7747 — 79708
Address — Zip Code

Maria Chavez
Property Owner Name — Phone/e-mail

Address — Zip Code

Operator (if different from Applicant or Property Owner) — Phone/e-mail

Address — Zip Code

Type of Business: Lounge Restaurant
(Restaurant, Bar, Lounge, Nightclub, etc.)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, name, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)
~~32~~ 319 N Colorado BLK: 027, Lots: 002 + 3, ADDN: Original Town

Current Zoning: C1

Max. Floor Area: 3500 sq ft Seating Capacity: 240

Proposed hours and days of alcoholic beverage sales: Mon-Sat 11-2Am
Sun Noon-9Pm

Reason for request: To have a full service menu of food & Beverage

REQUIRED SUBMITTALS

1. Application fee: **$300** ✓.

2. Site plan – 16 copies (FOLDED) ✓.
3. On a CD in .pdf and .jpg digital format ✓.

SIGNATURES:
Applicant: _____ Date: 9-28-11
Property Owner: Maria Chang Date: 9-28-11

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

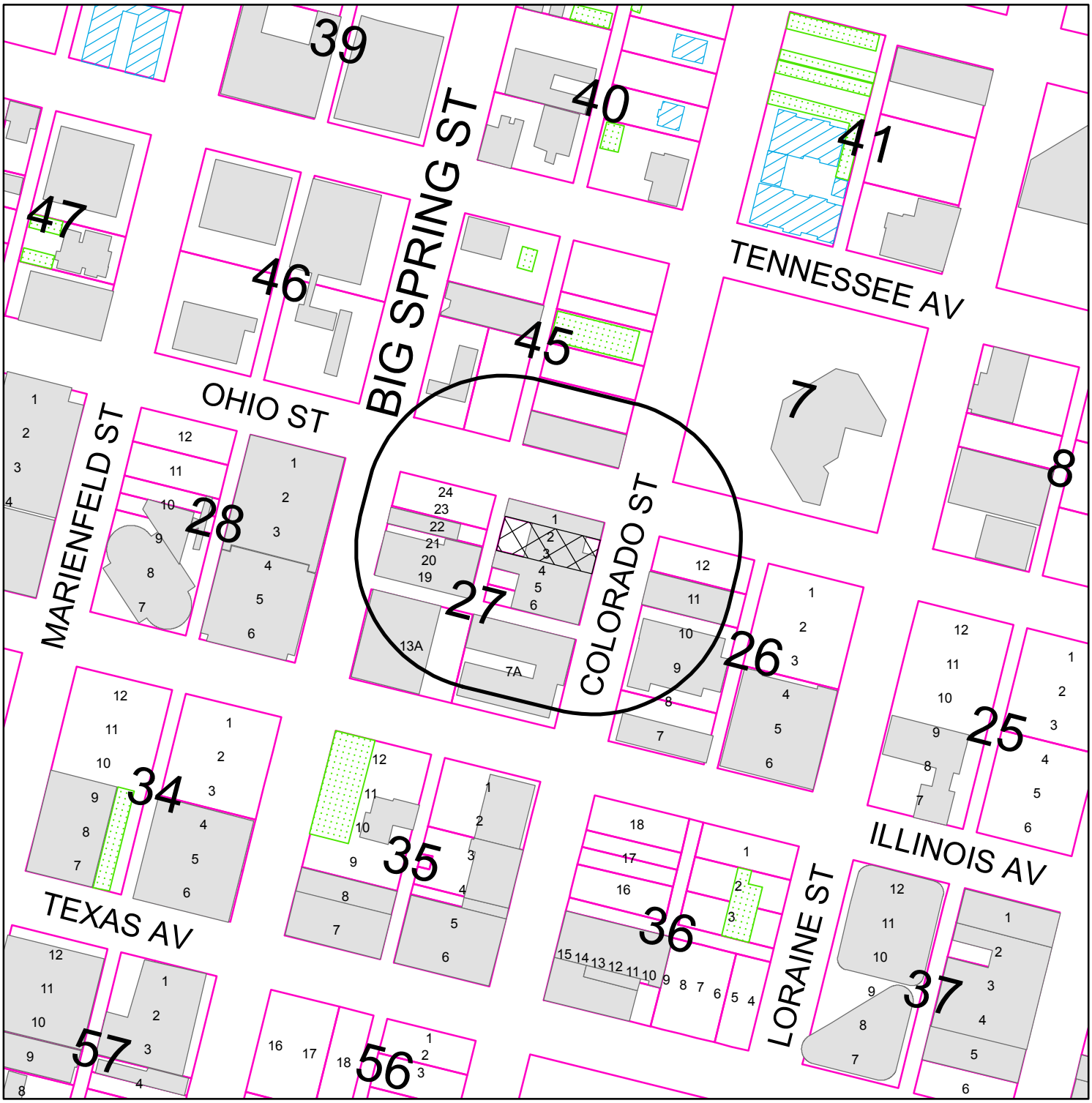
Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

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: KV Date: 9/26
Assigned: KV
For: P+Z On: 10/31/11

****Application will not be considered for scheduling until reviewed by a planner.****



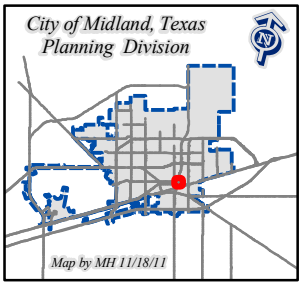
PROPERTY OWNER NOTIFICATION MAP

S - 11 - 018 **Scale: 1" = 200'**

Consider a request for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a lounge, on Lots 2 and 3, Block 27, Original Town, 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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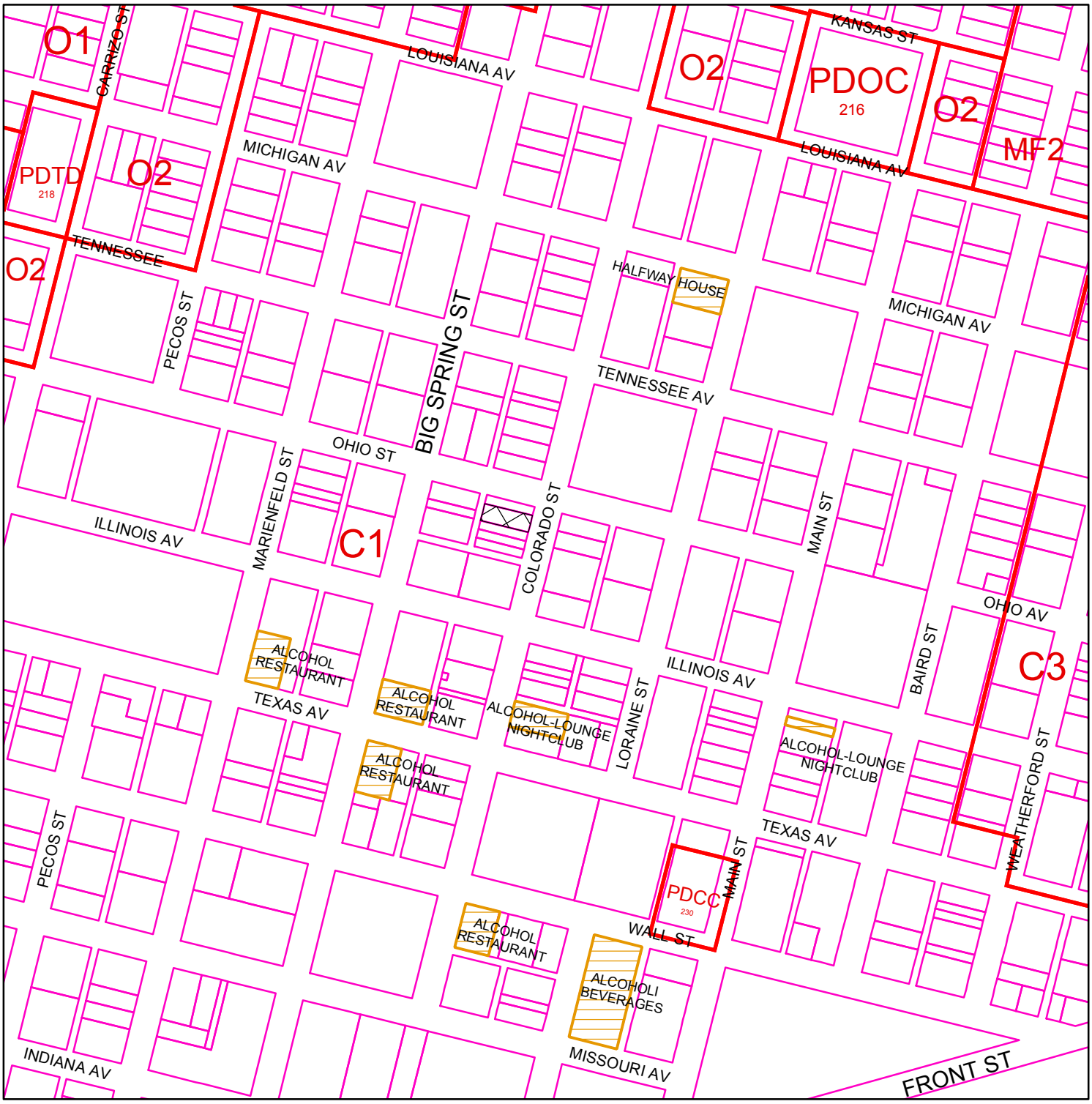


ZONING MAP

S - 11 - 018 **Scale: 1" = 400'**

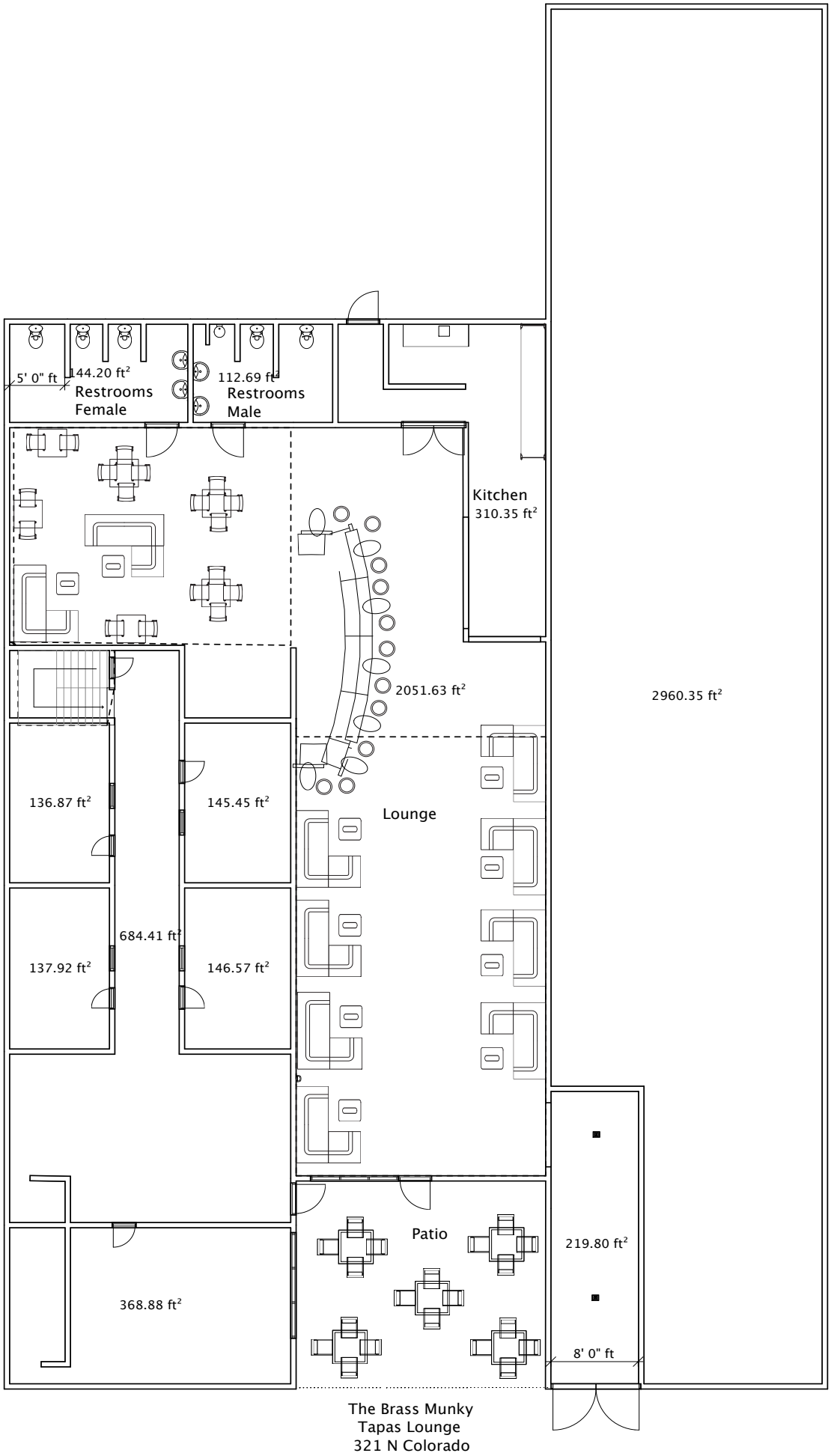
Consider a request for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a lounge, on Lots 2 and 3, Block 27, Original Town, City and County of Midland, Texas.

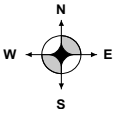
LEGEND

ZONING — PARCELS — SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 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


5' 0" ft
144.20 ft²
Restrooms
Female
112.69 ft²
Restrooms
Male
Kitchen
310.35 ft²
2051.63 ft²
2960.35 ft²
136.87 ft²
145.45 ft²
Lounge
684.41 ft²
137.92 ft²
146.57 ft²
Patio
219.80 ft²
368.88 ft²
8' 0" ft
The Brass Munky
Tapas Lounge
321 N Colorado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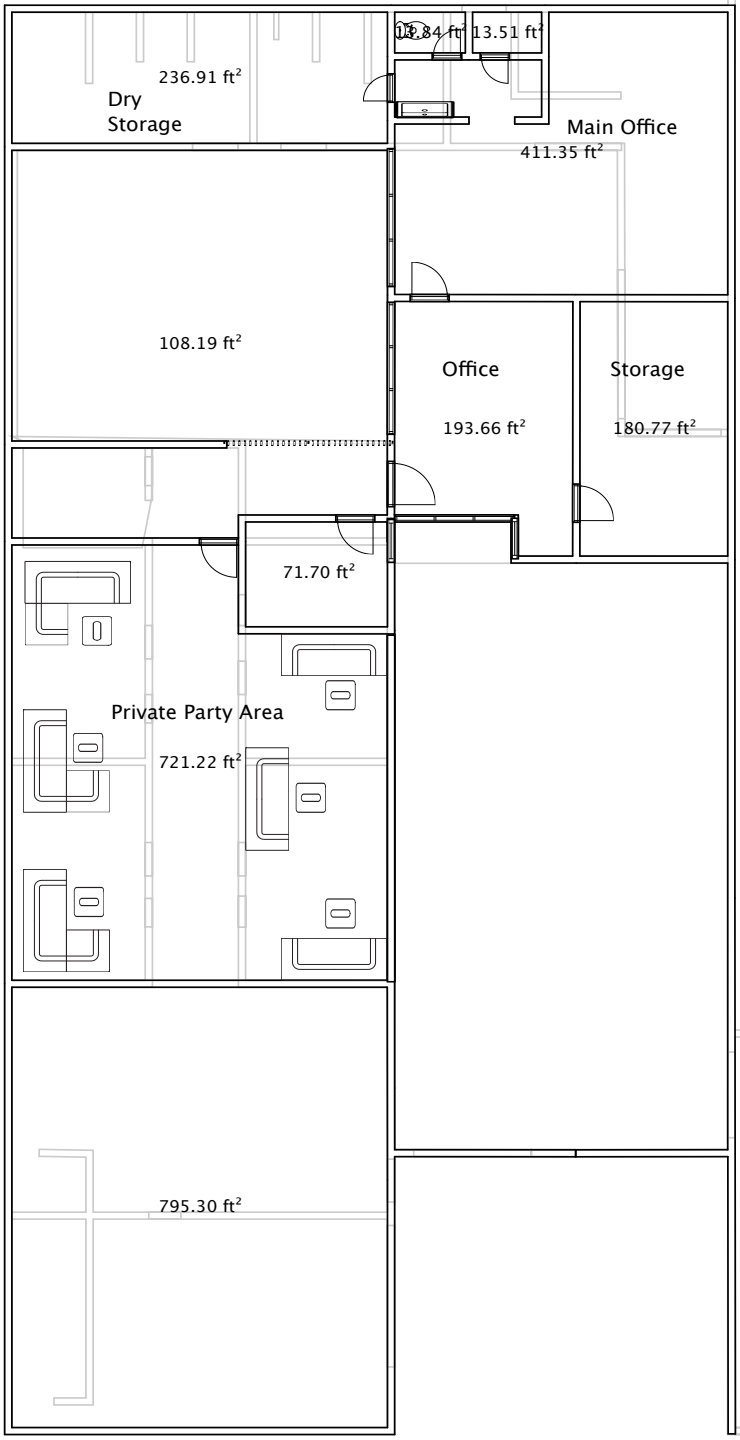

236.91 ft²
Dry
Storage
13.51 ft²
Main Office
411.35 ft²
108.19 ft²
Office
193.66 ft²
Storage
180.77 ft²
71.70 ft²
Private Party Area
721.22 ft²
795.30 ft²

N
W
E
S

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-11-021, InSite Towers**

Purpose:

This is a second reading to consider an ordinance on a request by InSite Towers for a Specific Use Permit, Without Term, for a Wireless Communication Tower. No changes have been made to this item since its first reading on December 13, 2011

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

InSite Towers wishes to construct a 150-foot tall wireless communication tower at the northeast corner of Scharbauer Drive and N "A" Street. Since this lot is zoned LR-2 District, approval of a specific use permit is required. This site meets all City requirements, including maximum height, minimum spacing from residential zoning boundaries, and this tower can accommodate at least two wireless service providers. The applicant has provided Exhibits A, B and C to illustrate the layout of the proposed site. No building is planned and the site will be surrounded by an eight-foot tall wooden fence with a locked gate. No public opposition has been noted. The Planning and Zoning Commission recommended unanimous approval of this request. Staff recommends approval.

Attachments:
Proposed Ordinance

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-11-021, InSite Towers**

Purpose:

Hold a public hearing at approximately 10:45 a.m. and consider an ordinance on a request by InSite Towers for a Specific Use Permit, Without Term, for a Wireless Communication Tower.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

InSite Towers wishes to construct a 150-foot tall wireless communication tower at the northeast corner of Scharbauer Drive and N "A" Street. Since this lot is zoned LR-2 District, approval of a specific use permit is required. This site meets all City requirements, including maximum height, minimum spacing from residential zoning boundaries, and this tower can accommodate at least two wireless service providers. The applicant has provided Exhibits A, B and C to illustrate the layout of the proposed site. No building is planned and the site will be surrounded by an eight-foot tall wooden fence with a locked gate. No public opposition has been noted. The Planning and Zoning Commission recommended unanimous approval of this request. Staff recommends approval.

Attachments:
November 14th, 2011 P&Z Staff Report
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 2, BLOCK 5, NORTHLAND SHOPPING CENTER, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF SCHARBAUER DRIVE AND NORTH "A" STREET), WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR A WIRELESS COMMUNICATION TOWER; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit Without Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned LR-2, Local Retail District, to-wit:

> Lots 2, Block 5, Northland Shopping Center, Section 4, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit Without Term for a wireless communication tower, together with the uses permitted in the present LR-2, Local Retail District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

A. That the development of this property with a wireless communication tower shall conform in all respects to the conditions shown on Exhibits "A", "B" and "C", which are attached hereto and incorporated herein.

B. That the tower must be a monopole design, and shall not exceed 150 feet above site grade.

C. That the tower site shall be enclosed with a solid wooden fence at least 8 feet above grade. Said gate shall be locked at all times except during required maintenance. No landscaping shall be required.

D. That the tower must accommodate a minimum of 2 communication providers.

E. That no equipment building shall be constructed.

F. That the base of the tower shall be installed at a minimum elevation of 2,778 feet above sea level to avoid the 100-year flood plain.

G. That the City of Midland reserves the right to affix equipment and materials, including but not limited to emergency warning sirens, to the wireless communication system or tower at any time for any purpose; the City shall not be charged any rental or license fee for the initial placement or continued placement of such equipment or materials on the wireless communication system or tower, but shall only be responsible for the cost of installation or maintenance of the City's equipment or materials.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-11-021, InSite Towers**

Purpose:

Hold a public hearing at approximately 10:45 a.m. and consider an ordinance on a request by InSite Towers for a Specific Use Permit, Without Term, for a Wireless Communication Tower.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

InSite Towers wishes to construct a 150-foot tall wireless communication tower at the northeast corner of Scharbauer Drive and N "A" Street. Since this lot is zoned LR-2 District, approval of a specific use permit is required. This site meets all City requirements, including maximum height, minimum spacing from residential zoning boundaries, and this tower can accommodate at least two wireless service providers. The applicant has provided Exhibits A, B and C to illustrate the layout of the proposed site. No building is planned and the site will be surrounded by an eight-foot tall wooden fence with a locked gate. No public opposition has been noted. The Planning and Zoning Commission recommended unanimous approval of this request. Staff recommends approval.

Attachments:
November 14th, 2011 P&Z Staff Report
Proposed Ordinance

Planning and Zoning Commission
Minutes
November 14, 2011

S-11-021 - Hold a public hearing and consider a request by **InSite Tower, LLC.** *Specific Use Permit without Term* for a Wireless Communication System on Lot 2, Block 5, Northland Shopping Center, Section 4, City and County of Midland, Texas. (Generally located on the northeast corner of the intersection of N. "A" Street and W. Scharbauer Drive.)

Mike O'Neal with InSite Towers, 790 Cypress, Abilene, Texas, yielded to the staff. Mr. Compton stated that the 150-foot high wireless communication tower (cell tower) would be located at the northeast corner of Scharbauer Drive and N. "A" Street where there are a variety of retail uses.

Chairman Carney opened the public hearing and there being no one wishing to speak in favor or in opposition to the item, closed the public hearing.

Following a brief discussion, a motion for approval, subject to Conditions A-G, was made by Commissioner Gatten; seconded by Commissioner Wolf. The motion carried by the following vote: AYE: Wolf, Lanning, Gatten, Carney, Ferguson, Wilton and Watkins. NAY: None. ABSTAIN: None. ABSENT: York and Woodruff

PLANNING AND ZONING COMMISSION

November 14, 2011

CASE: S-11-021.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit, without term, for a Wireless Communication Tower.

APPLICANT: InSite Towers, LLC.

OWNER: Midland County.

REPRESENTATIVE: Mike O'Neal

LEGAL DESCRIPTION: Lot 2, Block 5, Northland Shopping Center, Section 4, City and County of Midland, Texas.

LOCATION: Northeast corner of Scharbauer Drive and N. "A" Street.

CURRENT ZONING: LR-2, Local Retail District.

DETAILS OF REQUEST:

1. Midland County has entered into a contract with InSite Towers to construct a wireless communication tower (cell tower) at this location. The property is zoned LR-2 District. Therefore a specific use permit must be approved before the tower can be constructed. The tower is a monopole design with a maximum height of 150 feet. Additional details are shown on the attached Exhibits A, B and C.

SURROUNDING ZONING AND LAND USE:

2. This property is located in the shopping center at the northeast corner of Scharbauer Drive and N. "A" Street. This center is developed with a variety of retail uses. In addition, the Midland County Annex is located here, where several administrative offices are maintained. The land to the north is zoned MF-1 District, and is developed with apartments. The area to the east is zoned Planned District for a Housing Development, and is developed with a retirement home. To the south, across Scharbauer Drive, are tracts zoned for retail uses and for a housing development. The land to the west, across N. "A" Street, is zoned 1F-1 District and is developed with single-family homes.

CODE REQUIREMENTS:

3. Cell towers are allowed by right in the C-1 through HI and the BP Districts, and by specific use permit in the O-1 though LR-3 Districts. The base of towers must observe a minimum 200-foot setback from the nearest residential zoning district boundary. Unmanned equipment buildings cannot exceed 750 square feet in area or 12 feet in height, and the maximum tower height may not exceed 150 feet. All towers must be designed to accommodate a minimum of two cellular providers. The provider is required to contact the owners of surrounding towers and request collocation, if available. Given the proximity to Midland Executive Airpark, staff has requested a letter from the Federal Aviation Administration. Towers may not be illuminated unless required by the FAA. The tower site must be surrounded by a fence at least eight feet tall, with access through a locked gate. The tower site must be screened with either landscaping or by a decorative screening fence. Finally, if the wireless system is ever abandoned, the tower must be removed within 180 days.

ANALYSIS:

4. In order to justify this location for a cell tower, the application indicates that the nearest existing tower location is 1.12 miles from this site. However, it also indicates that there is a 1.75 mile radius centered on this site that is underserved, and that a tower at this location will solve this problem. The tower design is that of a monopole, which eliminates the need for guy wires, and minimizes the aesthetic impact of a tower. Because the applicant is requesting the maximum tower height permitted, it is important to consider setbacks from residential zoning boundaries. The Zoning Code defines zoning boundaries as running down streets, alleys and property lines. The tower base would be 218 feet from the 1F-1 District to the west, 225 feet from the planned district to the south, and over 470 feet from the apartment complex to the north. Thus, this proposal meets the setback requirements established in the Zoning code. Exhibit C shows three separate antennas on this tower, thereby meeting the requirement to potentially accommodate at least two carriers. The tower site would be enclosed with an eight-foot tall wooden fence without landscaping. A 12-foot wide gate with a lock is planned for maintenance access. The applicant has submitted a letter from the FAA indicating that this tower will not present a hazard to air navigation. It further states that this tower does not require lighting under its requirements.

   This tower site is located within the 100-year flood zone. We have checked with the City Engineer and Building Official, who have provided the applicant with the flood elevation at this location, which is 2,777 feet above sea level. The tower is

required to be a minimum of 12-inches above this elevation, a condition that the applicant indicates he will be able to satisfy. For this installation, no equipment building is proposed. Staff finds that the details associated with this request meet all of the requirements set out in the Zoning Code, and that meeting the flood plain requirement is manageable.

STAFF RECOMMENDATION:

We recommend approval of this request for a Specific Use Permit, without term, for a Wireless Communication Tower, subject to the satisfaction of the following conditions:

A. That the development of a communication tower at this location shall conform to the conditions shown on the attached Exhibits A, B and C in all respects.

B. The tower must be a monopole design, and shall not exceed 150 feet above the site grade.

C. The tower site shall be enclosed with a solid wooden fence with a minimum height of eight feet above grade. The indicated gate shall be locked at all times, except when maintenance access is required. No landscaping shall be required.

D. The tower must accommodate a minimum of two communication providers.

E. No equipment building shall be constructed.

F. The base of the tower shall be installed at a minimum elevation of 2,778 feet above sea level to avoid the 100 year flood plain.

G. No tower lighting shall be allowed.

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: S-11-021

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

InSite Towers, LLC 800-555-8935 Direct to Mike O'Neal: 325-691-1285
Applicant Name Contact Phone #s

790 Cypress Street, Abilene, Texas 79601 or P.O. Box 6060 Abilene, TX 79608
Address Zip Code

E-Mail address Mike O'Neal [moneal@insitewireless.com]

Property Owner Name Contact Phone #s

County of Midland, Texas, a Texas political subdivision. Attn: Judge Michael R. Bradford
Address Zip Code

E-Mail address: County Attorney Russell Malm: malm@co.midland.tx.us (432) 688-4490

500 North Loraine, Ste. 1101, Midland, Texas 79701

Operator (if different from Applicant or Property Owner) Contact Phone #s

NOT APPLICABLE: no operator

Address Zip Code

Type of Permit: SUP Communication Cellular Tower site

SUP with Term: ____Yes ____No
(For Office Use)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)
Pending 9-1-1 E Address: 2104 "A" Street, Midland, Texas. See Legal Description Metes and Bounds for Site, and for the County land in its entirety, per site plan filed with application. See 1A Surveyor Certified Legal and GPS Attached.

Current Zoning: Per Jim Compton of Planning & Zoning, [redacted] LR2

Maximum Floor Area: Not Applicable Max. Occupancy: Not Applicable

Proposed hours and days of use or operation: 8-foot fenced and locked gate admission available 24 hours per day, seven days per week, for repair access only, by approved tenant employees only or those of InSite Towers, LLC.

Reason for request: Nearest tower in Precinct 1 area is 1.12 miles away (AT&T site, one carrier only). Second site is roof top site for Personal Usage of Pioneer Nat. Resources. A 1.75 Mile Radius is UNDER-SERVED for Public needs for signal & Wi-Fi

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: No Adverse effects upon the Public; no health hazards; all proven by studies. No moral issues: site is not occupied. Tower Carriers will offer Public ability to use cell phones in homes & business with stroner signal, % data support for emails, linking systems, on-line usage and 9-1-1 service area.

REQUIRED SUBMITTALS

1. Application fee: **$300.** (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.)
2. Site plan – 16 copies (FOLDED)
3. On a CD in .pdf and .jpg format.

SIGNATURES:

Applicant: InSite Towers, LLC, by: C. Mike O'Neal Date: 10/21/2011
C. Mike O'Neal, Senior Lease Director

Property Owner: County of Midland, Texas Date:
(see Memorandum of Site Lease Agreement signed by Judge Bradford, October 11, 2011

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~~ Taylor

Before me, the undersigned authority, on this day personally appeared C. Mike O'Neal, Senior Lease Dir. who, being by me duly sworn, upon oath says: That ~~(s)~~he is authorized by County of Midland, Texas, 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, as limited to the approval, construction and operation of a Communication Celluar Tower and Site on the County Annex Site shown by Site Plan, Legal Description, and Metes & Bounds, as allowed in the Master Option*
Subscribed and sworn to before me, this 21st day of October, 2011, to certify which witness my hand and seal of office.

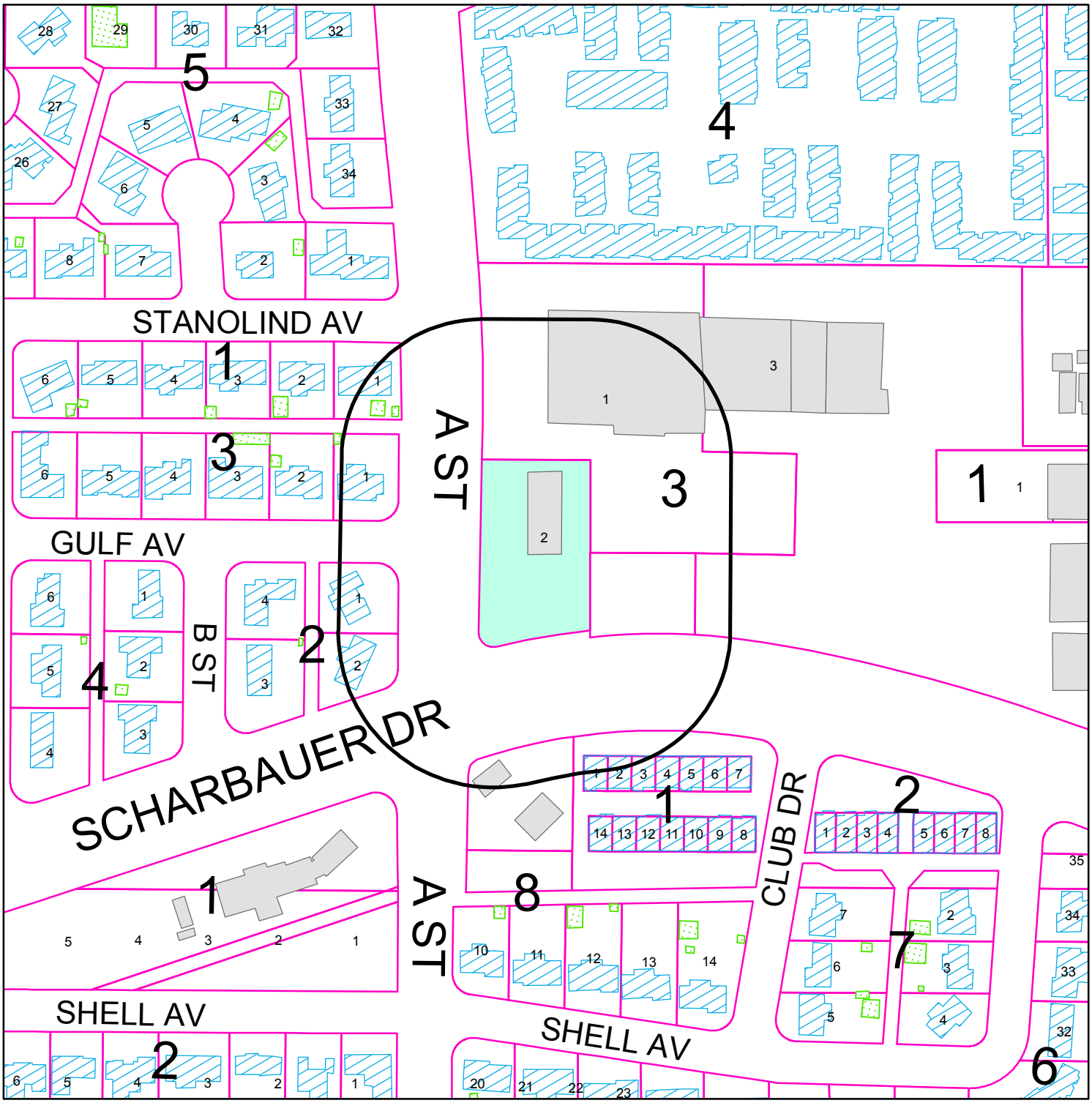
Jane Spraberry
NOTARY PUBLIC, ~~MIDLAND~~ TAYLOR COUNTY, TEXAS

*contined from above:
and Lease Agreement signed by the County on October 11, 2011

FOR OFFICE USE ONLY	
Rec'd By: CW	Date: 10/24/11
Assigned: JC	
For: P+Z	On: 11/14/11

NOTARY PUBLIC STATE OF TEXAS
JANE SPRABERRY
My Commission Expires
May 30, 2013

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

S - 11 - 021 **Scale: 1" = 200'**

Consider a request for a Specific Use Permit Without Term for a Wireless Communication System on Lot 2, Block 5, Northland Shopping Center, Section 4, 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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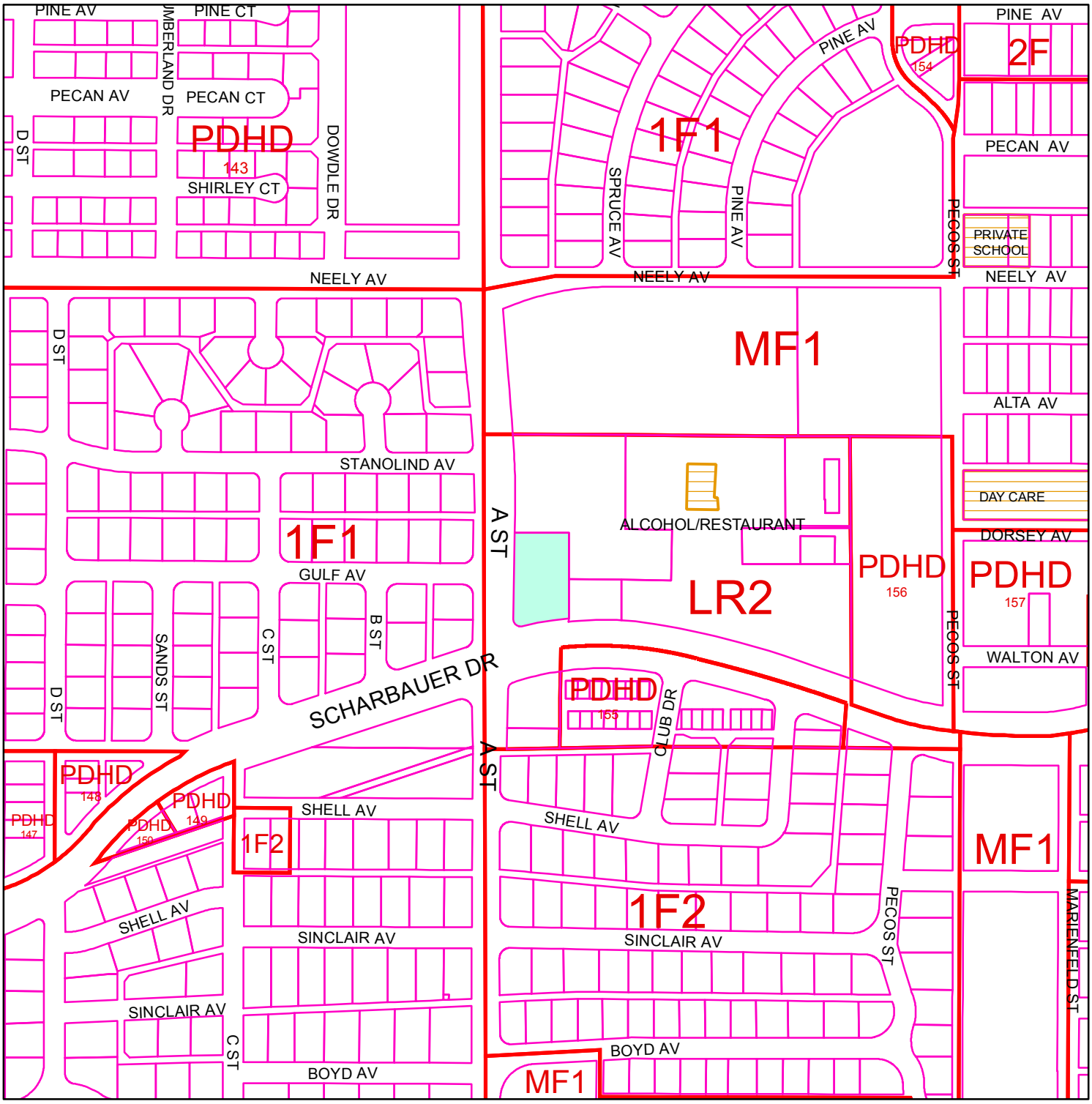

ZONING MAP

S - 11 - 021 **Scale: 1" = 400'**

Consider a request for a Specific Use Permit Without Term for a Wireless Communication System on Lot 2, Block 5, Northland Shopping Center, Section 4, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 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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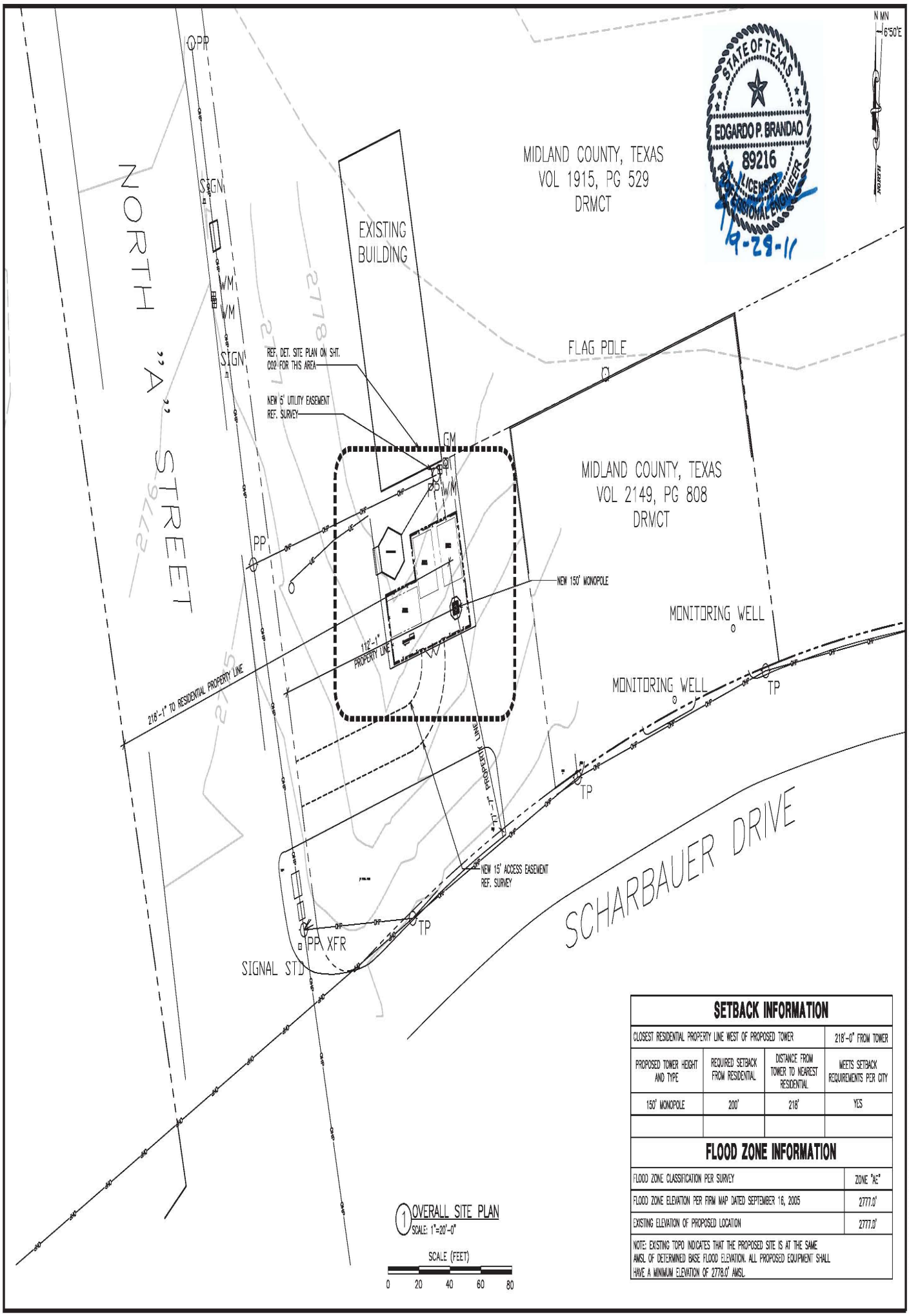

1 OVERALL SITE PLAN
SCALE: 1"=20'-0"

SCALE (FEET)
0 20 40 60 80

STATE OF TEXAS
EDGARDO P. BRANDAO
89216
LICENSED PROFESSIONAL ENGINEER
9-29-11

SETBACK INFORMATION

CLOSEST RESIDENTIAL PROPERTY LINE WEST OF PROPOSED TOWER			218'-0" FROM TOWER
PROPOSED TOWER HEIGHT AND TYPE	REQUIRED SETBACK FROM RESIDENTIAL	DISTANCE FROM TOWER TO NEAREST RESIDENTIAL	MEETS SETBACK REQUIREMENTS PER CITY
150' MONOPOLE	200'	218'	YES

FLOOD ZONE INFORMATION

FLOOD ZONE CLASSIFICATION PER SURVEY	ZONE "AE"
FLOOD ZONE ELEVATION PER FIRM MAP DATED SEPTEMBER 16, 2005	2777.0'
EXISTING ELEVATION OF PROPOSED LOCATION	2777.0'

NOTE: EXISTING TOPO INDICATES THAT THE PROPOSED SITE IS AT THE SAME AMSL OF DETERMINED BASE FLOOD ELEVATION. ALL PROPOSED EQUIPMENT SHALL HAVE A MINIMUM ELEVATION OF 2778.0' AMSL.

REVISIONS	DATE
0 ISSUED FOR CONSTRUCTION	09/27/11

CELERIS PROJECT NO.: 11-3018

The Celeris Group
a subsidiary of Microwave Transmission Systems, Inc.
2201 N. Collins St., Suite 125
Arlington, TX 76011
Office: 817.446.1700
Fax: 817.496.0895

EPB Associates, Inc.
Consulting Engineers
5501 LBJ Freeway, Ste. 225
Dallas, Texas 75240
(972) 239-5495
Registration No. F-9923

InSite Towers, LLC

SITE NAME
MIDLAND COUNTY ANNEX
SITE NUMBER
TX152

DRAWN BY: JAK
CHECKED BY: EPB
DATE 09/27/11
PLOT SCALE 1:2
DRAWING NAME OVERALL SITE PLAN
SHEET No. 001

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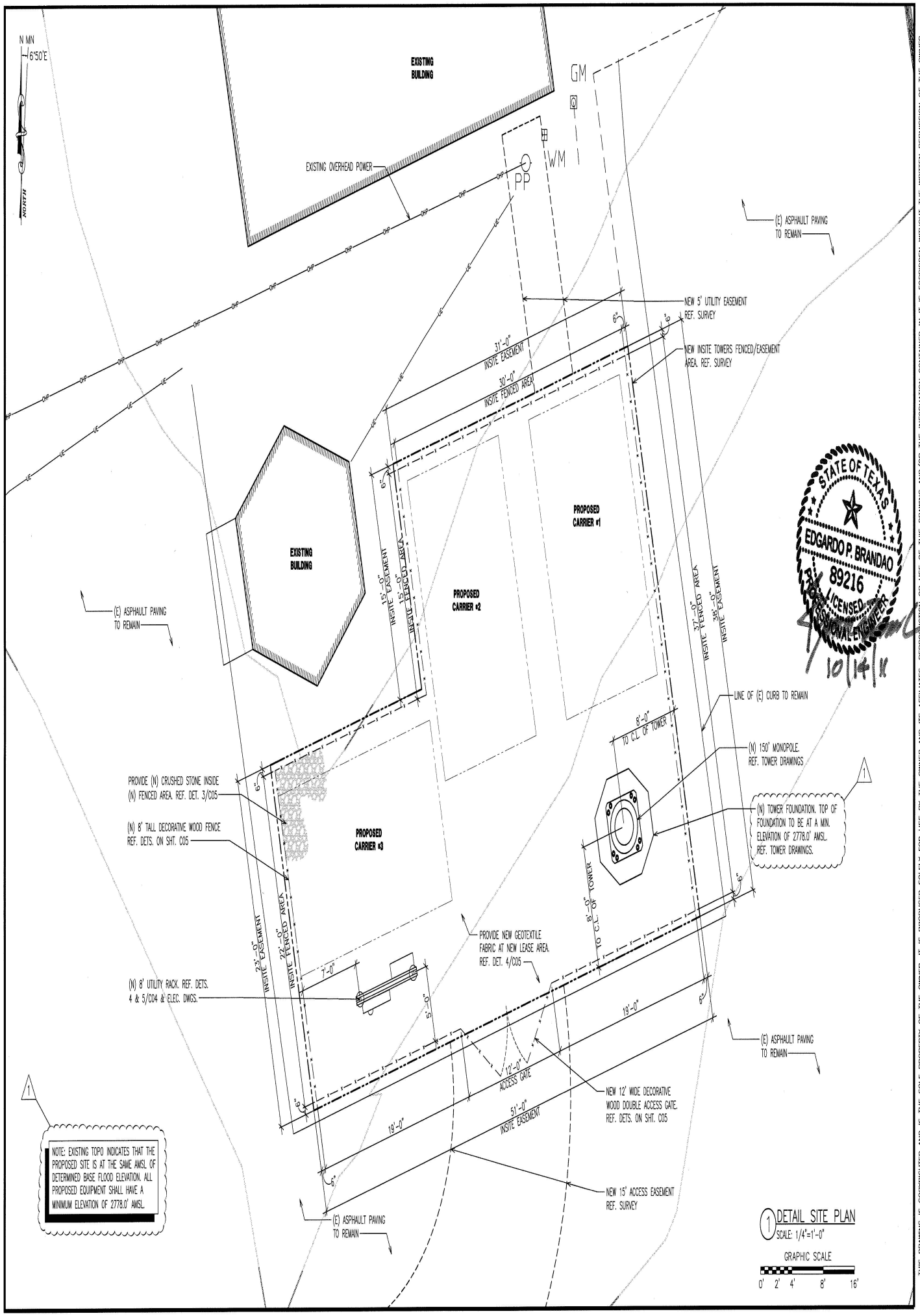

1 DETAIL SITE PLAN
SCALE: 1/4"=1'-0"

REVISIONS	DATE
0 ISSUED FOR CONSTRUCTION	09/27/11
1 REVISED FOR CONSTRUCTION	10/14/11

CELERIS PROJECT NO.: 11-3018

The Celeris Group
a subsidiary of Microwave Transmission Systems, Inc.
2201 N. Collins St., Suite 125
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Office: 817.446.1700
Fax: 817.496.0895

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5501 LBJ Freeway, Ste. 225
Dallas, Texas 75240
(972) 239-5495
Registration No. F-9923

InSite Towers, LLC

SITE NAME
MIDLAND COUNTY ANNEX

SITE NUMBER
TX152

DRAWN BY: JAK
CHECKED BY: EPB
DATE: 10/14/11
PLOT SCALE: 1:2
DRAWING NAME: DETAIL SITE PLAN
SHEET No. C02

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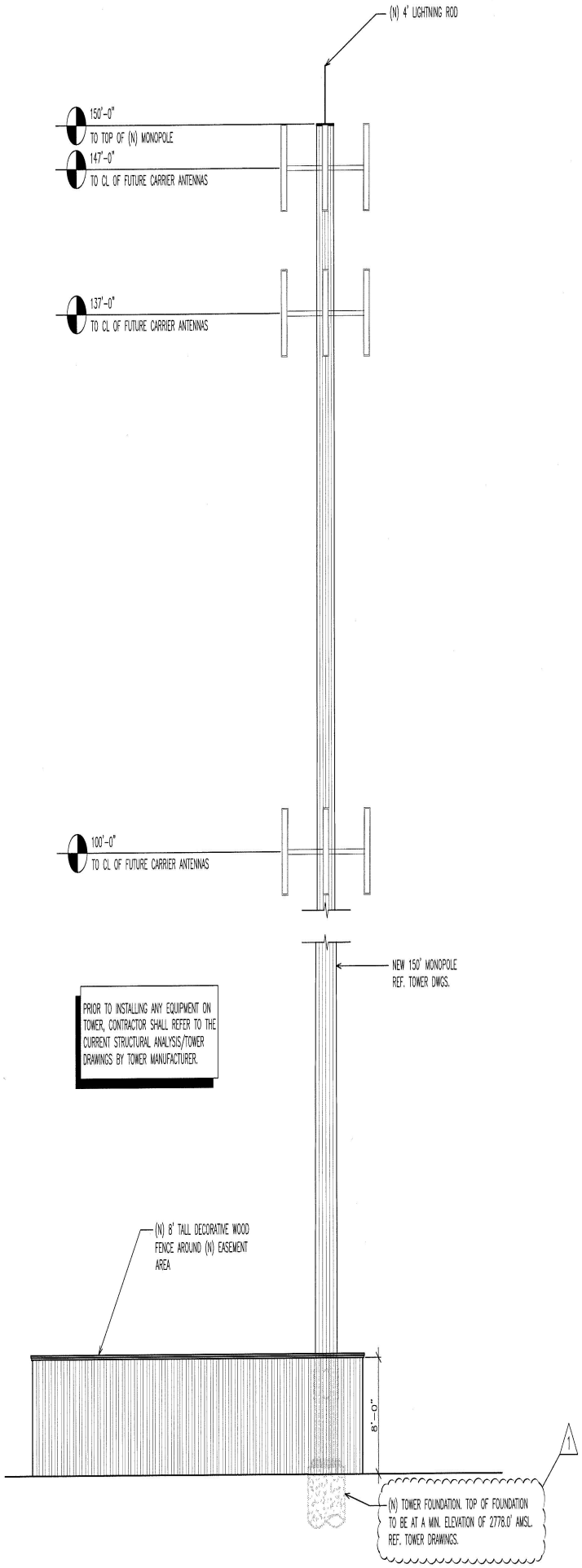

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NOTE: EXISTING TOPO INDICATES THAT THE PROPOSED SITE IS AT THE SAME AMSL OF DETERMINED BASE FLOOD ELEVATION. ALL PROPOSED EQUIPMENT SHALL HAVE A MINIMUM ELEVATION OF 2778.0' AMSL.

1 TOWER ELEVATION
SCALE: NTS

STATE OF TEXAS
EDGARDO P. BRANDAO
89216
LICENSED
PROFESSIONAL ENGINEER
10/14/11

REVISIONS	DATE
0 ISSUED FOR CONSTRUCTION	09/27/11
1 REVISED FOR CONSTRUCTION	10/14/11

CELERIS PROJECT NO.: 11-3018

The Celeris Group
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2201 N. Collins St., Suite 125
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5501 LBJ Freeway, Ste. 225
Dallas, Texas 75240
(972) 239-5495
Registration No. F-9923

InSite Towers, LLC

SITE NAME
MIDLAND COUNTY ANNEX
SITE NUMBER
TX152

DRAWN BY: JAK
CHECKED BY: EPB
DATE 10/14/11
PLOT SCALE 1:2
DRAWING NAME ELEVATION
SHEET No. C03

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-11-019; Matt Gallagher**

Purpose:

This is the second reading to consider an ordinance on a request by Matt Gallagher for approval of a Specific Use Permit without Term for an accessory building for living or sleeping quarters on Lot 19, Block 9, Replat Block 9 2nd Section Ma-Mar Terrace, City and County of Midland, Texas. No changes have been made to this item since its first reading on December 13, 2011

Recommended City Council Action

X Approve __Deny __ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Mr. Gallagher resides at 3109 Stanolind Circle and plans to convert a garage structure located at the rear portion of his lot into a living and sleeping quarters for visitors. The 1F-1 District allows only one residence per lot. However, approval of a Specific Use Permit can allow an accessory building to be used for living and sleeping quarters. The attached site plan labeled Exhibit A, indicates the dimensions of this existing structure which totals approximately 576 square feet in area. A garage door currently exists on the rear of this structure providing vehicular access to the alley. Mr. Gallagher plans to replace this door with a permanent wall so that access into this structure is not available from the alley. Sufficient improved parking surfaces exist for this additional use and staff finds that this request meets all development requirements for this type of use. This request was approved unanimously by the Planning and Zoning Commission on November 14th, 2011. One letter of opposition has been received to date.

Attachments: Application, Map, Exhibit A – Site Plan

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-11-019; Matt Gallagher**

Purpose:

Hold a public hearing at approximately 10:48 a.m. and consider an ordinance on a request by Matt Gallagher for approval of a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 19, Block 9, Replat Block 9 2nd Section Ma-Mar Terrace, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this application.

Discussion:

Mr. Gallagher resides at 3109 Stanolind Circle and plans to convert a garage structure located at the rear portion of his lot into a living and sleeping quarters for visitors. The 1F-1 District allows only one residence per lot. However, approval of a Specific Use Permit can allow an accessory building to be used for living and sleeping quarters. The attached site plan labeled Exhibit A, indicates this existing structure totals approximately 576 square feet in area. A garage door currently exists on the rear of this structure providing vehicular access to the alley. Mr. Gallagher plans to replace this door with a permanent wall so that access into the structure will not be available from the alley. Sufficient improved parking surfaces exist for this additional use and staff finds that this request meets all development requirements for this type of use. The request was approved unanimously by the Planning and Zoning Commission on November 14th, 2011. No letters of public opposition have been received to date. Staff recommends approval of this application.

Attachments:
Application, Map, Exhibit A – Site Plan

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 19, BLOCK 9, REPLAT OF BLOCK 9, 2ND SECTION, MA-MAR TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF STANOLIND CIRCLE, APPROXIMATELY 350 FEET EAST OF CESSNA DRIVE), WHICH IS PRESENTLY ZONED 1F-1, ONE-FAMILY DWELLING DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings and affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the health, safety and general welfare will be best served by the granting of a Specific Use Permit Without Term, set out hereinafter, subject to the special conditions and restrictions set out hereinafter on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned 1F-1, One-Family Dwelling District, to wit:

> Lot 19, Block 9, Replat of Block 9, 2nd Section, Ma-Mar Terrace, City and County of Midland, Texas;

is hereby changed to permit same to be used under a Specific Use Permit Without Term for

an accessory building to be used for living or sleeping quarters, together with the uses permitted in an 1F-1, One-Family Dwelling District, subject to the following conditions:

1. That the development of this property shall adhere to Exhibit "A", which is attached hereto and incorporated herein.

2. That the accessory building shall not exceed 576 contiguous square feet in area.

3. That the garage door existing on the accessory building shall be removed.

4. That no entry into the accessory building shall be allowed from the adjacent alley.

5. That the use of the accessory building for living or sleeping quarters shall be limited to family members or guests of the occupant of the primary residence; the accessory building shall not be rented out as a separate residence or used for any commercial purpose.

6. That the applicant shall obtain a Certificate of Occupancy to ensure that the conditions of this permit are satisfied.

SECTION TWO. 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 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 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., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-11-019; Matt Gallagher**

Purpose:

Hold a public hearing at approximately 10:48 a.m. and consider an ordinance on a request by Matt Gallagher for approval of a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 19, Block 9, Replat Block 9 2nd Section Ma-Mar Terrace, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this application.

Discussion:

Mr. Gallagher resides at 3109 Stanolind Circle and plans to convert a garage structure located at the rear portion of his lot into a living and sleeping quarters for visitors. The 1F-1 District allows only one residence per lot. However, approval of a Specific Use Permit can allow an accessory building to be used for living and sleeping quarters. The attached site plan labeled Exhibit A, indicates this existing structure totals approximately 576 square feet in area. A garage door currently exists on the rear of this structure providing vehicular access to the alley. Mr. Gallagher plans to replace this door with a permanent wall so that access into the structure will not be available from the alley. Sufficient improved parking surfaces exist for this additional use and staff finds that this request meets all development requirements for this type of use. The request was approved unanimously by the Planning and Zoning Commission on November 14th, 2011. No letters of public opposition have been received to date. Staff recommends approval of this application.

Attachments:
Application, Map, Exhibit A – Site Plan

Planning and Zoning Commission
Minutes
November 14, 2011

S-11-019 - Hold a public hearing and consider a request by **Matt Gallagher** for an *Specific Use Permit without Term* for an accessory building for living or sleeping quarters on Lot 19, Block 9, Replat Block 9, 2nd Section Ma-Mar Terrace, City and County of Midland, Texas. (Generally located on the west side of Stanolind Circle, approximately 350 feet east of Cessna Drive.)

The applicant yielded to the staff and Mr. Melland explained that the request was for an existing garage structure to be converted into an accessory dwelling to be used for guests. He also stated that the zoning in this area prohibits the renting of an accessory dwellings and that the garage door will be removed for access from the alley.

Chairman Carney opened the public hearing and there being no one wishing to speak in favor or in opposition to the item, closed the public hearing.

A motion for approval, subject to Conditions A-F, was made by Commissioner Ferguson; seconded by Commissioner Lanning. The motion carried by the following vote: AYE: Wolf, Lanning, Gatten, Carney, Ferguson and Wilton. NAY: None. ABSTAIN: Watkins. ABSENT: York and Woodruff

PLANNING AND ZONING COMMISSION

November 14, 2011

CASE: S-11-019; Matt Gallagher

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit, Without Term, for an accessory building for living and sleeping quarters.

APPLICANT/OWNER: Matt Gallagher

LEGAL DESCRIPTION: Lot 19, Block 9, Replat Block 9 2nd Section, Ma-Mar Terrace, City and County of Midland, Texas.

LOCATION: Generally located on the west side of Stanolind Circle, approximately 350 feet east of Cessna Drive.

CURRENT ZONING: 1F-1, Single Family Dwelling District.

DETAILS OF REQUEST:

1. Mr. Gallagher resides at 3109 Stanolind Circle and plans to convert a garage structure located at the rear portion of his lot into a living and sleeping quarters for visitors. The 1F-1 District allows only one residence per lot. However, approval of a Specific Use Permit can allow an accessory building to be used for living and sleeping quarters. The Zoning Code prohibits such accessory dwellings from being rented as a separate dwelling.

ANALYSIS:

2. The Planning and Zoning Commission has adopted policy guidelines to assist in evaluating this type of application. These guidelines are as follows.

   A. The maximum floor area of an accessory dwelling should generally not exceed 35 percent of the floor area of the main residence, or 600 square feet, whichever is larger.

   B. In order to mitigate conditions whereby the accessory dwelling could be rented as a separate dwelling, the site plan should:

      1. Avoid vehicular access between the lot and any adjacent street or alley.

      2. Avoid a door in the accessory dwelling that can be accessed via an adjacent street or alley. Access should be provided through the rear yard of the principal residence.

   C. The Specific Use Permit should specify who may occupy the accessory dwelling, or for what purposes the accessory dwelling may be occupied.

The attached site plan labeled Exhibit A, indicates the dimensions the dimensions of this existing structure which totals approximately 576 square feet in area. A garage door currently exists on the rear of this structure providing vehicular access to the alley. Mr. Gallagher plans to replace this door with a permanent wall so that access into this structure is only available from the back yard.

As Mr. Gallagher plans to add an additional dwelling to his property, two additional parking spaces will be required, but must be located at the primary residence so as to mitigate the additional parking needs of the accessory dwelling, yet not encourage its use for non-conforming purposes. As Exhibit A illustrates, sufficient improved parking surfaces exist at the front of this lot to accommodate two additional vehicles.

STAFF RECOMMENDATION:

We recommend approval of this request for a Specific Use Permit for an accessory building for living and sleeping quarters, subject to the following conditions:

A. That the development of this property shall adhere to the attached site plan labeled Exhibit A.

B. That the floor area of this accessory building shall not exceed 576 square feet.

C. That garage door existing on this structure shall be removed.

D. No entry into this accessory building shall be allowed from the adjacent alley.

E. That the accessory building may be occupied only by family members or guests of the occupant of the primary residence. It shall not be rented as a separate dwelling at any time.

F. The applicant shall secure a Certificate of Occupancy to ensure that the conditions of this permit are satisfied.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Brandon Melland, Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A – Site Plan

Case Number: S-11-019

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

Matt Gallagher — 432-254-8446
Applicant Name — Contact Phone #s

3109 Stanolind Circle — 79705
Address — Zip Code

E-Mail address: mgallagher@parsleyenergy.com

Matt Gallagher — 432-254-8446
Property Owner Name — Contact Phone #s

3109 Stanolind Circle — 79705
Address — Zip Code

E-Mail address: mgallagher@parsleyenergy.com

Property Owner — See #'s above
Operator (if different from Applicant or Property Owner) — Contact Phone #s

Address — Zip Code

Type of Permit: Specific Use Permit - Accessory Building for Living & Sleeping Quarters

SUP with Term: ____Yes ____No
(For Office Use)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)
3109 Stanolind Circle, Lot 19, Blk 9, 2nd Section, Ma-Mar Terrace, Midland, TX

Current Zoning: 1-F1

Maximum Floor Area: 576 ft² Max. Occupancy: 2 people

Proposed hours and days of use or operation: Over night accommodations for out of town guests during holidays & special visits

Reason for request: To house family guests during holidays & special visits.

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: The building is contained within our property & will be built to code. General public will not have access.

REQUIRED SUBMITTALS

1. Application fee: **$300.** (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.)
2. Site plan – 16 copies (FOLDED)
3. On a CD in .pdf and .jpg format.

SIGNATURES:

Applicant: _____ Date: _____

Property Owner: Matt Gallagher Date: 10-14-11

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.

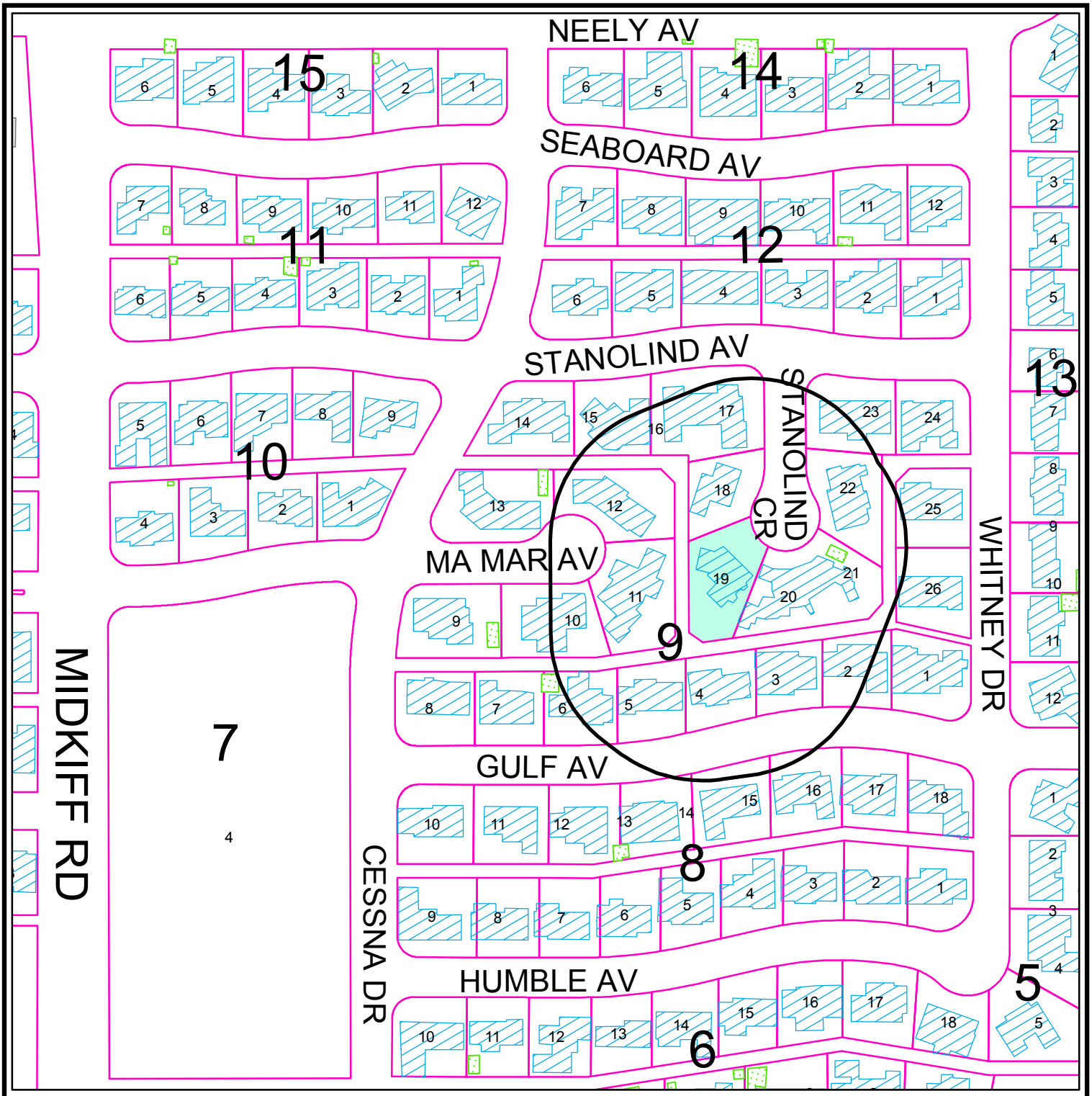
Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

Rec'd By: JC Date: 10-14-11
Assigned: BM
For: P+Z On: 11-14-11

****Application will not be considered for scheduling until reviewed by a planner.****



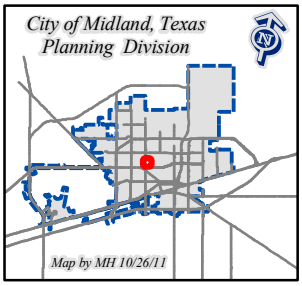
PROPERTY OWNER NOTIFICATION MAP

S - 11 - 019 **Scale: 1" = 200'**

Consider a request for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 19, Block 9, Replat Block 9 2nd Section Ma-Mar Terrace, 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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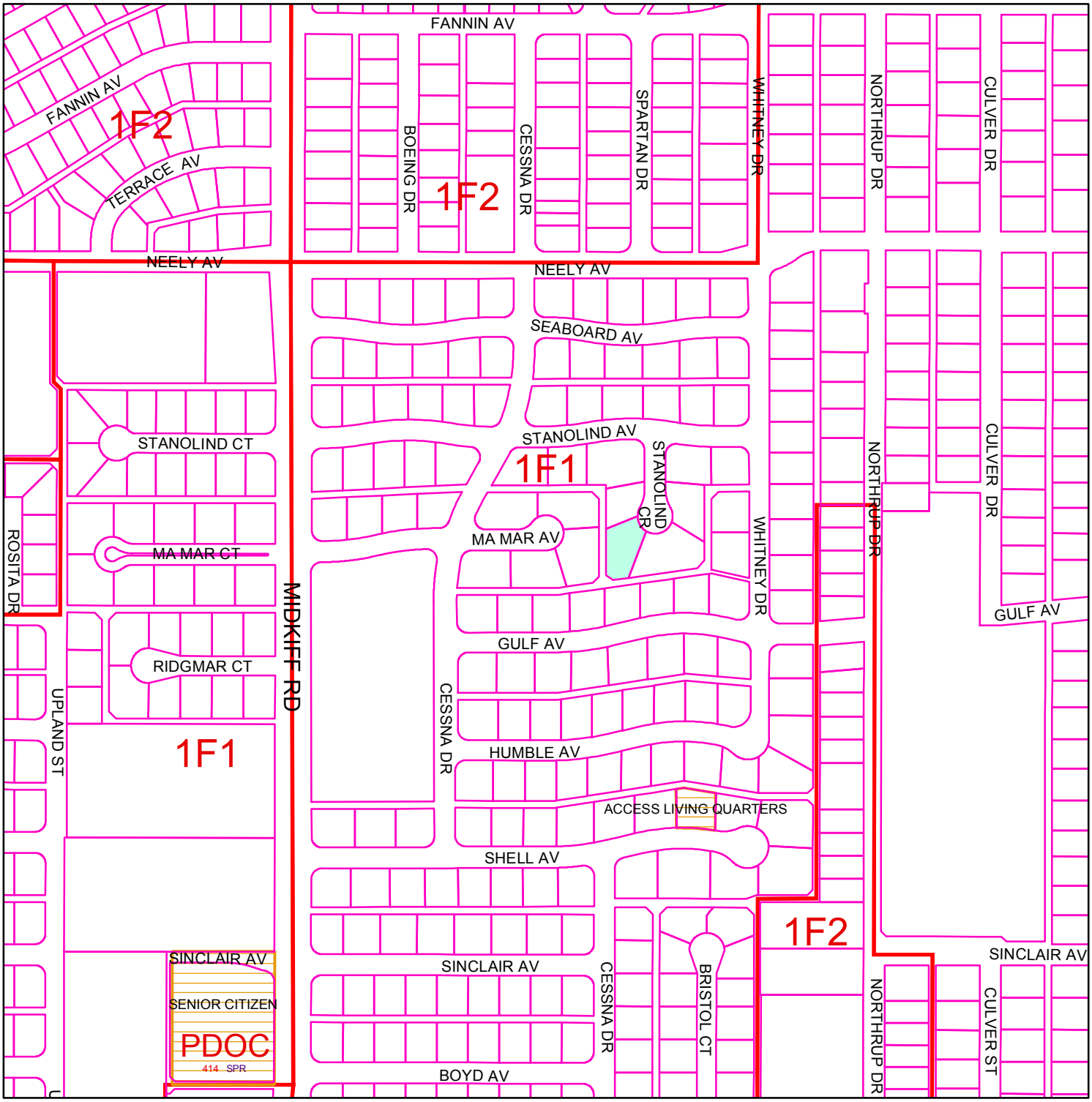
THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY
TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BAS
SOLELY ON THE INFORMATION CONTAINED HEREIN.



ZONING MAP

S - 11 - 019 **Scale: 1" = 400'**

Consider a request for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters on Lot 19, Block 9, Replat Block 9 2nd Section Ma-Mar Terrace, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 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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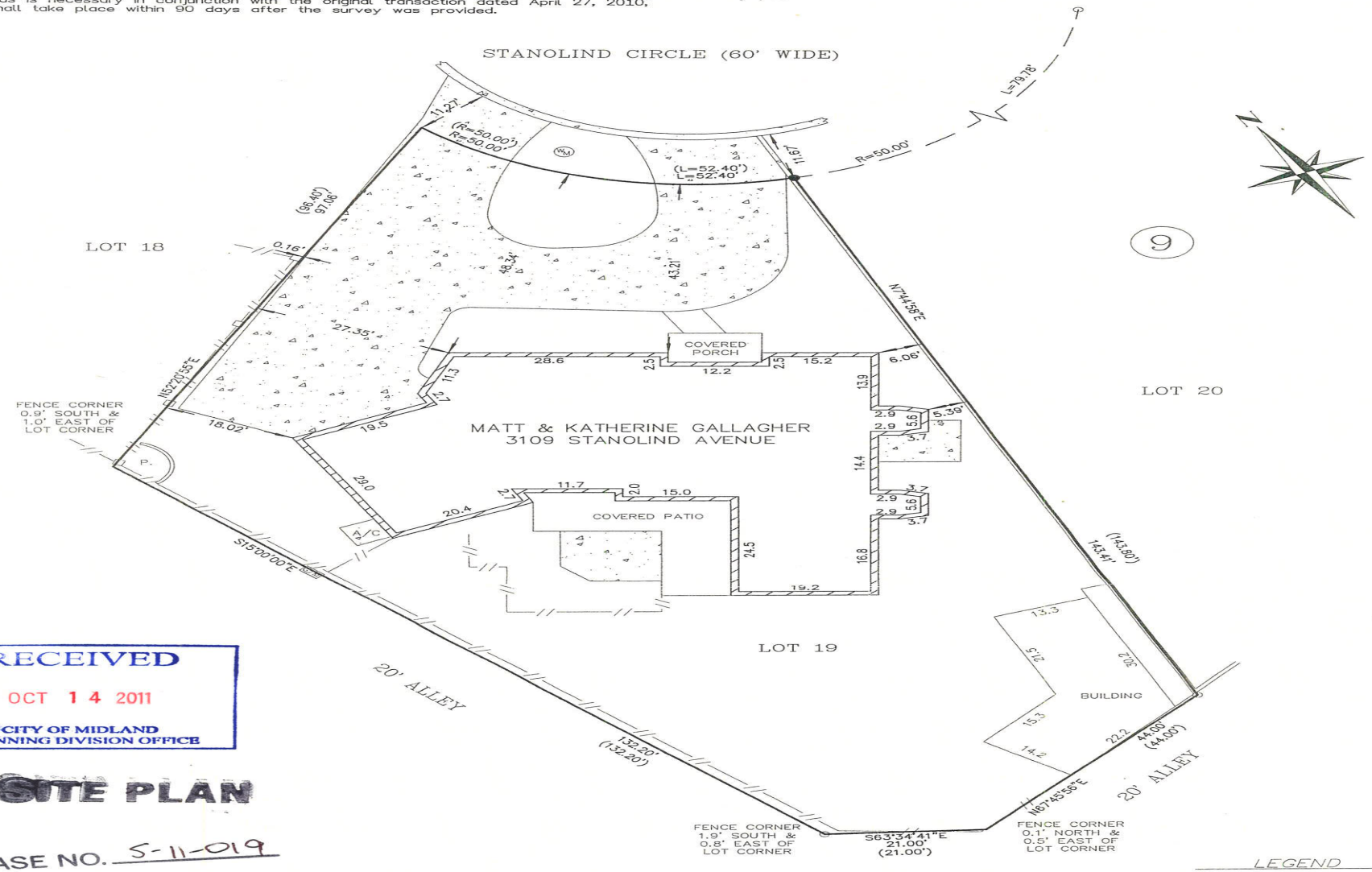
COPYRIGHT 2010
This survey plat is being provided solely for the use of: Matt & Katherine Gallagher, H.N.B. Financial & West Texas Abstract & Title Co., and that no license has been created, express or implied, to copy the survey plat except as is necessary in conjunction with the original transaction dated April 27, 2010, which shall take place within 90 days after the survey was provided.



RECEIVED
OCT 14 2011
CITY OF MIDLAND
PLANNING DIVISION OFFICE

SITE PLAN

CASE NO. 5-11-019

The following Easements, Rights-of-way, and Restrictive covenants as listed on the title commitment furnished by:
West Texas Abstract and Title Co., Inc.,
G.F. No.: 1004-028-BW

Restrictive Covenants:
Vol. 294, Pg. 246,
Vol. 338, Pg. 32,
Deed Records,
Midland Co., Texas

Census Tract: 3.03

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: 48329C0088 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 27th day of April 2010.

Bruce R. Pennell

Registered Professional Land Surveyor No. 4170
Date: 04/27/10

(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
OFFICE:(432)570-6256 FAX: (432)682-3262 MOBILE: (432)528-1027

CONTRACT OFFICE: WEST TEXAS	G.F. #: 1004-028-BW	COMMITMENT EFFECTIVE DATE: 03/31/10	
CAD FILE: BRP13970	DATA FILE: 3109STANOLIND	DRAWN BY: MARCY S.	BOOK/PAGE: 1/

PLAT OF
LOT NINETEEN (19), BLOCK NINE (9),
(REPLAT OF BLOCK 9) 2nd SECTION, MA-MAR TERRACE,
AN ADDITION TO THE CITY OF MIDLAND
MIDLAND COUNTY, TEXAS

ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN CABINET B, PAGE 96, PLAT RECORDS, MIDLAND COUNTY, TEXAS

Basis of Bearings:
EAST Line of this Lot

Bearings and Distances Shown
Inside ( ) Indicate Record Information

20 10 0 20

SCALE: 1" = 20'

STATE OF TEXAS
REGISTERED
BRUCE R. PENNELL
4170
PROFESSIONAL
LAND SURVEYOR

LEGEND

- Set 1/2" I.R. W/Cap "RPLS 4170"
- Fnd. 1/2" I.R.
- G/M Gas Meter
- WM Water Meter
- Light Pole
- Power Pole
- FH Fire Hydrant
- OVERHEAD ELECTRIC
- Guy Wire
- Telephone Junct. Box
- Cable TV Junct. Box
- Buried Pipeline Marker
- Sewer Cleanout
- Underground Electric Box
- Utility Box
- Misc. Sign
- MH Sanitary Sewer Manhole
- WV Water Valve
- GV Gas Valve
- Satellite Dish
- Propane Propane Tank
- WW Water Well

33.17

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **E-11-003; Mid-Cities Community Church**

Purpose:

This is a second reading to consider an ordinance on a request by Mid-Cities Community Church for approval of a Special Exception to the Zoning Code concerning building height on Lot 1, Block 1, Westlake Addition, City and County of Midland, Texas. No changes have been made to this item since its first reading on December 13, 2011

Recommended City Council Action

X Approve __Deny __ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Mid-Cities Community Church is planning to construct an addition to their existing facility located on the north side of Highway 191 just east of N. County Road 1275 within the area recently zoned for retail use. Development standards within the LR-2, Local Retail District, limit building height to 28 feet 9 inches. Mid-Cities proposed addition is 38 feet, 9 inches in height. Thus they are requesting a Special Exception to the zoning code to allow for this variation. The Zoning Code allows for Special Exceptions for architectural and other projections of a minor extent beyond maximum height limits. In this case, Mid-Cities Community Church is planning to construct a building, indicated on the attached Site Plan labeled Exhibit A as "New Children's Addition", which exceeds building height limitations within the LR-2, Local Retail district by 10 feet. Although 10 feet beyond the maximum 28 feet 9 inches may seem excessive, this proposed addition will observe a front yard building setback of over 250 feet. That being considered, staff finds that in this case, a 10 foot exception is reasonable and recommends approval. No letters of opposition have been received to date.

Attachments: Application, Map, Exhibit A – Site Plan

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **E-11-003; Mid-Cities Community Church**

Purpose:

Hold a public hearing at approximately 10:57 a.m. and consider an ordinance on a request by Mid-Cities Community Church for approval of a Special Exception to the Zoning Code concerning building height on Lot 1, Block 1, Westlake Addition, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this application.

Discussion:

Mid-Cities Community Church is planning to construct an addition to their existing facility located on the north side of Highway 191 just east of N County Road 1275 within the area recently zoned for retail use. Development standards within the LR-2, Local Retail District, limit building height to 28 feet, 9 inches. Mid-Cities is proposing an addition that would be 38 feet, 9 inches in height. Thus they are requesting a Special Exception to the zoning code to allow for this variation. The Zoning Code allows for Special Exceptions for architectural and other projections of a minor extent beyond maximum height limits. In this case, Mid-Cities Community Church is planning to construct a building, indicated on the attached Site Plan labeled Exhibit A as "New Children's Addition", which exceeds building height limitations within the LR-2, Local Retail district by 10 feet. Although 10 feet beyond the maximum 28 feet 9 inches may seem excessive, this proposed addition will observe a front yard building setback of over 250 feet. That being considered, staff finds that a 10-foot exception is reasonable. No letters of public opposition have been received to date. Staff recommends approval of this request.

Attachments:
Application, Map, Exhibit A – Site Plan

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **E-11-003; Mid-Cities Community Church**

Purpose:

Hold a public hearing at approximately 10:57 a.m. and consider an ordinance on a request by Mid-Cities Community Church for approval of a Special Exception to the Zoning Code concerning building height on Lot 1, Block 1, Westlake Addition, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this application.

Discussion:

Mid-Cities Community Church is planning to construct an addition to their existing facility located on the north side of Highway 191 just east of N County Road 1275 within the area recently zoned for retail use. Development standards within the LR-2, Local Retail District, limit building height to 28 feet, 9 inches. Mid-Cities is proposing an addition that would be 38 feet, 9 inches in height. Thus they are requesting a Special Exception to the zoning code to allow for this variation. The Zoning Code allows for Special Exceptions for architectural and other projections of a minor extent beyond maximum height limits. In this case, Mid-Cities Community Church is planning to construct a building, indicated on the attached Site Plan labeled Exhibit A as "New Children's Addition", which exceeds building height limitations within the LR-2, Local Retail district by 10 feet. Although 10 feet beyond the maximum 28 feet 9 inches may seem excessive, this proposed addition will observe a front yard building setback of over 250 feet. That being considered, staff finds that a 10-foot exception is reasonable. No letters of public opposition have been received to date. Staff recommends approval of this request.

Attachments:
Application, Map, Exhibit A – Site Plan

Case #: E-11-003

CITY OF MIDLAND
Planning Division

SPECIAL EXCEPTION APPLICATION

Mid-Cities Community Church P.O. Box 81300, 8700 SH 191, Midland, Texas 79708-1300 432-522-1330
NAME OF APPLICANT ADDRESS ZIP PHONE

Word of Life of Midland, Inc. P.O. Box 81300, 8700 SH 191, Midland, Texas 79708-1300 432-522-1330
OWNER OF PROPERTY ADDRESS ZIP PHONE

NOTE: ATTACH SITE PLAN (FOLDED) _____ APPLICATION FEE: $400.00 _____

ADDRESS AND LEGAL DESCRIPTION OF PROPERTY FOR WHICH APPLICATION IS MADE: (COMPLETE LOT AND BLOCK DESCRIPTION OR IF NOT A LOT IN A RECORDED PLAT, ATTACH A METES AND BOUNDS DESCRIPTION)

Lot 1, Block 1, Westlake Addition

ZONING OF PROPERTY: LR-2

THE PROPERTY QUALIFIES AS AN EXCEPTION TO THE CITY CODE BECAUSE:

_____a. IT IS AN EXPANSION OF A NONCONFORMING USE
_____b. EXISTENCE OF NONCONFORMING STRUCTURES IN AREA
___X___c. ARCHITECURAL OR OTHER PROJECTIONS OF A MINOR EXTENT

_____ BY: Larry G. Bell, P.E. 11/4/2011
PROPERTY OWNER DATE (IF APPLICABLE-SEE NOTE)

NOTE: IF PROPERTY OWNER IS TO BE REPRESENTED BY AUTHORIZED AGENT, THE AGENT SHOULD SIGN THE PROPERTY OWNER AND HIS OWN NAME ON THE LINE PROVIDED ABOVE AND COMPLETE THE AFFIDAVIT BELOW.

State of Texas)
County of Midland)

Before me, the undersigned authority, on this day personally appeared Larry G. Bell, P.E. who, being duly sworn, upon oath says: That he is authorized by Word of Life of Midland, Inc. the owner of the above described property, to fully represent him in this application and that he has the legal right, power and authority to sign said owner's name hereto as his attorney in fact.

Signature of Affiant

Subscribed and sworn to before me, by the said Larry G. Bell this 4 day of November, 2011, to certify which witness my hand and seal of office.

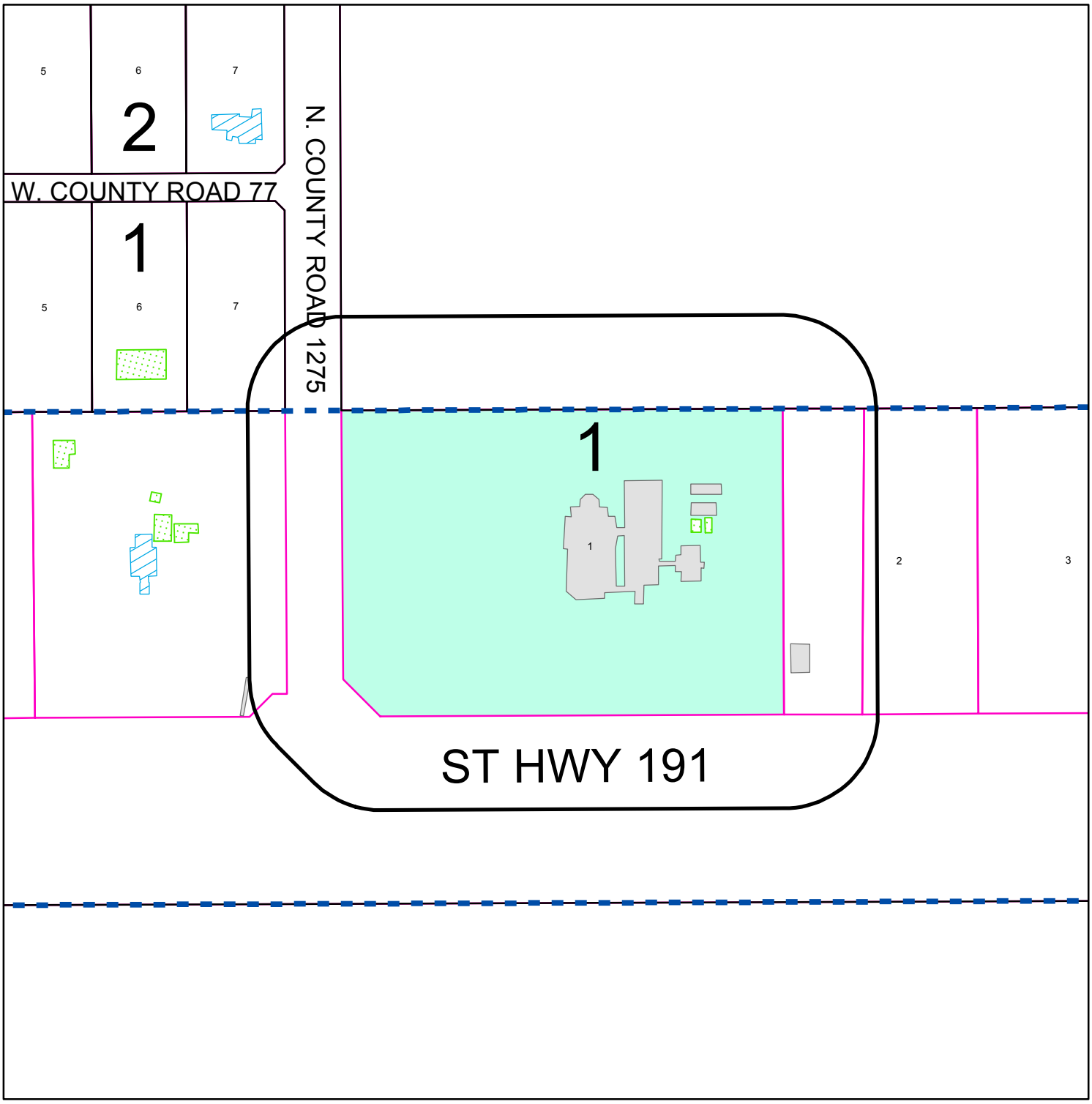
Sheri Mullins
Notary Public, Midland County, Texas

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY
Rec'd By: BM **Date:** 11/4/11
Assigned: BM
For: P+Z **On:** ~~11/14/11~~ 12/5/11

SHERI MULLINS
MY COMMISSION EXPIRES
October 4, 2014

(revised 5/2/11)



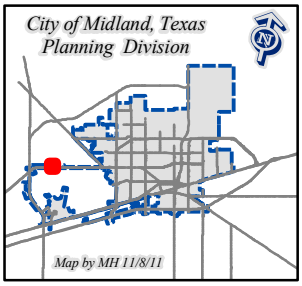
OWNER NOTIFICATION WITHIN CITY LIMITS ONLY

E - 11 - 003 **Scale: 1" = 300'**

Consider a request for a Special Exception to the Zoning Code for a building height on Lot 1, Block 1, Westlake Addition, 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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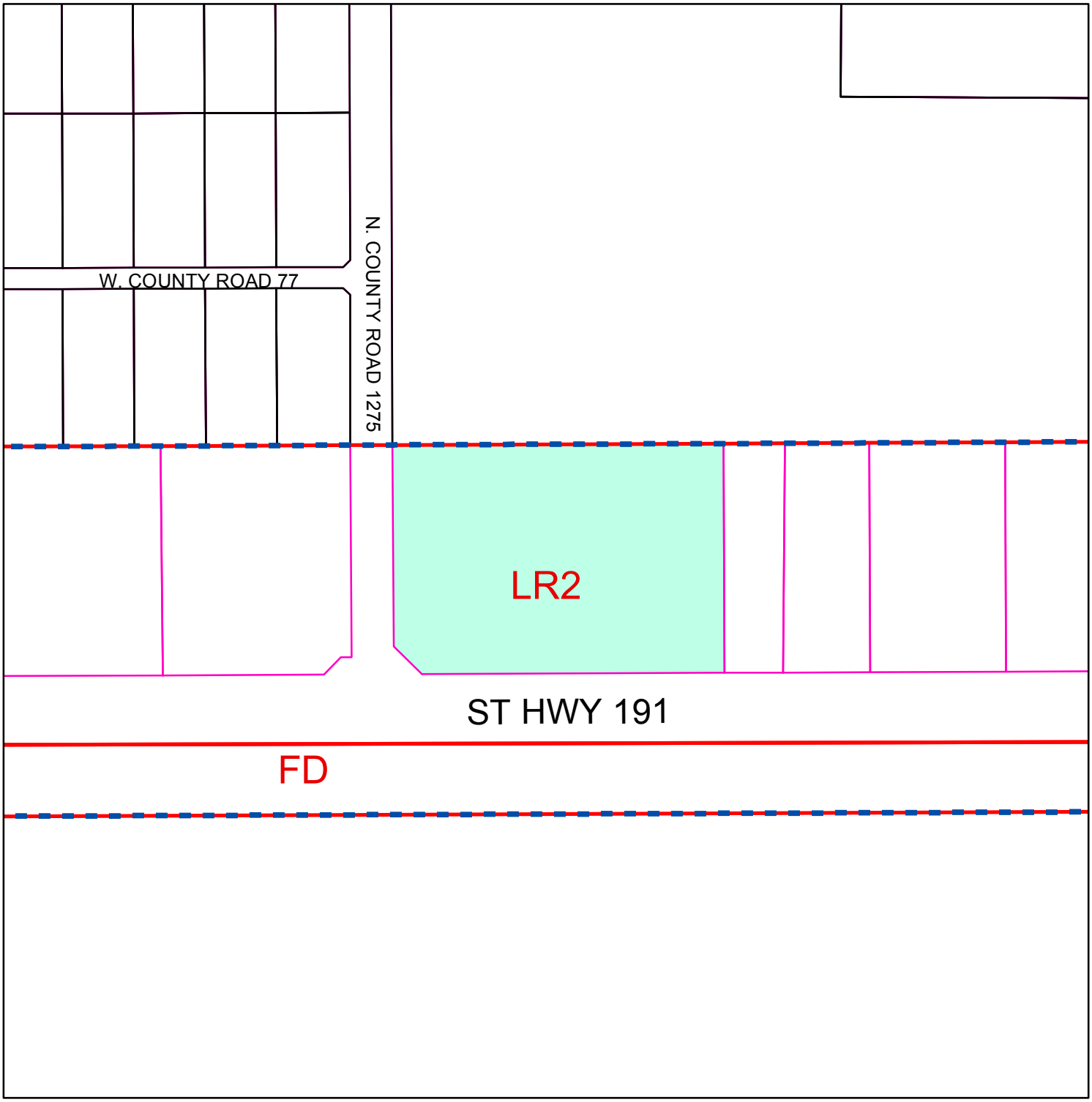


ZONING MAP

E - 11 - 003 **Scale: 1" = 400'**

Consider a request for a Special Exception to the Zoning Code for a building height on Lot 1, Block 1, Westlake Addition, City and County of Midland, Texas.

LEGEND

ZONING
CITY PARCELS
CITY LIMITS
COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 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

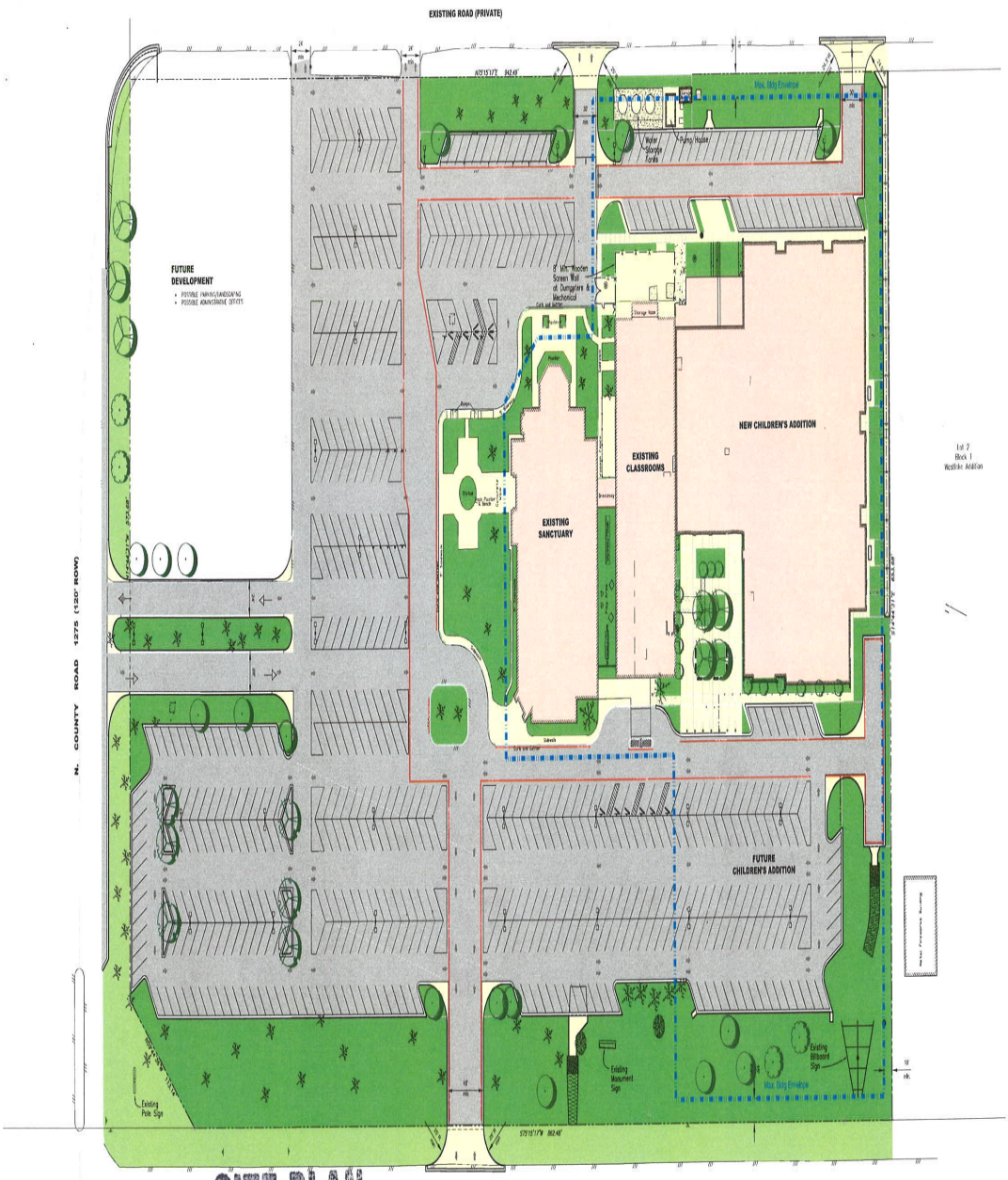
PLANNED DISTRICT SITE PLAN

WESTLAKE ADDITION

LOT 1 BLOCK 1

Original Scale: 1"=50'

Site Plan submitted to P&Z on September 28, 2011.



NOTES:

- 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 CONCRETE.
- SHADED AREAS DENOTED BY TO BE IRRIGATED & LANDSCAPED INCLUDING TREES, GRASS OR SHRUBS - WHICH MAY BE ENHANCED BY OTHER LANDSCAPE MATERIALS.
- SHADED AREAS DENOTED BY TO BE IRRIGATED GRASS AND GROUND COVER
- SHADED AREAS DENOTED BY ARE BUILDINGS.
- FIRE LANE DENOTED BY
- LANDSCAPED AREA (NOT INCLUDING R.O.W.S.) WILL BE A MINIMUM OF 10% OF TOTAL LOT AREA LESS THE BUILDING AREA.
- EXTERIOR BUILDING MATERIALS SHALL BE DECORATIVE OR PAINTED CMU, FACE BRICK, PRECAST CONCRETE, TILT-WALL, STUCCO, MANUFACTURED STONE, GLAZING OR SIMILAR CONSTRUCTION.
- ROOF MATERIALS MAY INCLUDE COMPOSITE, MEMBRANE, BUILT-UP OR STANDING SEAM METAL ROOF.
- ALL NEW SIGNS SHALL BE IN CONFORMANCE WITH SECTION 11-7a OF THE MIDLAND CITY CODE.
- ALL EXTERIOR LIGHTING SHALL ADHERE TO THE STANDARDS OUTLINED IN SECTION 11-10 OF THE MIDLAND CITY CODE.

SITE DATA	
SITE AREA	612,543 SF
BUILDING AREA (Foot Print)	90,708 SF
LANDSCAPE AREA REQUIRED	61,254 SF
LANDSCAPED AREA SHOWN (NOT INCLUDING ROW)	184,798 SF
TREES REQUIRED-(3" Cal. Min.)	89
PARKING SPACES REQUIRED	180
PARKING SPACES SHOWN	571
H.C. PARKING SPACES REQUIRED	12
H.C. PARKING SPACES SHOWN	13

SITE PLAN

EXHIBIT A

RECEIVED
NOV 30 2011
CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. E-11-003

WESTLAKE ADDITION

PARKHILLSMITH&COOPER

ORDINANCE NO.

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 1, WESTLAKE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF STATE HIGHWAY 191 AND NORTH COUNTY ROAD 1275), BY PERMITTING A BUILDING TO EXCEED THE MAXIMUM HEIGHT LIMIT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, by Ordinance No. 8416, the City Council modified the authority of the Board of Adjustment; and

WHEREAS, Title XI, Chapter 1, Section 12 ("11-1-12"), of the Midland City Code provides for the consideration of requests for special exceptions to the Midland Zoning Code; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of 11-1-12 to grant such a special exception and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to 11-1-12, for the purposes herein stated, subject to special conditions;

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

SECTION ONE. That a special exception is hereby granted for the property described as Lot 1, Block 1, Westlake Addition, City and County of Midland, Texas. Said special exception shall allow a building to exceed the maximum height limit.

SECTION TWO. Said special exception is subject to the following special conditions:

1. That the proposed construction of the building indicated as "New Children's Addition" shall adhere to Exhibit "A", which is attached hereto and incorporated herein for all purposes.

2. That the building indicated as "New Children's Addition" on Exhibit "A" shall be permitted to be a maximum of 39 feet tall.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

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., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-048, Larry Mills**

Purpose:

This is a second reading to consider an ordinance on a request by Larry Mills for a zone change from PD, Planned District for a Transition District to Amended Planned District. No changes have been made to this item since its first reading on December 13, 2011

Recommended City Council Action

X Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to consider this application.

Discussion:

Mr. Mills owns the lot at the southwest corner of W. Wall Street and "J" Street. This lot is zoned Planned District for a Transition District, subject to LR-1 District regulations. He wishes to construct a two-story mixed use structure consisting of an 1,840 square foot office building with a residence above. The building designs are shown on the attached Exhibits A-E. Exterior building materials include brick, cement siding and a metal canopy. The purpose of this zone change is to reduce the front yard setback along Wall Street from 20 feet to 15 feet, and to reduce the side yard setback along "J" Street from 10 feet to five feet. The applicant claims these reductions are needed to make this project viable. The staff believes that mixed use developments should be supported, and the applicant is installing more trees than required. The Planning and Zoning Commission voted unanimously to recommend approval, and no opposition has been forthcoming. Staff concurs with this recommendation.

Attachments:
November 14, 2011 P&Z Staff Report
Proposed Ordinance and Exhibits A-E

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-048, Larry Mills**

Purpose:

Hold a public hearing at approximately 11:06 a.m. and consider an ordinance on a request by Larry Mills for a zone change from PD, Planned District for a Transition District to Amended Planned District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to consider this application.

Discussion:

Mr. Mills owns the lot at the southwest corner of W Wall Street and "J" Street. This lot is zoned Planned District for a Transition District, subject to LR-1 District regulations. He wishes to construct a two-story mixed use structure consisting of an 1,840-square foot office building with a residence above. The building designs are shown on the attached Exhibits A-E. Exterior building materials include brick, cement siding and a metal canopy. The purpose of this zone change is to reduce the front yard setback along Wall Street from 20 feet to 15 feet and to reduce the side yard setback along "J" Street from 10 feet to five feet. The applicant claims these reductions are needed to make this project viable. The staff believes that mixed use developments should be supported and the applicant is installing more trees than required. The Planning and Zoning Commission voted unanimously to recommend approval and no public opposition has been forthcoming. Staff concurs with this recommendation and is recommending approval.

Attachments:
November 14, 2011 P&Z Staff Report
Proposed Ordinance and Exhibits A-E

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-048, Larry Mills**

Purpose:

Hold a public hearing at approximately 11:06 a.m. and consider an ordinance on a request by Larry Mills for a zone change from PD, Planned District for a Transition District to Amended Planned District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to consider this application.

Discussion:

Mr. Mills owns the lot at the southwest corner of W Wall Street and "J" Street. This lot is zoned Planned District for a Transition District, subject to LR-1 District regulations. He wishes to construct a two-story mixed use structure consisting of an 1,840-square foot office building with a residence above. The building designs are shown on the attached Exhibits A-E. Exterior building materials include brick, cement siding and a metal canopy. The purpose of this zone change is to reduce the front yard setback along Wall Street from 20 feet to 15 feet and to reduce the side yard setback along "J" Street from 10 feet to five feet. The applicant claims these reductions are needed to make this project viable. The staff believes that mixed use developments should be supported and the applicant is installing more trees than required. The Planning and Zoning Commission voted unanimously to recommend approval and no public opposition has been forthcoming. Staff concurs with this recommendation and is recommending approval.

Attachments:
November 14, 2011 P&Z Staff Report
Proposed Ordinance and Exhibits A-E

Planning and Zoning Commission
Minutes
November 14, 2011

Z-11-048 - Hold a public hearing and consider a request by **Larry Mills** for a *zone change* from PD, Planned District for a Transition District, to an Amended Planned District on Lot 1, Block 83, West End, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of W. Wall Street and S. "J" Street.)

The applicant yielded to the staff, and Mr. Compton explained that this request is for a two-story building (1,840 square feet) that would house an office on the first floor and living quarters on the second. He further stated that the applicant had requested a reduction in the front setback from 20 to 15 feet and a side yard setback from ten to five feet on a 50-foot wide by 140-foot long lot.

Chairman Carney opened the public hearing and there being no one wishing to speak in favor or in opposition to the item, closed the public hearing.

Following a brief discussion, a motion for approval, subject to Conditions A-C, was made by Commissioner Watkins; seconded by Commissioner Gatten. The motion carried by the following vote: AYE: Wolf, Lanning, Gatten, Carney, Ferguson, Wilton and Watkins. NAY: None. ABSTAIN: None. ABSENT: York and Woodruff

PLANNING AND ZONING COMMISSION

November 14, 2011

CASE: Z-11-048.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Transition District to Amended Planned District.

APPLICANT/OWNER: Larry Mills.

REPRESENTATIVE: Richard Greth.

LEGAL DESCRIPTION: Lot 1, Block 83, West End, City and County of Midland, Texas.

LOCATION: Southwest corner of W. Wall Street and S. "J" Street.

DETAILS OF REQUEST:

1. This vacant lot is zoned Planned District for a Transition District. This planned district was created in 2008 as part of a City-initiated rezoning of several blocks along Wall Street when Graham's Pharmacy desired to relocate to this area. The land was rezoned from O-1 District to a planned district that is generally subject to LR-1 District regulations. However, certain uses, such as bowling alleys and self-service gasoline stations are excluded. Further, a solid six-foot fence is required adjacent to the alleys as well as alley paving is required. Finally, this planned district limits all signs to a maximum height of four feet above grade and 32 square feet in area, and electronic reader boards are expressly prohibited.

   We have received a request from Larry Mills who wishes to develop this lot with a mix of office and residential land use. He plans to build an office building at the corner of Wall Street and "J" Street. This would be a two story building with a residence above the office. Further, he plans on a second building toward the rear of the lot where a two-car detached garage would be constructed. These are all permitted uses. However, to make this project work, he is requesting a reduction in front yard setback along Wall Street from 20 to 15 feet, and a reduction in side yard setback along "J" Street from ten feet to five feet. For these reasons, he has submitted a request to amend this planned district.

SURROUNDING ZONING AND LAND USE:

2. The area to the west is developed with a flower shop that is currently undergoing renovation that involves the construction of a new building at the rear of the lot, to be followed with the razing of the existing building. Farther to the west is Midland Need to Read, a hair salon and an attorney's office. North, across Wall Street is an engineering and architect office. To the northeast is a church, and the area to the south is developed with single-family residences.

ANALYSIS:

3. The subject lot measures 50 feet in width and 140 feet in depth. The only need for this zone change is to allow a five-foot reduction in the front and side yard setbacks. We support this request for two reasons. First, the applicant proposes to plant eight trees along "J" Street, whereas the landscape code only requires four. Second, this is the first application we have reviewed that proposes a mixed use development. That is, he plans both an office and a residence in the same building. This provides for a compact development and efficient use of land, a goal for land close to the downtown area. We do not anticipate any adverse impacts to abutting land if this request is approved.

4. The applicant has provided Exhibits A-E to illustrate the planned development. Exhibit A is a plan view which shows the principle office building adjacent to Wall Street, with a 15-foot front yard setback. The foot print is 46 feet by 40 feet (1,840 square feet), and the building height is shown as 29 feet. Under the LR-1 District requirements, this building must be lowered three inches. No driveway or parking is planned from Wall Street. An office building with 1,840 square feet requires a minimum of five parking spaces, and two spaces are needed for the residence. Exhibit A shows a total of nine spaces. Access into the attached garage will be through the abutting alley.

5. Exhibits B through E represent elevation views of the office building. Exterior building materials include brick veneer, glazing and cement siding. Exhibit A indicates that the detached garage will have a brick veneer exterior. These are acceptable materials in the underlying LR-1 District. Exhibit A also shows ten new trees along "J" Street as well as the two existing trees along Wall Street that will be retained. This meets or exceeds the requirements of the Landscape Code. The staff views this proposal as a compact, mixed use development with building design and landscaping that will fit well with the surrounding development.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from PD, Planned District for a Transition District to Amended Planned District, subject to the following conditions:

A. The development of this property shall conform to the conditions shown on Exhibits A through E in all respects, except as otherwise stated below.

B. The maximum building height shall not exceed 28.75 feet, and the maximum building footprint for the office/residence shall not exceed 1,840 square feet.

C. The door to the detached garage must be accessible from the alley and thedoor must be setback five feet from the alley.

Jim Compton, for
Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Jim Compton
Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A through E

Case Number: Z-11-048

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

LARRY MILLS — 432/967.2089 / LMILLS01@GRASCARD.NET
Applicant Name — (Phone/e-mail)
1704 W. MISSOURI
Address — Zip Code

LARRY MILLS — 432/967.2089 / LMILLS@GRASCARD.NET
Property Owner Name — (Phone/e-mail)
1704 W. MISSOURI MIDLAND
Address — Zip Code

RICHARD GRETH — 559-5198 / R.GRETH@SBCGLOBAL.NET
Representative Name — (Phone/e-mail)
P.O. BOX 8565 MIDLAND, TX — 79708
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. Mixed use - office & single family

PRESENT ZONE: PDTD REQUESTED ZONE: Amended PD
(List by tracts if more than one district is requested)

Reason for Zone Change Request:

Present Use of Property: VACANT LOT

Proposed Use of Property: MIXED USE BLDG.

How will zone change affect the public health, safety and welfare?

Describe how conditions affecting the property have changed since present zoning designation:

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes ✓ 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): [signature] Date: 9-29-2011

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.

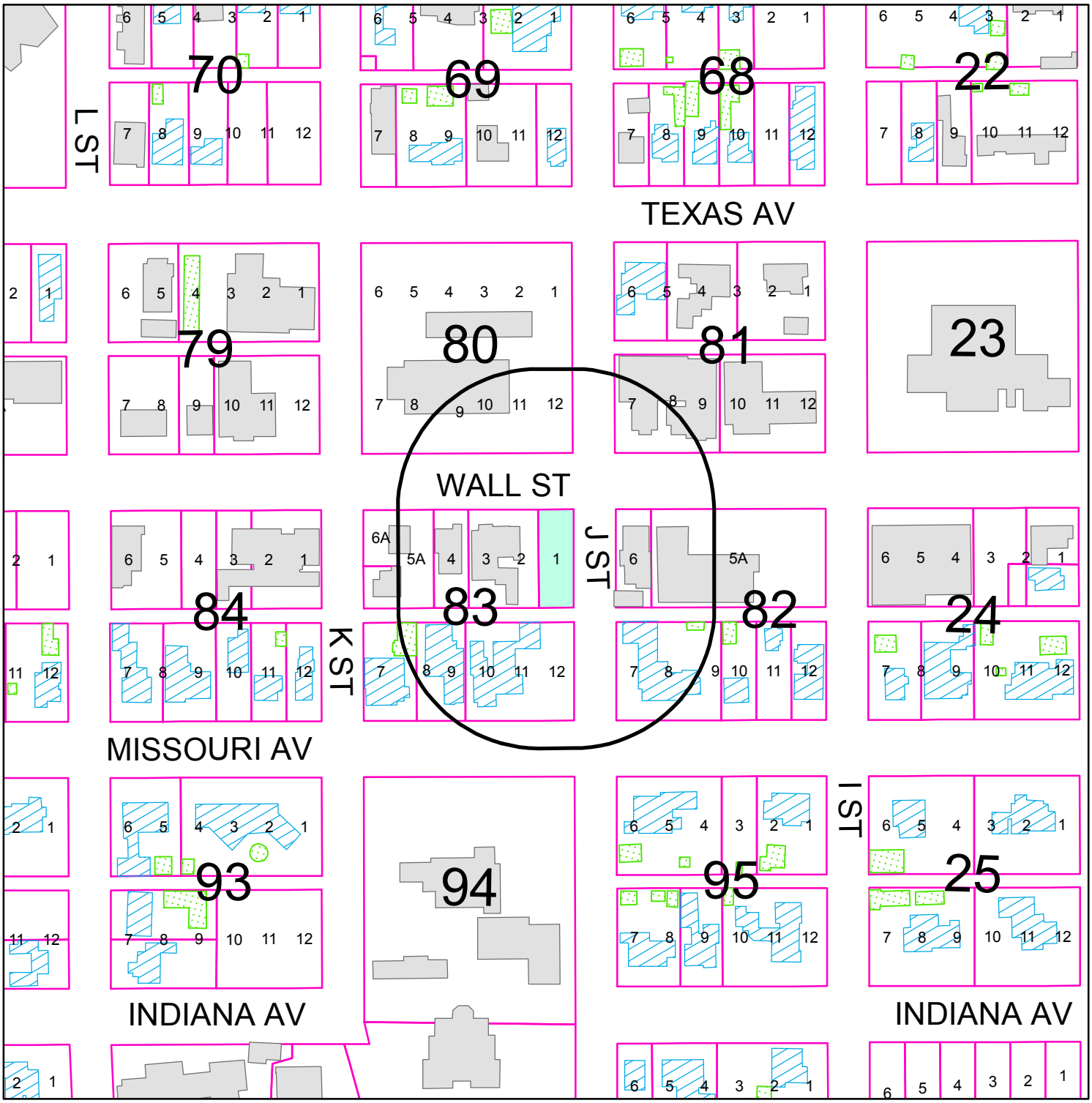
_____
Authorized Agent (signature)

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: JC Date: 10-12-11
Assigned: JC
For: P+Z On: 11/14/11

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

Z - 11 - 048 **Scale: 1" = 200'**

Consider a request for a zone change from PD, Planned District for a Transition District, to an Amended Planned District on Lot 1, Block 83, West End, 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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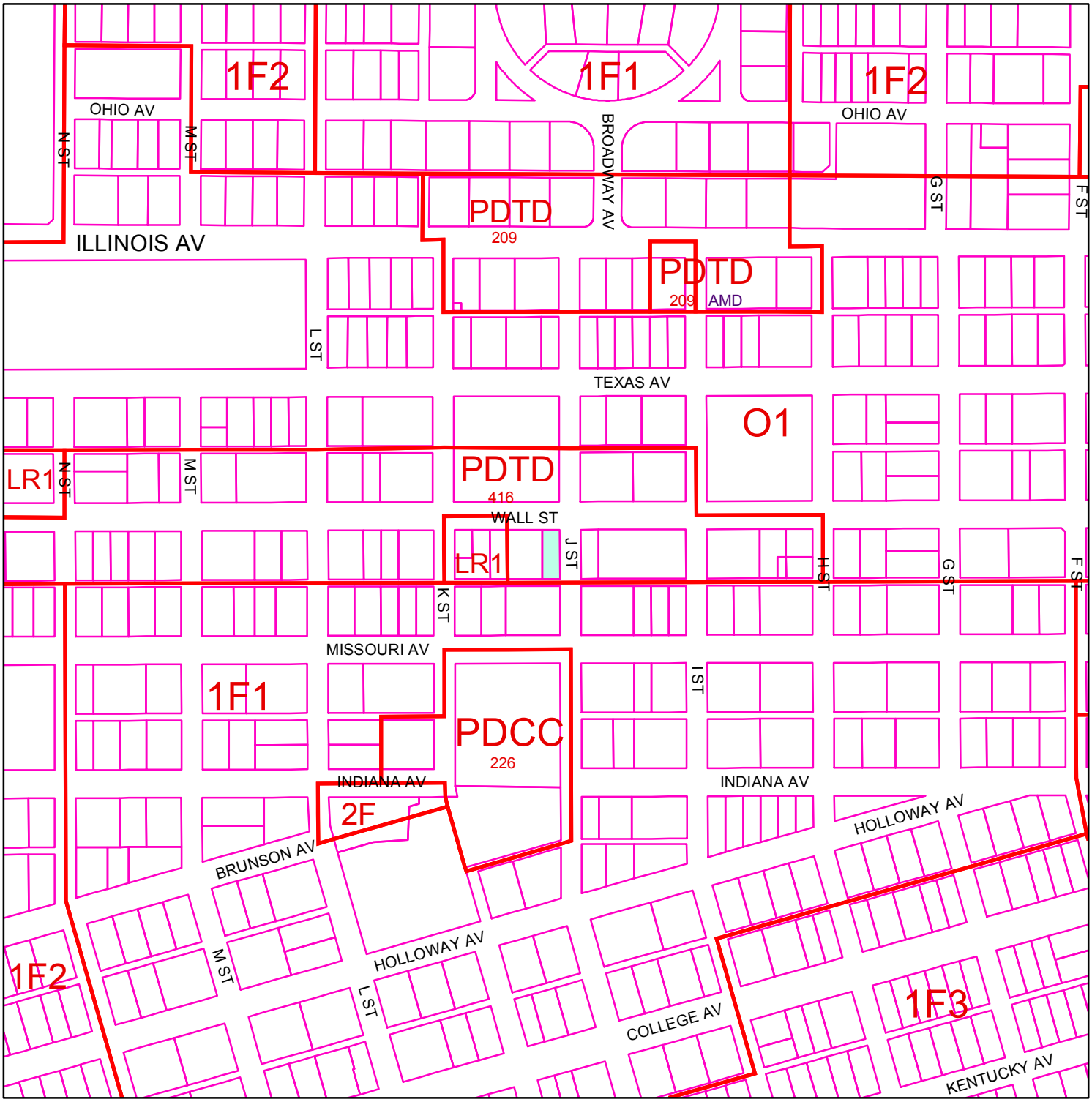

ZONING MAP

Z - 11 - 048 **Scale: 1" = 400'**

Consider a request for a zone change from PD, Planned District for a Transition District, to an Amended Planned District on Lot 1, Block 83, West End, 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, 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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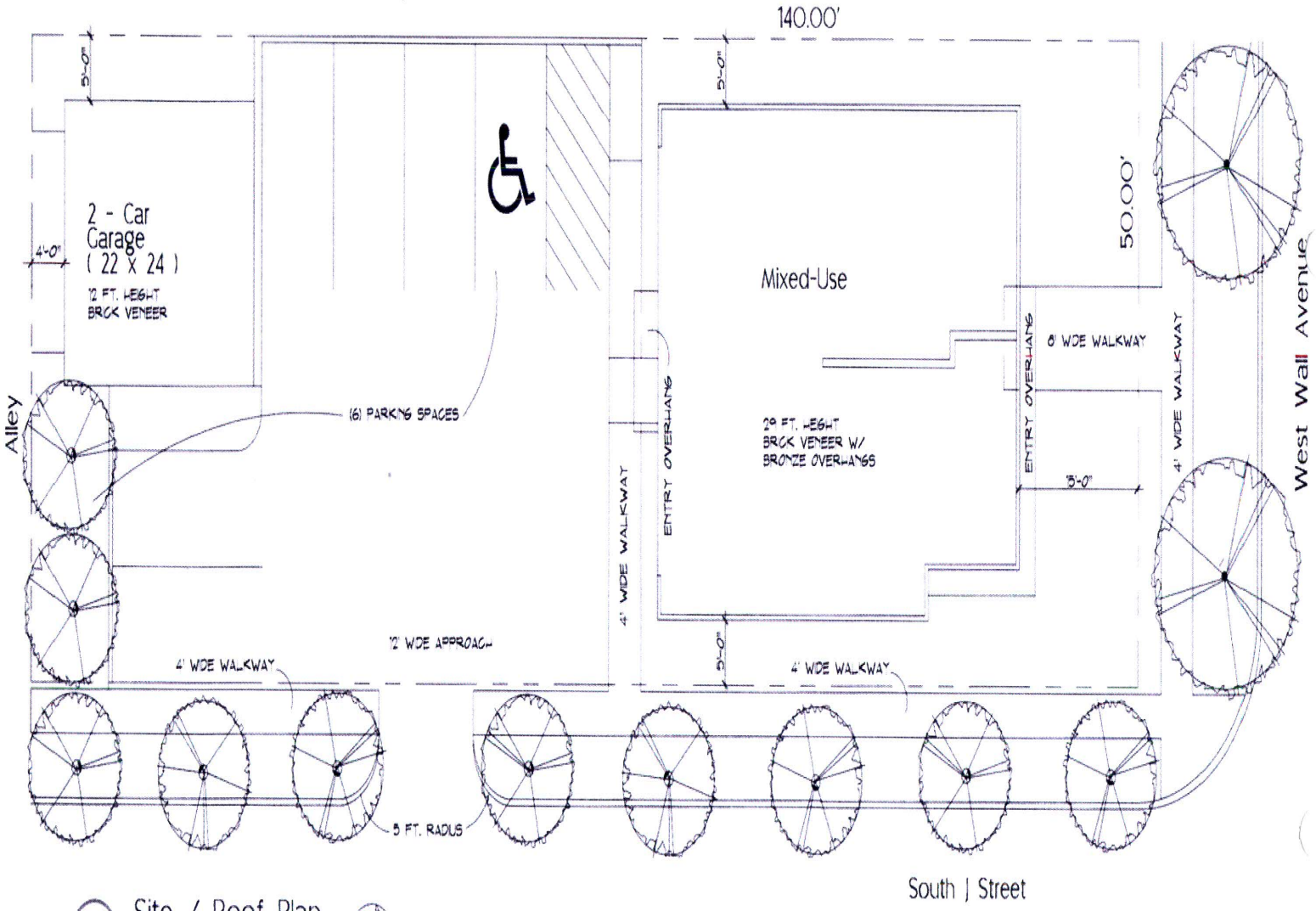


1 Site / Roof Plan

SCALE: 1/8" = 1'- 0"

N

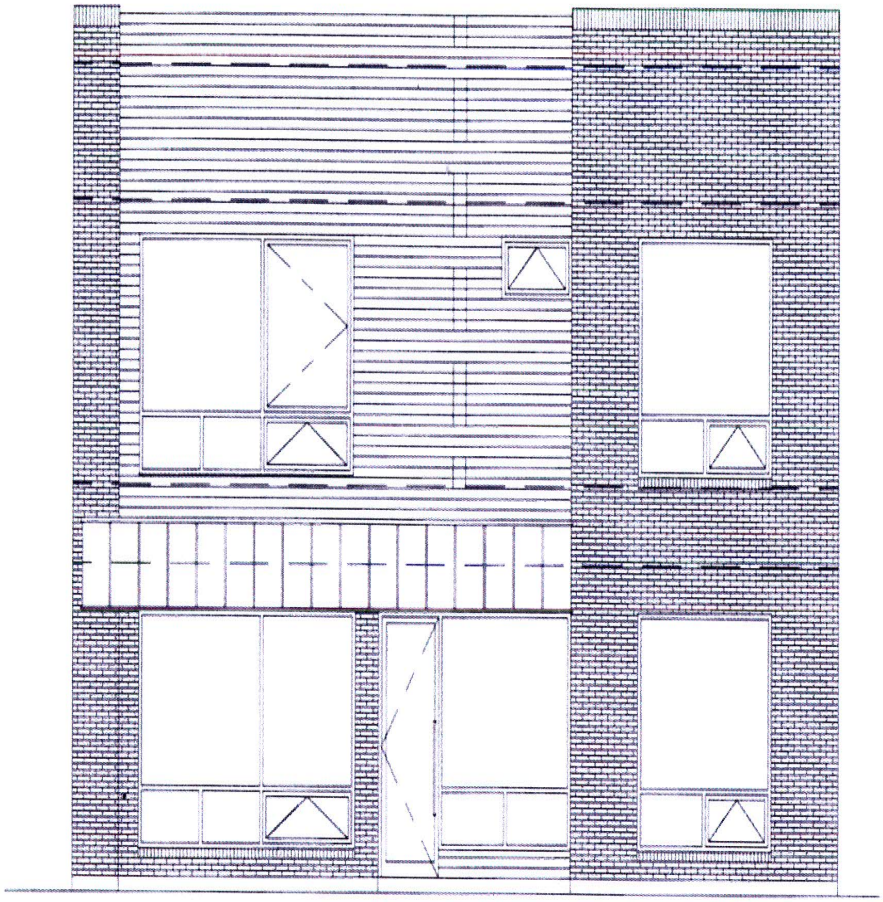
29 September 2011

Blue Yucca Studios
Fort Worth Texas
817.924.9911

RECEIVED
OCT 11 2011
CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT A

CASE NO. 24-048



1 North Elevation

SCALE: 1/8" = 1'- 0"

RECEIVED
OCT 11 2011
CITY OF MIDLAND
PLANNING DIVISION OFFICE

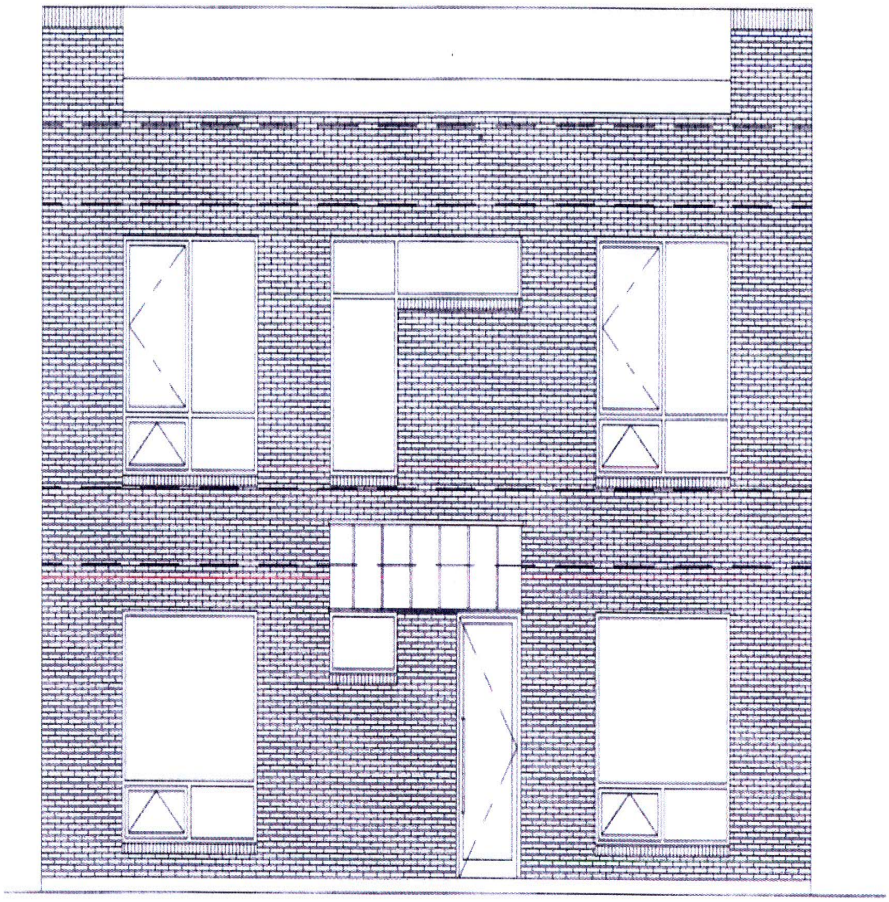
SAVE-\GRET-MU.VWF 9/8/

EXHIBIT B

29 September 2011

Blue Yucca Studios
Fort Worth Texas
817.924.9911

CASE NO. Z-11-048



1 South Elevation

SCALE: 1/8" = 1'- 0"

RECEIVED
OCT 11 2011
CITY OF MIDLAND
PLANNING DIVISION OFFICE

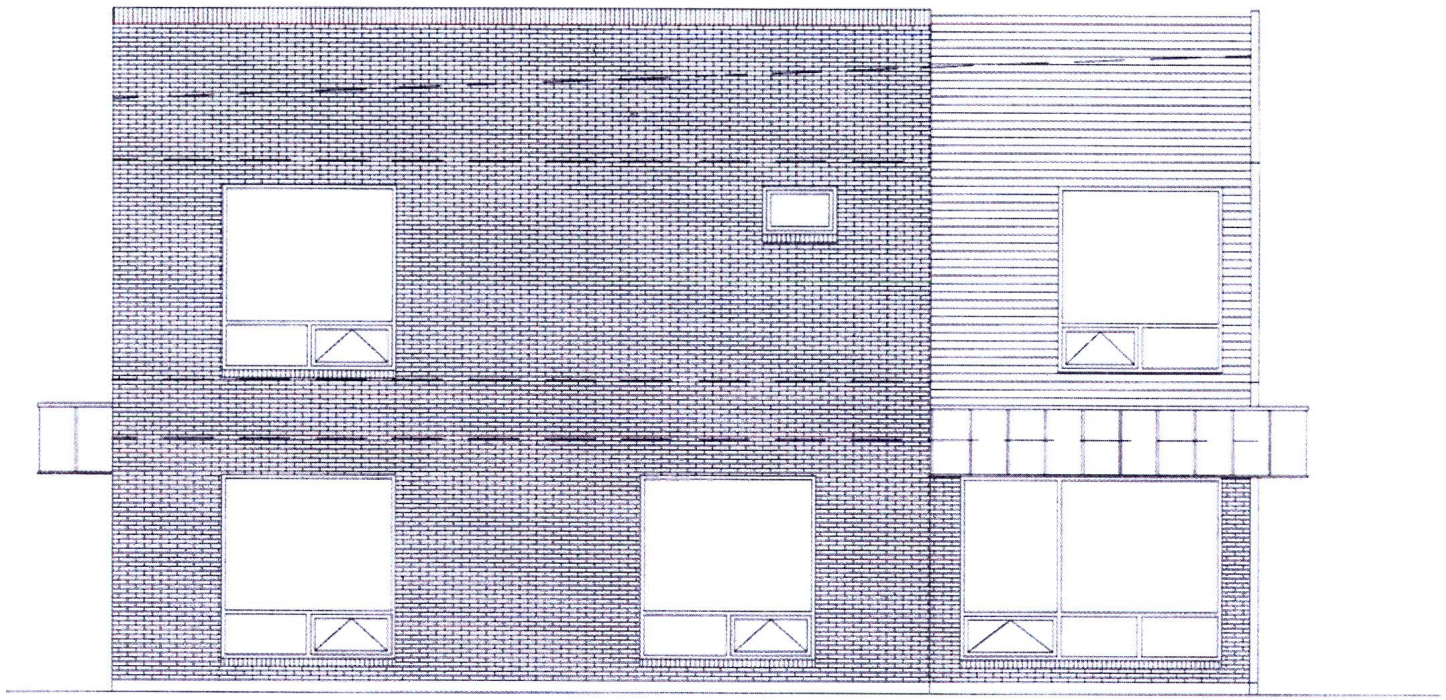
SAVE-\SRETH-MU.VWE 09/20/11

EXHIBIT C

29 September 2011

Blue Yucca Studios
Fort Worth Texas
817.924.9911

CASE NO. Z11-048



2 East Elevation

SCALE: 1/8" = 1'- 0"

RECEIVED
OCT 11 2011
CITY OF MIDLAND
PLANNING DIVISION OFFICE

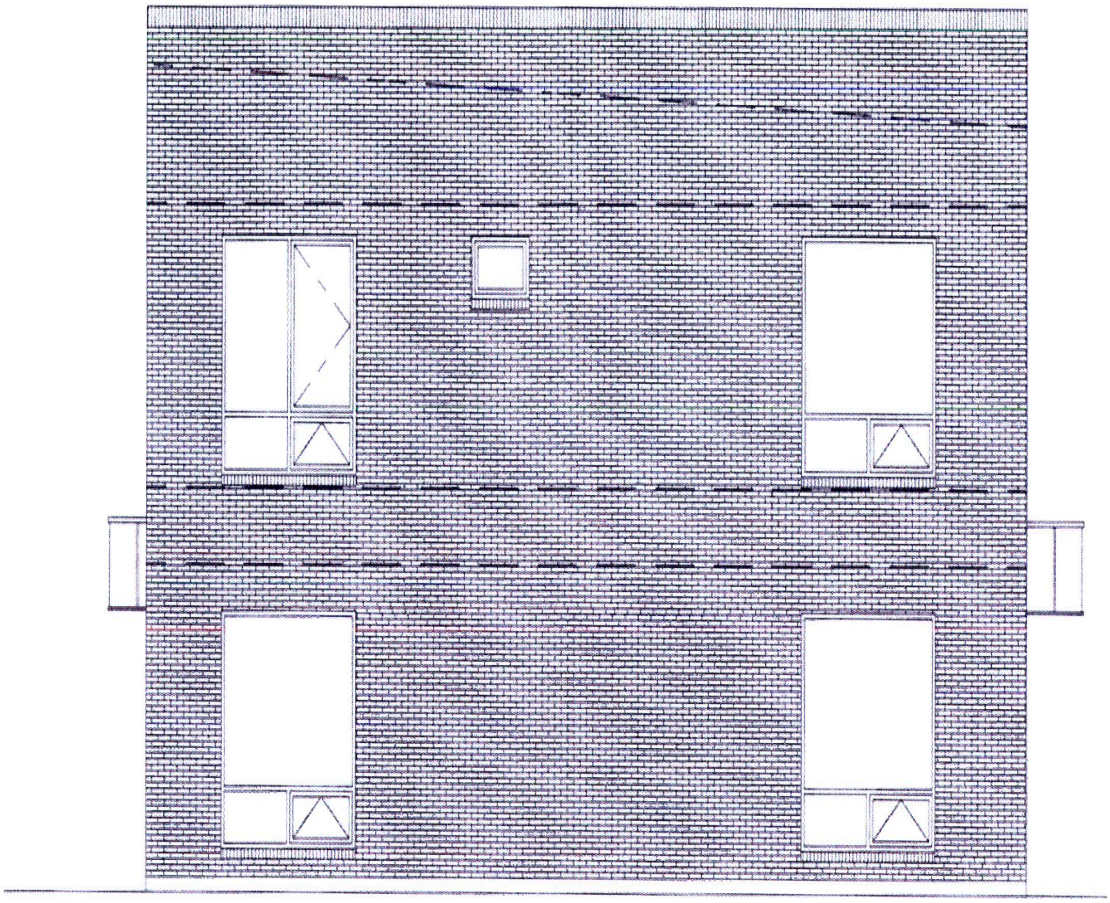
SAVE-\GRE~1-~1\VWR 9/29

EXHIBIT D

29 September 2011

Blue Yucca Studios
Fort Worth Texas
817.924.9911

CASE NO. Z-11-048



2 West Elevation

SCALE: 1/8" = 1'- 0"

RECEIVED

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CITY OF MIDLAND
PLANNING DIVISION OFFICE

CAD70\AASAVE-1\GRETH-MU.VWF 9/10/11

EXHIBIT E

29 September 2011

Blue Yucca Studios
Fort Worth Texas
817.924.9911

CASE NO. Z-11-048

ORDINANCE NO.

AN ORDINANCE ADOPTING A SITE PLAN FOR LOT 1, BLOCK 83, WEST END, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF WEST WALL STREET AND "J" STREET); SUBJECT TO THE FOLLOWING CONDITIONS AND RESTRICTIONS; 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, by Ordinance No. 8615, adopted February 26, 2008, the City Council granted a "Planned District" for a Transition District, subject to future site plan review; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to adopt a site plan pursuant to Ordinance No. 8615, subject to special conditions and restrictions;

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

SECTION ONE. That a site plan, which is attached hereto as Exhibits "A", "B", "C", "D" and "E", and incorporated herein for all purposes, is hereby adopted for the following property:

Lot 1, Block 83, West End, City and County of Midland, Texas.

SECTION TWO. That the use and development of the property shall be subject to the following conditions and restrictions:

1. That the development of this lot shall conform in all respects to the conditions shown on Exhibits "A", "B", "C", "D" and "E", except as otherwise stated below.

2. That the maximum "footprint" of the principle building shall not exceed 1,840 square feet in area.

3. That the maximum height of the principle building shall not exceed 28.75 feet. A minimum building setback of 15 feet shall be observed from Wall Street, and a minimum building setback of 5 feet shall be observed from "J" Street.

4. That the detached garage shall be entered from the alley only, and the garage

door must observe a minimum 5-foot setback from the alley.

5. That a minimum 6-foot tall solid fence shall be constructed along the rear lot line, except along the detached garage.

6. That City of Midland Ordinance No. 8615 shall remain in full force and effect, except as amended by this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

L:\Ordinances\Planning\Planned District\Adopt\2011\Z-11-048.PD-Transition District.wpd

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-050, SBC, L.P.**

Purpose:

This is the second reading to consider an ordinance on a request by SBC, L.P. for a zone change from PD, Planned District for a Shopping Center to an Amended Planned District. No changes have been made to this item since its first reading on December 13, 2011.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

SBC, L.P. is planning to construct an 86,064 square foot, 3-story office building and a 2-story parking garage at the southeast corner of the intersection of Champions Drive and Tradewinds Boulevard. The underlying zoning for this Planned District is the LR-2, Local Retail District, which permits a maximum height of 2 ½ stories. The proposed office building is 53' high including rooftop equipment. Therefore, the Planned District needs to be amended for the greater height and to adopt the proposed site plan. With the height of some nearby structures exceeding the height of the proposed office building (Crestview Church and the stadiums), staff recommends approval of the height and associated site plan based on the contextual fit. The agreeable aesthetics of this primarily glass façade building also presents a softened look at this highly visible intersection. No letters of opposition were received and the Planning and Zoning Commission recommends approval.

Attachments:

Maps
December 5, 2011 Planning & Zoning Commission Staff Report
Exhibit A – D
Proposed Ordinance

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-050, SBC, L.P.**

Purpose:

Hold a public hearing at approximately 11:09 a.m. and consider an ordinance on a request by SBC, L.P. for a zone change from PD, Planned District for a Shopping Center to an Amended Planned District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

SBC, L.P. is planning to construct an 86,064-square foot, 3-story office building and a 2-story parking garage at the southeast corner of the intersection of Champions Drive and Tradewinds Boulevard. The underlying zoning for this Planned District is the LR-2, Local Retail District, which permits a maximum height of 2 ½ stories. The proposed office building is 53' high including rooftop equipment. Therefore, the Planned District needs to be amended for the greater height and to adopt the proposed site plan. With the height of some nearby structures exceeding the height of the proposed office building (Crestview Church and the stadiums), staff recommends approval of the height and associated site plan based on the contextual fit. The agreeable aesthetics of this primarily glass façade building also present a softened look at this highly visible intersection. No letters of public opposition were received and the Planning and Zoning Commission approved this request. Staff recommends approval.

Attachments:
Maps

December 5, 2011 Planning & Zoning Commission Staff Report
Exhibit A – D
Proposed Ordinance

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-050, SBC, L.P.**

Purpose:

Hold a public hearing at approximately 11:09 a.m. and consider an ordinance on a request by SBC, L.P. for a zone change from PD, Planned District for a Shopping Center to an Amended Planned District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

SBC, L.P. is planning to construct an 86,064-square foot, 3-story office building and a 2-story parking garage at the southeast corner of the intersection of Champions Drive and Tradewinds Boulevard. The underlying zoning for this Planned District is the LR-2, Local Retail District, which permits a maximum height of 2 ½ stories. The proposed office building is 53' high including rooftop equipment. Therefore, the Planned District needs to be amended for the greater height and to adopt the proposed site plan. With the height of some nearby structures exceeding the height of the proposed office building (Crestview Church and the stadiums), staff recommends approval of the height and associated site plan based on the contextual fit. The agreeable aesthetics of this primarily glass façade building also present a softened look at this highly visible intersection. No letters of public opposition were received and the Planning and Zoning Commission approved this request. Staff recommends approval.

Attachments:
Maps

December 5, 2011 Planning & Zoning Commission Staff Report
Exhibit A – D
Proposed Ordinance

PLANNING AND ZONING COMMISSION

December 5, 2011

CASE: Z-11-050.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Shopping Center to an Amended Planned District.

APPLICANT/OWNER: SBC, L.P.

LEGAL DESCRIPTION: A 4.68 Acre Portion out of the Remainder of Lot 1, Block 6, Westridge Park Addition, Section 6, City and County of Midland, Texas.

LOCATION: Generally located on the southeast corner of the intersection of Champions Drive and Tradewinds Boulevard.

CURRENT ZONING: PDSC, Planned District for a Shopping Center.

ASSOCIATED CASES: Z-04-005

DETAILS OF REQUEST:

1. The applicant plans to develop this vacant land with a 3-story office building and a 2-story parking garage. The property is currently zoned PD, Planned District for a Shopping Center, subject to regulations of the LR-2, Local Retail District. The current request accompanies a proposed preliminary plat, also scheduled on the December 5th agenda (REF. CASE P-11-081, Proposed Lot 3). While an office building and onsite parking facility are permitted in the LR-2 District, the maximum permitted height is two and one-half stories. Therefore, the site plan and the height regulation must be amended.

SURROUNDING ZONING AND LAND USE:

2. This property is bounded on the north by Champions Drive and the west by Tradewinds Blvd., both of which are collector streets. The area to the north is undeveloped sports complex land. To the east and south of this site are parts of this same Planned District currently being subdivided, but as yet, undeveloped. To the west is the Betenbough Development, a PD, Planned District for a Housing Development, and the city limits boundary below that.

ANALYSIS:

3. The building is shown to have a ground floor footprint of 28,688 square feet in total. The area provided for landscaping and the number of parking spaces provided is more than adequate for the lot size and an 86,064 square foot office building. The height of the building is 53 feet including the screened HVAC equipment, which is greater than what is currently allowed under the existing Planned District. However, the height is within the contextual fit of nearby structures including the neighboring church (Crestview Baptist Church is 57 feet in height) and the large Scharbauer Sports Complex just to the north. The building façade will be made of decorative materials as noted on the Site Plan (Exhibit – A). Additionally, the building's exterior rendering (Exhibit – D) depicts a neat, clean appearance in an office building for this intersection with plenty of glass to soften the perceived height of the structure. Staff concurs that this 53' maximum height allowance is acceptable given the area context, building setbacks, the building's design and that the roof utility equipment adding to the height is also placed back from the rooftop edge. The site provides adequate driveways for ingress and egress, however, the final placement of the drive at the northeast must be completely contained within the property lines for this site. The sidewalk should match the design and accessible walkway layout pattern of that across Champions Drive on this high visibility intersection.

STAFF RECOMMENDATION:

Staff concurs with the approval of this request for a zone change from PD, Planned District for a Shopping Center to an Amended Planned District, subject to the following conditions:

A. That the new construction is consistent with the Site Plan (Exhibit A), Structure Elevations (Exhibits B & C), and Office Building Rendering (Exhibit D) with the exception that the rendering depicts 4-stories rather than the permitted 3-stories;

B. That the maximum height of the office building shall not exceed 53 feet;

C. That the landscaping shall conform to City regulations in place at the time of development;

D. That the placement of driveways accessing public streets shall be contained within the property lines bounding the site and approved by the City;

E. That the air conditioners and dumpsters shall be appropriately screened;

F. **That a drainage plan must be submitted and approved;**

G. **That all required public improvements shall be addressed, including requirements for a looped waterline, additional fire hydrants, sewer extension and sidewalks;**

H. **That a blanket refuse easement is granted to the city;**

I. **That Ordinance 8227 is amended by this action.**

_____

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

_____

Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Site Plan – Exhibit A
Elevations – Exhibits B & C
Rendering – Exhibit D
Maps

Case Number: Z-11-050

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

SBC, L.P. — 432-522-2040
Applicant Name — (Phone/e-mail)
1811 Heritage Blvd., #100 — Midland, Texas 79707
Address — Zip Code

SBC, L.P. — 432-522-2040
Property Owner Name — (Phone/e-mail)
1811 Heritage Blvd., #100 — Midland, Texas 79707
Address — Zip Code

Parkhill, Smith, and Cooper, Inc. — 432-697-1447 EOliver@team-psc.com
Representative Name — (Phone/e-mail)
1700 W. Wall Street, Suite 100 — 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. Being a 24.16 Ac. Replat of the remaining portion of Lot 1, Block 6, Westridge Park Addition Section 6

PRESENT ZONE: PD-SC REQUESTED ZONE: Amended PD-SC with underlying LR-2
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To allow for further development of the site into an office facility

Present Use of Property: None

Proposed Use of Property: Office building

How will zone change affect the public health, safety and welfare? None

Describe how conditions affecting the property have changed since present zoning designation: None

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes __X__ No

- 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: X

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 Eric L. West, P.E. who, being by me duly sworn, upon oath says: That (s)he is authorized by SBC, L.P., 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.

Eric L. West

Authorized Agent (signature)

Subscribed and sworn to before me, this 14th day of October, 20 11, to certify which witness my hand and seal of office.

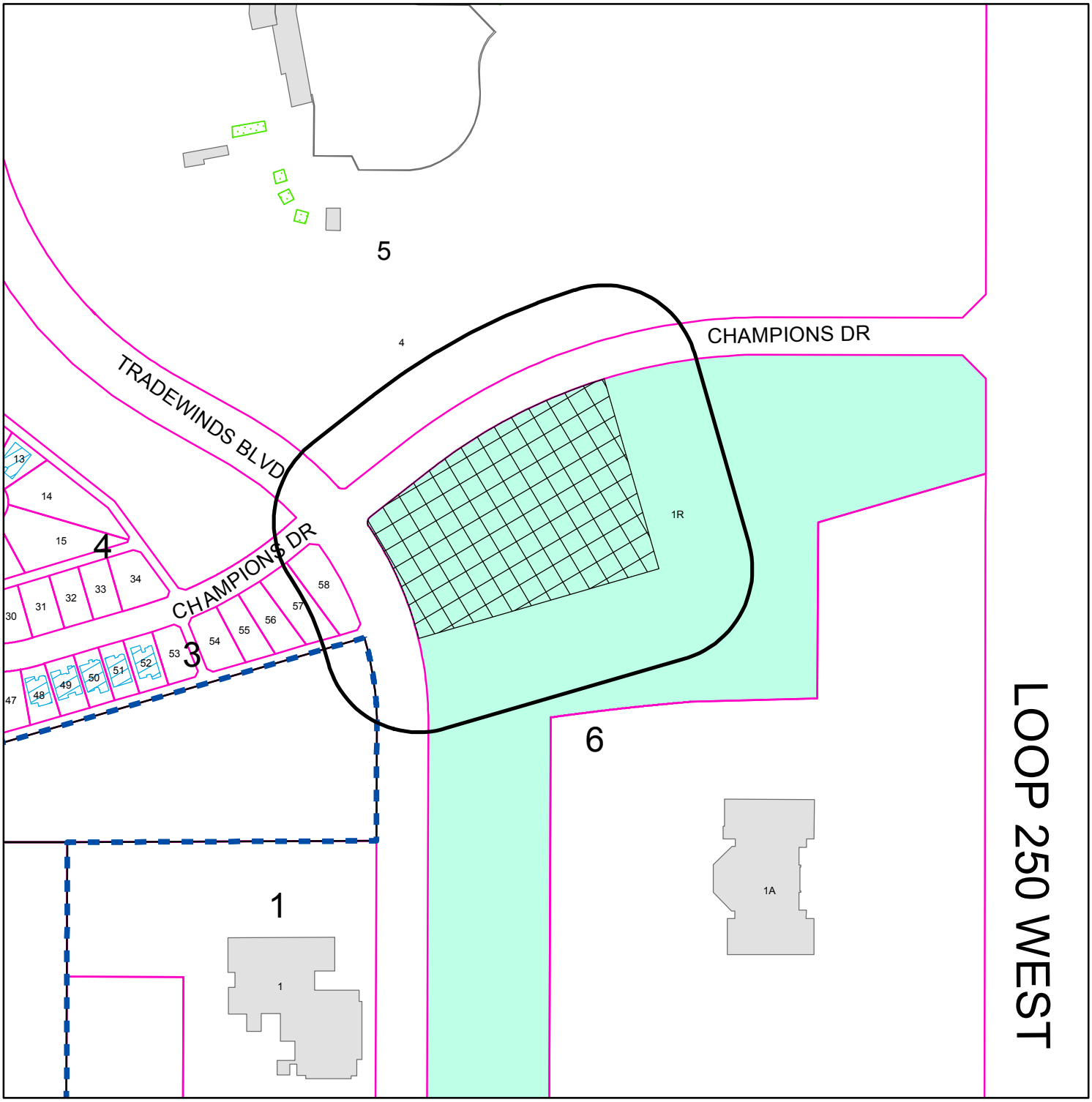
Darcy Y. Knight

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: JC	Date: 10/17/11
Assigned: KV	
For: PZ	On: 12/5/11

NOTARY PUBLIC STATE OF TEXAS
DARCY Y. KNIGHT
Notary Public, State of Texas
My Commission Expires
JUNE 14, 2015

****Application will not be considered for scheduling until reviewed by a planner.****



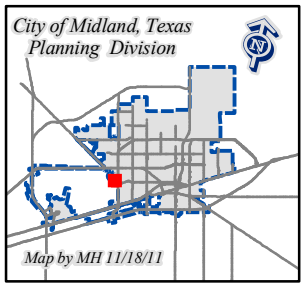
PROPERTY OWNER NOTIFICATION MAP

Z - 11 - 050 **Scale: 1" = 300'**

Consider a request for a zone change from PD Planned District for a Shopping Center, to an Amended Planned District on a 4.68-acre portion out of the remainder of Lot 1, Block 6, Westridge Park Addition, Section 6, 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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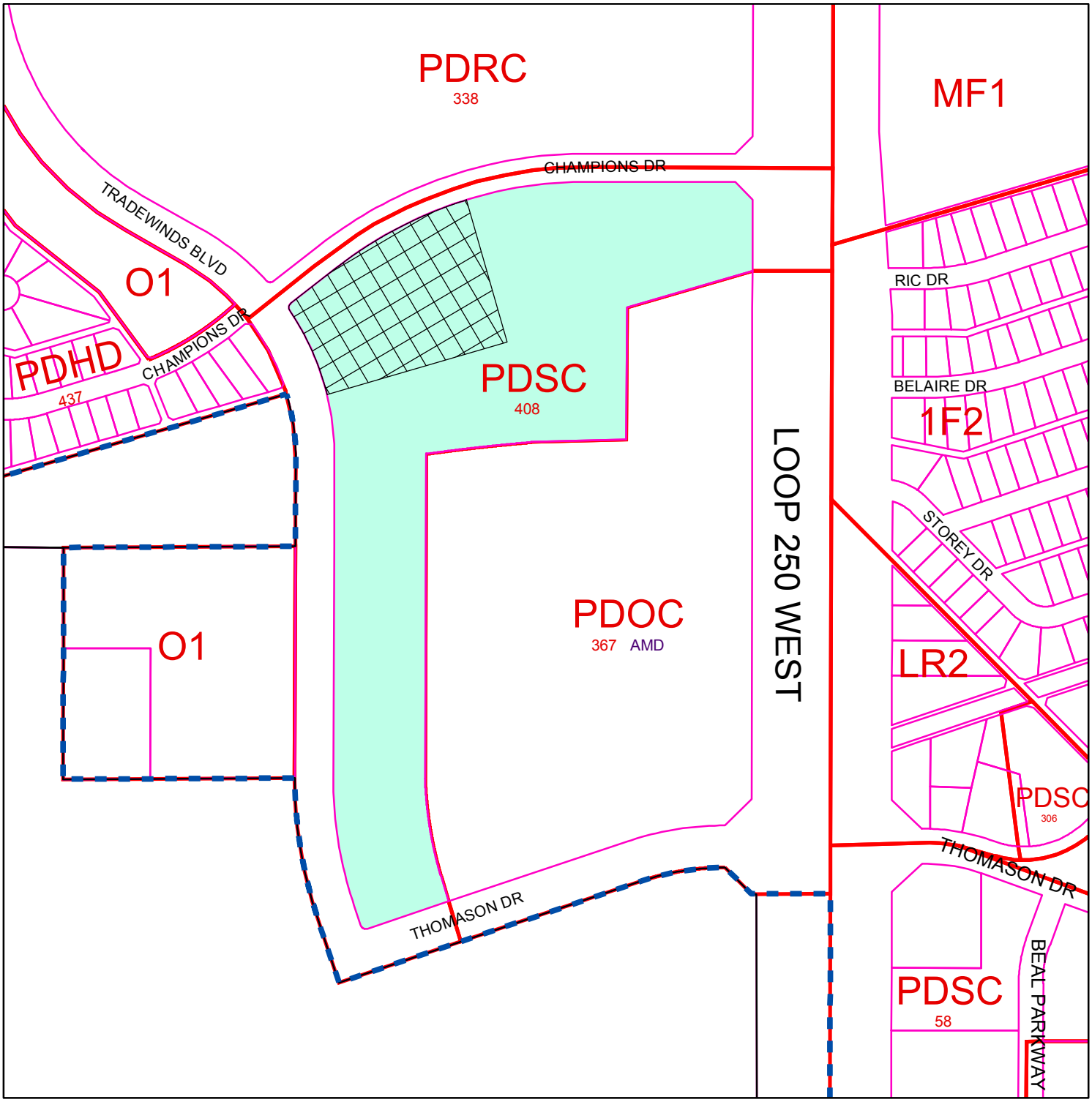

ZONING MAP

Z - 11 - 050 **Scale: 1" = 400'**

Consider a request for a zone change from PD Planned District for a Shopping Center, to an Amended Planned District on a 4.68-acre portion out of the remainder of Lot 1, Block 6, Westridge Park Addition, Section 6, City and County of Midland, Texas.

LEGEND

ZONING — CITY PARCELS
CITY LIMITS — COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 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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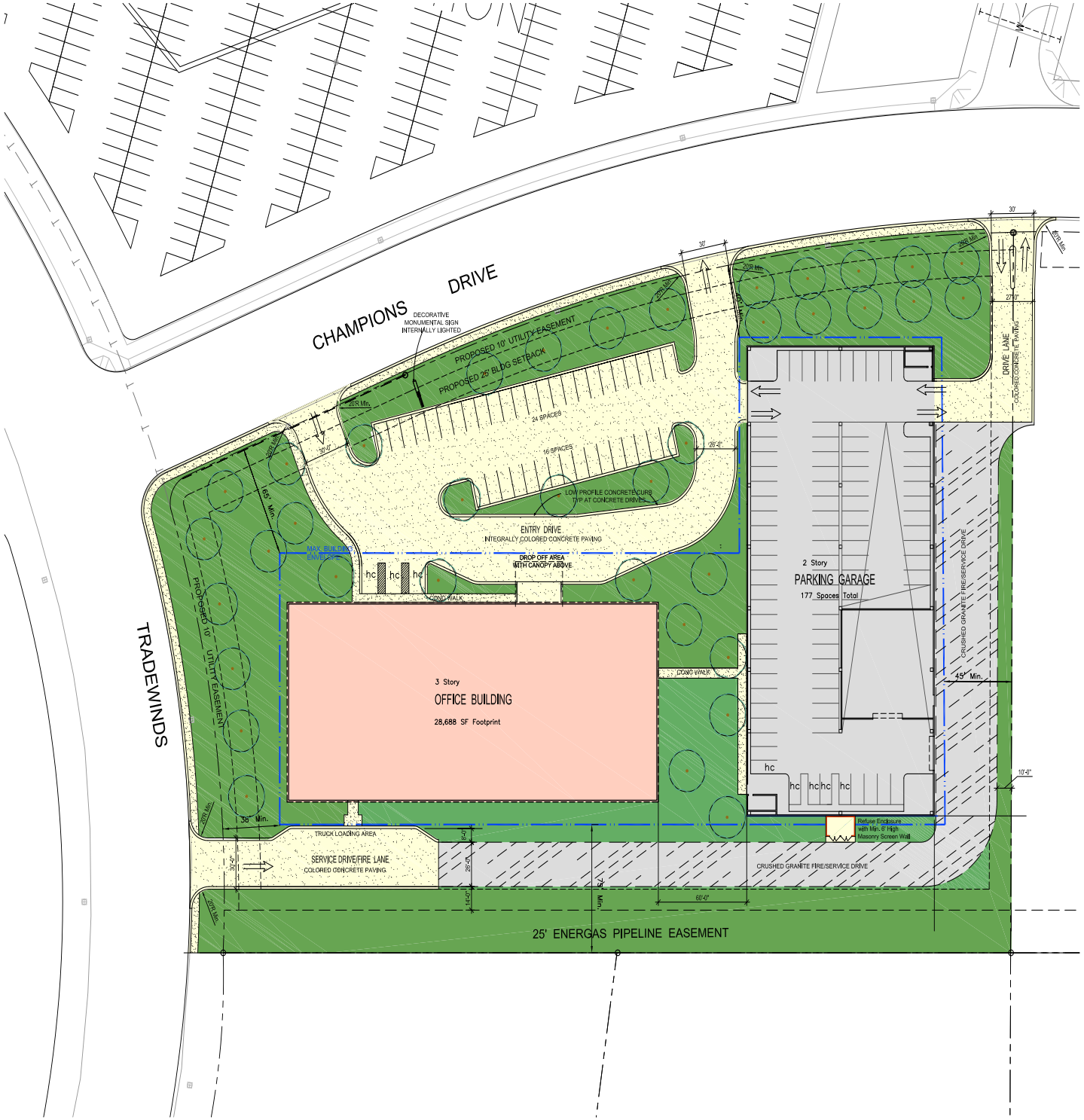


PLANNED DISTRICT SITE PLAN

WESTRIDGE PARK ADDITION

SECTION 19

PROPOSED LOT 3, BLOCK 6

30' 15' 0 30'

Original Scale: 1"=30'

PD Site Plan:
Submitted to City of Midland P&Z
on October 14, 2011.

PD Site Plan:
Re-Submitted to City of Midland P&Z
on November 21, 2011.

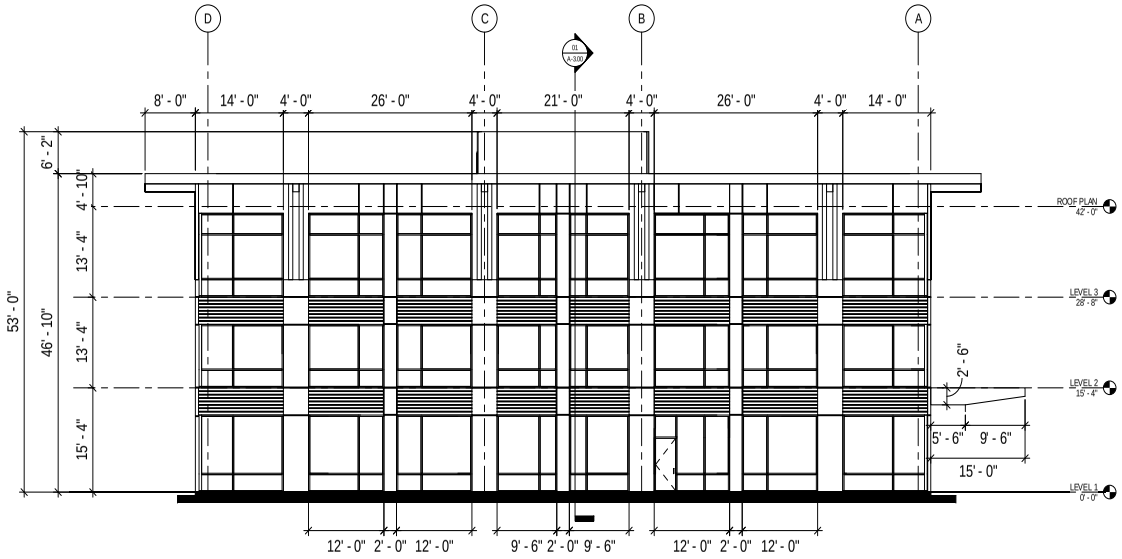
NOTES:

- 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 OR OTHER DRIVING SURFACE.
- SHADED AREAS DENOTED BY TO BE CONCRETE.
- SHADED AREAS DENOTED BY TO BE IRRIGATED & LANDSCAPED INCLUDING TREES, GRASS OR SHRUBS – WHICH MAY BE ENHANCED BY OTHER LANDSCAPE MATERIALS.
- SHADED AREAS DENOTED BY ARE BUILDINGS.
- SHADED AREAS DENOTED BY ARE SCREEN WALLS.
- LANDSCAPED AREA (NOT INCLUDING R.O.W.S.) WILL BE A MINIMUM OF 10% OF TOTAL LOT AREA LESS THE BUILDING AREA.
- EXTERIOR BUILDING MATERIALS SHALL BE DECORATIVE OR PAINTED CMU, FACE BRICK, PRECAST CONCRETE, TILT-WALL, STUCCO, GLAZING OR SIMILAR CONSTRUCTION.
- ROOF MATERIALS MAY INCLUDE COMPOSITE, BUILT-UP OR STANDING SEAM METAL ROOF.
- ALL SIGNS SHALL BE IN CONFORMANCE WITH SECTION 11-7a OF THE MIDLAND CITY CODE.
- ALL EXTERIOR LIGHTING SHALL ADHERE TO THE STANDARDS OUTLINED IN SECTION 11-10 OF THE MIDLAND CITY CODE.
- HVAC UNITS WILL BE ROOF MOUNTED AND SURROUNDED BY A SCREEN WALL.

SITE DATA	
SITE AREA	190,952 SF ±
OFFICE BUILDING AREA (Foot Print)	28,688 SF ±
OFFICE BUILDING AREA (Total Floor Space)	86,064 SF ±
TOTAL BUILDING FOOTPRINT (Ofc & Garage)	61,043 SF ±
LANDSCAPE AREA REQUIRED	12,991 SF ±
LANDSCAPED AREA SHOWN	36,442 SF ±
TREES REQUIRED–(3" Cal. Min.)	31
PARKING SPACES REQUIRED	216
PARKING SPACES PLANNED	220
H.C. PARKING SPACES REQUIRED	8
H.C. PARKING SPACES SHOWN	10

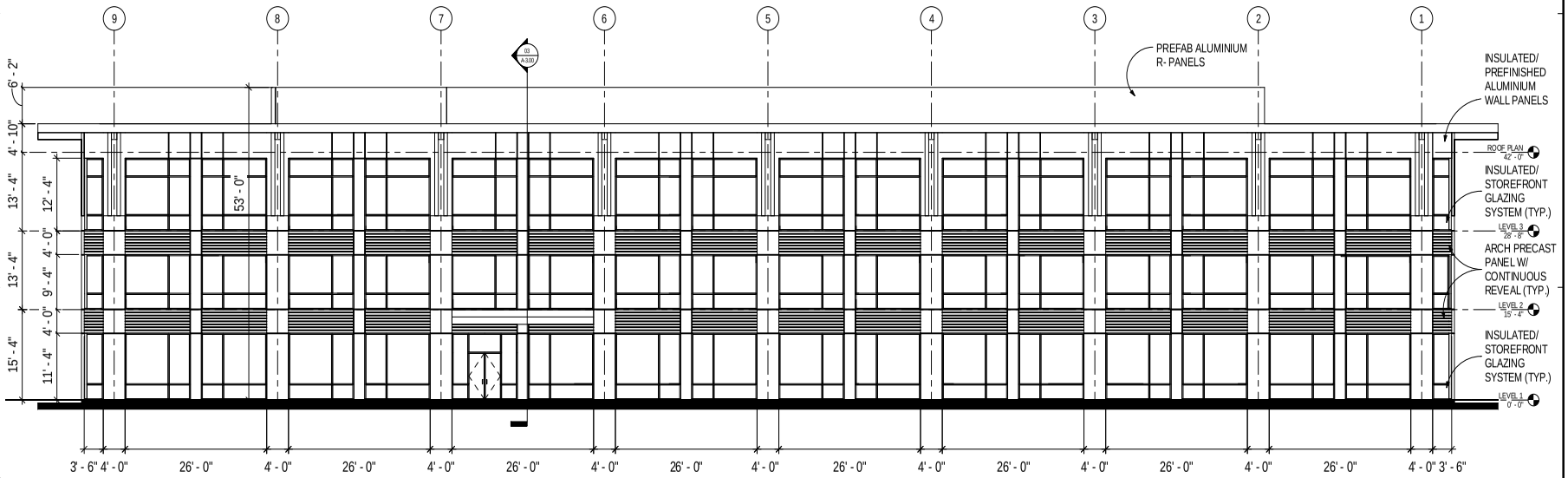
WESTRIDGE PARK ADDITION
SECTION 18

PARKHILLSMITH&COOPER



RE:01/A-2.00 FOR ADDITIONAL NOTES

EAST ELEVATION- OFFICE 1/8" = 1'-0" 03



NORTH ELEVATION- OFFICE 1/8" = 1'-0" 01

Issue

No.	Date	Description
01	11.18.2011	ISSUE FOR SCHEMATIC DESIGN

MORRIS
ARCHITECTS

1001 Fannin Street, Suite 300 | Houston, TX 77002 USA
Phone 713.622.1180 | Fax 713.622.7021
www.morrisarchitects.com

Project Team

OWNER

MORRIS ARCHITECTS
ARCHITECT

W.S. BELLOWS CONSTRUCTION CORPORATION
CONSTRUCTION MANAGER

WELDING POUR PARTNERS
STRUCTURAL ENGINEER

EOG RESOURCES, INC.
OWNER

W.S. BELLOWS CONSTRUCTION CORPORATION
CONSTRUCTION MANAGER

PARKHILL SMITH & COOPER
CIVIL ENGINEER

PARKHILL SMITH & COOPER
LANDSCAPE ARCHITECT

HAYNES WHALEY ASSOCIATES, INC.
STRUCTURAL ENGINEER

BURNS DeLATTE & McCOY, INC.
MEP ENGINEERS

SPIKER BALDWIN ASSOCIATES, INC.
SPECIFICATION CONSULTANT

INTERIM REVIEW DOCUMENTS

Interim review documents are incomplete and not to be used for regulatory approval, permit, or construction.

NOT FOR CONSTRUCTION

Project Name
EOG- RESOURCES OFFICE DEVELOPMENT
PROJECT ADDRESS

PROJECT No:

Project Number
20110095.000

Drawing Name
EXTERIOR ELEVATIONS

Scale: 1/8" = 1'-0"

Drawing Number
A-2.00

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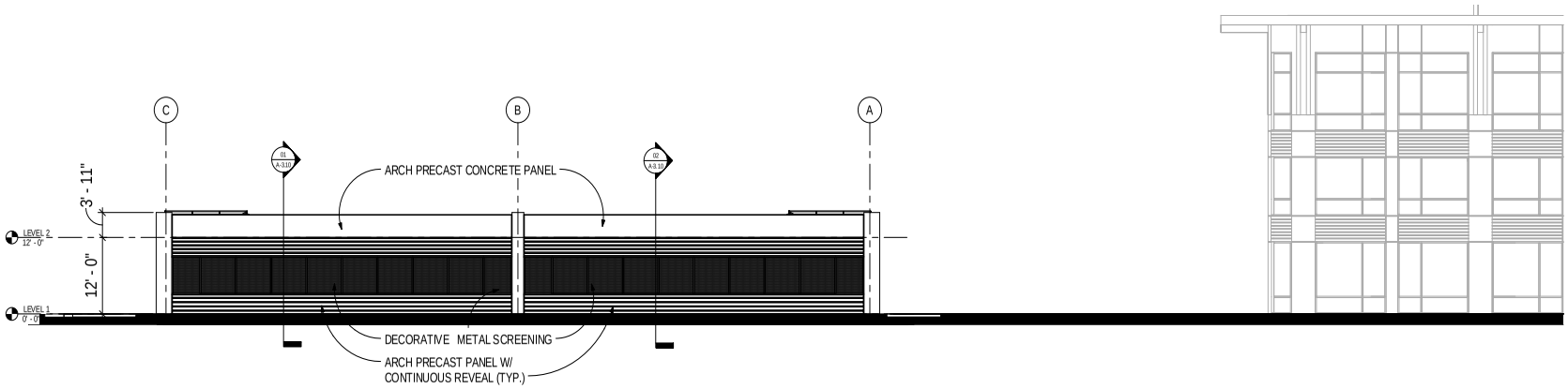
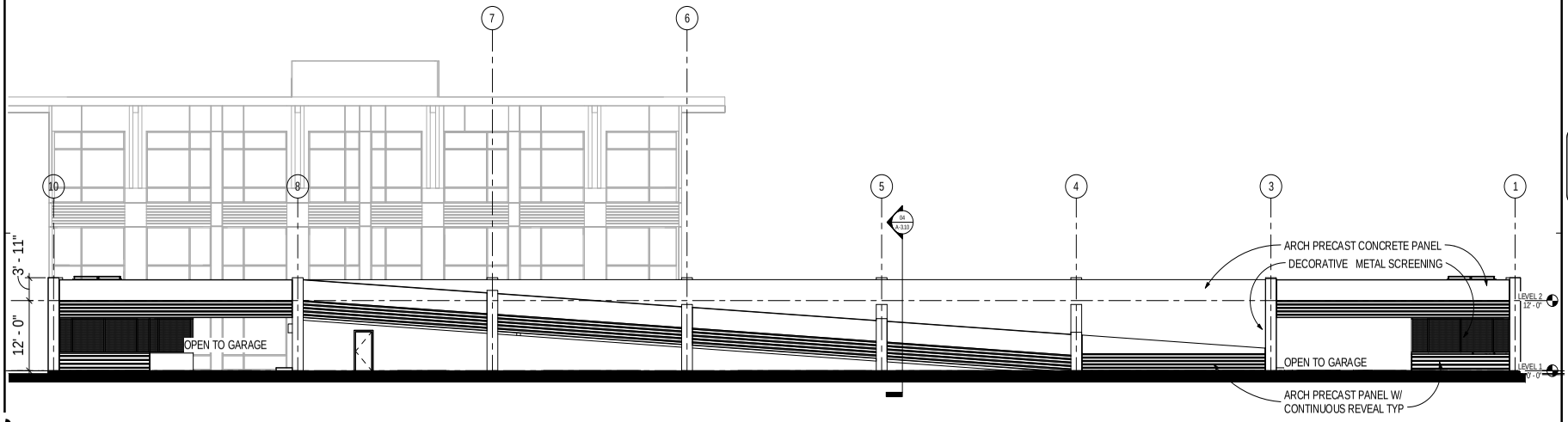
36.14



NORTH ELEVATION 1/8" = 1'-0" 03



EAST ELEVATION 1/8" = 1'-0" 01

Issue

No.	Date	Description
01	11.18.2011	ISSUE FOR SCHEMATIC DESIGN

MORRIS
ARCHITECTS

1001 Fannin Street, Suite 300 | Houston, TX 77002 USA
Phone 713.622.1180 | Fax 713.622. 0021
www.morrisarchitects.com

Project Team

INTERIM REVIEW DOCUMENTS

Interim review documents are incomplete and not to be used for regulatory approval, permit, or construction.

NOT FOR CONSTRUCTION

Project Name
EOG RESOURCES PARKING GARAGE
PROJECT ADDRESS

PROJECT ISSUE DATE

Project Number
PROJECT NUMBER

Drawing Name
GARAGE ELEVATIONS - EAST & NORTH

Scale: 1/8" = 1'-0"

Drawing Number
A-2.20

36.15

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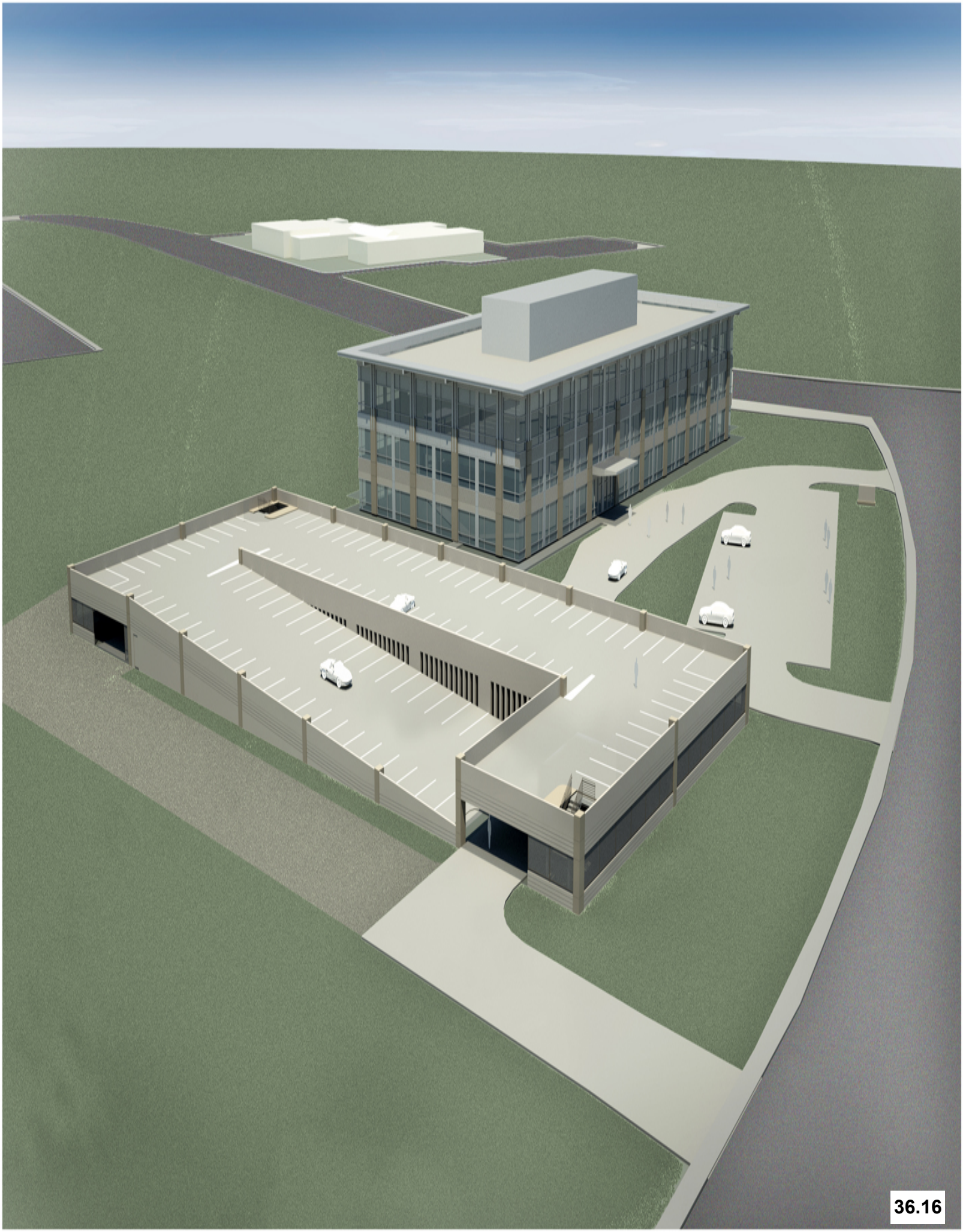

36.16

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 4.68-ACRE PORTION OF THE REMAINDER OF LOT 1, BLOCK 6, WESTRIDGE PARK ADDITION, SECTION 6, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF CHAMPIONS DRIVE AND TRADEWINDS BOULEVARD); 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 Shopping Center, 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 4.68-acre portion of the remainder of Lot 1, Block 6, Westridge Park Addition, Section 6, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "E", 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 new construction shall be consistent with: the Site Plan (Exhibit "A"); the Structure Elevations (Exhibits "B" and "C"); and the Office Building Rendering (Exhibit "D"). The referenced Exhibits are attached hereto and incorporated herein.

2. That the maximum height of the office building shall not exceed 53 feet.

3. That the landscaping shall conform to City of Midland regulations in place at the time of development.

4. That the placement of driveways accessing public streets shall be contained within the property lines of the site and approved by the City.

5. That the air conditioners and dumpsters shall be appropriately screened.

6. That all required public improvements shall be addressed, including requirements for a looped waterline, additional fire hydrants, sewer extension and sidewalks.

7. That a blanket refuse easement is granted to the City of Midland.

8. That City of Midland Ordinance No. 8227 is hereby amended by this ordinance.

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., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Steve Thorpe, Building Official**

SUBJECT: **Energy Code**

Purpose: Second Reading to amend currently adopted Energy Code to meet Texas state law requirements.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact: N/A

Discussion: First Reading was approved without amendment on December 13, 2011.

The City of Midland Energy Code is less stringent than the new Texas state law, with this amendment the Midland Code will be in compliance with state law.

The newly adopted 2009 Texas State Energy Code **does not exempt** additions, alterations and repairs from meeting the requirements of the 2009 International Energy Efficiency Code. The City of Midland Energy Code currently **exempts** additions, alterations and repairs made to existing residential and commercial structures. This amendment is less stringent than the newly adopted State requirement.

I propose that section 101.2 of the City of Midland Energy Code 4-12-2, Ordinance 8819 be amended. (current code section language follows) "This code establishes minimum prescriptive and performance-related regulations for the design of energy efficient buildings and structures and portions thereof that provide facilities or shelter for public assembly, educational, business, mercantile, institutional, storage, and residential occupancies, as well as those portions of factory and industrial occupancies designed primarily for human occupancy. This code thereby addresses the design of energy efficient building envelopes and the selection and installation of energy efficient mechanical, service water heating, electrical distribution and illumination systems and equipment for the effective use of energy in these buildings and structures. The provisions of this code shall only apply to new residential and new commercial construction. The provisions of this code do not apply to additions, alterations or repairs made to existing residential and commercial structures."

I propose section 101.2 be changed to read, "This code applies to residential and commercial buildings.". This wording matches the 2009 International Energy Efficiency Code verbatim.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Steve Thorpe, Building Official**

SUBJECT: **Energy Code**

Purpose:

To amend currently adopted Energy Code to meet Texas state law requirements.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no fiscal impact to the City associated with this amendment.

Discussion:

The City of Midland Energy Code is currently less stringent than the new Texas state law. The newly adopted 2009 Texas State Energy Code **does not exempt** additions, alterations or repairs from meeting the requirements of the 2009 International Energy Efficiency Code. The City of Midland Energy Code currently **exempts** such work done to existing residential and commercial structures.

Staff is proposing to amend section 101.2 of the City of Midland Energy Code 4-12-2, Ordinance 8819. The current language states:
"This code establishes minimum prescriptive and performance-related regulations for the design of energy efficient buildings and structures and portions thereof that provide facilities or shelter for public assembly, educational, business, mercantile, institutional, storage, and residential occupancies, as well as those portions of factory and industrial occupancies designed primarily for human occupancy. This code thereby addresses the design of energy efficient building envelopes and the selection and installation of energy efficient mechanical, service water heating, electrical distribution and illumination systems and equipment for the effective use of energy in these buildings and structures. The provisions of this code shall only apply to new residential and new commercial construction. The provisions of this code do not apply to additions, alterations or repairs made to existing residential and commercial structures."

To bring our code into compliance with Texas state law, Section 101.2 would be changed to read, "This code applies to residential and commercial buildings." This wording matches the 2009 International Energy Efficiency Code verbatim.

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 12, "ENERGY CODE", SECTION 2, "CHANGES AND ADDITIONS TO ADOPTED ENERGY CODE", OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, SO AS TO REMOVE THE EXEMPTION FOR ADDITIONS, ALTERATIONS OR REPAIRS TO EXISTING RESIDENTIAL AND COMMERCIAL STRUCTURES; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Council has adopted the 2009 International Energy Conservation Code as the Energy Code of the City of Midland; and

WHEREAS, the Council finds it to be in the public interest to amend the Energy Code so as to remove the exemption for additions, alterations or repairs to existing residential and commercial structures;

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

SECTION ONE. That Title IV, "Building Regulations", Chapter 12, "Energy Code", Section 2, "Changes and additions to adopted energy code", of the City Code of the City of Midland, Texas, is hereby amended to hereafter read as follows:

4-12-2. Changes and additions to adopted energy code.

Notwithstanding any provisions of this Chapter or said adopted Energy Code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows, to wit:

101.1 Title. This code shall be known as the International Energy Conservation Code of Midland, Texas, and shall be cited as such. It is referred to herein as "this code."

101.2 Scope. This code applies to residential and commercial buildings.

109 Means of Appeal.

109.1 Application for appeal. A person shall have the right to appeal a decision of the Code Official to the Board of Appeal, per the International Building Code Section 113.

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 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 ($2000.00).

SECTION FIVE. 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., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **V-11-002, City of Midland ROW**

Purpose:

Consider an ordinance on a City-initiated request to vacate a portion of E. Hamby Avenue and two alleys.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to consider this application.

Discussion:

The Planning and Zoning Commission approved the preliminary plat of Glenn Frances Addition on October 3, 2011. This plat represents a partnership between the City, Habitat for Humanity and Midland Community Development Corporation to provide affordable housing along E Jax Avenue, Jackson Street and E Hamby Avenue. Part of this redevelopment plan would reorient four lots that currently front onto the south side of E Hamby Avenue, east of Jackson Street. This unpaved portion of E Hamby Avenue is a dead end at Sparks Park. The three new lots would face Jackson Street. While this eliminates one lot, it results in a substantial cost savings by eliminating the need to pave E Hamby Avenue. The replat will dedicate compensating alleys to serve the new lot orientation. As this is a City-initiated proposal, no compensation is required in exchange for the vacated right-of-way. Since Atmos Energy has a gas line in the alley south of the church, the replat will dedicate a utility easement.

Attachments:
Location Map
Proposed Ordinance

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **V-11-002, City of Midland ROW**

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Attachments:
Location Map
Proposed Ordinance

Case Number: V-11-002

CITY OF MIDLAND
Transportation 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: Being approximately 0.6 acres of street and alley right of way, construction east Hamby Avenue east of North Jackson Street and west of Billy Sparks Park, along with certain connecting alleys.

II. Reason for Request: This vacation, initiated by the City of Midland facilitates the City of Midland's project to replat this area for residential redevelopment.

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:
All vacated right-of-way will be replaced by a new configuration with agreement with City Standards.

IV. **REQUIRED ITEMS:**

1. Applicant(s) Information: (Attach extra sheets as necessary.)
   Name: City of Midland
   Address: P.O. Box 1152 (Street) Phone: (432) 685-7400
   Midland (City) Texas (State) 79702 (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. N/A

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 1,000 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: _____

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

To be completed by City of Midland staff:

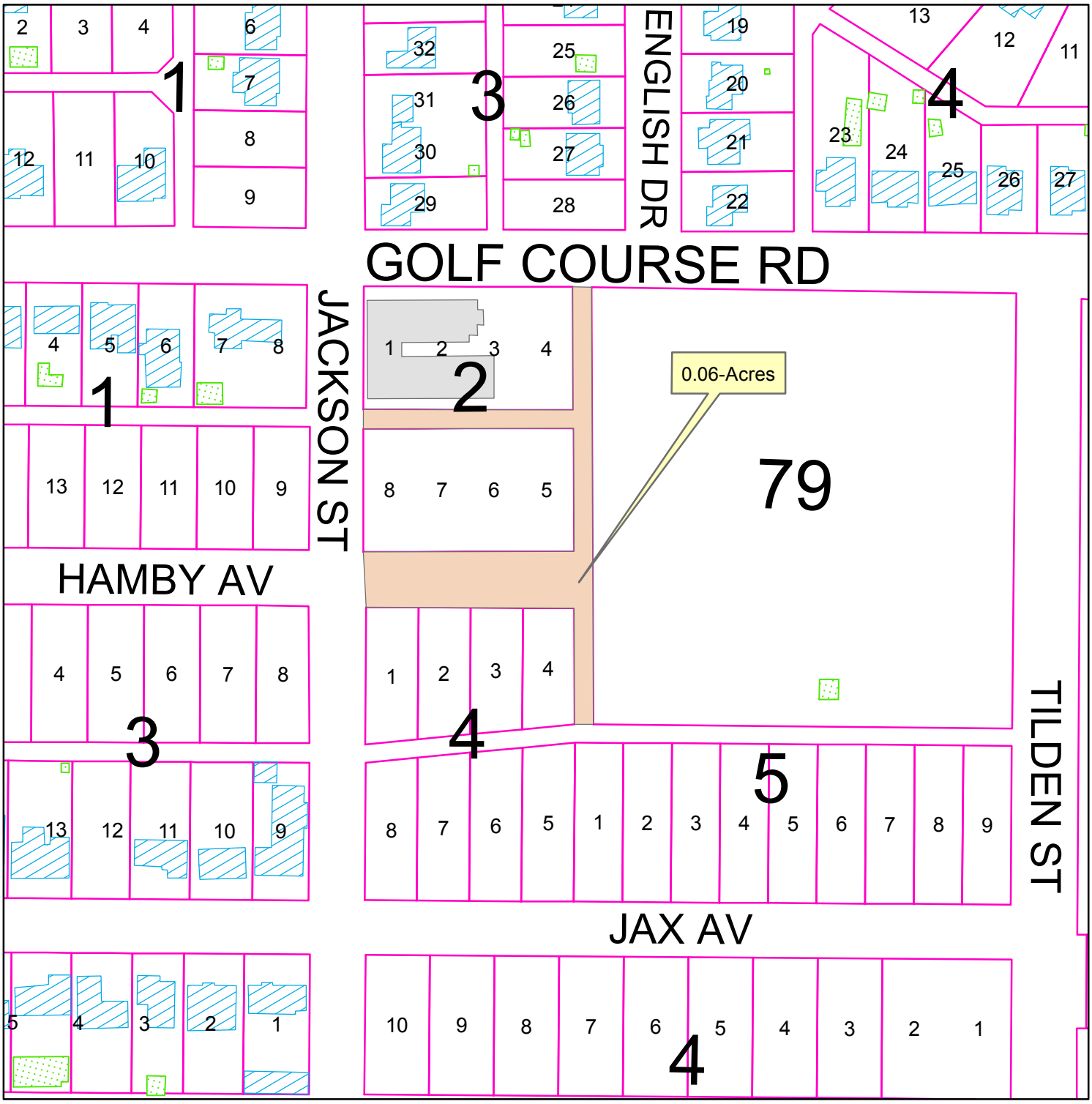
According to the policy guidelines outlined above, a public hearing will ____ will not ____ be required

FOR OFFICE USE ONLY

Rec'd. By: JC Date: 8-24-11

Assigned: JC

For: CC On: _____



LOCATION MAP

V - 11 - 002 **Scale: 1" = 150'**

Consider a request for the vacation of a 0.06-acre tract vacating rights-of-way of streets and alleys in Block 79, East Midland and Blocks 2 and 4, Glenn Francis Addition City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS

©THE CITY OF MIDLAND - 2011
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.

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.62-ACRE TRACT OF STREET AND ALLEY RIGHT-OF-WAY LOCATED IN BLOCK 79, EAST MIDLAND ADDITION, AND BLOCKS 2 AND 4, GLENN FRANCIS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF EAST GOLF COURSE ROAD AND NORTH JACKSON STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $2,718.80; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; RETAINING A GENERAL UTILITY AND DRAINAGE EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.62-acre tract of street and alley right-of-way located in Block 79, East Midland Addition, and Blocks 2 and 4, Glenn Francis 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 initiated by the City; and

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at $2,718.80, 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 status as a nonprofit organization and the abutting property owner's dedication of right-of-way to the City in connection with the replat of this area; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the right-of-way described herein, and to retain a general utility and drainage easement;

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

SECTION ONE. That the 0.62-acre tract of street and alley right-of-way located in Block 79, East Midland Addition, and Blocks 2 and 4, Glenn Francis 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.

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 herein retains a general utility and drainage easement along, on, under, above and across said right-of-way.

SECTION FOUR. 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., 2011; 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., 2012, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS ____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

MIDLAND
CITY OF MIDLAND

Office of
City Manager

300 N. Loraine
P.O. Box 1152
Midland, TX 79702-1152

432.685.7203
Fax 432.686.1600

December 1, 2011

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.62-acre tract of street and alley right-of-way located in Block 79, East Midland Addition, and Blocks 2 and 4, Glenn Francis 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 $2,718.80.

Very truly yours,

Courtney Sharp
City Manager

Exhibit "B"

L:\Ordinances\Planning\Vacate & Abandon\2011\East Midland & Glenn Francis Additions Appraisal Letter.wpd

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **V-11-002, City of Midland ROW**

Purpose:

This is a second reading to consider an ordinance on a City-initiated request to vacate a portion of E. Hamby Avenue and two alleys. No changes have been made to this item since its first reading on December 13, 2011

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to consider this application.

Discussion:

The Planning and Zoning Commission approved the preliminary plat of Glenn Frances Addition on October 3, 2011. This plat represents a partnership between the City, Habitat for Humanity and Midland Community Development Corporation to provide affordable housing along E Jax Avenue, Jackson Street and E Hamby Avenue. Part of this redevelopment plan would reorient four lots that currently front onto the south side of E Hamby Avenue, east of Jackson Street. This unpaved portion of E Hamby Avenue is a dead end at Sparks Park. The three new lots would face Jackson Street. While this eliminates one lot, it results in a substantial cost savings by eliminating the need to pave E Hamby Avenue. The replat will dedicate compensating alleys to serve the new lot orientation. As this is a City-initiated proposal, no compensation is required in exchange for the vacated right-of-way. Since Atmos Energy has a gas line in the alley south of the church, the replat will dedicate a utility easement.

Attachments:
Location Map
Proposed Ordinance

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **V-11-001; Andrew Mellen/Homestead**

Purpose:

This is the second reading to consider an ordinance on a request by Andrew Mellen for the vacation of the 0.10-acre north/south alley and a 0.05-acre portion of the right-of-way of N. Marienfeld Street adjacent to the east half of Block 31A, Homestead Addition, City and County of Midland, Texas. Since its first reading on December 13, 2011, this request has been amended. The applicant has increased the amount of N. Marienfeld Street right-of-way to be vacated from 0.02-acres to 0.05-acres. This is the only amendment to this request.

Recommended City Council Action

X Approve __Deny __ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Andrew Mellen of the West Company of Midland is representing David Long, the owner of the entire city block located at the northwest corner of Louisiana Avenue and Marienfeld Street. They are requesting the vacation of the above described right-of-way to allow for the future development of this block for an office building. This city block is presently comprised of several lots which Mr. Long is platting into one lot. Written confirmation has been requested by Mr. Mellen from all franchised utility companies regarding facilities that may be present within the rights-of-way to be vacated. Any facilities present will be further addressed during the platting process. The property has been used as a parking lot.

The area to be vacated is approximately 6,484.20 square feet and is valued at $1.00 per square foot which establishes its total value at $6,484.20. However, the applicant is planning to dedicate an easement for utility provision on the alley portion of the right of way to be vacated which totals 4,322.80 square feet; therefore the value of the this portion of land will be decrease by fifty percent which establishes a modified total value of $4,339.40. This amount must be received prior to second reading;

Attachments: Application, Map, Exhibits A & B

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **V-11-001; Andrew Mellen/Homestead**

Purpose:

Consider an ordinance on a request by Andrew Mellen for the vacation of the 0.10-acre north/south alley and a 0.02-acre portion of the right-of-way of N. Marienfeld Street adjacent to the east half of Block 31A, Homestead Addition, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this application.

Discussion:

Andrew Mellen of the West Company is representing David Long, the owner of the entire city block located at the northwest corner of Louisiana Avenue and Marienfeld Street. They are requesting the vacation of the above described right-of-way to allow for the future development of this block for an office building. This city block is presently comprised of several lots which Mr. Long is platting into one lot. The property has been used as a parking lot.

The area to be vacated is approximately 5,225 square feet and is valued at $1.00 per square foot which establishes its value at $5,225. However, the applicant is planning to dedicate an easement for utility provision; therefore the value of the land should be decreased by 50% and payment to the City in the amount of $2,612.50 must be received prior to second reading.

Attachments:
Application, Map

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.025-ACRE PORTION OF MARIENFELD STREET RIGHT-OF-WAY ADJACENT TO THE EAST HALF OF BLOCK 31A, AND A 0.099-ACRE NORTH/SOUTH ALLEY ADJACENT TO LOTS 1-8, BLOCK 31A, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF LOUISIANA AVENUE AND MARIENFELD STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $2,612.50; RETAINING A GENERAL UTILITY AND DRAINAGE EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.025-acre portion of Marienfeld Street right-of-way adjacent to the east half of Block 31A, and a 0.099-acre north/south alley adjacent to Lots 1-8, Block 31A, Homestead Addition, City and County of Midland, Texas, are 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 $2,612.50 , as shown in Exhibit "C" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the right-of-way described herein, and to retain a general utility and drainage easement;

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

SECTION ONE. That the 0.025-acre portion of Marienfeld Street right-of-way

adjacent to the east half of Block 31A, and the 0.099-acre north/south alley adjacent to Lots 1-8, Block 31A, Homestead Addition, City and County of Midland, Texas, as described in Exhibits "A" and "B" attached hereto and made a part hereof for all legal purposes, are 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 this Ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of $2,612.50.

SECTION THREE. That the City herein retains a general utility and drainage easement along, on, under, above and across said right-of-way.

SECTION FOUR. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

MIDLAND
CITY OF MIDLAND

Office of
City Manager

300 N. Loraine
P.O. Box 1152
Midland, TX 79702-1152

432.685.7203
Fax 432.686.1600

December 5, 2011

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.025-acre portion of Marienfeld Street right-of-way adjacent to the east half of Block 31A, and a 0.099-acre north/south alley adjacent to Lots 1-8, Block 31A, Homestead 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 $2,612.50. 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,

Courtney Sharp
City Manager

Exhibit "C"

L:\Ordinances\Planning\Vacate & Abandon\2011\Marienfeld Street Appraisal Letter.wpd

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **V-11-001; Andrew Mellen/Homestead**

Purpose:

Consider an ordinance on a request by Andrew Mellen for the vacation of the 0.10-acre north/south alley and a 0.02-acre portion of the right-of-way of N. Marienfeld Street adjacent to the east half of Block 31A, Homestead Addition, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this application.

Discussion:

Andrew Mellen of the West Company is representing David Long, the owner of the entire city block located at the northwest corner of Louisiana Avenue and Marienfeld Street. They are requesting the vacation of the above described right-of-way to allow for the future development of this block for an office building. This city block is presently comprised of several lots which Mr. Long is platting into one lot. The property has been used as a parking lot.

The area to be vacated is approximately 5,225 square feet and is valued at $1.00 per square foot which establishes its value at $5,225. However, the applicant is planning to dedicate an easement for utility provision; therefore the value of the land should be decreased by 50% and payment to the City in the amount of $2,612.50 must be received prior to second reading.

Attachments:
Application, Map

9/1/11

Case Number: V-11-001

CITY OF MIDLAND
Transportation 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:
Vacate 5' of the 80' R.o.w along Marienfeld St.
Between Kansas Ave, + Louisiana Ave.
Vacate Existing 20' Alley to a 20' utility easement.

II. Reason for Request: To Increase Property Size

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:
This will leave the R.o.w with 75' which is still
5' More than current standards.

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)
   Name: Andrew L. Mellen
   Address: 110. W. Louisiana Ave (Street) Phone: 432-687-0865
   Midland (City) TX (State) 79701 (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.

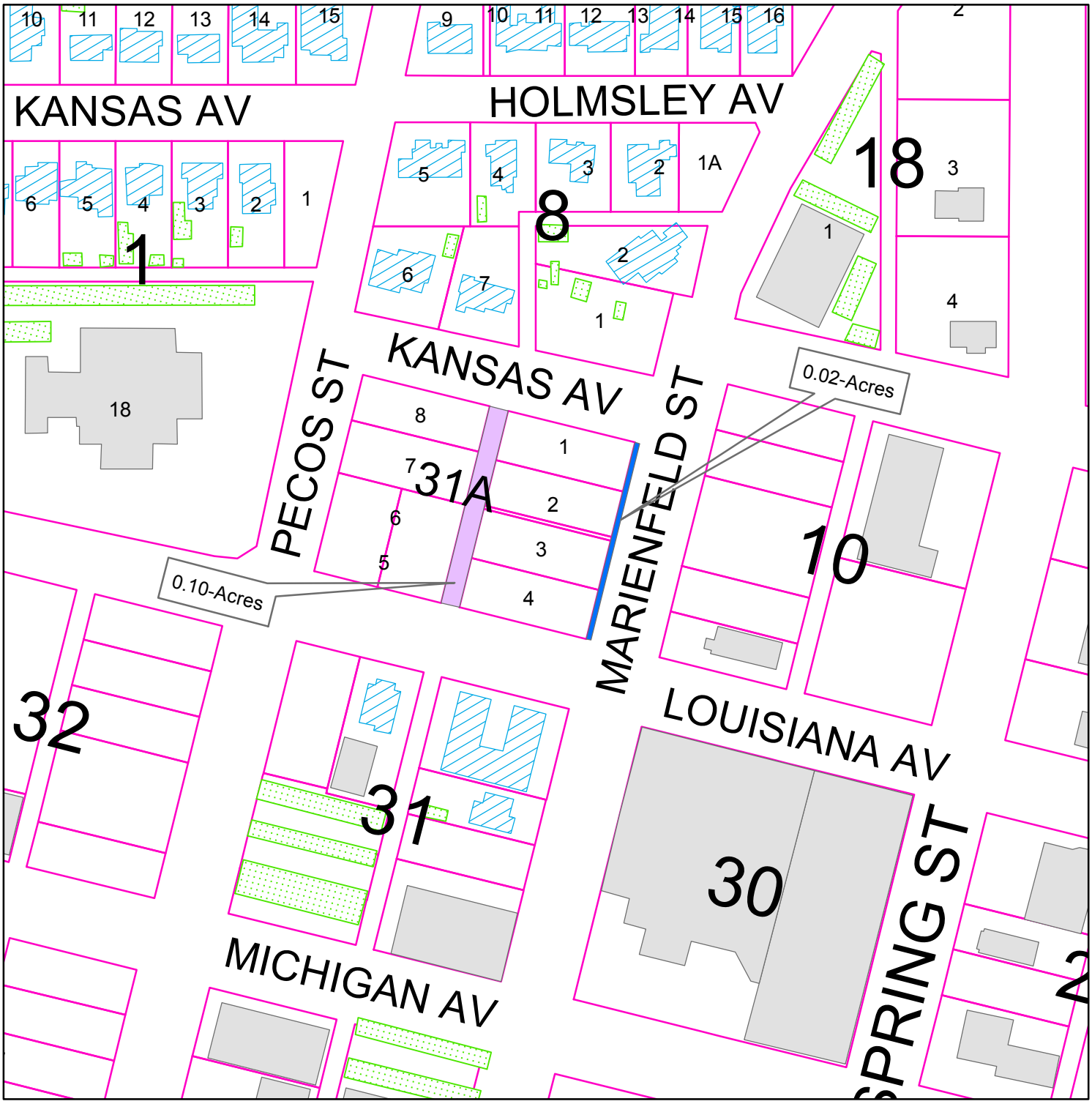
   b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 1,000 feet of the affected right-of-way.

   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: Andrew L. Mellen Jr. Date: 9/1/11

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

FOR OFFICE USE ONLY	
Rec'd. By: BM	Date: 9/1/11
Assigned: BM	
For: 9/ CC	On:



LOCATION MAP

V - 11 - 001 **Scale: 1" = 150'**

Consider a request for the vacation of the 0.10-acre north/south alley and of a 0.02-acre portion of the right-of-way of N. Marienfeld Street adjacent to the east half of Block 31A, Homestead Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS

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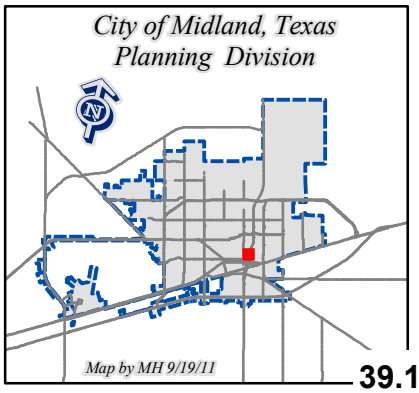


City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **V-11-003; Andrew Mellen/Montgomery**

Purpose:

This is the second reading to consider an ordinance on a request by Andrew Mellen for the vacation of a 0.55-acre portion of the right-of-way of Stonewall Street, a 0.17-acre portion of the right-of-way of Garden Lane, and a 0.14-acre portion of north/south alley right-of-way all adjacent to Block A, Montgomery Addition, City and County of Midland, Texas. No changes have been made to this item since its first reading on December 13, 2011.

Recommended City Council Action

X Approve __Deny __ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Andrew Mellen of the West Company of Midland is representing Edward Grube, owner of the entire city block located at the southeast corner of Garden Lane and Fairgrounds Road. They are requesting the vacation of the above described right-of-way to allow for the future development of this entire city block for a contractors shop and storage yard. These rights-of-way to be vacated are not improved. Written confirmation has been requested by Mr. Mellen from all franchised utility companies regarding facilities that may be present within the rights-of-way to be vacated and it has been determined that no facilities are present.

The property to be vacated totals 37,400 square feet; it is valued at $0.10 per square foot which establishes its value at $3,740.00. A payment in this amount to the City must be received prior to second reading of this ordinance.

Attachments: Application, Map, Exhibits A, B, C, & D

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **V-11-003; Andrew Mellen/Montgomery**

Purpose:

Consider an ordinance on a request by Andrew Mellen for the vacation of a 0.55-acre portion of the right-of-way of Stonewall Street, a 0.17-acre portion of the right-of-way of Garden Lane, and a 0.14-acre portion of north/south alley right-of-way all adjacent to Block A, Montgomery Addition, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Andrew Mellen of the West Company is representing Edward Grube, owner of the entire city block located at the southeast corner of Garden Lane and Fairgrounds Road. They are requesting the vacation of the above described right-of-way to allow for the future development of this entire city block for a contractors shop and storage yard. These rights-of-way to be vacated are not improved. Mr. Mellen has determined that no franchised utility facilities are present.

The property to be vacated totals 37,400 square feet; it is valued at $0.10 per square foot which establishes its total value at $3,740. A payment in this amount to the City must be received prior to second reading of this ordinance.

Attachments:
Application, Map

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.55-ACRE PORTION OF STONEWALL STREET RIGHT-OF-WAY, A 0.16-ACRE PORTION OF GARDEN LANE RIGHT-OF-WAY, AND A 0.14-ACRE PORTION OF THE NORTH/SOUTH ALLEY RIGHT-OF-WAY, ALL ADJACENT TO BLOCK "A", MONTGOMERY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF GARDEN LANE AND FAIRGROUNDS ROAD); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $3,740.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.55-acre portion of Stonewall Street right-of-way, a 0.16-acre portion of Garden Lane right-of-way, and a 0.14-acre portion of the north/south alley right-of-way, all adjacent to Block "A", Montgomery Addition, City and County of Midland, Texas, are 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 $3,740.00 , as shown in Exhibit "A" 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 0.55-acre portion of Stonewall Street right-of-way, the

0.16-acre portion of Garden Lane right-of-way, and the 0.14-acre portion of the north/south alley right-of-way, all adjacent to Block "A", Montgomery Addition, City and County of Midland, Texas, as described in Exhibits "B", "C" and "D" attached hereto and made a part hereof for all legal purposes, are 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 this Ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of $3,740.00.

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., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

MIDLAND
CITY OF MIDLAND

Office of
City Manager

300 N. Loraine
P.O. Box 1152
Midland, TX 79702-1152

432.685.7203
Fax 432.686.1600

December 5, 2011

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.55-acre portion of Stonewall Street right-of-way, a 0.16-acre portion of Garden Lane right-of-way, and a 0.14-acre portion of the north/south alley right-of-way, all adjacent to Block "A", Montgomery 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 $3,740.00. 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,

Courtney Sharp
City Manager

Exhibit "A"

L:\Ordinances\Planning\Vacate & Abandon\2011\Stonewall Street & Garden Lane Appraisal Letter.wpd

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **V-11-003; Andrew Mellen/Montgomery**

Purpose:

Consider an ordinance on a request by Andrew Mellen for the vacation of a 0.55-acre portion of the right-of-way of Stonewall Street, a 0.17-acre portion of the right-of-way of Garden Lane, and a 0.14-acre portion of north/south alley right-of-way all adjacent to Block A, Montgomery Addition, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Andrew Mellen of the West Company is representing Edward Grube, owner of the entire city block located at the southeast corner of Garden Lane and Fairgrounds Road. They are requesting the vacation of the above described right-of-way to allow for the future development of this entire city block for a contractors shop and storage yard. These rights-of-way to be vacated are not improved. Mr. Mellen has determined that no franchised utility facilities are present.

The property to be vacated totals 37,400 square feet; it is valued at $0.10 per square foot which establishes its total value at $3,740. A payment in this amount to the City must be received prior to second reading of this ordinance.

Attachments:
Application, Map

Case Number: V-11-003

CITY OF MIDLAND
Transportation 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:
Vacate 80' x 300' of Stonewall St.
Vacate 20' x 330' of Garden Lane
Vacate 20' x 300' of Alley way

II. Reason for Request: To aquire More land

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:
Stonewall is not a through St. This will help Traffic Routing + less Maintenance on Crb
Garden will have 60' R.O.W. and will align Better w/ Community Gardens

---

IV. **REQUIRED ITEMS:**

1. Applicant(s) Information: (Attach extra sheets as necessary.)
Name: Andrew L. Mellen
Address: 110. W. Louisiana Ave (Street) Phone: 432-687-0865
Midland (City) TX (State) 79701 (Zip Code)

2. Metes and bounds description of property to be vacated including total square feet of vacation.
See Attachments Stonewall St. = 12,000 ft² Garden Lane = 6,600 ft² Alley = 6000 ft²

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 1,000 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: Andrea L. Mellish Date: 9/14/11

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

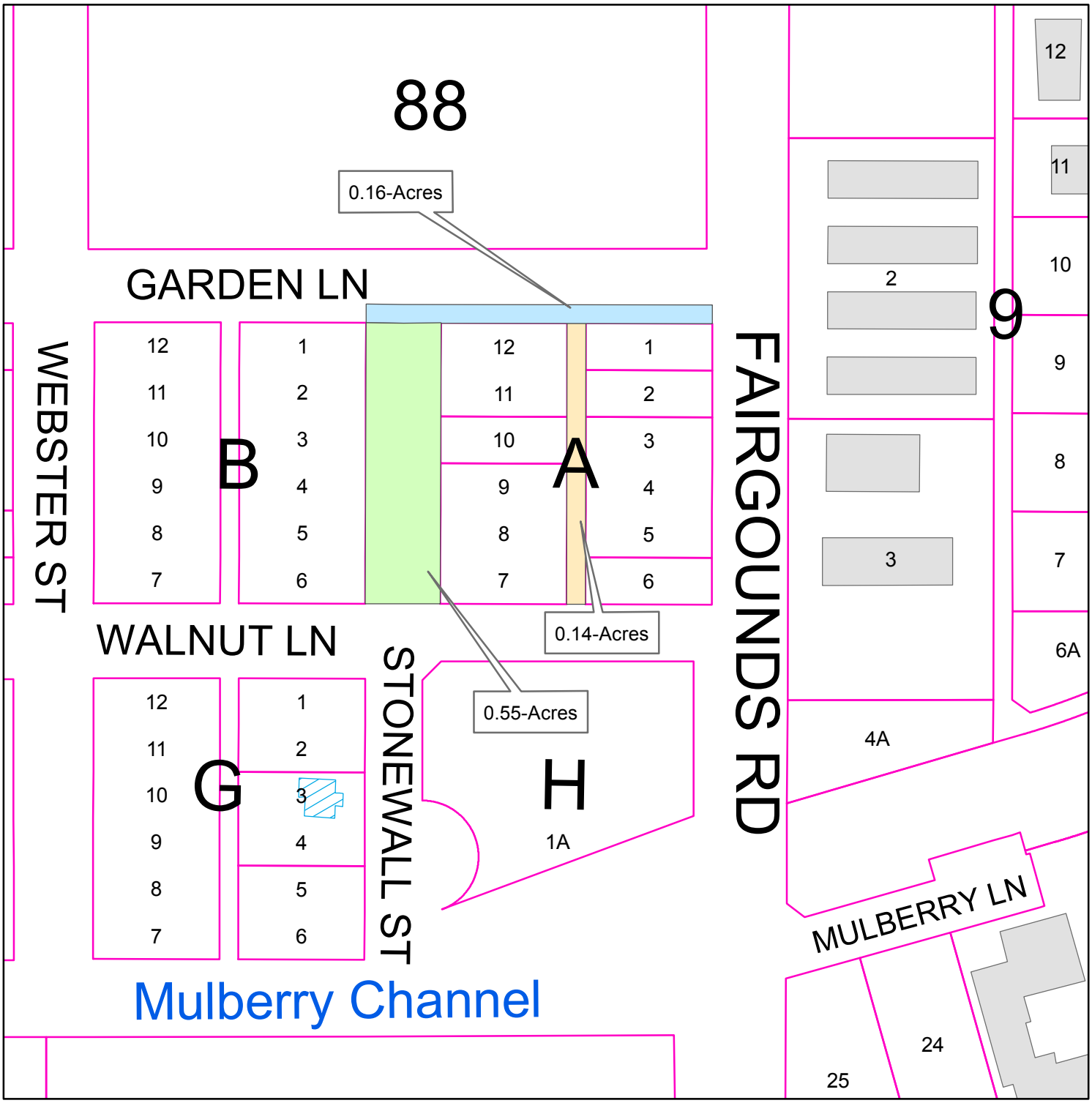
To be completed by City of Midland staff:

FOR OFFICE USE ONLY

Rec'd. By: BM Date: 9/16/11

Assigned: BM

For: CC On: 12/13/11



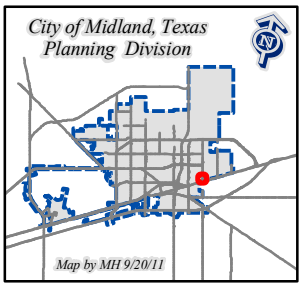
LOCATION MAP

V - 11 - 003 **Scale: 1" = 150'**

Consider a request for the vacation of a 0.55-acre portion of the right-of-way of Stonewall Street, of a 0.16-acre portion of the right-of-way of Garden Lane and of the 0.14-acre north/south alley right-of-way all adjacent to Block A, Montgomery Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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TOOL IN PERMITTING, CITING, OR OTHER DECISIONS
SOLELY ON THE INFORMATION CONTAINED HER

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Agriculture exemption for land included in annexation area**

Purpose:

Consider a second reading amending an annexation ordinance to indicate that a portion of the land proposed for annexation on the west side of FM 1788 and on the north side of SH 191 will remain in the city's extraterritorial jurisdiction due to the owners requesting an agricultural use exemption agreement with the City. No changes to this request have occurred since first reading on December 13th, 2011.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this amendment.

Discussion:

State annexation laws require a municipality to offer an agreement to a land owner who has an agricultural exemption status under the state's tax code. The agreement prevents the City from annexing the land but also ensures that development cannot occur until such time as the land is annexed. The land subject to the agreement is an approximate 315-acre tract. Staff has received this exemption request from the subject property owner and is recommending Council's approval of the ordinance.

Attachments:
Ordinance.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Agriculture exemption for land included in annexation area**

Purpose:

Consider an amended annexation ordinance to indicate that a portion of the land proposed for annexation on the west side of FM 1788 and on the north side of SH 191 will remain in the city's extraterritorial jurisdiction due to the owners requesting an agricultural use exemption agreement with the City.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this amendment.

Discussion:

State annexation laws require a municipality to offer an agreement to a land owner who has an agricultural exemption status under the state's tax code. The agreement prevents the City from annexing the land but also ensures that development cannot occur until such time as the land is annexed. The land subject to the agreement is an approximate 315-acre tract. Staff has received this exemption request from the subject property owner and is recommending Council's approval of the ordinance.

Attachments:
Map, ordinance.

ORDINANCE NO.

AN ORDINANCE AMENDING ORDINANCE NO. 8925 OF THE CITY OF MIDLAND BY ATTACHING AN AGREEMENT EXECUTED BY THE CITY MANAGER OF THE CITY OF MIDLAND AND OWNERS OF APPROXIMATELY 309 ACRES OUT OF SECTION 37, BLOCK 41, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, PURSUANT TO SECTION 43.035 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING THAT THE PROPERTY SUBJECT TO SUCH AGREEMENT SHALL REMAIN IN THE CITY'S EXTRATERRITORIAL JURISDICTION; PROVIDING THAT, EXCEPT AS AMENDED, ORDINANCE NO. 8925 SHALL REMAIN IN FULL FORCE AND EFFECT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ORDERING PUBLICATION; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO FILE A COPY OF THIS ORDINANCE IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND THE CITY MANAGER IS HEREBY AUTHORIZED AND DIRECTED TO EXECUTE THE AGREEMENT

WHEREAS, on August 23, 2011, the City Council of the City of Midland, Texas, adopted Ordinance No. 8925, annexing a 465.07-acre tract of land out of Sections 37, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas, as more fully described in Exhibit "A" to such ordinance (the "Property"); and

WHEREAS, the owners of approximately 309 acres of the Property have entered into an agreement with the City of Midland pursuant to Section 43.035 of the Texas Local Government Code, in accordance with Resolution No. 2011-190 approved by the City Council (the "Section 43.035 Agreement"); and

WHEREAS, the City Council wishes to amend Ordinance No. 8925 to attach the Section 43.035 Agreement and, to reflect that the approximately 309 acres of the Property described in the Section 43.035 Agreement shall remain in the City's extraterritorial jurisdiction subject to the terms of such agreement;

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

SECTION ONE. That Section Three of Ordinance No. 8925 is amended to read as

follows:

> That properties described in the development agreement entered into with the City of Midland pursuant to Chapter 43 of the Texas Local Government Code attached hereto as Exhibit "C" shall continue to have extraterritorial status.

SECTION TWO. That except as amended herein, Ordinance No. 8925 shall remain in full force and effect.

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. That this entire ordinance be published in the official newspaper in the City of Midland, Texas, and the same shall not be effective until after the publication thereof.

SECTION SIX. That the City Secretary is hereby authorized and directed to file a copy of this ordinance in the deed records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the day of , A.D., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

STATE OF TEXAS)
)
COUNTY OF MIDLAND)

DEVELOPMENT AGREEMENT
TEXAS LOCAL GOVERNMENT CODE, SECTION 43.035

THIS AGREEMENT (the "Agreement") by and among the City of Midland, Texas, a home rule municipal corporation of the State of Texas located in Midland County, Texas (the "City") and Blaine Covington, Cameron Covington, Andrew Pennington, Ed Covington, and 2007 LANDRUM-TX, LTD, a Texas limited partnership (collectively, "Owner"), is effective August 23, 2011 (the "Effective Date").

WHEREAS, Owner is the sole owner of approximately 309 acres of land located within Section 37, Block 41, T-1-S, T & P RR Co. Survey, Midland County, Texas, described by metes and bounds and depicted in **Exhibit A** ("the Property"); and

WHEREAS, the Property is located within the City's extraterritorial jurisdiction; and

WHEREAS, the Property is appraised for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, or as timber land under Subchapter E, Chapter 23, Texas Tax Code; and

WHEREAS, Texas Local Government Code, Section 43.035, provides that a municipality may not annex property appraised for agricultural, wildlife management, or timber unless it first offers to make a development agreement with the landowner pursuant to such section; and

WHEREAS, the City has notified Owner of its intent to annex the Property and has offered to enter into this Agreement guaranteeing the continued extraterritorial status of the Property upon the terms and conditions hereinafter provided; and

WHEREAS, Owner desires to enter into this Agreement to secure the continued extraterritorial status of the Property, subject to the terms of this Agreement; and

WHEREAS, this Agreement is entered into pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code; and

WHEREAS, the City and Owner acknowledge that this Agreement is binding on the City and Owner and their respective successors and assigns.

NOW THEREFORE, in exchange for the mutual covenants, conditions and promises contained herein, City and Owner agree as follows:

Section 1. Subject to Section 2 of this Agreement, the City guarantees the continuation of the extraterritorial jurisdiction status of the Property, the Property's immunity from annexation by the City, and the Property's immunity from City property taxes, for the term of this Agreement and all extensions thereof. Except as provided in this Agreement, the City agrees (a) not to annex the Property except upon submittal by Owner of a petition requesting annexation; (b) not to institute proceedings to annex the Property except upon submittal by Owner of a petition requesting annexation; and (c) not to include the Property in a statutory annexation plan pursuant to Section 43.052, Texas Local Government Code, for the term of the Agreement and all extensions thereof. Notwithstanding anything herein to the contrary, if the Property is annexed pursuant to the terms of this Agreement, then the City shall provide services to the Property pursuant to Chapter 43, Texas Local Government Code.

Section 2. The provisions of Section 1 restricting or limiting annexation of the Property are void with respect to any portion of the Property for which Owner files any type of subdivision plat or related development document with a governmental entity that has jurisdiction over such property. In such event, the City may annex the portion of the Property for which the subdivision plat or related development document was filed, and such annexation shall be deemed to be with the consent of Owner.

Section 3. Pursuant to Section 43.035(b)(1)(B) of the Texas Local Government Code, the City is authorized to enforce all of the City's regulations and planning authority that do not interfere with the use of the Property for agriculture, wildlife management or timber, in the same manner the regulations are enforced within the City's boundaries. The City specifically reserves its authority to exercise eminent domain over the Property pursuant to Chapter 251 of the Texas Local Government Code.

Section 4. This Agreement shall terminate seven years after the Effective Date or upon annexation of the Property in conformance with this Agreement, whichever comes first.

Section 5. This Agreement shall not be deemed a permit for the purposes of Texas Local Government Code, Chapter 245.

Section 6. This Agreement may not be modified or amended without the written consent of each party hereto.

Section 7. Prior to selling or conveying any portion of the Property, Owner shall give written notice of this Agreement to the prospective purchaser or grantee. Owner shall give written notice to the City of the sale or conveyance within 30 days after such sale or conveyance. Furthermore, Owner shall give the City written notice of any change in the agricultural exemption status of the Property within 14 days after Owner's receipt of written notice of the Property's change in agricultural status from the Midland County Chief Appraiser. All notices required by this section shall be forwarded to the City at the following address:

City of Midland
Attn: City Manager
300 N. Loraine
P.O. Box 1152
Midland, Texas 79702

Section 8. This Agreement shall run with the Property and shall be recorded in the real property records of Midland County, Texas.

Section 9. If a court of competent jurisdiction determines that any covenant of this Agreement is void or unenforceable, including the covenants regarding involuntary annexation, then the remainder of this Agreement shall remain in full force and effect.

Section 10. This Agreement may be enforced by any Owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement hereafter.

Section 11. Venue for this Agreement shall be in Midland County, Texas. Midland County, Texas, shall be the exclusive venue for all actions to enforce or construe this Agreement. This Agreement shall be governed by the laws of the State of Texas.

Section 12. This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and the same instrument.

Section 13. This Agreement supersedes any previous agreement executed by any Owner and the City pursuant to Section 43.035, Texas Local Government Code.

CITY OF MIDLAND

_____
Courtney Sharp, City Manager

Approved as to Form

_____
Keith Stretcher, City Attorney

ATTEST

_____

Amy Turner, City Secretary

State of Texas §
County of Midland §

This instrument was acknowledged before me on the _____ day of _____, 2011, by Courtney Sharp, City Manager of the City of Midland, on behalf of such municipality.

_____

Notary Public

OWNER

_____
Blaine Covington

State of Texas §
County of _____ §

This instrument was acknowledged before me on the _____ day of _____, 2011, by Blaine Covington.

_____
Notary Public

_____
Cameron Covington

State of Texas §
County of _____ §

This instrument was acknowledged before me on the _____ day of _____, 2011, by Cameron Covington.

_____
Notary Public

_____
Andrew Pennington

State of Texas §
County of _____ §

This instrument was acknowledged before me on the _____ day of _____, 2011, by Andrew Pennington.

_____
Notary Public

_____
Ed Covington

State of Texas §
County of _____ §

This instrument was acknowledged before me on the _____ day of _____, 2011, by Ed Covington.

_____
Notary Public

2007 LANDRUM-TX, LTD,
a Texas limited partnership

By: Bledsco, Inc.,
its general partner

By: _____
Name: _____
Title: _____

State of Texas §
County of _____ §

This instrument was acknowledged before me on the _____ day of _____, 2011, by _____, _____ of Bledsco, Inc., general partner of 2007 LANDRUM-TX, LTD., on behalf of such limited partnership.

_____
Notary Public

After Recording Return to:
City Secretary
City of Midland
P.O. Box 1152
300 N. Loraine
Midland, Texas 79702

EXHIBIT A
Legal Description of Property

BEING a 308.72 acre tract of land out of a 90 acre tract of land to 2007 Landrum-TX, Ltd., as shown on County Clerk's File Number 2010-22717, Official Public Records of Midland County, Texas, and a 68.2 acre tract to 2007 Landrum-TX, Ltd., as shown on County Clerk's File Number 2011-3453, Official Public Records, Midland County, Texas, and on County Clerk's File Number 2011-12034, Official Public Records, Midland County, Texas according to the Warranty Deed to Texas Pacific Land Trust filed of record in Volume 234, Page 474, Deed Records of Midland County, Texas, situated in Section 37 and Section 48, Block 41, T-1-S, T. & P. RR Company Survey, Midland County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at (Northing (Y) 10,686,813.9, Easting (X): 1,700,984.0) a 1/2-inch iron rod with red plastic cap marked "West Co. Midland" set for the Northeast corner of this tract in the North Line of Section 37, Block 41, T-1-S, Midland County, Texas and being in the Westerly right-ofway line of F.M. 1788, a variable right-of-way, from which a spike nail found at or near the Northeast corner of said Section 37 bears N 74"59'25" E a distance of 200.40 feet;

THENCE S 14"08'32" E with the Westerly right-of-way line of said F.M. 1788 a distance of 60.00 feet to (Northing (Y) 10,686,755.7, Easting (X): 1,700,998.7) a Concrete right-of-way marker found for the most easterly Southeast corner of this tract and the Northeast corner of a tract to Calvary Chapel of Midland-Odessa as shown on the document filed of record in Vol. 2412, Pg. 518, Official Public Records of Midland County, Texas;

THENCE S 74°59'25" W with the Northerly line of said Calvary Chapel tract a distance of 917.94 feet to (Northing (Y) 10,686,518.0, Easting (X): 1,700,112.1) a 1/2-inch Iron Rod found for an interior corner of this tract and the Northwest corner of said Calvary Chapel tract:

THENCE S 14"01'01" E with the West line of said Calvary Chapel tract and the West line of a tract to Steve Holifield as shown on the document filed of record in Vol. 1666, Pg. 335, Official Public Records of Midland County. Texas a distance of 1576.95 feet to a 1/2-inch iron rod with red plastic cap marked "West Co. Midland" set for the most Easterly Southeast corner of this tract and the Northeast corner of Tract 2;

THENCE S 75°48'08" W with the North line of said Tract 2 a distance of 838.22 feet to a *1/2*inch iron rod with red plastic cap marked "West Co. Midland";

THENCE S 14°11'56" E with the West line of said Tract 2 a distance of 25.71 feet to a 1/2-inch iron rod with red plastic cap marked "West Co. Midland";

THENCE S 34°41'48" W with the Northwesterly line of said Tract 2 a distance of 1970.54 feet to a 1/2-inch iron rod with red plastic cap marked "West Co. Midland" set for an interior angle;

THENCE S 55°18'12" E with the Westerly line of said Tract 2 a distance of 450.52 feet to a *1/2*inch iron rod with red plastic cap marked "West Co. Midland" set for an exterior angle;

THENCE S 34°43'03" W with the Northwesterly line of said Tract 2 a distance of 246.52 feet to a 1/2-inch iron rod with red plastic cap marked "West Co. Midland" set for an exterior angle;

THENCE N 55°18'12" W with the Westerly line of said Tract 2 a distance of 450.43 feet to a *1/2*inch iron rod with red plastic cap marked "West Co. Midland" set for an interior angle;

THENCE S 34°41'48" W with the Northwesterly line of said Tract 2 a distance of 739.56 feet to a 1/2-inch iron rod with red plastic cap marked "West Co. Midland" set for an interior angle;

THENCE S 55°18'12" E with the Westerly line of said Tract 2 a distance of 900.60 feet to a *1/2*inch iron rod with red plastic cap marked "West Co. Midland" set in the Northwesterly right-of-way line of State Highway 191 a variable right-of-way, as shown on the map or plat thereof filed of record in Vol. 715, PG 251, Deed Records of Midland County, Texas;

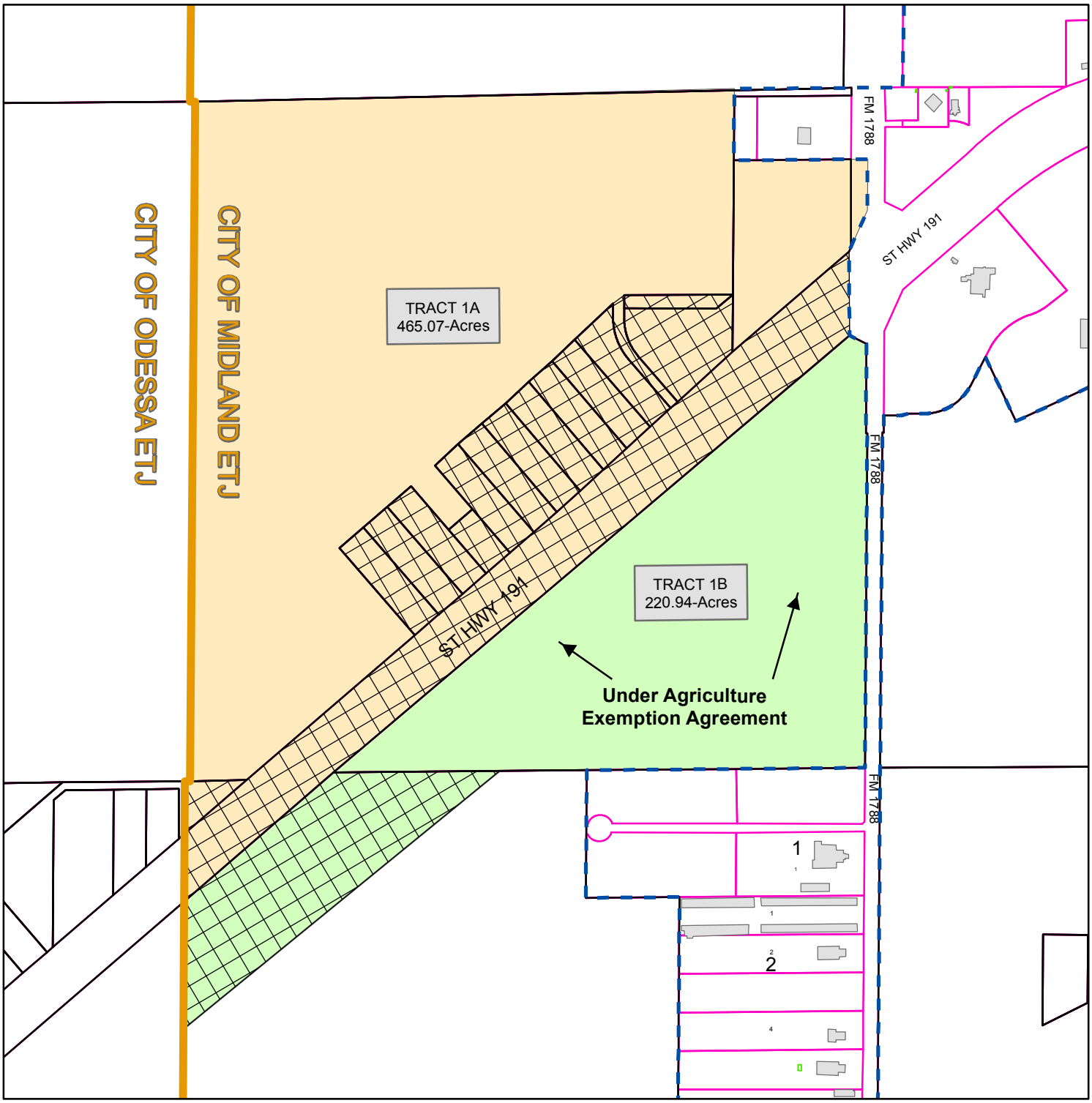
THENCE S 34°43'03" W with the Northwesterly right-of-way line of said State Highway 191 at a distance of 1663.39 feet pass the South line of said Section 37 and the North line of said Section 48, continuing on for a total distance of 2298.17 feet to (Northing (Y): 10,680,447.35 Easting (X): 1,697,800.48) a *1/2* inch iron rod marked "West Co. Midland";

THENCE N 14°08'04" W with the Westerly line of Section 48 a distance of 410.53 feet to *1/2"* iron rod at or near the Northwesterly corner of Section 48;

THENCE N 75°02'17" E with the North line of said Section 48 a distance of 38.35 feet to a *1/2* inch iron rod and stone mound found for the Southwest corner of this tract at or near the Southwest corner of said Section 37;

THENCE N 14°06'06" W with the Westerly line of said Section 37 a distance of 5325.32 feet to (Northing (Y): 10685498.48 Easting (X): 1696078.24) a *1/2* inch iron rod found for the Northwest corner of this tract at or near the Northwest corner of said Section 37;

THENCE N 74°59'25" E with the North line of said Section 37 a distance of 5079.07 feet to the POINT OF BEGINNING, subject tract contains 308.72 acres of land.



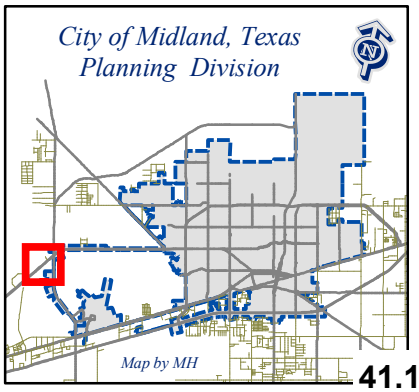
LOCATION & ZONING MAP

M - 11 - 001 Scale: 1" = 1100'

Consider an amendment to an agriculture exemption agreement related to the annexation of a 465.07-acre tract of land (Tract 1A), out of Sections 37 and 48, Block 41, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- ANNEXED LAND
- ANNEXATION TRACT 1A
- ANNEXATION TRACT 1B
- CITY LIMITS
- ETJ BOUNDARY
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Gary Saunders, Transportation Manager**

SUBJECT: **Ordinance – Construction Speed Zone**

Purpose:

To approve an ordinance on second reading establishing a temporary construction speed limit on a portion of Interstate 20 within the City of Midland.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no fiscal impact to the City associated with this request. All costs will be borne by the Texas Department of Transportation (TxDOT).

Discussion:

The Legal Department has prepared an ordinance to be considered on second reading establishing a temporary construction speed limit of 60 miles per hour (mph) on a portion of Interstate 20 between Loop 250 and State Highway 349 as follows:

60 mph (Both Directions) from the west City limits of the City of Midland and continuing east for a distance of approximately 5.06 miles to a point just east of State Highway 349.

The temporary construction speed limit has been requested by TxDOT in concert with a roadway construction project. The temporary speed limit will be in place for the duration of the project only.

Attached is a map of this portion of IH-20 indicating the proposed temporary construction speed limit area.

Staff recommends approval of this ordinance.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Gary Saunders, Transportation Manager**

SUBJECT: **Ordinance – Construction Speed Zone**

Purpose:

To approve an ordinance establishing a temporary construction speed limit on a portion of Interstate 20 within the City of Midland.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no fiscal impact to the City associated with this request. All costs will be borne by the Texas Department of Transportation (TxDOT).

Discussion:

The Legal Department has prepared an ordinance establishing a temporary construction speed limit of 60 miles per hour (mph) on a portion of Interstate 20 between Loop 250 and State Highway 349 as follows:

60 mph (Both Directions) from the west City limits of the City of Midland and continuing east for a distance of approximately 5.06 miles to a point just east of State Highway 349.

The temporary construction speed limit has been requested by TxDOT in concert with a roadway construction project. The temporary speed limit will be in place for the duration of the project only.

Attached is a map of this portion of IH-20 indicating the proposed temporary construction speed limit area.

Staff recommends approval of this ordinance.

ORDINANCE NO.

AN ORDINANCE ESTABLISHING A TEMPORARY CONSTRUCTION SPEED ZONE OF 60 MILES PER HOUR ON A PORTION OF INTERSTATE 20 FOR A STATE HIGHWAY IMPROVEMENT PROJECT BY THE TEXAS DEPARTMENT OF TRANSPORTATION; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

WHEREAS, the Texas Department of Transportation is in the process of developing a pavement rehabilitation project within the City of Midland that will require a certain amount of construction; and

WHEREAS, the Texas Department of Transportation has conducted a study and has determined and recommended that a speed limit of 60 miles per hour be established on that portion of Interstate 20 from the west city limits of the City of Midland and continuing east a distance of approximately 5.06 miles to a point just east of State Highway 349; and

WHEREAS, the City Council finds and determines from the above-mentioned study that said portion of Interstate 20 should be temporarily speed zoned to a rate hereinafter set out in this Ordinance;

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

SECTION ONE. That no person shall drive a vehicle at rate of speed in excess of 60 miles per hour on that portion of Interstate 20 under temporary construction as set out below. The speed limit specified in this Section shall be lawful, but any speed in excess of the limit specified in this Section shall be prima facie evidence that the speed is not reasonable and prudent and is unlawful. The speed of motor vehicles on that portion of Interstate 20 under temporary construction as set out below shall be effective during the period of construction and shall terminate when construction is completed as certified by the

District Engineer for the Texas Department of Transportation, to wit:

Interstate 20

60 m.p.h. (both directions) - from the west city limits of the City of Midland and continuing east a distance of approximately 5.06 miles to a point just east of State Highway 349.

SECTION TWO. That the above speed zoning is based upon findings and determinations of the City Council made as a result of certain traffic surveys and studies made by the Texas Department of Transportation.

SECTION THREE. That the Traffic Engineer of the City of Midland is hereby authorized and directed to install appropriate speed zone signs commensurate with the provisions of this Ordinance.

SECTION FOUR. That any person violating the prima facie speed limits established by this Ordinance shall, upon conviction, be punished by a fine of not less than One Dollar ($1.00) nor more than Two Hundred Dollars ($200.00), as fully prescribed by Section 542.401 of the Texas Transportation Code.

SECTION FIVE. That all existing ordinances, or any part thereof, in conflict with this Ordinance are hereby expressly repealed.

Not repealed, amended, or in any way affected by this ordinance are those ordinances establishing speed limits in school zones or school crossings.

SECTION SIX. That repeal of the ordinances, or parts of ordinances, effectuated by the enactment of this ordinance shall not be construed as abating any actions pending under or by virtue of such ordinances; or as discontinuing, abating, modifying or altering any penalty accruing or to accrue; or as affecting the liability of any person, firm or corporation; or as waiving any right of the municipality under any section or provision existing at the time of the passage of this Ordinance.

SECTION SEVEN. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not

affect the validity of the remaining portions of this Ordinance. The Council of the City of Midland hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

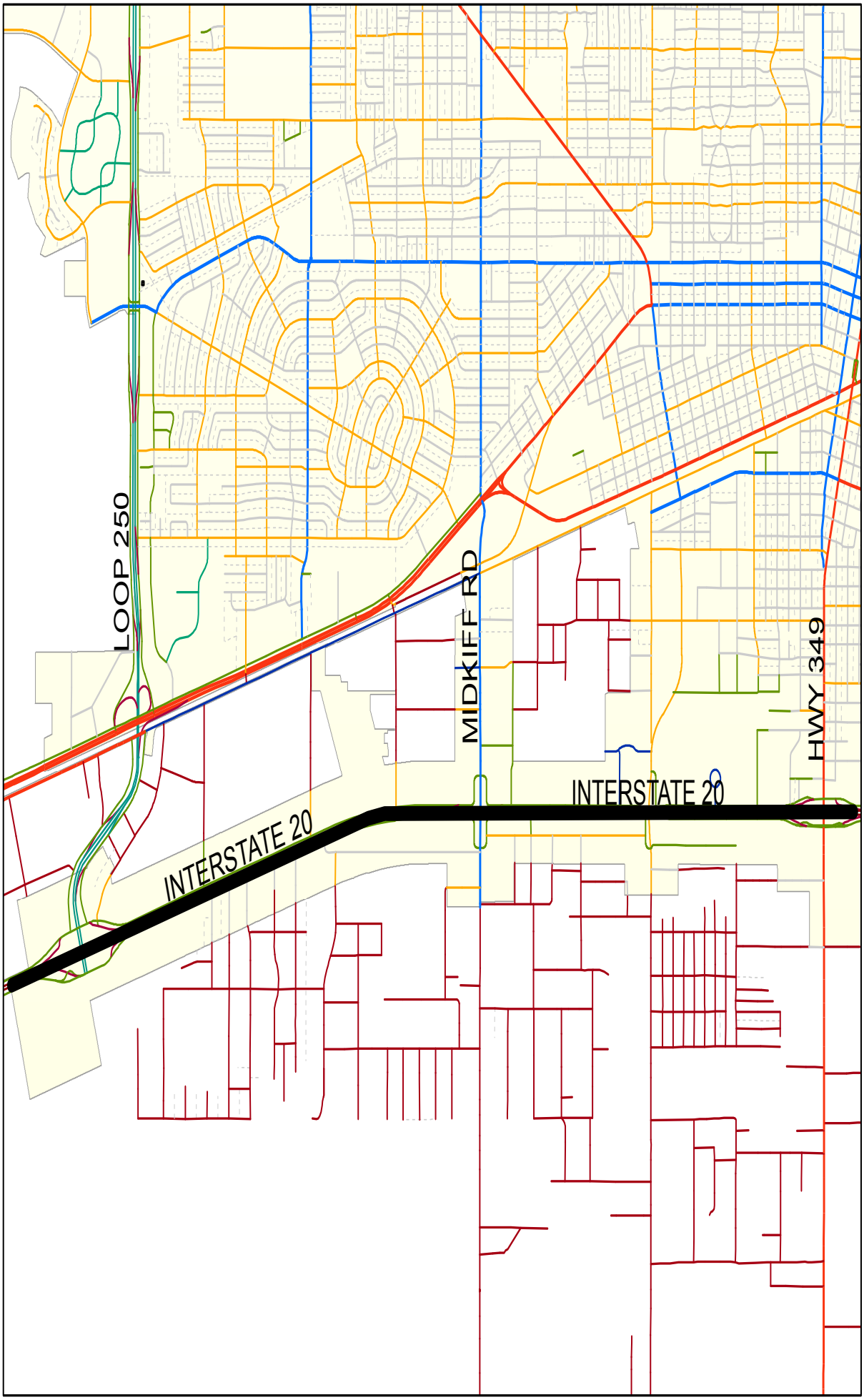
ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

TRANSPORTATION DIVISION



Proposed 60 m.p.h. construction speed limit for Interstate 20

N

MIDLAND Transportation

Map by TC 11/30/11

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Morris Williams Jr., Director of Solid Waste**

SUBJECT: **Commercial Rates Ordinance – SECOND READING**

Purpose:

Second reading to consider an ordinance amending Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 9, "Collection from Commercial Customers", of the City Code of Midland, Texas, so as to replace the explanatory paragraph of Table 1. Standard Commercial Locations: Three Yard Containers.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

This proposed amendment includes removing the current explanatory paragraph that states:

"If a commercial location, an apartment complex or mobile home park requires more than one whole three-yard container, the second whole three-yard container will be billed at ten percent less than the first whole container. The third and additional whole three-yard containers will be billed at 20 percent less than the first whole three-yard container."

and replacing it with the following paragraph:

"If a commercial location, an apartment complex or mobile home park requires more than one whole three-yard container, any additional whole three-yard container will be billed at ten percent less than the first whole three-yard container."

This amendment to the current ordinance will correct a conflict between different portions of the ordinance dealing with the rate structure used in Customer Service for garbage billing.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Morris Williams Jr., Director of Solid Waste**

SUBJECT: **Commercial Rates Ordinance**

Purpose:

Consider an ordinance amending Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 9, "Collection from Commercial Customers", of the City Code of Midland, Texas, so as to replace the explanatory paragraph of Table 1. Standard Commercial Locations: Three Yard Containers.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

This proposed amendment includes removing the current explanatory paragraph that states:

"If a commercial location, an apartment complex or mobile home park requires more than one whole three-yard container, the second whole three-yard container will be billed at ten percent less than the first whole container. The third and additional whole three-yard containers will be billed at 20 percent less than the first whole three-yard container."

and replacing it with the following paragraph:

"If a commercial location, an apartment complex or mobile home park requires more than one whole three-yard container, any additional whole three-yard container will be billed at ten percent less than the first whole three-yard container."

This amendment to the current ordinance will correct a conflict between different portions of the ordinance dealing with the rate structure used in Customer Service for garbage billing.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MIDLAND AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION," CHAPTER 6, "GARBAGE, TRASH AND RUBISH," SECTION 9, "COLLECTION FROM COMMERCIAL CUSTOMERS" FOR CLARIFICATION; AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to clarify Title VIII, "Food Establishments, Health and General Sanitation," Chapter 6, Garbage, Trash and Rubish," Section 9, "Collection from Commercial Customers";

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

SECTION ONE. That Title VIII, "Food Establishments, Health and General Sanitation," Chapter 6, "Garbage, Trash and Rubbish," Section 9, "Collection from Commercial Customers," Subsection (A) of the City Code of Midland, Texas, shall be amended to read as follows:

(A) The charges for collection and removal of garbage, trash, or waste from all commercial customers which have refuse containers furnished by the City shall be as follows:

TABLE 1. STANDARD COMMERCIAL LOCATIONS:

THREE YARD CONTAINERS.

Commercial rates: (Includes apartments and mobile home parks)

No. of Containers	*Rate (plus current tax rate)*
Twice a week service (Monday and Thursday or Tuesday and Friday)	
1	51.00
2	96.90
3	142.80
4	188.70
5	234.60
6	280.50

7	326.40
8	372.30
9	418.20
10	464.10
11	510.00
12	555.90
13	601.80
14	647.70
15	693.60
16	739.50
17	785.40
18	831.30
19	877.20
20	923.10
21	969.00
22	1,014.90
23	1,060.80
24	1,106.70
25	1,152.60

Three times a week service (Monday, Wednesday, Friday)

1	76.50
2	145.35
3	214.20
4	283.05
5	351.90
6	420.75
7	489.60
8	558.45
9	627.30
10	696.15
11	765.00
12	833.85
13	902.70
14	971.55
15	1,040.40
16	1,109.25
17	1,178.10

18	1,246.95
19	1,315.80
20	1,384.65
21	1,453.50
22	1,522.35
23	1,591.20
24	1,660.05
25	1,728.90

Four times a week service (Monday, Tuesday, Thursday and Friday)

1	102.00
2	193.80
3	285.60
4	377.40
5	469.20
6	561.00
7	652.80
8	744.60
9	836.40
10	928.20
11	1,020.00
12	1,111.80
13	1,203.60
14	1,295.40
15	1,387.20
16	1,479.00
17	1,570.80
18	1,662.60
19	1,754.40
20	1,846.20
21	1,938.00
22	2,029.80
23	2,121.60
24	2,213.40
25	2,305.20

Five times a week service (Monday through Friday)

1	127.50
2	242.25
3	357.00
4	471.75
5	586.50
6	701.25
7	816.00
8	930.75
9	1,045.50
10	1,160.25
11	1,275.00
12	1,389.75
13	1,504.50
14	1,619.25
15	1,734.00
16	1,848.75
17	1,963.50
18	2,078.25
19	2,193.00
20	2,307.75
21	2,422.50
22	2,537.25
23	2,652.00
24	2,766.75
25	2,881.50

If a commercial location, an apartment complex or mobile home park requires more than one whole three yard container, any additional whole three yard container will be billed at ten percent less than the first whole container.

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.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2011; 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **S-11-020; Hamilton Williams**

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Hamilton Williams for approval of a Specific Use Permit without term for tire, battery, and automotive accessory use. (Generally located on the east side of N. Big Spring Street, approximately 880 feet south of Scharbauer Drive.)

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

Aaron's Inc. is planning to construct an addition to the existing *HomeSmart* facility located at 2014 N. Big Spring Street. This addition will be a future *Rimco* location, which specializes in wheel and tire sales, rental, and installation. As wheel and tire installation is not a permitted use in the LR-2, Local Retail District, Aaron's is requesting approval of a Specific Use Permit to allow for tire, battery, and automotive accessory use.

Tire sales and installation with minor repair, is an allowed use in the LR-3, Local Retail District but may be allowed in the LR-2 District with approval of a Specific Use Permit. The applicants are planning to construct a 5,200 square foot addition to the north side of the existing *HomeSmart* facility, as indicated in the attached site plan. Approximately 2,300 square feet of this addition will be used for wheel and tire storage and installation. The remaining 2,900 square feet will be used as a showroom and for offices. Parking conditions will remain satisfactory and all installations will occur indoors with no vehicles or merchandise being stored outdoors. Staff finds that this additional requested use is compatible with surrounding uses and recommends approval.

Proposed hours of operation are Monday through Thursday from 10:00 a.m. to 7:00 p.m., Fridays from 10:00 a.m. to 8:00 p.m., and Saturdays from 9:00 a.m. to 5:00 p.m. *Rimco* will be closed on Sundays.

Attachments:
Application, Maps, Exhibit A – Site Plan

Planning and Zoning Commission
Minutes
December 5, 2011

S-11 020 - Hold a public hearing and consider a request by Hamilton Williams for a Special Use Permit without Term for tire, battery and automotive accessory on the south 120 feet of Tract 4, Morningside, City and County of Midland, Texas. (Generally located on the east side of N. Big Spring Street, approximately 880 feet south of Scharbauer Drive.)

Bill Chandler, Director of Construction for Aaron's, Inc. 2625 FM 1960 W, Houston, stated that this company is planning to construction an addition to the existing HomeSmart facility at 2014 N. Big Spring Street and will be the future Rimco location.

Mr. Melland stated that this is a Specific Use Permit without Term and no letters of opposition were received.

Chairman Carney opened the public hearing and there being no one wishing to speak in favor or in opposition to the item, closed the public hearing.

A motion for approval, subject to Conditions A-D, was made by Commissioner Watkins; seconded by Commissioner Wilton. The motion carried by the following vote: AYE: Lanning, Ferguson, Woodruff, Carney, Wilton, Watkins and Wolf. NAY: None. ABSTAIN: None. ABSENT: Gatten and York

PLANNING AND ZONING COMMISSION

December 5, 2011

CASE:	S-11-020; Hamilton Williams
REQUEST:	Hold a public hearing and consider a request for a Specific Use Permit without Term for tire, battery, and automotive accessory use.
APPLICANT:	Hamilton Williams
OWNER:	Aaron's Inc.
LEGAL DESCRIPTION:	The south 120 feet of Tract 4, Morningside, City and County of Midland, Texas.
LOCATION:	Generally located on the east side of N. Big Spring Street, approximately 880 feet south of Scharbauer Drive.
CURRENT ZONING:	LR-2, Local Retail District

DETAILS OF REQUEST:

1. Aaron's Inc. is planning to construct an addition to the existing *HomeSmart* facility located at 2014 N. Big Spring Street. This addition will be a future *Rimco* location, which specializes in wheel and tire sales, rental, and installation. As wheel and tire installation is not a permitted use in the LR-2, Local Retail District, Aaron's is requesting approval of a Specific Use Permit to allow for tire, battery, and automotive accessory use. Proposed hours of operation are Monday through Thursday from 10:00 a.m. to 7:00 p.m., Fridays from 10:00 a.m. to 8:00 p.m., and Saturdays from 9:00 a.m. to 5:00 p.m. *Rimco* will be closed on Sundays.

SURROUNDING ZONING AND LAND USE:

2. This property and surrounding properties to the north, south, and west, adjacent to N. Big Spring Street are zoned LR-2, Local Retail. Properties to the east are zoned 2-F, Two Family Dwelling District.

ANALYSIS:

3. Tire sales and installation with minor repair, is an allowed use in the LR-3, Local Retail District but may be allowed in the LR-2 District with approval of a Specific Use Permit. The applicants are planning to construct a 5,200 square foot addition to north side of the existing *HomeSmart* facility, as indicated in the attached site plan. Approximately 2,300 square feet of this addition will be used for wheel and tire storage and installation. The remaining 2,900 square feet will be used as for a showroom and for offices. Parking conditions will remain satisfactory and all installations will occur indoors with no vehicles or merchandise being stored outdoors. Staff finds that this additional requested use is compatible with surrounding uses and recommends approval.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a Specific Use Permit without Term for tire, battery, and automotive accessory use, subject to the following conditions:

A. That the development of said property shall conform to the attached site plan and elevations labeled Exhibits A and B in all respects;

B. That the maximum area of tire, battery, and automotive accessory use shall be limited to 5,200 square feet;

C. All applicable Building and Fire Codes must be met prior to business operations;

D. That the days and hours of tire, battery, and automotive accessory use shall not exceed the following: Monday through Thursday from 10:00 a.m. to 7:00 p.m., Fridays from 10:00 a.m. to 8:00 p.m., and Saturdays from 9:00 a.m. to 5:00 p.m.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Brandon Melland, Planner
Department of Development Services

Attachments:

Application
Site Plan – Exhibit A
Maps

Case Number: S-11-020

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

Hamilton Williams — 404-601-4283
Applicant Name — Contact Phone #s

1430 West Peachtree St., Ste. 200 — Atlanta, GA 30309
Address — Zip Code

E-Mail address: hwilliams@greenbergfarrow.com

Aaron's Inc. (Bill Chandler) — 281-631-0983
Property Owner Name — Contact Phone #s

2625 FM 1960 West — Houston, TX — 77068
Address — Zip Code

E-Mail address: bill.chandler@aarons.com

Operator (if different from Applicant or Property Owner) — Contact Phone #s

Address — Zip Code

Type of Permit: Tire, Battery & Auto Accessory

SUP with Term: ____Yes XX No
(For Office Use)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)
2014 N. Big Springs Street (See attached Survey)

Current Zoning: LR-2

Maximum Floor Area: 4,951 sf Max. Occupancy: 98

Proposed hours and days of use or operation:

Reason for request: To allow 2,272 square feet of Tire and Auto Accessory use within the retail building.

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: The requested use will be fully contained within the building and not be visible from the public ROW. The use aligns with the current land uses in the adjacent area.

REQUIRED SUBMITTALS

1. Application fee: **$300.** (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.)
2. Site plan – 16 copies (FOLDED)
3. On a CD in .pdf and .jpg format.

SIGNATURES:

Applicant: _____ Date: 10.19.11

Property Owner: _____ Date: 10/17/11

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

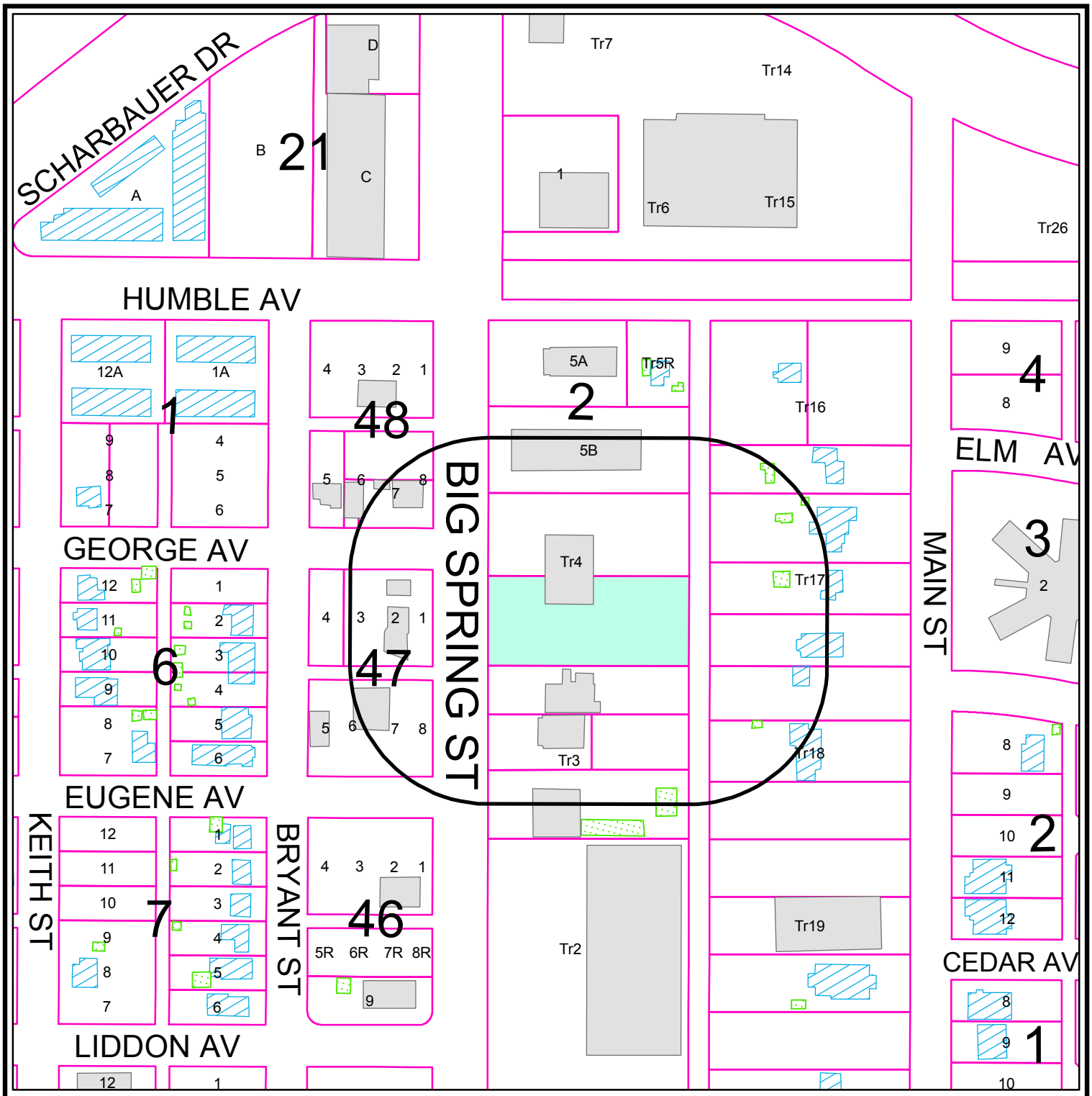
Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

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: Ben	Date: 10/24/11
Assigned:	
For: PTZ	On: 12/5/11

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

S - 11 - 020 **Scale: 1" = 200'**

Consider a request for a Specific Use Permit Without Term for tire, battery and automotive accessory on the south 120 feet of Tract 4, Morningside, 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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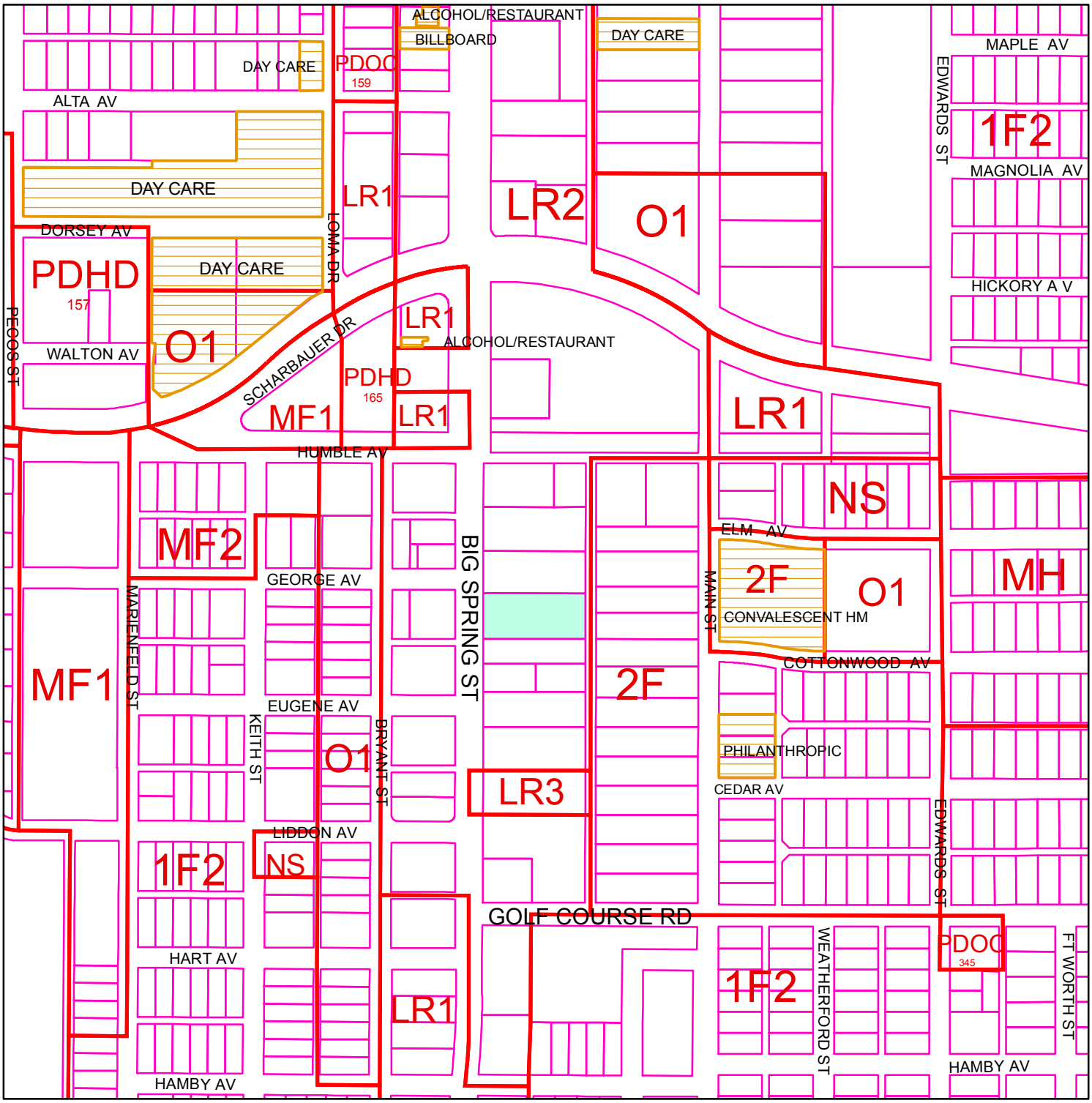

ZONING MAP

S - 11 - 020 **Scale: 1" = 400'**

Consider a request for a Specific Use Permit Without Term for tire, battery and automotive accessory on the south 120 feet of Tract 4, Morningside, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 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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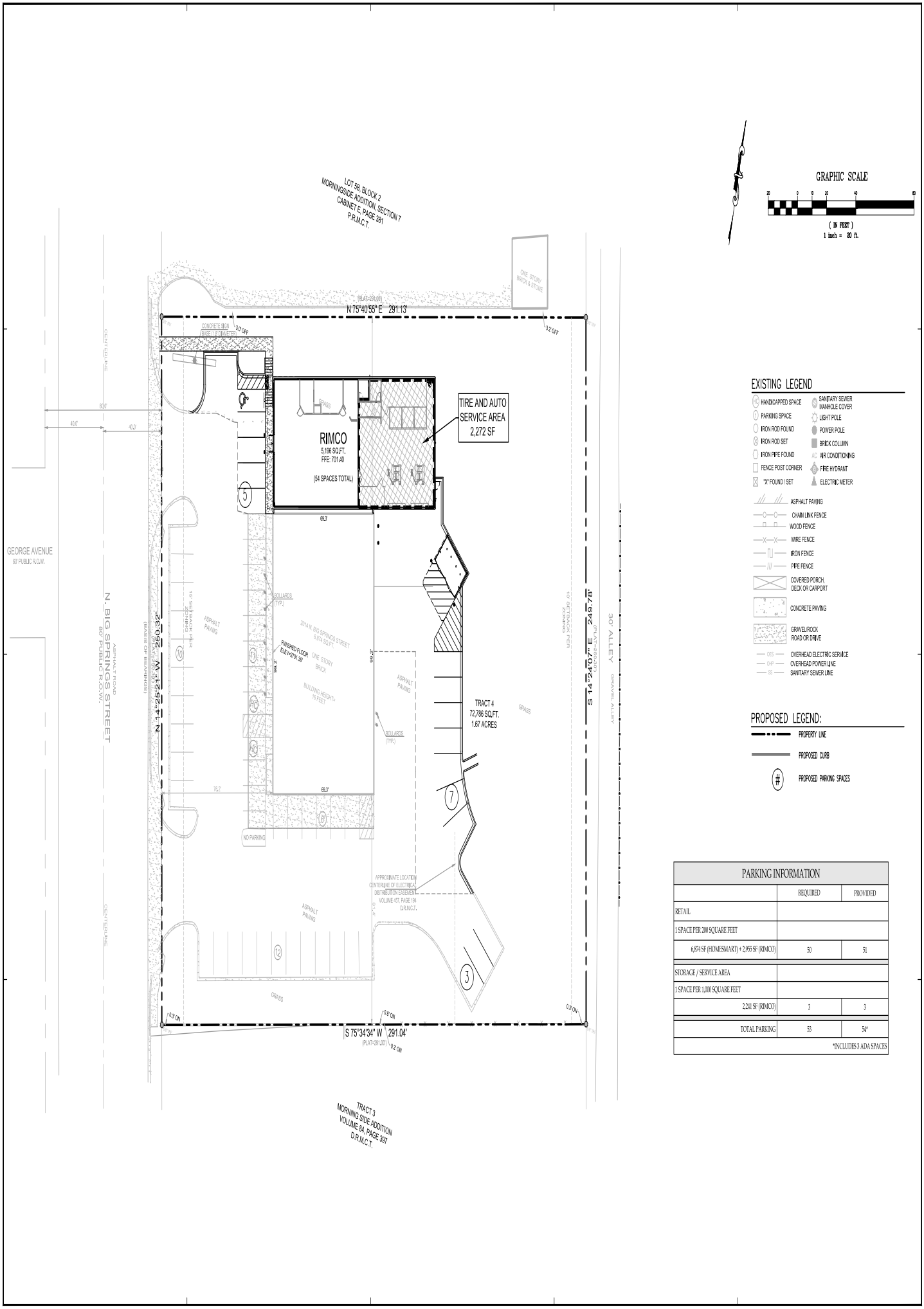

GRAPHIC SCALE

20 0 10 20 40 80

(IN FEET)
1 inch = 20 ft.

EXISTING LEGEND

- HANDICAPPED SPACE
- PARKING SPACE
- IRON ROD FOUND
- IRON ROD SET
- IRON PIPE FOUND
- FENCE POST CORNER
- "X" FOUND / SET
- SANITARY SEWER MANHOLE COVER
- LIGHT POLE
- POWER POLE
- BRICK COLUMN
- AC AIR CONDITIONING
- FIRE HYDRANT
- ELECTRIC METER
- ASPHALT PAVING
- CHAIN LINK FENCE
- WOOD FENCE
- WIRE FENCE
- IRON FENCE
- PIPE FENCE
- COVERED PORCH, DECK OR CARPORT
- CONCRETE PAVING
- GRAVEL/ROCK ROAD OR DRIVE
- OES OVERHEAD ELECTRIC SERVICE
- OHP OVERHEAD POWER LINE
- SS SANITARY SEWER LINE

PROPOSED LEGEND:

- PROPERTY LINE
- PROPOSED CURB
- # PROPOSED PARKING SPACES

PARKING INFORMATION		
	REQUIRED	PROVIDED
RETAIL		
1 SPACE PER 200 SQUARE FEET		
6,874 SF (HOMESMART) + 2,955 SF (RIMCO)	50	51
STORAGE / SERVICE AREA		
1 SPACE PER 1,000 SQUARE FEET		
2,241 SF (RIMCO)	3	3
TOTAL PARKING	53	54*
		*INCLUDES 3 ADA SPACES

GreenberyFarrow
CORP.
1430 W. Peachtree St. NW
Suite 200
Atlanta, GA 30309
t: 404 601 4000 f: 404 601 3970

PROJECT TEAM

COPYRIGHT NOTICE
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ISSUE/REVISION RECORD

DATE	DESCRIPTION
10-21-11	S.U.P. SUBMITTAL
11-11-11	CITY SUBMITTAL
12-06-11	CITY SUBMITTAL #2

PROFESSIONAL SEAL

PROFESSIONAL IN CHARGE
JOHN NOURZAD
PROFESSIONAL ENGINEER
LICENSE NO. 85192

PROJECT MANAGER
G. HAMILTON WILLIAMS

QUALITY CONTROL
LARRY DIEHL

DRAWN BY
KJJ

PROJECT NAME

RIMCO

MIDLAND
TEXAS

2014 N. BIG SPRINGS STREET

PROJECT NUMBER
20110514.0

SHEET TITLE

S.U.P. SITE PLAN

SHEET NUMBER

SUP 44.9

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE SOUTH 120 FEET OF TRACT 4, MORNINGSIDE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH BIG SPRING STREET, APPROXIMATELY 880 FEET SOUTH OF SCHARBAUER DRIVE), WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR TIRE, BATTERY AND AUTOMOTIVE ACCESSORY USE; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings and affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the health, safety and general welfare will be best served by the granting of a Specific Use Permit Without Term, set out hereinafter, subject to the special conditions and restrictions set out hereinafter on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned LR-2, Local Retail District, to wit:

> The south 120 feet of Tract 4, Morningside, City and County of Midland, Texas;

is hereby changed to permit same to be used under a Specific Use Permit Without Term for

an accessory building to be used for living or sleeping quarters, together with the uses permitted in an LR-2, Local Retail District, subject to the following conditions:

1. That the development of said property shall conform to the site plan attached hereto and incorporated herein as Exhibit "A".

2. That the maximum area of tire, battery and automotive accessory use shall be limited to 5,200 contiguous square feet in area.

3. That all applicable Building Code and Fire Code provisions shall be met prior to business operations.

4. That the days and hours of said accessory use shall not exceed the following: Monday through Thursday, 10:00 a.m. to 7:00 p.m.; Friday, 10:00 a.m. to 8:00 p.m.; and Saturday, 9:00 a.m. to 5:00 p.m.

SECTION TWO. 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 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 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-036, Los Conchos Ventures Zone Change**

Purpose:

Continue consideration of an ordinance on a request by Los Conchos Ventures, LLC for a zone change from AE, Agriculture Estate District and PD, Planned Districts for Housing Developments to 1F-2, One-Family Dwelling District; PD, Planned District for a Housing District, TH, Townhouse Districts, O-1, Office District and LR-2, Local Retail District.

Recommended City Council Action

X Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this request.

Discussion:

Los Conchos Ventures wishes to develop a vacant quarter-section of land bounded on the west by Holiday Hill Road, on the north by Mockingbird Lane and on the east by Oriole Drive. This land was annexed in 1980, at which time it was zoned AE District. At that time it was standard practice to adopt this zoning classification because this was the most restrictive district in the Zoning Code. It was considered a "holding zone" until the land was ripe for development and a plan was proposed. (Today, the FD, Future Development District is used, since no building permits can be issued until a rezoning occurs.) The southern portion of this land was rezoned in 2007 for conventional residential development, based upon a preliminary plat. However, no final plat was submitted.

The applicant is proposing five different zoning categories. Three are for single-family development, one is for office development and one is for retail development. This zoning plan is a virtual replica of the Model Neighborhood Plan contained in the Comprehensive Plan. A 12-acre retail tract is proposed at the intersection of Mockingbird Lane and Holiday Hill Road, which are both arterial streets. The office zoning is proposed along the south side of Mockingbird Lane, which again meets the recommended location for office zoning. The residential lots on the north side of Mockingbird Lane are oriented with the rear of the lots facing this arterial street. The single-family zoning will be subject to the 1F-2 District regulations, including those lots adjacent to Holiday Hill Road that must be zoned Planned District for a Housing Development. This is to allow the adoption of a site plan showing the fencing and landscaping required to screen the alley adjacent to Holiday Hill Road. This site plan is attached as Exhibit A. There are also three tracts proposed for townhouse development. The maximum potential density, based on the proposed zoning districts, is approximately 4.5 dwelling units per acre, well below the maximum recommendation of the Comprehensive Plan of 5 to 5.4 dwelling units per acre. Since the associated plat contains common areas, the City Council must approve the plat as well, and it is also on the December 13th agenda.

Several persons spoke in opposition to this request during the Planning and Zoning Commission meeting. Staff has also received several opposition letters, and the percent of written opposition stands at 46.44percent at this writing. Therefore, six affirmative Council votes are needed for approval. The staff received a letter from the Greathouse Home Owners Association supporting this proposal. The Planning and Zoning Commission voted 6-1 to approve this request. Staff concurs with this recommendation

Attachments:

November 14, 2011 P&Z Staff Report
Proposed Ordinance and Exhibit A

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **December 13, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-036, Los Conchos Ventures Zone Change**

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Los Conchos Ventures, LLC for a zone change from AE, Agriculture Estate District and PD, Planned District for Housing Developments to 1F-2, One-Family Dwelling District; PD, Planned District for a Housing District, TH, Townhouse Districts, O-1, Office District and LR-2, Local Retail District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

Los Conchos Ventures wishes to develop a vacant quarter-section of land bounded on the west by Holiday Hill Road, on the north by Mockingbird Lane and on the east by Oriole Drive. This land was annexed in 1980, at which time it was zoned AE District. At that time it was standard practice to adopt this zoning classification because this was the most restrictive district in the Zoning Code. It was considered a "holding zone" until the land was ripe for development and a plan could be proposed. (Today, the FD, Future Development District is used, since no building permits can be issued until a rezoning occurs.) The southern portion of this land was rezoned in 2007 for conventional residential development, based upon a preliminary plat. However, no final plat was submitted.

The applicant is proposing five different zoning categories. Three are for single-family development, one is for office development and one is for retail development. This zoning plan is a virtual replica of the Model Neighborhood Plan contained in the Comprehensive Plan. A 12-acre retail tract is proposed at the intersection of Mockingbird Lane and Holiday Hill Road, which are both arterial streets. The office zoning is proposed along the south side of Mockingbird Lane, which again meets the recommended location for office zoning. The residential lots on the north side of Mockingbird Lane are oriented with the rear of the lots facing this arterial street. The single-family zoning will be subject to the 1F-2 District regulations, including those lots adjacent to Holiday Hill Road that must be zoned Planned District for a Housing Development. This is to allow the adoption of a site plan showing the fencing and landscaping required to screen the alley adjacent to Holiday Hill Road. This site plan is attached as Exhibit A. There are also three tracts proposed for townhouse development. The maximum potential density, based on the proposed zoning districts, is approximately 4.5 dwelling units per acre, well below the maximum recommendation of the Comprehensive Plan of 5 to 5.4 dwelling units per acre. Since the associated plat contains common areas, the City Council must approve the plat as well, and it is also on the December 13th agenda.

Several persons spoke in opposition to this request during the Planning and Zoning Commission meeting. Staff has also received several opposition letters, and the percent of written opposition stands at 46.44 percent at this writing. Therefore, six affirmative Council votes are needed for approval. The staff received a letter from the Greathouse Home Owners Association supporting this proposal. The Planning and Zoning Commission voted 6-1 to approve this request. Staff concurs with this proposal and recommends Council approval.

Attachments:

November 14, 2011 P&Z Staff Report
Proposed Ordinance and Exhibit A

Planning and Zoning Commission
Minutes
November 14, 2011

Z-11-036 - Hold a public hearing and consider a request by **Los Conchos Ventures, LLC.** for a *zone change* from AE, Agriculture Estate District to LR-2, Local Retail District on a 19.71-acre tract of land (Tract 1); to O-1, Office District on a 12.97-acre tract of land (Tract 2); to TH, Townhouse Dwelling District on a 10.64-acre tract of land (Tract 7); and to 1F-2, One-Family Dwelling District on a 19.73-acre tract of land (Tract 8); and from Planned Districts for Housing Developments to PD, Planned District for Housing Development on a 26.33-acre tract of land (Tract 3); to 1F-2, One-Family Dwelling District on a 60.84-acre tract of land (Tract 4); to TH, Townhouse Dwelling District on a 7.93-acre tract of land (Tract 5); to TH, Townhouse Dwelling District on a 6.33-acre tract of land (Tract 6) all out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the south side of Mockingbird Lane, between Oriole Drive and Holiday Hill Road.)

Mr. West with Parkhill, Smith and Cooper, representing the applicant, Los Conchos Ventures, LLC, presented an overview of the request for several zone changes on various tracts of land and outlining the history of the land which had been included in the 1980 annexation, the largest ever done by the City. He said the proposed zone changes would include townhomes, single family homes, office, retail and Planned District to the areas that is basically now AE (Agricultural) zoning. With the use of a Power Point presentation, he demonstrated the exact areas for the zone changes. Mr. West answered questions from the Commissioners.

Mr. Compton stated that this is a 164-acre tract of land, which was divided into eight tracts for consideration because of overlapping zoning uses.

Chairman Carney opened the public hearing.

Larry Adams, 4508 Meadowlark Lane, expressed concern over environmental issues with regard to the location of a tank battery in the area and asked that this be reviewed. He also expressed opposition to the location of retail or office buildings.

Mr. Compton responded that the four oil well sites are located in common areas and no applications to drill have been received.

Georgia Corwin, 4516 Robin Lane, spoke in opposition to the zone changes, stating that adequate notification was not given to the homeowners. She also spoke regarding the increase in traffic in her area.

Tim McNealy, 4515 Meadowlark Lane, expressed opposition to the zone changes and suggested that the City of Midland Master Plan 2025 should be used as a guide.

Alan Bennett, 5001 Pimlico Dr., stated that he did not want to back of his house looking into an office building, that he has animals to think about and doesn't want retail in that area.

Heath Hardwick, 5109 King Richards Row, president of the Greenhill Terrace Pool Association, stated that the pool area has always been peaceful and quiet and does not want that destroyed by additional traffic that would result from the zone change. He said there are 50 families who are members.

Joyce McKelvey, 4511 Meadowlark Lane, stated that she lives on four acres and has seven horses and wondered what will happen to her horses should neighbors complain about them being there. She expressed concern over riding her horses on streets that have an increase in traffic.

She was told by the Planning staff that she is grandfathered in.

Joan Cox, 4607 Tattenham, expressed opposition to retail in the area.

John Sullivan, 4707 Tattenham, stated that alley access would be needed since Mockingbird is his alley at the present, that he has one horse stall and that this is a grave issue.

Stacey Humphrey, 4611 Tattenham, asked if the school is big enough to handle additional children that will move in should additional houses be built.

Mark Smith, 4420 Tanforan Avenue, stated that he is a Scoutmaster and members of his Scout Troop were present. Mr. Smith stated that he would like to see more of a transition, no retail, and the pool, livestock and neighborhood be protected.

Richard Pharr, 4613 Tattenham, asked that Mockingbird Lane be reconsidered as a major arterial street.

Greg Boler, 4510 Meadowlark Lane, expressed concern over traffic issues that would be generated by the development.

Craig Smith, 4701 Tattenham, stated that office space on Mockingbird was not appropriate and asked for reconsideration.

There being no one else to speak in opposition, Chairman Carney asked for those wishing to speak in favor of the request.

Rooney King Mestes, 5004 Apple Creek Road, representing the Greathouse Homeowners Association, voiced support of the development and asked that the Commission plan accordingly regarding the increase in traffic.

Walter Pate of Pate and Associates Architects, 4500 W. Illinois, expressed a sincere interest in what happens in Midland, stating that this would be a low density development. He stated that he was impressed with the development plan and in favor of the zone changes.

Rodney Roberts, 4515 Bent Tree Trail, an architect, spoke in favor of the development.

Scott Bowden, 4901 Weidner Strip, stated that he was in the Real Estate business and felt that property values would be enhanced by the development.

Mr. West offered clarification of questions asked during the opposition's presentations and answered questions from the Commissioners concerning the types of businesses that the zones would allow.

There being no one else wishing to speak in favor or in opposition to the item, closed the public hearing.

Discussion followed regarding the possible drilling areas to which Mr. West replied that in talking with the drillers, they had verbally agreed to change the four locations to the common areas.

A motion for approval was made by Commissioner Ferguson; seconded by Commissioner Wolf. The motion carried by the following vote: AYE: Wolf, Lanning, Gatten, Ferguson, Wilton and Watkins. NAY: Carney. ABSTAIN: None. ABSENT: York and Woodruff

PLANNING AND ZONING COMMISSION

November 14, 2011

CASE: Z-11-036.

REQUEST: Consider a request for a zone change from AE, Agriculture Estate District and PD, Planned Districts for Housing Developments to PD, Planned District for a Housing Development, 1F-2, One-Family Dwelling District, TH, Townhouse District, O-1, Office District and LR-2, Local Retail District.

APPLICANT/OWNER: Los Conchos Ventures, LLC.

REPRESENTATIVE: Parkhill, Smith and Cooper.

LEGAL DESCRIPTION: A 164-acre tract out of Section 6, Block "X", H. P. Hilliard Survey, Midland County, Texas.

LOCATION: South side of Mockingbird Lane, between Holiday Hill Road and Oriole Drive.

ASSOCIATED CASE: P-11-027, Greathouse Addition, Section 7.

DETAILS OF REQUEST:

1. Staff has received a development proposal on this 164-acre tract located in northwest Midland that consists of a proposed preliminary plat and this zone change application. The land is currently zoned AE District and three separate Planned Districts for Housing Developments that are based on a preliminary plat approved in 2008. However, while the platting process on the earlier plan stalled, the zoning was approved. This revised development plan adds additional land that was zoned AE District upon annexation in 1980. The development plan includes mostly single-family development, but it also includes proposals for an O-1 District and an LR-2 District. The associated preliminary plat, Greathouse Addition, Section 7 is also scheduled on the November 14th meeting. For logistical purposes, the staff has divided this large tract into eight different parcels, but there are only five different zoning districts. This was necessary because of the overlapping of districts due to the current zoning pattern.

SURROUNDING ZONING AND LAND USE:

2. This property is bounded on the west by Holiday Hill Road and on the north by Mockingbird Lane, both of which are arterial streets. The east side is bounded by Oriole Drive, a collector street. The land to the west is outside the City limit. The area to the north is the Green Hill Terrace Subdivision which is zoned AE District. The land to the east is the Melody Acres neighborhood, which is also zoned AE District. The land to the south is developed with the Greathouse neighborhood, which is zoned for single-family development on lots similar in size to this proposal.

ANALYSIS:

3. Our analysis will separate the single-family districts from the other districts. The largest area is planned to be zoned 1F-2 District (Tracts 4 and 8, 80.57 acres). This district allows single-family detached homes on lots at least 7,000 square feet in area, and can yield a maximum density of around 3.75 dwelling units per acre. Also proposed is a Planned District for a Housing Development (Tract 3, 26.33 acres). This planned district will also be subject to the 1F-2 District regulations. However, a planned district is required due to the lotting pattern on the associated plat. An alley is planned adjacent and parallel to Holiday Hill Road, a pattern prohibited by the Subdivision Code unless a common area, developed with a screening fence and landscaping, is placed between the street and the alley. Such a plan is shown on the associated plat. The attached Exhibit A illustrates the screening fence design. It would consist of a six-foot tall solid wood fence with seven-foot tall brick pilasters placed on 12- to 18-foot centers. The area outside the fence will be landscaped with grass and trees planted on 50-foot centers. The staff is satisfied that these elements will provide an effective and attractive visual screen of the neighborhood. The applicant is also proposing three tracts to be zoned TH District (Tracts 5, 6 and 7, 24.9 acres). These districts surround three of the common areas. The TH District provides for attached single-family homes, and can be developed at a maximum density of eight dwelling units per acre. The combined maximum density of all residential districts is approximately 4.5 units per acre, well below the 5.0 to 5.5 units per acre recommended by the Comprehensive Plan. The preliminary plat has 354 single-family lots, which results in a density of only 2.64 units per acre.

4. The remaining zoning districts include an O-1 District (Tract 2, 12.97 acres) and an LR-2 District (Tract 1, 19.71 acres). These acreages are measured to the center of the abutting roadways, therefore; the developable tracts are significantly smaller. The O-1 District will contain eight acres. The land on the north side of Mockingbird Lane is developed with single-family homes, with the rear of the lots oriented toward Mockingbird Lane. This condition significantly reduces the marketability of residential lots on the applicants land. This condition

acres. The size and location of both districts fit within the Comprehensive Plan guidelines for these respective districts. Therefore, we see no objection to the proposed office and retail districts.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from AE, Agriculture Estate District and PD, Planned Districts for a Housing Developments to PD, Planned District for a Housing Development, 1F-2, One-Family Development District, TH, Townhouse District, O1, Office District and LR-2, Local Retail District, as detailed below:

Tract 1: **From AE, Agriculture Estate District to LR-2, Local Retail District;**

Tract 2: **From AE, Agriculture Estate District to O-1, Office District;**

Tract 3: **From Planned Districts for Housing Developments to Amended Planned District for a Housing Development.**

Tract 4: **From Planned District for a Housing Development 1F-2, One-Family Dwelling District;**

Tract 5: **From Planned Districts for Housing Developments to TH, Townhouse District;**

Tract 6: **From Planned Districts for Housing Developments to TH, Townhouse District;**

Tract 7: **From AE, Agriculture Estate District to TH, Townhouse District;**

Tract 8: **From AE, Agriculture Estate District to 1F-2, One-Family Dwelling District.**

Cameron Walker,
Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A, Fence Site Plan

Case Number: Z-11-036

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Los Conchos Ventures, LLC — (432) 413-9888
Applicant Name — Contact #s

P.O. Box 52587, Midland, Texas — 79710
Address — Zip Code

Same
Property Owner Name — Contact #s

Address — Zip Code

Parkhill, Smith & Cooper, Inc. — (432) 697-1447
Representative Name — Contact #s

1700 W. Wall, Ste 100, Midland, Texas — 79701
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.

PRESENT ZONE: PD-HD & AE REQUESTED ZONE: Varies (see exhibit)
(List by tracts if more than one district is requested)

Reason for Zone Change or PD Amendment: To develop the property into a residential subdivision with retail, office and multi-family tracts.

Present Use of Property: Pasture

Proposed Use of Property: Mixed use subdivision

How will zone change affect the public health, safety and welfare? It will have no effect.

Describe how conditions affecting the property have changed since present zoning designation: Property is ready for development

Will a Specific Use Permit with Term for alcoholic beverages sales be needed: ___ Yes X No

RECEIVED
OCT - 6 2011

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): _____ 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 Eric L. West, P.E. who, being by me duly sworn, upon oath says: That (s)he is authorized by Los Conchos Ventures, LLC. 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.

Eric L. West

Authorized Agent (signature)

Subscribed and sworn to before me, this 5h day of October, 20 11, to certify which witness my hand and seal of office.

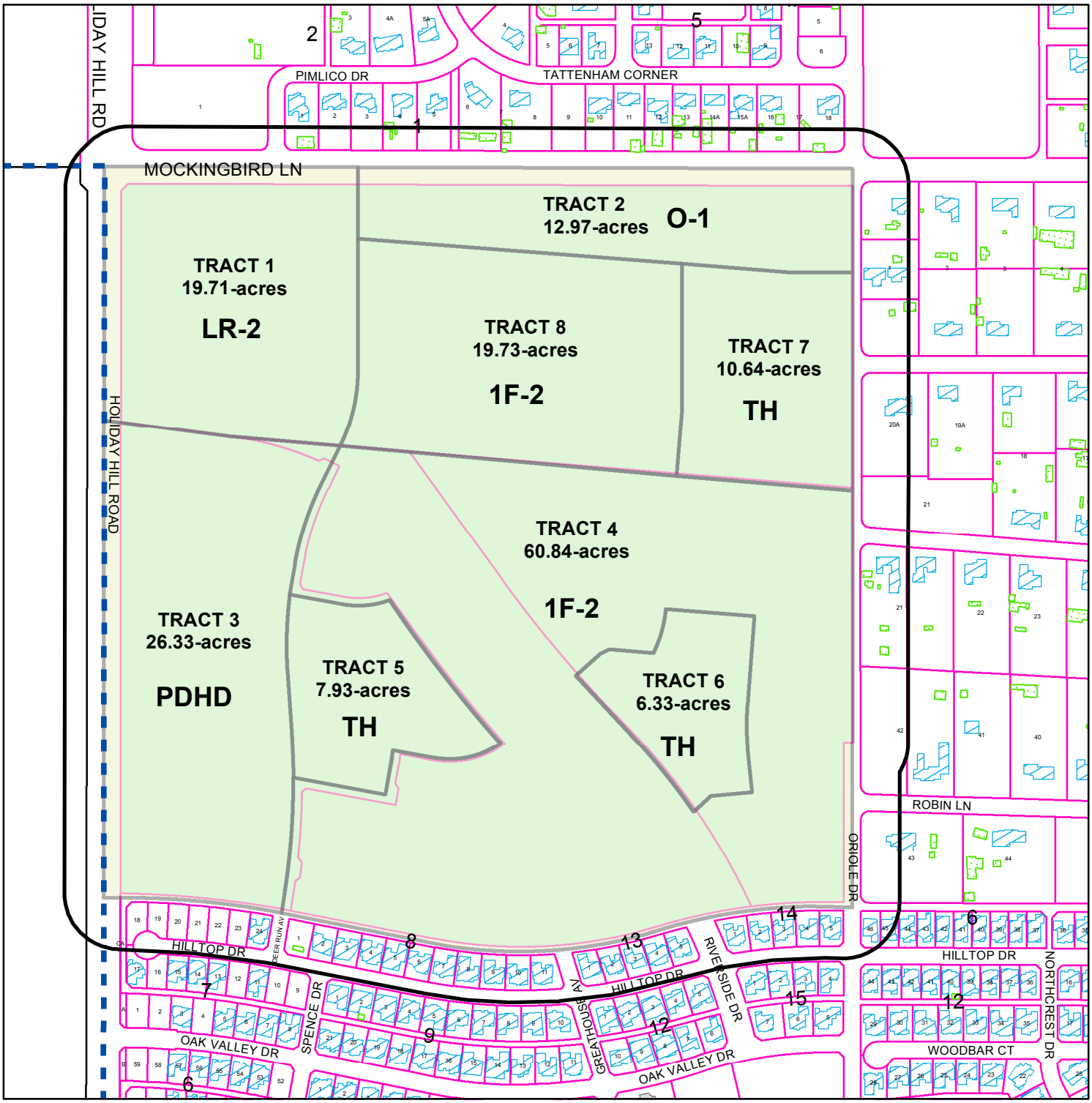
Darcy Y. Knight

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: JC	Date: 10-6-11
Assigned: JC	
For: P&Z	On: 10-17-11

NOTARY PUBLIC STATE OF TEXAS
DARCY Y. KNIGHT
Notary Public, State of Texas
My Commission Expires
JUNE 14, 2015

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

Consider a request for a zone change from AE, Agriculture Estate District to LR-2, Local Retail District on a 19.71-acre tract of land (Tract 1); to O-1, Office District on a 12.97-acre tract of land (Tract 2); to TH, Townhouse Dwelling District on a 10.64-acre tract of land (Tract 7); and to 1F-2, One-Family Dwelling District on a 19.73-acre tract of land (Tract 8); and from Planned Districts for Housing Developments to PD, Planned District for Housing Development on a 26.33-acre tract of land (Tract 3); to 1F-2, One-Family Dwelling District on a 60.84-acre tract of land (Tract 4); to TH, Townhouse Dwelling District on a 7.93-acre tract of land (Tract 5); to TH, Townhouse Dwelling District on a 6.33-acre tract of land (Tract 6) all out of Section 6, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas.

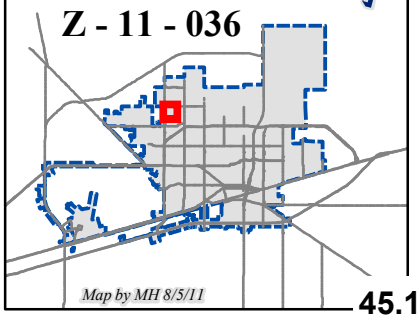
LEGEND

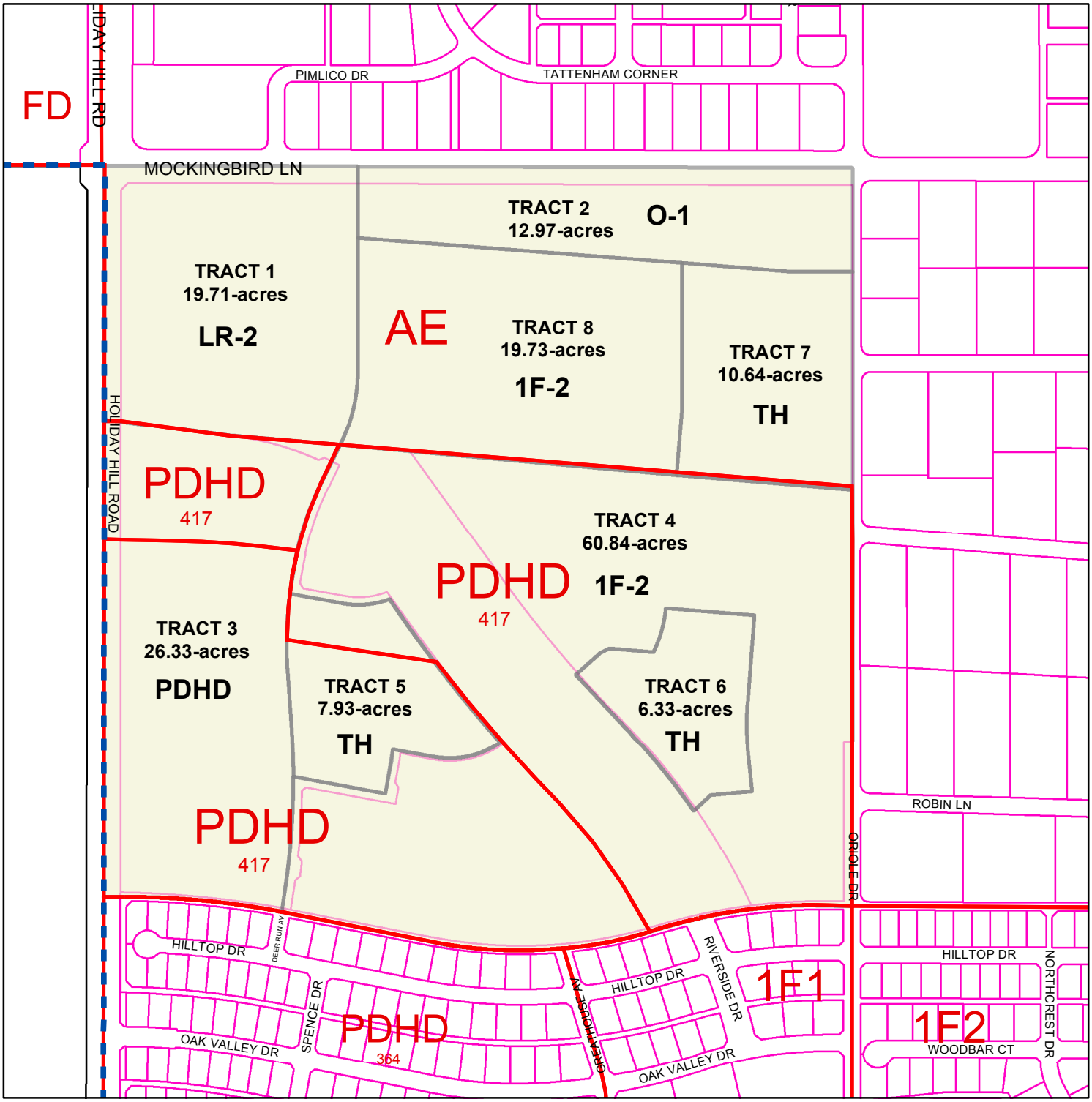
- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS

Scale: 1" = 500'

City of Midland, Texas
Planning Division

Z - 11 - 036





ZONING MAP

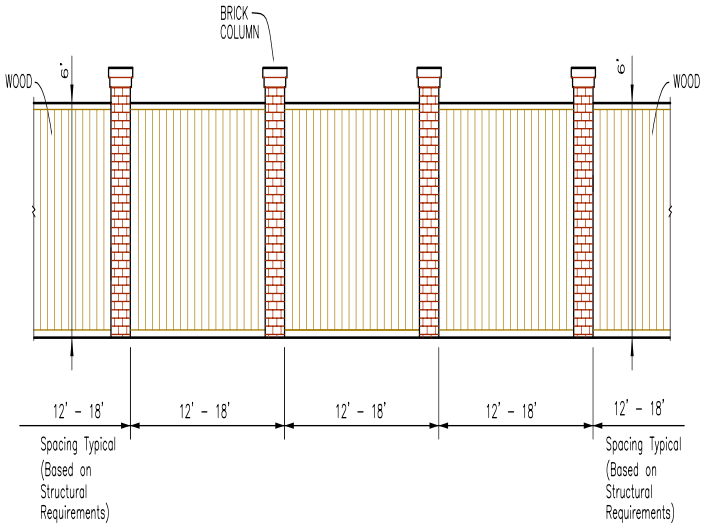
Consider a request for a zone change from AE, Agriculture Estate District to LR-2, Local Retail District on a 19.71-acre tract of land (Tract 1); to O-1, Office District on a 12.97-acre tract of land (Tract 2); to TH, Townhouse Dwelling District on a 10.64-acre tract of land (Tract 7); and to 1F-2, One-Family Dwelling District on a 19.73-acre tract of land (Tract 8); and from Planned Districts for Housing Developments to PD, Planned District for Housing Development on a 26.33-acre tract of land (Tract 3); to 1F-2, One-Family Dwelling District on a 60.84-acre tract of land (Tract 4); to TH, Townhouse Dwelling District on a 7.93-acre tract of land (Tract 5); to TH, Townhouse Dwelling District on a 6.33-acre tract of land (Tract 6) all out of Section 6, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas.

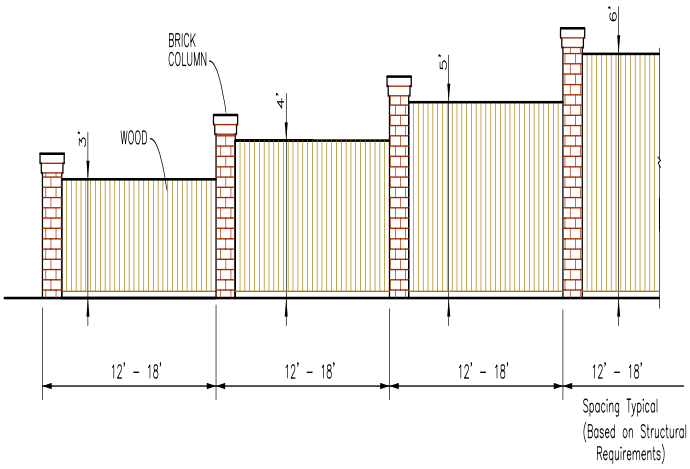
Z - 11 - 036 **L E G E N D** **Scale: 1" = 500'**

ZONING — CITY PARCELS
CITY LIMITS — COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 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





ELEVATION along HOLIDAY HILL ROAD at CUL-DE-SACS

NOT TO SCALE

NOTE:
THIS ARRANGEMENT TYPICAL FOR WALL SHOWN ALONG HOLIDAY HILL ROAD. REFER TO PLAN FOR LOCATION. WALL HEIGHT IS 6' TYPICAL, EXCEPT AS NOTED. COLUMN SPACING IS 12' - 18' TYPICAL, EXCEPT WHERE NOTED. ALL DIMENSIONS ARE NOMINAL.

ELEVATION along HOLIDAY HILL ROAD at STREET ENTRANCES

NOT TO SCALE

NOTE:
THIS ARRANGEMENT TYPICAL ON BOTH SIDES OF BROWN HEART LANE ENTRANCE AND THE SOUTH SIDE OF THE RIVERSIDE DRIVE ENTRANCE. REFER TO PLAN FOR LOCATION. WALL HEIGHT IS 6' TYPICAL EXCEPT AS NOTED. COLUMN SPACING IS 12' - 18' TYPICAL, EXCEPT WHERE NOTED. ALL DIMENSIONS ARE NOMINAL.

GREATHOUSE SECTION 7

PLANNED DISTRICT SITE PLAN

PREPARED BY:
PSC Parkhill, Engineers

\\data1\projects\2011\9707.11\CADD\01_CIVIL\platting\greathouse 7 preliminary plat - 7.5.2011.dwg, pdsp, 7/14/2011 9:23:39 AM, TONY, Bluebeam PDF, 1:1

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 19.71-ACRE TRACT OF LAND ("TRACT 1") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 12.97-ACRE TRACT OF LAND ("TRACT 2") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN O-1, OFFICE DISTRICT; BY PERMITTING A 26.33-ACRE TRACT OF LAND ("TRACT 3") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 60.84-ACRE TRACT OF LAND ("TRACT 4") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING A 7.93-ACRE TRACT OF LAND ("TRACT 5") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 6.33-ACRE TRACT OF LAND ("TRACT 6") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 10.64-ACRE TRACT OF LAND ("TRACT 7") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 19.73-ACRE TRACT OF LAND ("TRACT 8") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; ALL OF SAID TRACTS BEING OUT OF SECTION 6, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; ALL OF SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED SOUTH OF MOCKINGBIRD LANE, BETWEEN HOLIDAY HILL ROAD AND ORIOLE 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 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, an O-1, Office District, an Amended Planned District for a Housing Development, two 1F-2, One-Family Dwelling Districts, and three TH, Townhouse Districts, 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, and it shall be used as an LR-2, Local Retail District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

> A 19.71-acre tract of land ("Tract 1"), being out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein.

SECTION TWO. 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, and it shall be used as an O-1, Office District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

> A 12.97-acre tract of land ("Tract 2"), being out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "B", which is attached hereto and incorporated herein.

SECTION THREE. 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 for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

> A 26.33-acre tract of land ("Tract 3"), being out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "C", which is attached hereto and incorporated herein.

SECTION FOUR. 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 a 1F-2, One-Family Dwelling District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

> A 60.84-acre tract of land ("Tract 4"), being out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "D", which is attached hereto and incorporated herein.

SECTION FIVE. 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 a TH, Townhouse District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

> A 7.93-acre tract of land ("Tract 5"), being out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "E", which is attached hereto and incorporated herein.

SECTION SIX. 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 a TH, Townhouse District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

> A 6.33-acre tract of land ("Tract 6"), being out of Section 6, Block "X", H.P. Hilliard 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 SEVEN. 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, and it shall be used as a TH, Townhouse District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

> A 10.64-acre tract of land ("Tract 7"), being out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "G", which is attached hereto and incorporated herein.

SECTION EIGHT. 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, and it shall be used as a 1F-2, One-Family Dwelling District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

> A 19.73-acre tract of land ("Tract 8"), being out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "H", which is attached hereto and incorporated herein.

SECTION NINE. 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 TEN. 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 ELEVEN. 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 TWELVE. 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 THIRTEEN. 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., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **P-11-027, Greathouse Addition, Section 7**

Purpose:

Consider a motion on a request by Los Conchos Ventures, LLC to approve the preliminary plat of Greathouse Addition, Section 7.

Recommended City Council Action

X Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to approve this request.

Discussion:

Provided the City Council approves the associated zone change request, the Council must next consider the preliminary plat. This plat contains 155-acres, and is bounded by Holiday Hill Road, Mockingbird Lane and Oriole Drive. It contains 354 single-family lots, three office lots and one retail lot. There are also eight common areas, which enacts the requirement for City Council approval. Common areas A and B are located along the east side of Holiday Hill Road, and will be developed with a six-foot tall solid wood fence with brick pilasters. The fence is needed to screen the alley and lots adjacent to Holiday Hill Road. Five of the common areas are labeled "Reserved for Mineral Development". The applicant has been working in conjunction with the mineral owner to accommodate four oil wells that have already received Railroad Commission approval; however, no oil and gas well applications have been submitted at this time. The lots abutting the common areas are proposed for townhouse (attached single-family residences) development. One common area is the planned location for a tank battery, and one contains existing pipelines, and will be left as open space.

The staff finds that this proposed preliminary meets the requirements of the Major Thoroughfare Plan, the Subdivision Code and the Comprehensive Plan. It is consistent with the requested zoning, and appears to be a reasonable subdivision plan. We understand that the Fire Department has issues with locating a tank battery within the City limit, and in such close proximity to residential development. However, until oil well permits are submitted, it is difficult to fault the plat regarding these concerns. Further, the City Council must approve variances to either the drilling company or the developer, whichever comes last, to allow residences within 500 feet of a well site.

The Planning and Zoning Commission voted 7 to 0 to recommend conditional approval of this request. The staff concurs in this recommendation.

Attachments:

November 14, 2011 P&Z Staff Report
Proposed Preliminary Plat

Planning and Zoning Commission
Minutes
November 14, 2011

P-11-027 - Consider a proposed *preliminary plat* of **Greathouse Addition, Section 7,** being a 155.99-acre tract of land out of Section 6, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the south side of Mockingbird Lane, between Oriole Drive and Holiday Hill Road.)

Mr. West reviewed the request, stating that the plat matches the zoning in the previous item and, with approval, will allow moving forward with the design of the first phase. In answer to a question concerning the oil wells, he answered that the townhomes will wrap around the first well drilled.

A motion for approval, subject to Conditions A-E, was made by Commissioner Wilton; seconded by Commissioner Lanning. The motion carried by the following vote: AYE: Wolf, Lanning, Gatten, Carney, Ferguson, Wilton and Watkins. NAY: None. ABSTAIN: None. ABSENT: York and Woodruff

PLANNING AND ZONING COMMISSION

November 14, 2011

CASE: P-11-027, Greathouse Addition, Section 7.

STATUS: Proposed Preliminary Plat.

APPLICANT/OWNER: Los Conchos Ventures, LLC.

REPRESENTATIVE: Parkhill, Smith and Cooper.

LEGAL DESCRIPTION: A 155.99-acre tract out of Section 7, Block "X", H. P. Hilliard Survey, Midland County, Texas.

LOCATION: South side of Mockingbird Lane, between Oriole Drive and Holiday Hill Road.

CURRENT ZONING: PD, Planned Districts for Housing Developments, and AE, Agriculture Estate District.

ASSOCIATED CASE: Z-11-036, Zone Change.

DETAILS OF REQUEST:

1. This property contains a quarter section of land. It is bounded on the north by Mockingbird Lane and on the west by Holiday Hill Road. Staff has received this preliminary plat that indicates a development plan consisting of single-family lots, some office lots and a retail tract. There are also seven common areas, five of which are labeled as being "Reserved for Mineral Development". We are advised that four oil wells and a tank battery are planned within these common areas. This plat contains 354 single-family lots, three office lots and one retail tract. Common Areas A and B are for a screening fence along Holiday Hill Road to screen the alley. Common Area G contains four petroleum pipelines, which prevents this right-of-way from being developed with anything other than native grasses. Common Area H is the planned location for the tank battery. There are also two storm water detention basins shown. Before any development can occur, a subdivision plat must be approved. An associated zone change request is also scheduled on the November 14th agenda; the Commission must first recommend approval of the zoning plan prior to considering this preliminary plat application. The City Council must approve the zone change prior to final plat approval.

RIGHTS-OF-WAY:

2. The width of both Holiday Hill Road and Mockingbird Lane is 120 feet. This satisfies the requirements of the Major Thoroughfare Plan. Collector streets include Brown Heart Lane, Dear Run and Greathouse Avenue, which are sixty feet wide. Another collector street, Riverside Drive, is 100 feet wide because it will also be used to convey storm water. The remaining streets are 55 feet wide. All alleys are 20 feet wide. The dimensions of these rights-of-way meet the requirements of the Subdivision Code for each respective street. An alley is planned adjacent to Holiday Hill Road, a condition prohibited by the Subdivision Code without a common area containing a screening fence and landscaping. Common Areas A and B have been designated for that purpose, thereby addressing this concern. The associated rezoning includes a planned district site plan that illustrates the characteristics of the screening fence. As we generally do for tracts zoned for business use, we recommend the dedication of a blanket refuse collection easement for the retail lots.

DRAINAGE:

3. As this vacant land develops, there will be an increase in storm water run-off. Further, there is an existing volume of storm water draining onto this property from the northwest. For these reasons, the staff has requested a drainage study, and recommends that final plat approval be conditioned upon approval of the drainage plan.

PUBLIC IMPROVEMENTS:

4. A development of this size requires a substantial amount of public improvements that the developer is responsible for installing. These include street paving, curb and gutter, alley paving if rear-entry garages are planned, water lines, fire hydrants, sanitary sewer lines, drainage improvements, and the screening fence, landscaping, irrigation system and public sidewalks in Holiday Hill Road. Since some of these improvements are considered oversized, the applicant may request that the City participate in these costs.

COMMON AREAS:

5. All plats that contain common areas must be accompanied by a declaration of restrictive covenants. The City's interest in the covenants is to ensure that the ownership and maintenance responsibilities of the common areas are addressed. The covenants must require the establishment of a non-profit association to carry out this objective.

Further, plats with common areas must also receive approval from both the Planning and Zoning Commission and the City Council.

OIL WELL VARIANCES:

6. The developer has advised the staff that he anticipates that the oil wells will be drilled, pending City Council approval, prior to the construction of homes. As such, the Oil and Gas Code requires the developer to secure a variance from the City Council to construct homes within 500 feet of an oil well. While not a part of the platting process, we mention this condition to place the developer on notice. He indicates that he is aware of this condition.

STAFF RECOMMENDATION:

We recommend approval of the proposed preliminary plat of Greathouse Addition, Section 7, subject to the following conditions:

A. That the preliminary plat and associated zone change request is approved by the City Council.

B. That the required public improvements are adequately addressed.

C. That a drainage plan is approved.

D. That a declaration of restrictive covenants is approved.

E. That a blanket refuse collection easement is dedicated for the retail tract.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Preliminary Plat Application
Maps
Proposed Preliminary Plat

Case Number: P-11-027

CITY OF MIDLAND
Planning Division

PRELIMINARY PLAT APPLICATION

I. APPLICATION

Proposed Title of Final Plat: Greathouse Addition – Section 7

Legal Description of Plat (or see attached metes and bounds) Being 155.99 acres of land located Section 6, Block X, H.P. Hilliard Survey, City & County of Midland, Texas

Owner Information:

Black Family Partnership, Ltd., et. al. (Name) — (432) 683-2950 (Phone)

P.O. Box 50820 (Address) — Midland, Texas 79710 (City, State, Zip)

Developer Information *(if different from Owner)*

Los Conchos Ventures, LLC (Name) — (432) 413-9888 (Phone)

P.O. Box 52587 (Address) — Midland, Texas 79710 (City, State, Zip)

Representative Information *(if acting as Agent, see Note on page2)*:

Parkhill, Smith & Cooper, Inc. (Name) — (432) 697-1447 (Phone)

1700 W. Wall, Ste 100 (Address) — Midland, Texas 79701 (City, State, Zip)

II. FEES

Standard Plat or Residential Replat

For plats up to 50 acres: **$250.00**

For plats over 50 acres, $1.00 for each additional acre, up to $500.00

TOTAL $ 356.00

III. SUBMITTAL INFORMATION

Submittal Date: Minimum of 12 days (21 days for plats requiring a public hearing) prior to the Planning and Zoning Commission meeting at which consideration is desired. The Planning and Zoning Commission generally meets the first and third Monday of each month.

Check items if submitted with this application form

			For Office Use Only Rec'd By/ Date
1. Application Fee:		X	/
2. Copies:	(16 prints)	X	/
3. Digital file:	(.jpg format)	X	/
4. Drainage plan:	(submitted to Engineering Dept.)	X	/

The Preliminary Plat shall be considered officially received in the Planning office only when it is in compliance with the provisions of the City of Midland Subdivision Code and when items 1 - 4 above are received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

IV. REQUEST FOR A VARIANCE

The following variances are requested: (attach additional sheets if necessary)

1. Sidewalk waiver: If property is located within the City Limits and is currently undeveloped, do you intend to seek a waiver from the Building Code requirement to construct public sidewalks? YES _____ NO __X__
2. Street/Alley alignment, width or length: _____
3. Other: _____

V. REQUEST FOR A DEVELOPMENT AGREEMENT

Do you expect to request a development agreement with the City? YES __X__ NO _____

VI. PROVISIONS

The Planning and Zoning Commission may approve, disapprove, or conditionally approve a preliminary plat. Conditional approval is subject to conformity with prescribed conditions and is considered disapproval of the plat until said conditions are met. Approval of a preliminary plat shall be considered to be approval of the general arrangement of lots, streets and alleys and the width of streets and alleys, but is not considered to be final acceptance of the subdivision plat. In some cases, a preliminary plat must be considered by the City Council, and any approval by the Planning and Zoning Commission shall be considered a recommendation to the City Council.

VII. 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 __Eric L. West, P.E.__ who, being by me duly sworn, upon oath says: That (s)he is authorized by Black Family Partnership, Ltd., et. al., 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.

Eric L. West
Authorized Agent (signature)

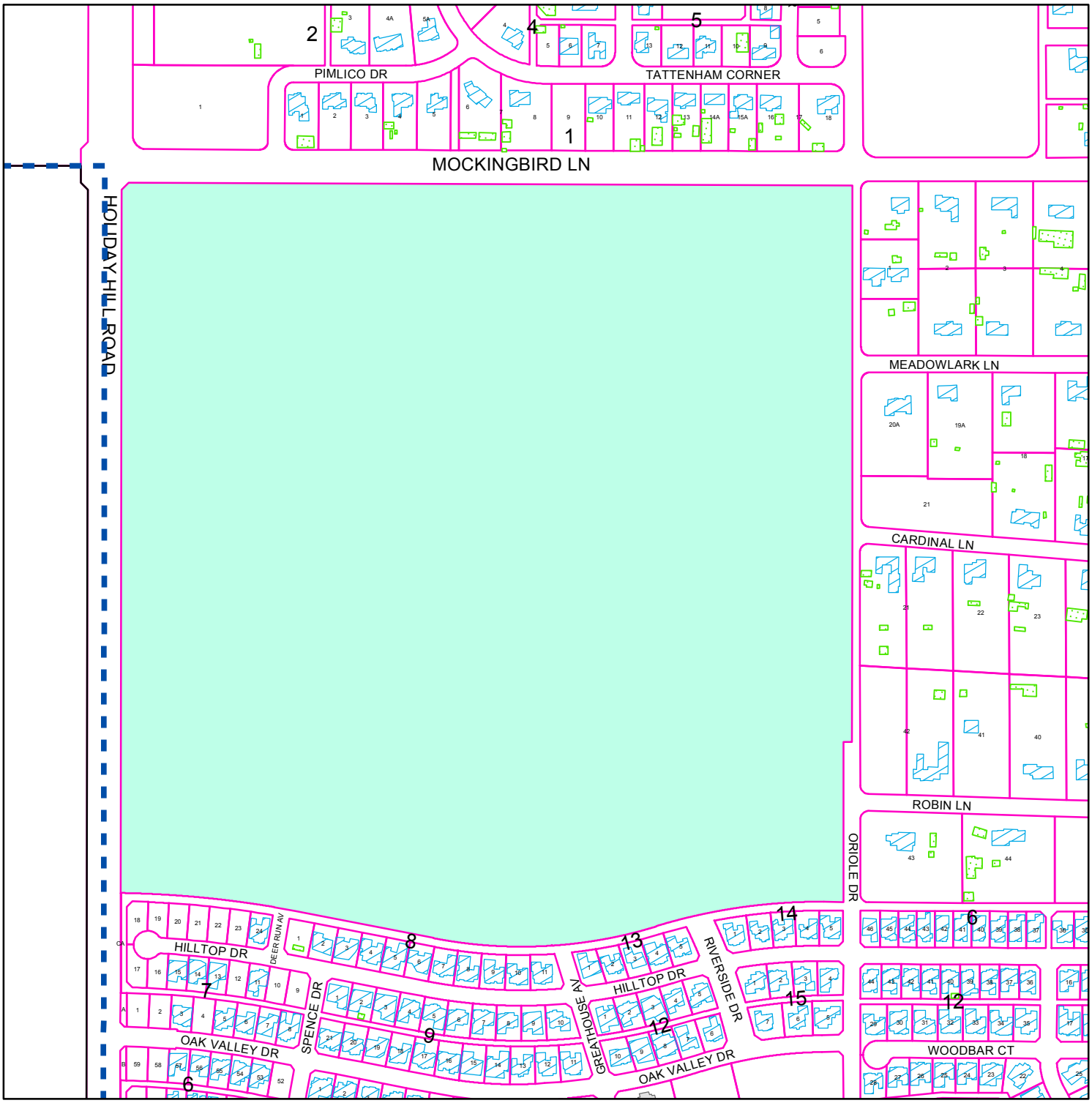
Subscribed and sworn to before me, this 20th day of May, 20 11, to certify which witness my hand and seal of office.

FOR OFFICE USE ONLY
Rec'd BY: KP DATE: 7/27/11
RES REPLAT: YES ____ NO ____
ASSIGNED: JC
FOR: _____ ON: _____
Council Action Required: Y N

Darcy Y. Knight
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

NOTARY PUBLIC STATE OF TEXAS
DARCY Y. KNIGHT
My Commission Expires
June 14, 2011

Application will not be scheduled for hearing until reviewed by a planner.



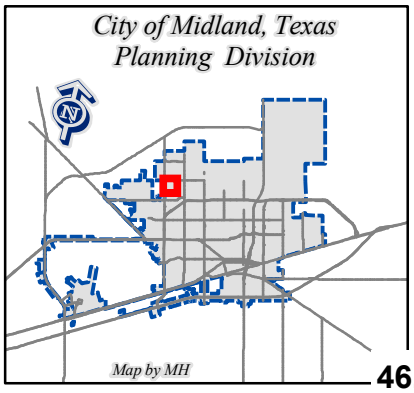
LOCATION MAP

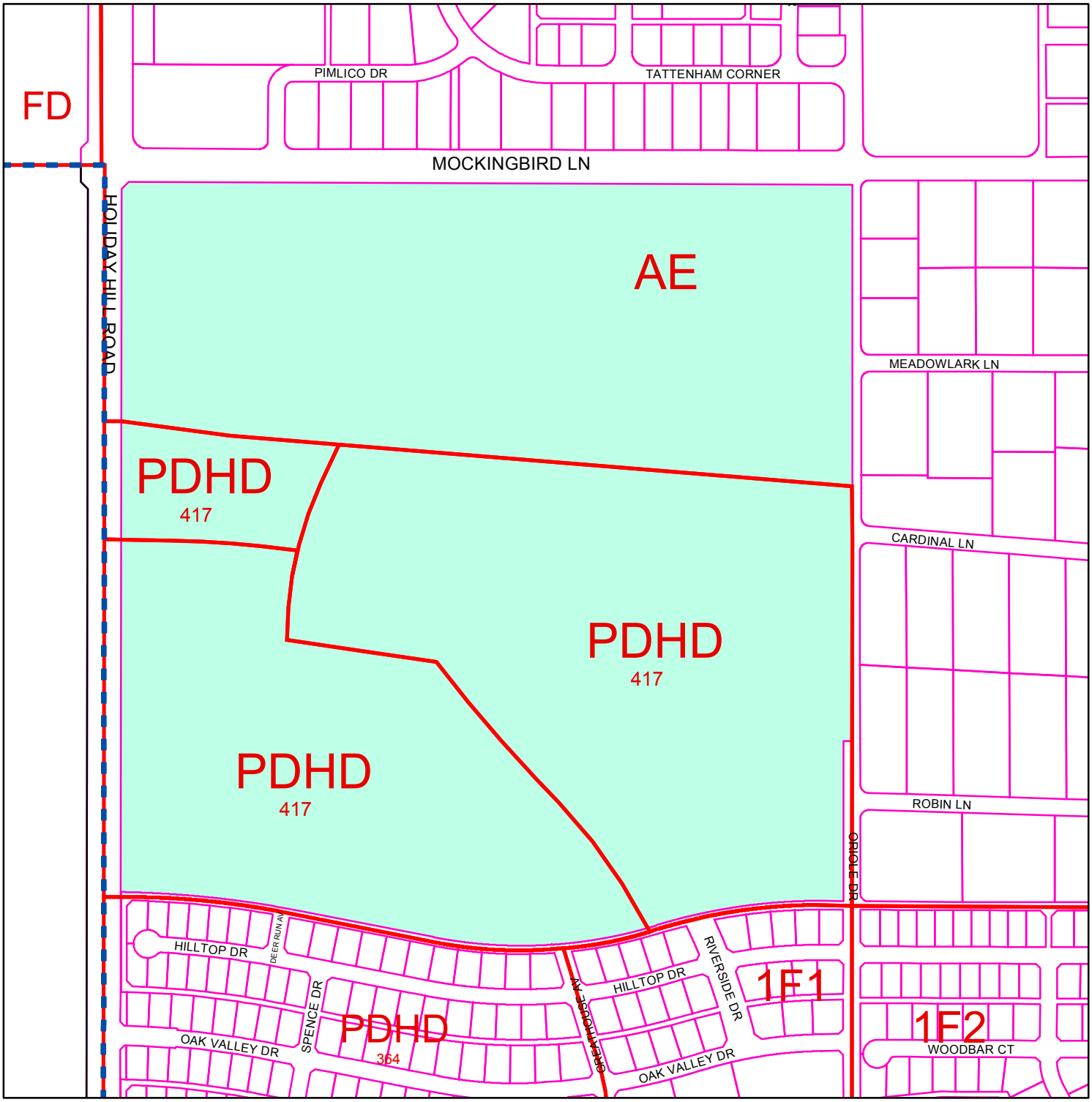
P - 11 - 027 **Scale: 1" = 500'**

Proposed plat of Greathouse Addition, Section 7, being a 155.99-acre tract of land out of Section 6, Block X, H. P. Hilliard Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- COUNTY PARCEL
- CITY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS





ZONING MAP

P - 11 - 027 **Scale: 1" = 500'**

Proposed plat of Greathouse Addition, Section 7, being a 155.99-acre tract of land out of Section 6, Block X, H. P. Hilliard Survey, City and County of Midland, Texas.

LEGEND

ZONING — CITY PARCELS
CITY LIMITS — COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 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

Preliminary Plat

GREATHOUSE ADDITION

SECTION 7

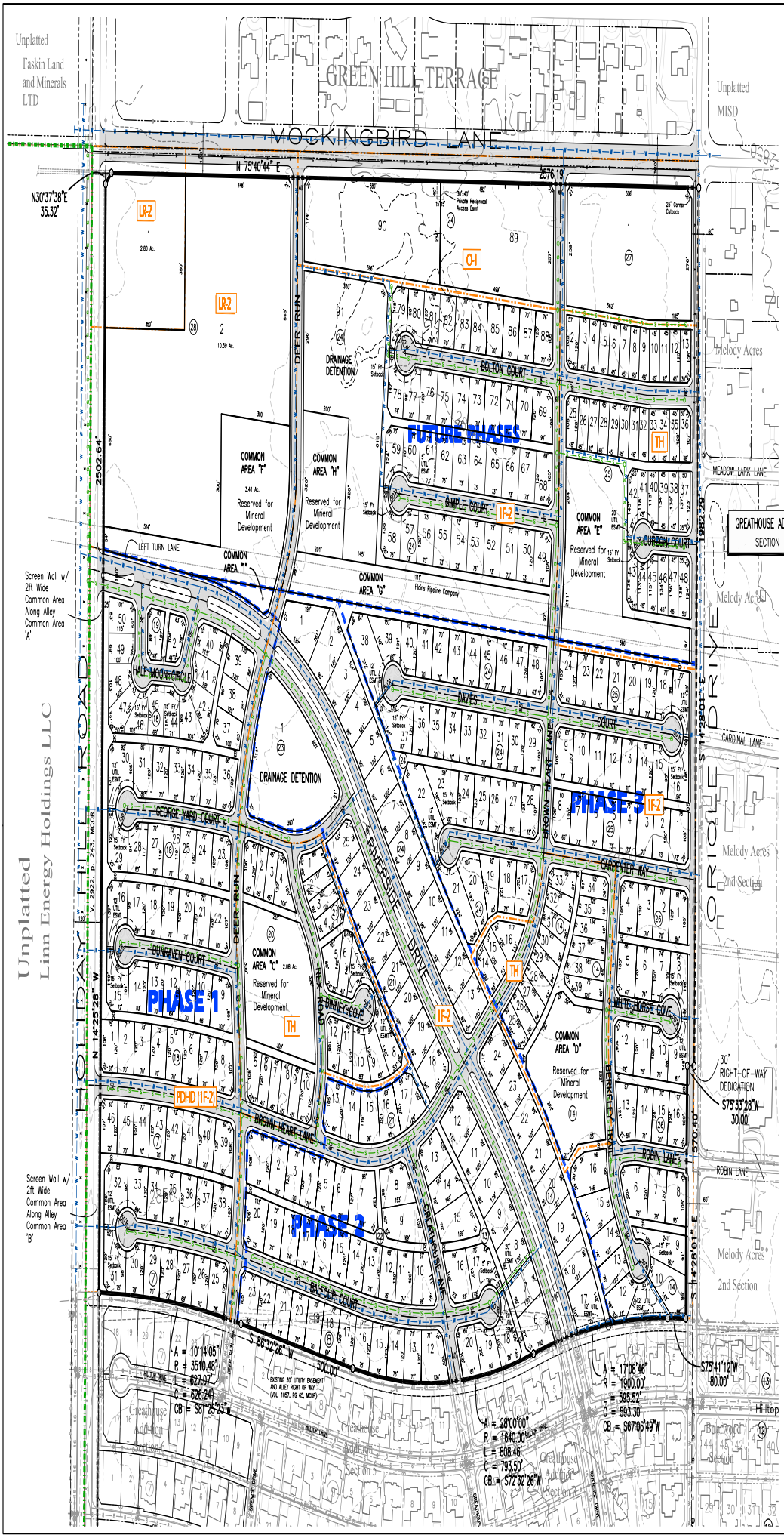
Being 155.99 Ac.
Located in
Section 6, Block X,
H.P. Hilliard Survey
City of Midland, Midland County, Texas

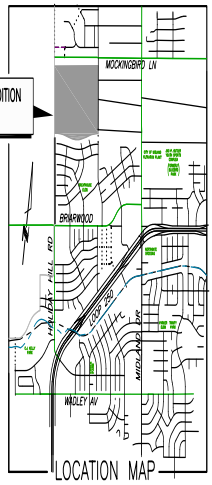
Original Scale: 1"=150'

Sketch Plat Submitted to P&Z
on April 27, 2011

Preliminary Plat Submitted to P&Z
on July 21, 2011

Preliminary Plat revised
on October 3, 2011





LEGEND

- PROPOSED PLAT LIMITS
- PROPOSED STREET ROW
- PHASING BOUNDARY
- ZONING BOUNDARY
- CITY LIMITS
- EXISTING SECTION CORNER
- EXISTING PLATTED LOTS & STREET R/W
- EXISTING EASEMENTS
- W — EXISTING WATER LINE
- S — EXISTING SEWER LINE & MANHOLE
- X — EXISTING FENCE
- EXISTING ELEVATION CONTOURS (From COM GIS Survey)
- PROPOSED PLATTED LOTS & STREET R/W
- PROPOSED EASEMENTS
- W — PROPOSED WATER LINE
- S — PROPOSED SEWER LINE & MANHOLE

LAND USE SUMMARY

Zoning	Area (Ac)	Lot Count
1F-2 (90' Wide)	15.17	36
1F-2 (75' Wide)	60.76	168
PDHD (1F-2)	26.11	74
TH	25.18	76
O-1	12.69	3
LR-2	19.69	2
TOTAL	159.6	359

OWNER & DEVELOPER:

LOS CONCHOS VENTURES, LLC.
P.O. Box 52587
Midland, Texas 79710
Contact:
Richard Dunham. (432) 413-9888

ENGINEER:

Parkhill, Smith & Cooper, Inc.
1700 W Wall St., #100
Midland, Texas 79701
Contact:
Eric West, P.E. (432) 697-1447

GREATHOUSE ADDITION

46.11

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **O-11-001a; consider a motion approving an amendment to an oil and gas well drilling permit for Bluestem Energy (Evans "C" #1) on the east side of Midland Drive, north of Mockingbird Lane.**

Purpose:

To consider an amendment to Resolution 2011-281 on a request from Bluestem Energy to drill an oil and gas well on property located 1,021' FNL and 2,310' FWL of the land described as Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. Council approved the proposed drill site on November 8, 2011; however, the applicant is requesting consideration of amended drilling conditions.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

The amended conditions proposed by Bluestem Energy are listed below.

REVISION #1: Attached is an Amendment to Application for Oil and Gas Permit where on page 2, we have modified the text regarding the manner in which our electrical lines will be installed. These changes are in accordance with our Surface Agreement with the surface owners.

REVISION #2: Attached is a Revised Exhibit “E”, (Plat Setting out Surface Culture), for the Amendment which modifies the original Exhibit “E” in accordance with the following:

- Adds a 200' x 200' frac pit to be located adjacent to and south of the Evans G #1 well location.
- Changes the electric power designation from "underground electric" to "overhead electric".
- Changes the pipeline designation from “3" pipeline" to “3" - 6" flowlines".
- Adds a well test facility to the Evans J #1 location to accommodate combining a well location with a well test facility.
- Revises the location and size of the central tank battery, (“CTB”) location that we plan to install in the Northeast corner of the Evans Lease. The new location honors the 135' ROW ordinance for tanks and facilities.
- Revises the drilling pad sizes and orientations to reflect our current drilling rig footprint.
- Adds the oil and gas pipelines to the oil purchase line and to WTG which crosses the Evans lease from the CTB.
- Adds a Vapor Recovery Unit, (“VRU”) with associated compressor equipment to contain the fugitive emissions from the tanks and the equipment at the CTB. Please note that we feel that the addition of a VRU is the most prudent manner of conducting our operations on the Evans lease, even though it is not a requirement of the Drilling Ordinance. A Quincy QRNG 4125 30 HP compressor, manufactured by Seimens will be installed to power the VRU. This unit is a single stage reciprocating, 900 RPM unit. Bluestem hereby requests a variance to paragraph L. 19, which provides that no compressors can be located at the CTB. This compressor is mounted on a skid that measures 5’ x 6’ with 4” cross members. Electricity will be the power source and the decibel level for the compressor is 80 decibels.

REVISION #3: Attached is a Revised Exhibit “G”, (Location Site Plan) for the Amendment which sets out the same information as REVISION #3 above.

REVISION #4: Attached is a Revised Exhibit “N”, (Concept Plan), for the Amendment which sets out the same information as REVISION #3 above.

REVISION #5: Attached is a Revised Exhibit “O”, (Closure of Pit Plan), which sets out in great detail the schematic of the drilling location.

Attachments: Application, Exhibit A (letter); Exhibits E, G, N and O; Drill site location.

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
07/22/2011	Bluestem Energy Holdings, LLC	301 Commerce St, Ste.2001, Fort Worth, TX 76102

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)687-4414
Wendell Brown	400 W. Illinois, Ste. 1630, Midland,TX 79701	Rep. Fax (432)682-4497
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: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

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 "C" #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:

1021' FNL and 2310' 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)].

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ATTACHED AS EXHIBIT M is the Road Repair Agreement and *Letter of Credit/Certificate of Deposit/Surety Bond* in the amount of at least $25,000. *Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):* Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary $75,000 *letter of credit/certificate of deposit/surety bond* in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) **Drilling:** none

(2) **Operations:** none

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 _____
Its John M. Cherry, Executive Vice President

State of Texas)
County of Tarrant)

, 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.

_____
Notary Public, State of_____

[S E A L]

BLUESTEM | ENERGY

December 14, 2011

Ron Jenkins
City of Midland Oil and Gas Compliance Officer
300 N. Loraine
Midland, Texas 79702

RE: Revision of City of Midland Oil and Gas Permit
Bluestem Energy Holdings, LLC Evans C 1 Well
Evans Prospect
Midland County, Texas

Dear Ron:

Reference is made to our drilling permit Application for the Bluestem Energy Holdings, LLC Evans C 1 well, which was granted final approval by the City Council on November 8, 2011. As you are aware, several revisions have become necessary to this Application, and this letter and the enclosed attachments shall represent such revisions. Such revisions are set forth below:

REVISION #1: Attached is an Amendment to Application for Oil and Gas Permit where on page 2, we have modified the text regarding the manner in which our electrical lines will be installed. These changes are in accordance with our Surface Agreement with the surface owners.

REVISION #2: Attached is a Revised Exhibit "E", (Plat Setting out Surface Culture), for the Amendment which modifies the original Exhibit "E" in accordance with the following:

- Adds a 200' x 200' frac pit to be located adjacent to and south of the Evans G #1 well location.
- Changes the electric power designation from "underground electric" to "overhead electric".
- Changes the pipeline designation from "3" pipeline" to "3" - 6" flowlines".
- Adds a well test facility to the Evans J #1 location to accommodate combining a well location with a well test facility.
- Revises the location and size of the central tank battery, ("CTB") location that we plan to install in the Northeast corner of the Evans Lease. The new location honors the 135' ROW ordinance for tanks and facilities.
- Revises the drilling pad sizes and orientations to reflect our current drilling rig footprint.
- Adds the oil and gas pipelines to the oil purchase line and to WTG which crosses the Evans lease from the CTB.

421 West 3rd St., Suite 700, Fort Worth, TX 76102 ♦ Phone: 817-872-9800 ♦ Fax: 817-872-9888

EXHIBIT A

- Adds a Vapor Recovery Unit, ("VRU") with associated compressor equipment to contain the fugitive emissions from the tanks and the equipment at the CTB. Please note that we feel that the addition of a VRU is the most prudent manner of conducting our operations on the Evans lease, even though it is not a requirement of the Drilling Ordnance. A Quincy QRNG 4125 30 HP compressor, manufactured by Seimens will be installed to power the VRU. This unit is a single stage reciprocating, 900 RPM unit. Bluestem hereby requests a variance to paragraph L. 19, which provides that no compressors can be located at the CTB. This compressor is mounted on a skid that measures 5' x 6' with 4" cross members. Electricity will be the power source and the decibel level for the compressor is 80 decibels.

REVISION #3: Attached is a Revised Exhibit "G", (Location Site Plan) for the Amendment which sets out the same information as REVISION #3 above.

REVISION #4: Attached is a Revised Exhibit "N", (Concept Plan), for the Amendment which sets out the same information as REVISION #3 above.

REVISION #5: Attached is a Revised Exhibit "O", (Closure of Pit Plan), which sets out in great detail the schematic of the drilling location.

Also enclosed is a check in the amount of $1,000.00 as consideration for this Amendment. Please let me know if the attached information is in accordance with your needs so that final approval of this as well as the other Amendments can be secured at the City Council meeting scheduled for January 10, 2012.

Thank you again for your assistance in this regard.

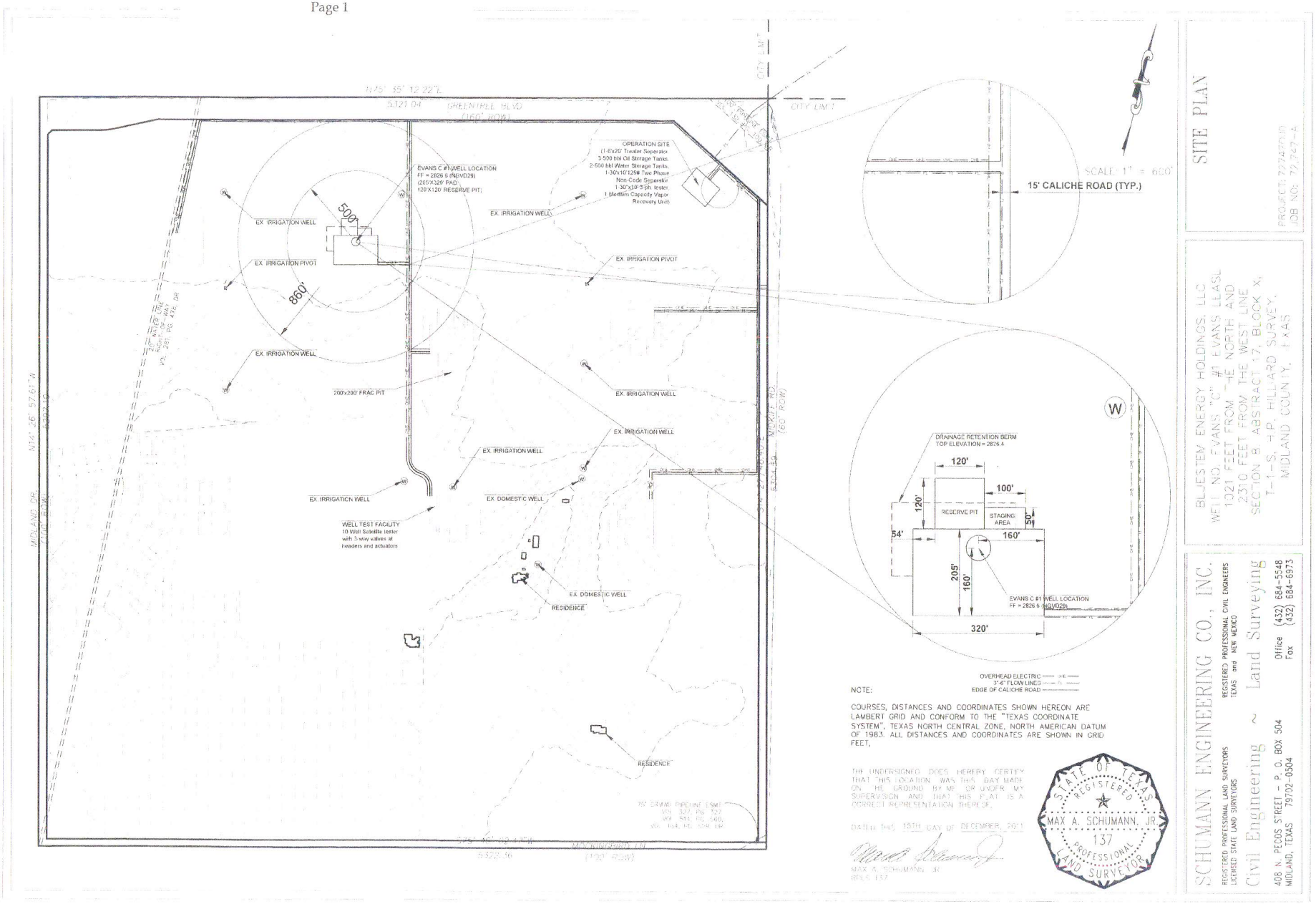
Sincerely:

Bluestem Energy Holdings, LLC

James C. Gresham, Jr. CPL
Vice President, Land

Exhibit "E"

Page 1



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 15TH DAY OF DECEMBER, 2011

MAX A. SCHUMANN, JR.
RPLS 137

STATE OF TEXAS
REGISTERED
MAX A. SCHUMANN, JR.
137
PROFESSIONAL
LAND SURVEYOR

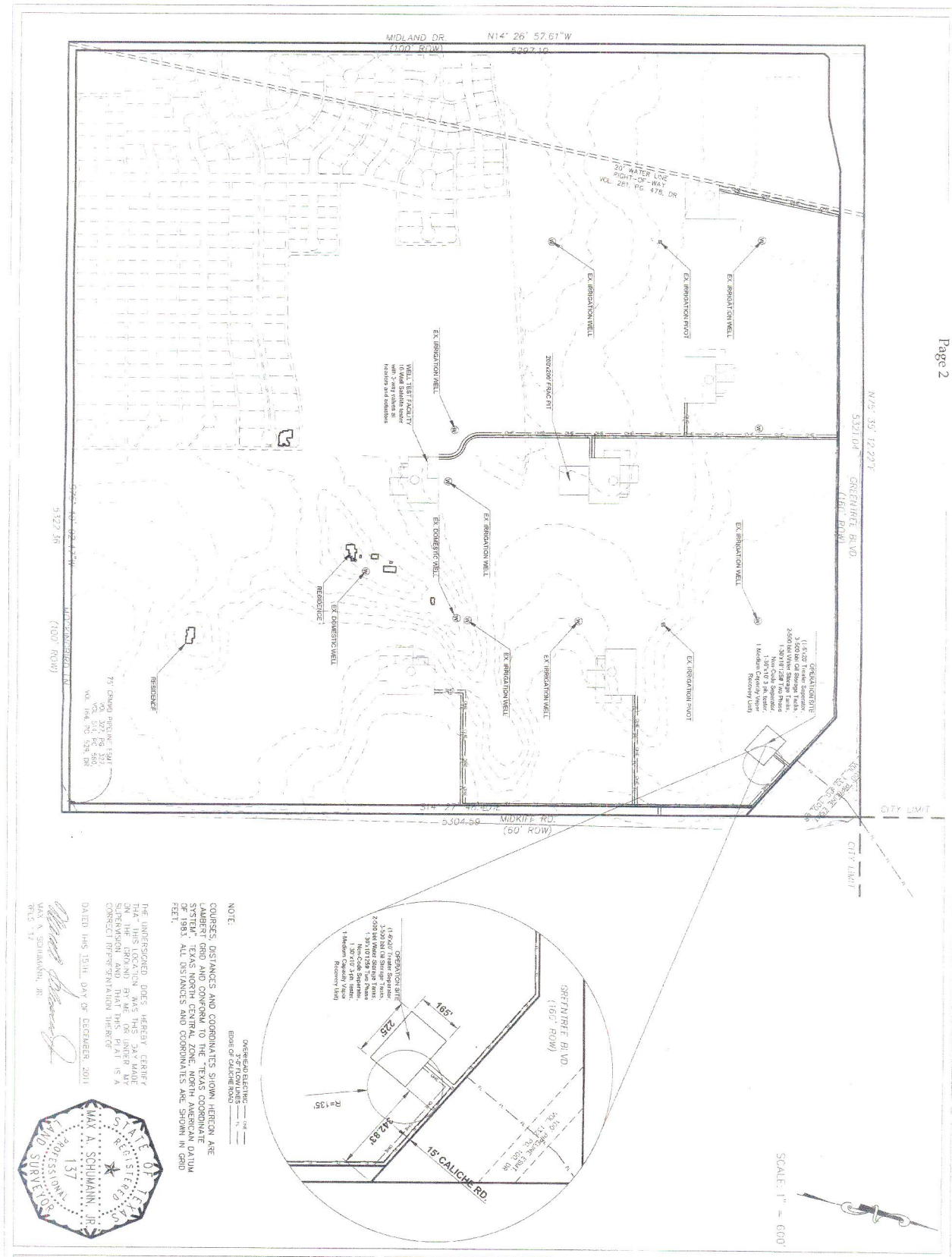
SITE PLAN

PROJECT: 2274ZP010
JOB NO: 72,747-A

BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS "C" #1 EVANS LEASE
1021 FEET FROM THE NORTH AND
2310 FEET FROM THE WEST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
T-1-S, T&P, HILLARD SURVEY,
MIDLAND COUNTY, TEXAS

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

EXHIBIT E



OVERHEAD ELECTRIC ——— OHE
3"-6" FLOW LINES ——— FL
EDGE OF CALICHE ROAD ——— CR

NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HERICON 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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MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

BLUESTEM ENERGY HOLDINGS, LLC

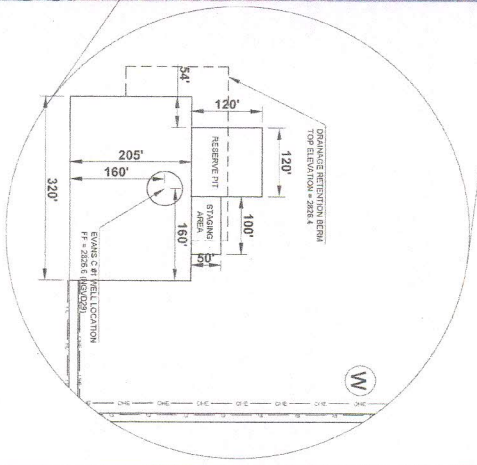
OPERATION SITE

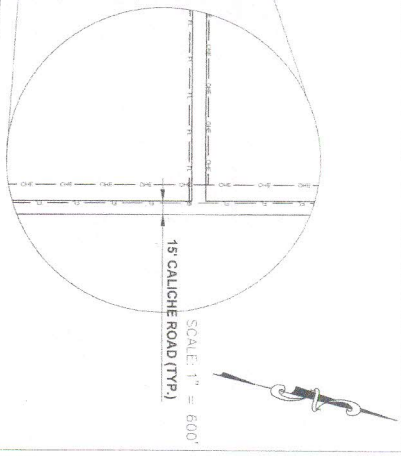
SECTION 8, ABSTRACT 17, BLOCK X,
T-1-S, H.P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS

SITE PLAN

PROJECT: 727470JD
JOB NO: 72,747-D

EXHIBIT E





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MIDLAND COUNTY, TEXAS

SITE PLAN

PROJECT: 727470JD
JOB NO: 72,747-A

EXHIBIT G

Exhibit "N"

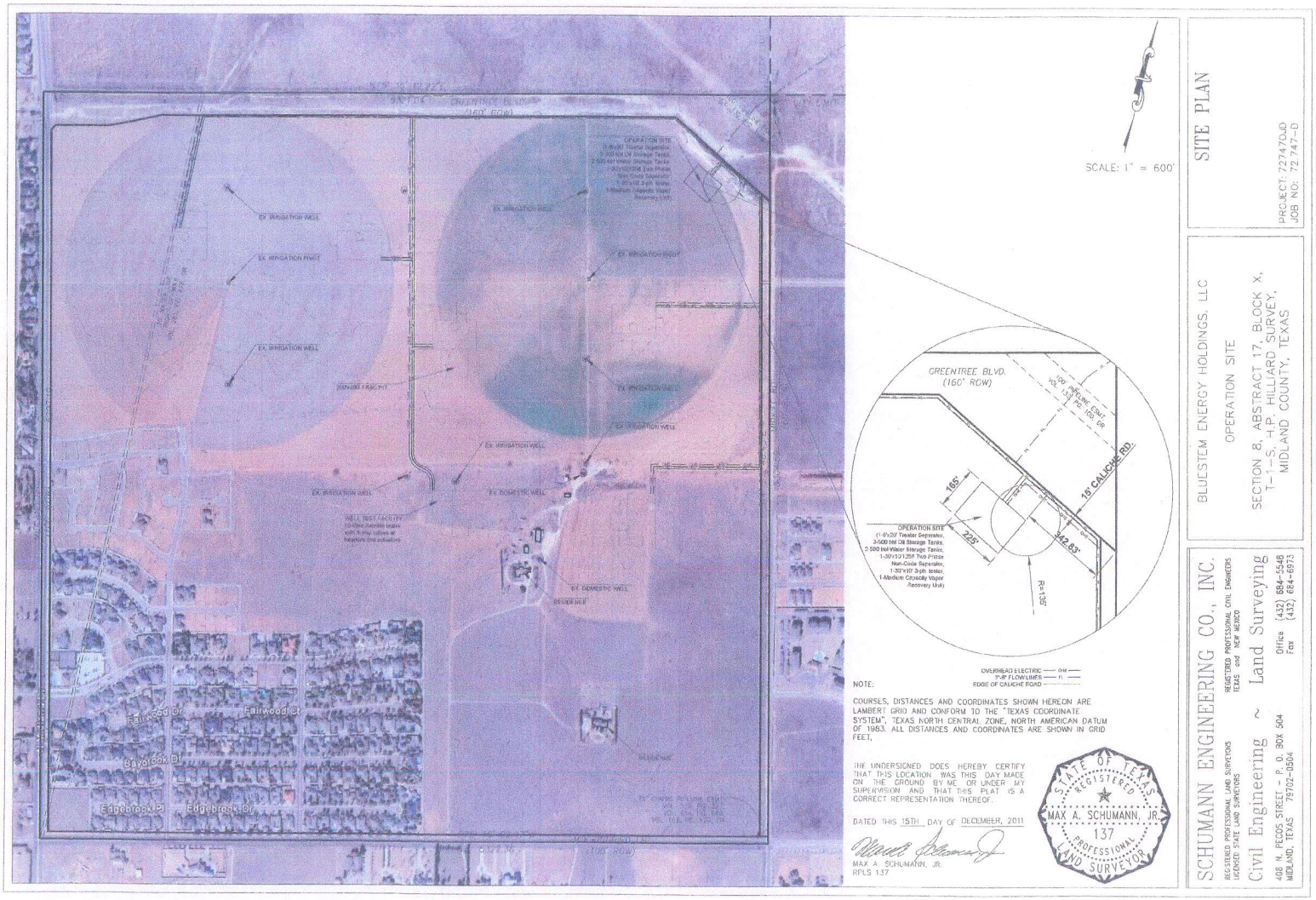


EXHIBIT N

Exhibit O

Reserve Pit:

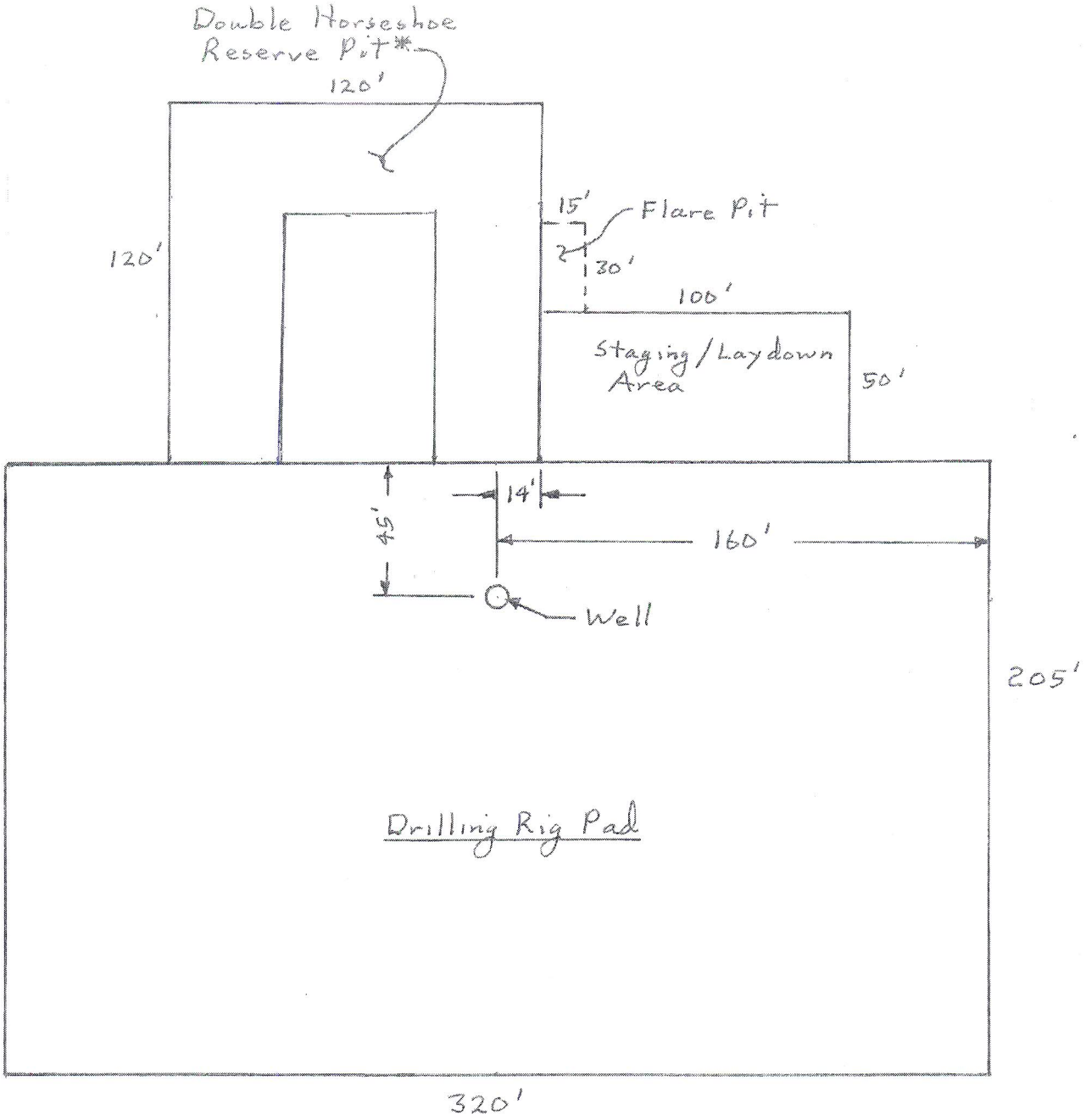
Bluestem Energy Holdings, LLC will use a 120 ft. x 120 ft. double horse shoe reserve pit for circulation of the mud system. Reserve pit size could increase to 150 ft. x 150 ft. depending on the needs of the drilling operation. This pit will be lined with a 8 mil cross laminated liner and will be fenced on all sides with a four strand barbed wire fence. The pit will be de-watered as soon as drilling and completion operations have been finished. The pit will be deep buried immediately next to the existing pit within 180 days from drilling cessation. The cuttings will be buried and covered with an impermeable liner and covered with 36" of soil. A survey and description of the deep bury pit will be recorded in the real property records as specified in the City of Midland Drilling Ordinance.

Future Stimulation Pit:

Bluestem Energy Holdings, LLC will use a 200 ft. x 200 ft. pit to supply fresh water for the fracture stimulation treatments on the proposed well. This pit will be lined with a 12 mil cross laminated liner and will be fenced on all sides. The pit will be de-watered as soon as drilling and completion operations have been finished on the Evans lease, and will be remediated to meet the surface land owner's requirements. This pit will contain fresh water only; therefore the deep burial requirement in the ordinance (L.27.C.CV) is not applicable.

421 W. 3rd Street, Ste.700, Fort Worth, TX 76102 ♦ Phone: 817-872-9800 ♦ Fax: 817-872-9888

Bluestem Energy Holdings, LLC Exhibit O



* Reserve pit size could increase to 150' x 150' depending on the needs of the drilling operation.

EXHIBIT O

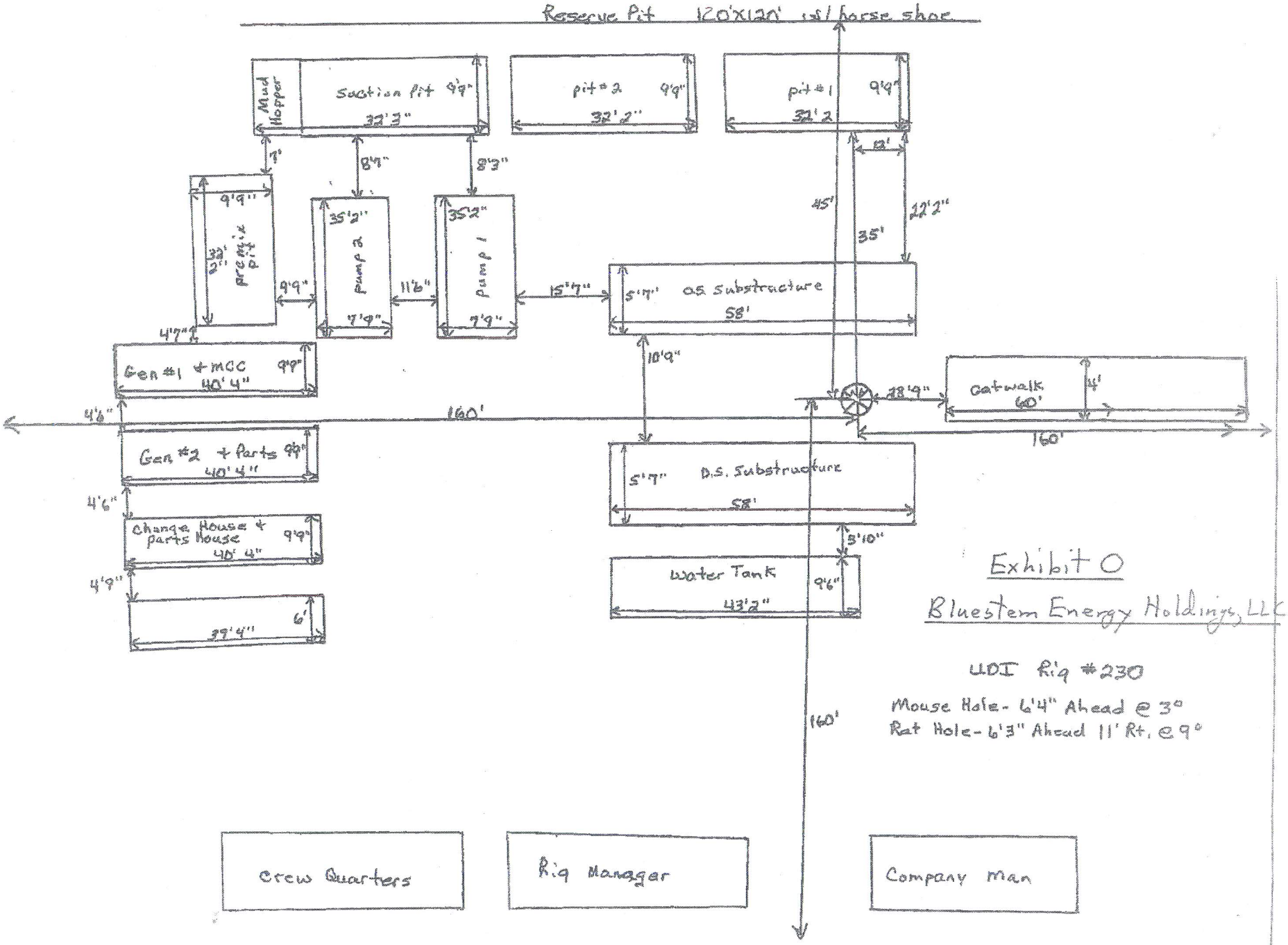


Exhibit O

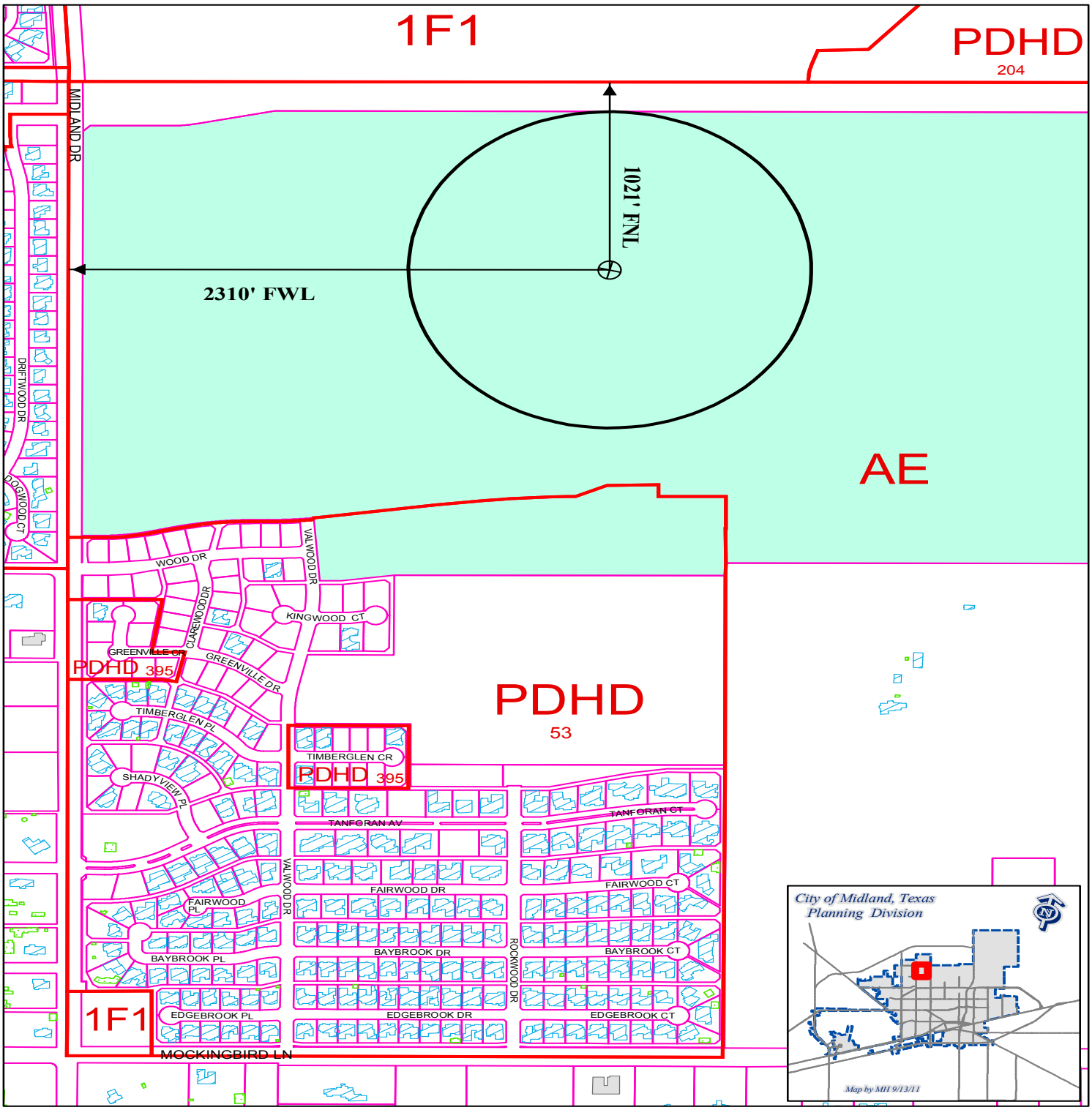
Bluestem Energy Holdings, LLC

UDI Rig #230

Mouse Hole - 6'4" Ahead @ 3°

Rat Hole - 6'3" Ahead 11' Rt. @ 9°

EXHIBIT O



LOCATION AND ZONING MAP

O - 11 - 001 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1021' FNL and 2310' FWL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Evans "C" #1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

		BP	BUSINESS PARK
FD	FUTURE DEVELOPMENT	P	PARKING
PD	PLANNED DISTRICT	01, O2	OFFICE
AE	AGRICULTURE 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

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **O-11-003a; consider a motion approving an amendment to an oil and gas well drilling permit for Bluestem Energy (Evans "G" #1) on the east side of Midland Drive, north of Mockingbird Lane.**

Purpose:

To consider an amendment to Resolution 2011-283 on a request from Bluestem Energy to drill an oil and gas well on property located 1,650' FNL and 2,310' FEL of the land described as Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. Council approved the proposed drill site on November 8, 2011; however, the applicant is requesting consideration of amended drilling conditions.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

The amended conditions proposed by Bluestem Energy are listed below.

REVISION #1: Attached is an Amendment to Application for Oil and Gas Permit where on page 2, we have modified the text regarding the manner in which our electrical lines will be installed. These changes are in accordance with our Surface Agreement with the surface owners.

REVISION #2: Attached is a Revised Exhibit “E”, (Plat Setting out Surface Culture), for the Amendment which modifies the original Exhibit “E” in accordance with the following:

- Adds a 200' x 200' frac pit to be located adjacent to and south of the Evans G #1 well location.
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REVISION #5: Attached is a Revised Exhibit “O”, (Closure of Pit Plan), which sets out in great detail the schematic of the drilling location.

Attachments: Application, Exhibit A (letter); Exhibits E, G, N and O; Drill site location.

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
07/22/2011	Bluestem Energy Holdings, LLC	301 Commerce St, Ste.2001, Fort Worth, TX 76102

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)687-4414
Wendell Brown	400 W. Illinois, Ste. 1630, Midland,TX 79701	Rep. Fax (432)682-4497
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: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

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 "G" #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:

1650' FNL and 2310' FEL, Sec. 8, Blk. X, Hilliard Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

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Bluestem Energy Holdings, LLC
[NAME OF COMPANY]

By _____
Its John M. Cherry, Executive Vice President

State of Texas)

County of Tarrant)

, 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.

_____
Notary Public, State of_____

[S E A L]

BLUESTEM | ENERGY

December 14, 2011

Ron Jenkins
City of Midland Oil and Gas Compliance Officer
300 N. Loraine
Midland, Texas 79702

RE: Revision of City of Midland Oil and Gas Permit
Bluestem Energy Holdings, LLC Evans G 1 Well
Evans Prospect
Midland County, Texas

Dear Ron:

Reference is made to our drilling permit Application for the Bluestem Energy Holdings, LLC Evans C 1 well, which was granted final approval by the City Council on November 8, 2011. As you are aware, several revisions have become necessary to this Application, and this letter and the enclosed attachments shall represent such revisions. Such revisions are set forth below:

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- Adds the oil and gas pipelines to the oil purchase line and to WTG which crosses the Evans lease from the CTB.

421 West 3rd St., Suite 700, Fort Worth, TX 76102 ♦ Phone: 817-872-9800 ♦ Fax: 817-872-9888

EXHIBIT A

- Adds a Vapor Recovery Unit, ("VRU") with associated compressor equipment to contain the fugitive emissions from the tanks and the equipment at the CTB. Please note that we feel that the addition of a VRU is the most prudent manner of conducting our operations on the Evans lease, even though it is not a requirement of the Drilling Ordnance. A Quincy QRNG 4125 30 HP compressor, manufactured by Seimens will be installed to power the VRU. This unit is a single stage reciprocating, 900 RPM unit. Bluestem hereby requests a variance to paragraph L. 19, which provides that no compressors can be located at the CTB. This compressor is mounted on a skid that measures 5' x 6' with 4" cross members. Electricity will be the power source and the decibel level for the compressor is .

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Thank you again for your assistance in this regard.

Sincerely:

Bluestem Energy Holdings, LLC

James C. Gresham, Jr. CPL
Vice President, Land

Exhibit "E"
Page 1

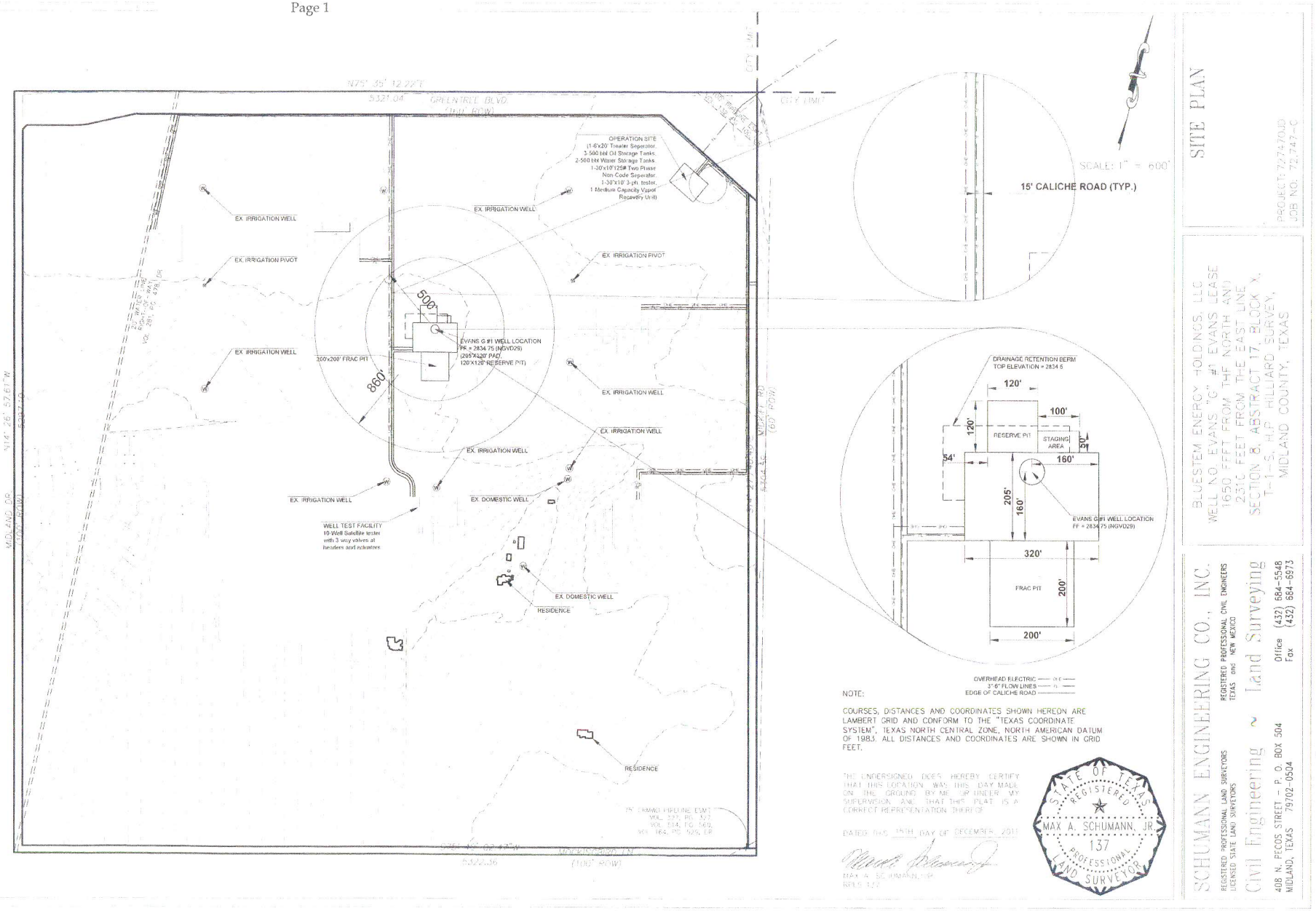
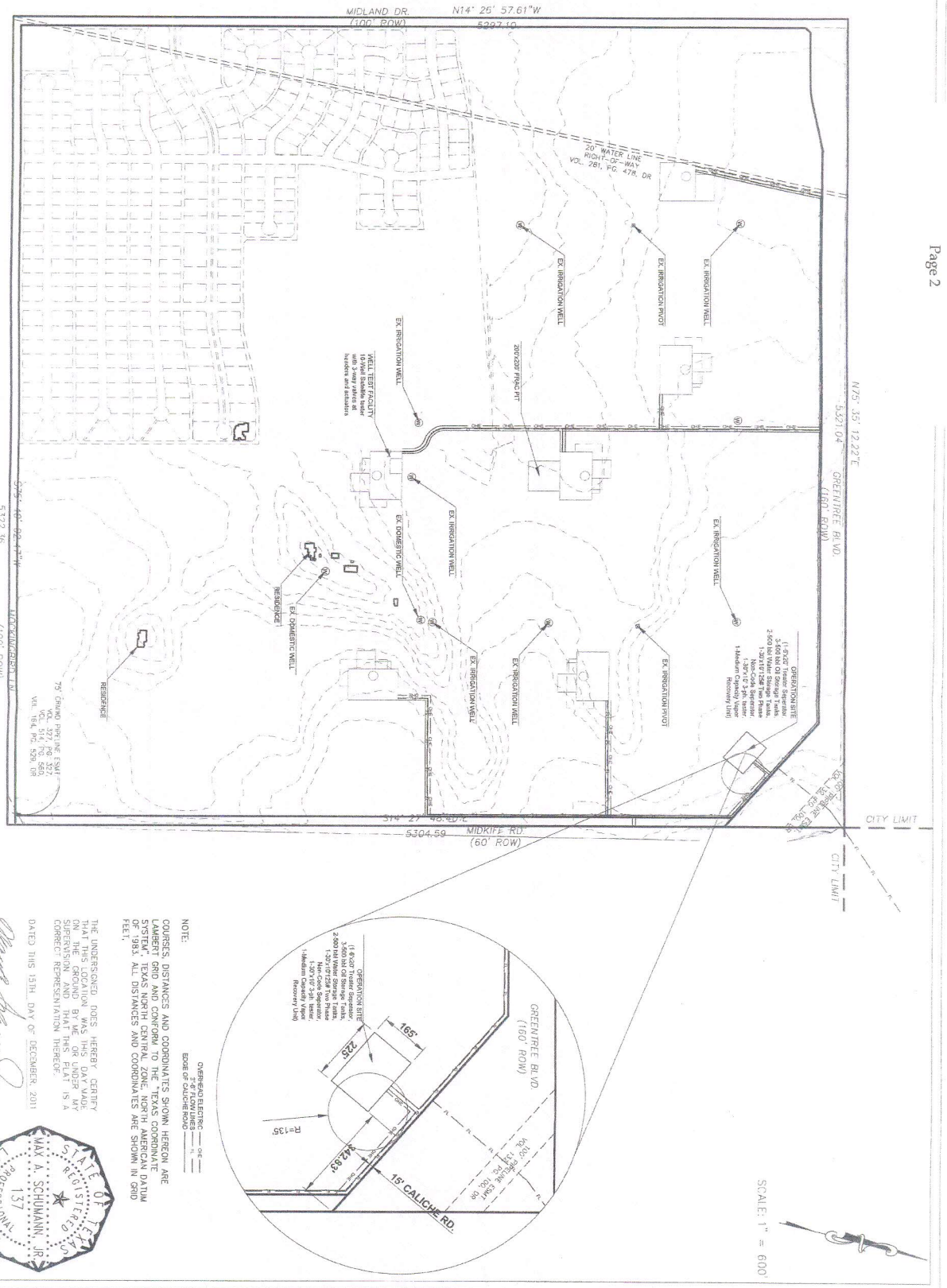


EXHIBIT E



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 15TH DAY OF DECEMBER, 2011

MAX A. SCHUMANN, JR.
RPLS 137

STATE OF TEXAS
MAX A. SCHUMANN, JR.
REGISTERED
PROFESSIONAL
LAND SURVEYOR
137

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

BLUESTEM ENERGY HOLDINGS, LLC

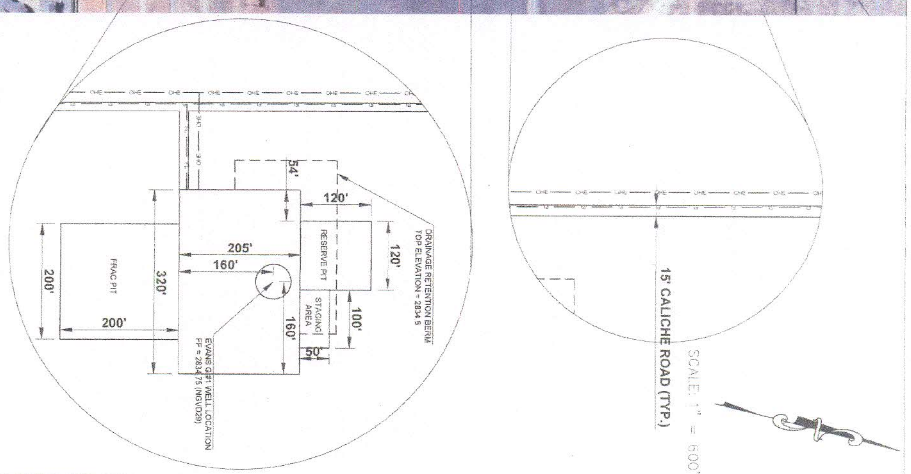
OPERATION SITE

SECTION 8, ABSTRACT 17, BLOCK X,
T-1-S, H.P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS

SITE PLAN

PROJECT: 727470JD
JOB NO: 72,747-D

EXHIBIT E



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BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS "G" #1 EVANS LEASE
1650 FEET FROM THE NORTH AND
2310 FEET FROM THE EAST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
T-1-S, H.P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS

SITE PLAN

PROJECT: 727470JD
JOB NO: 72,747-C

EXHIBIT G

Exhibit "N"

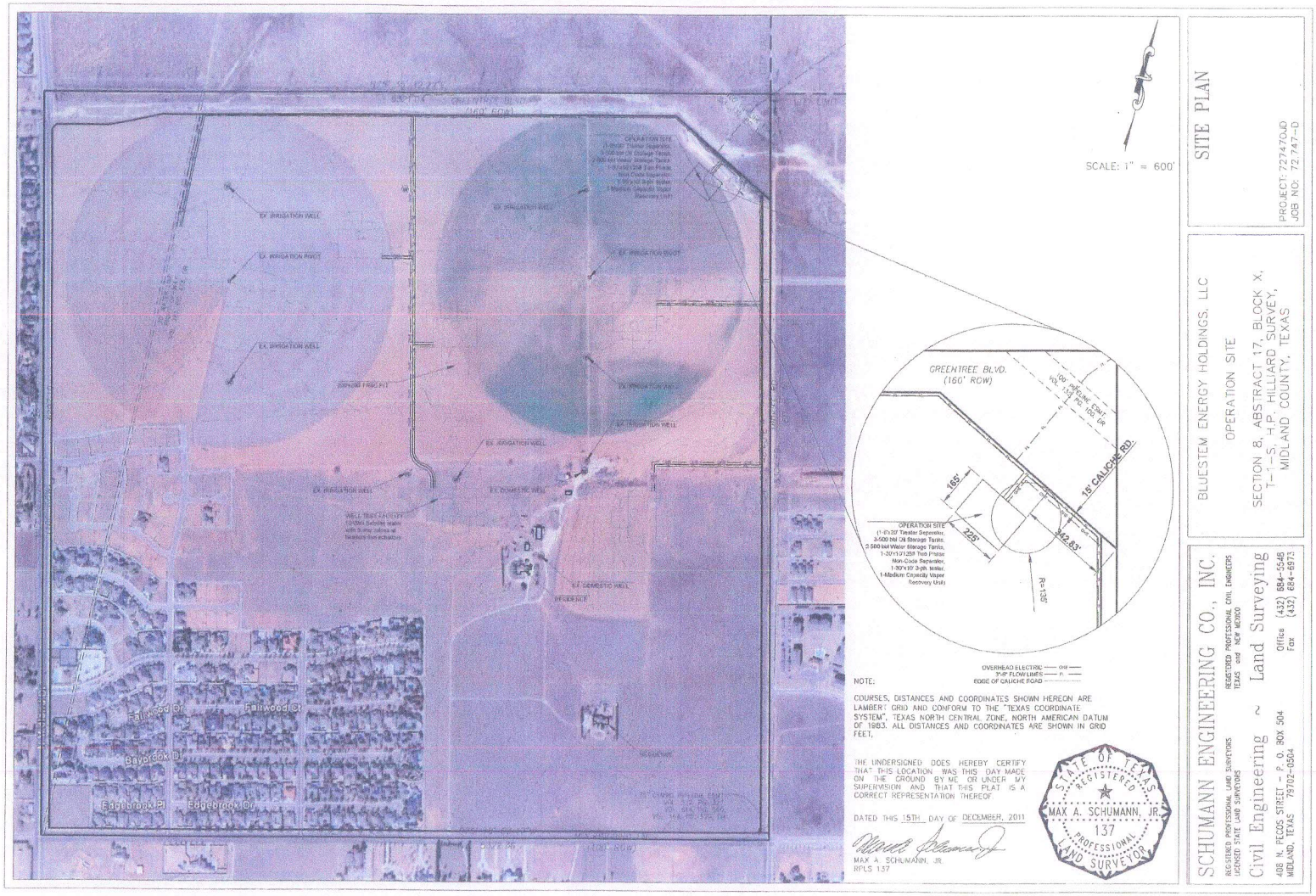


EXHIBIT N

Exhibit O

Reserve Pit:

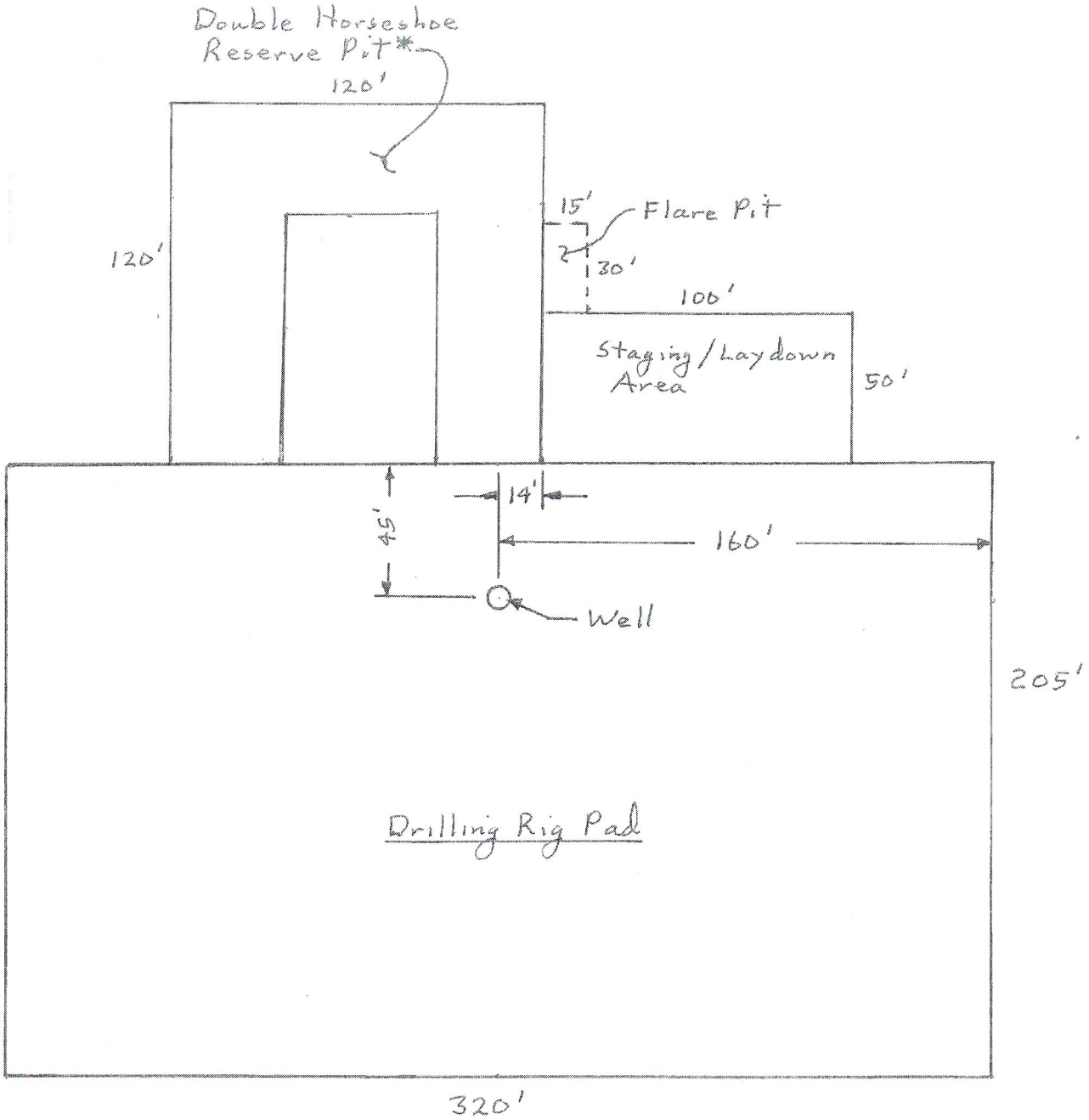
Bluestem Energy Holdings, LLC will use a 120 ft. x 120 ft. double horse shoe reserve pit for circulation of the mud system. Reserve pit size could increase to 150 ft. x 150 ft. depending on the needs of the drilling operation. This pit will be lined with a 8 mil cross laminated liner and will be fenced on all sides with a four strand barbed wire fence. The pit will be de-watered as soon as drilling and completion operations have been finished. The pit will be deep buried immediately next to the existing pit within 180 days from drilling cessation. The cuttings will be buried and covered with an impermeable liner and covered with 36" of soil. A survey and description of the deep bury pit will be recorded in the real property records as specified in the City of Midland Drilling Ordinance.

Future Stimulation Pit:

Bluestem Energy Holdings, LLC will use a 200 ft. x 200 ft. pit to supply fresh water for the fracture stimulation treatments on the proposed well. This pit will be lined with a 12 mil cross laminated liner and will be fenced on all sides. The pit will be de-watered as soon as drilling and completion operations have been finished on the Evans lease, and will be remediated to meet the surface land owner's requirements. This pit will contain fresh water only; therefore the deep burial requirement in the ordinance (L.27.C.CV) is not applicable.

421 W. 3rd Street, Ste.700, Fort Worth, TX 76102 ♦ Phone: 817-872-9800 ♦ Fax: 817-872-9888

Bluestem Energy Holdings, LLC Exhibit O



* Reserve pit size could increase to 150' x 150' depending on the needs of the drilling operation.

EXHIBIT O

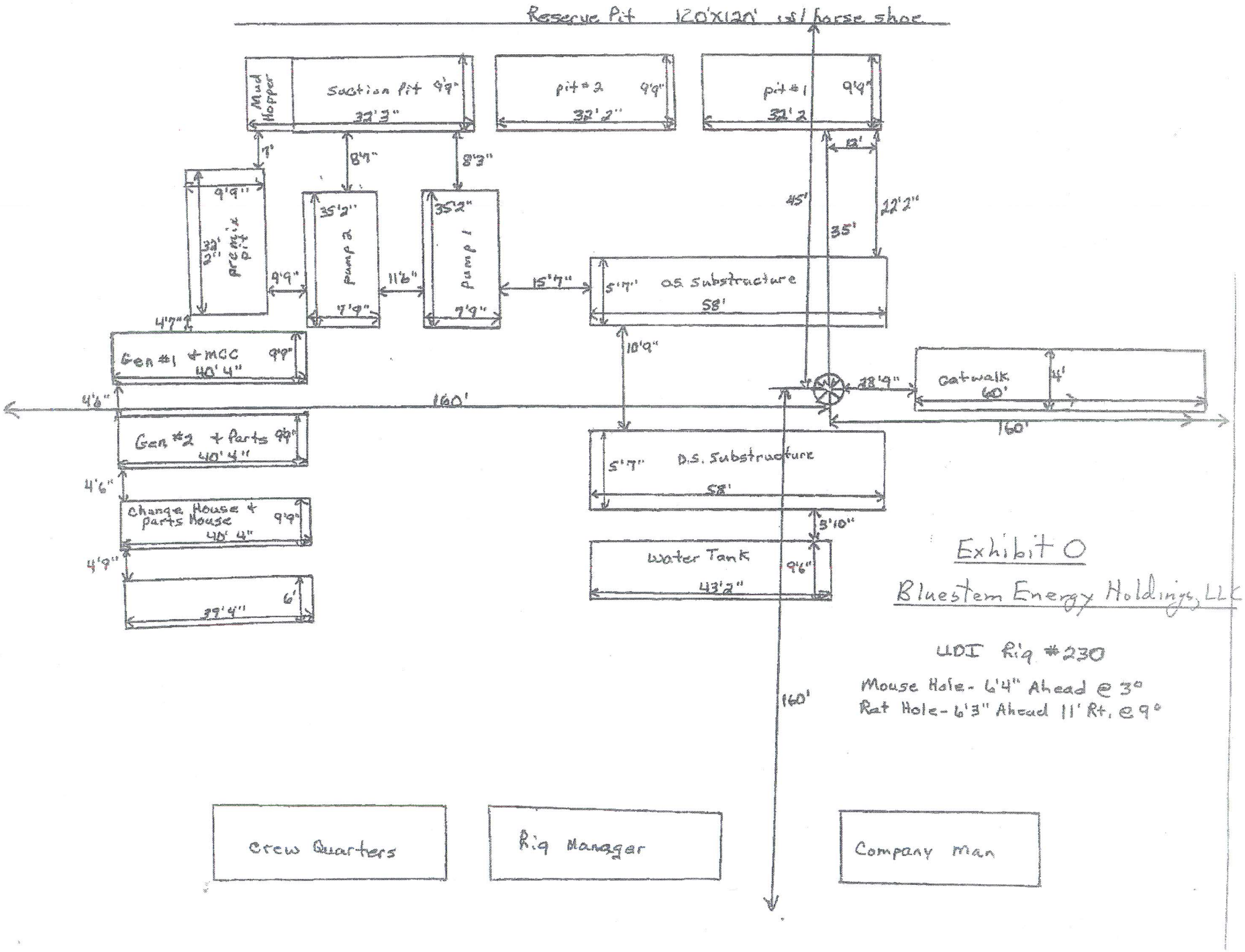


Exhibit O

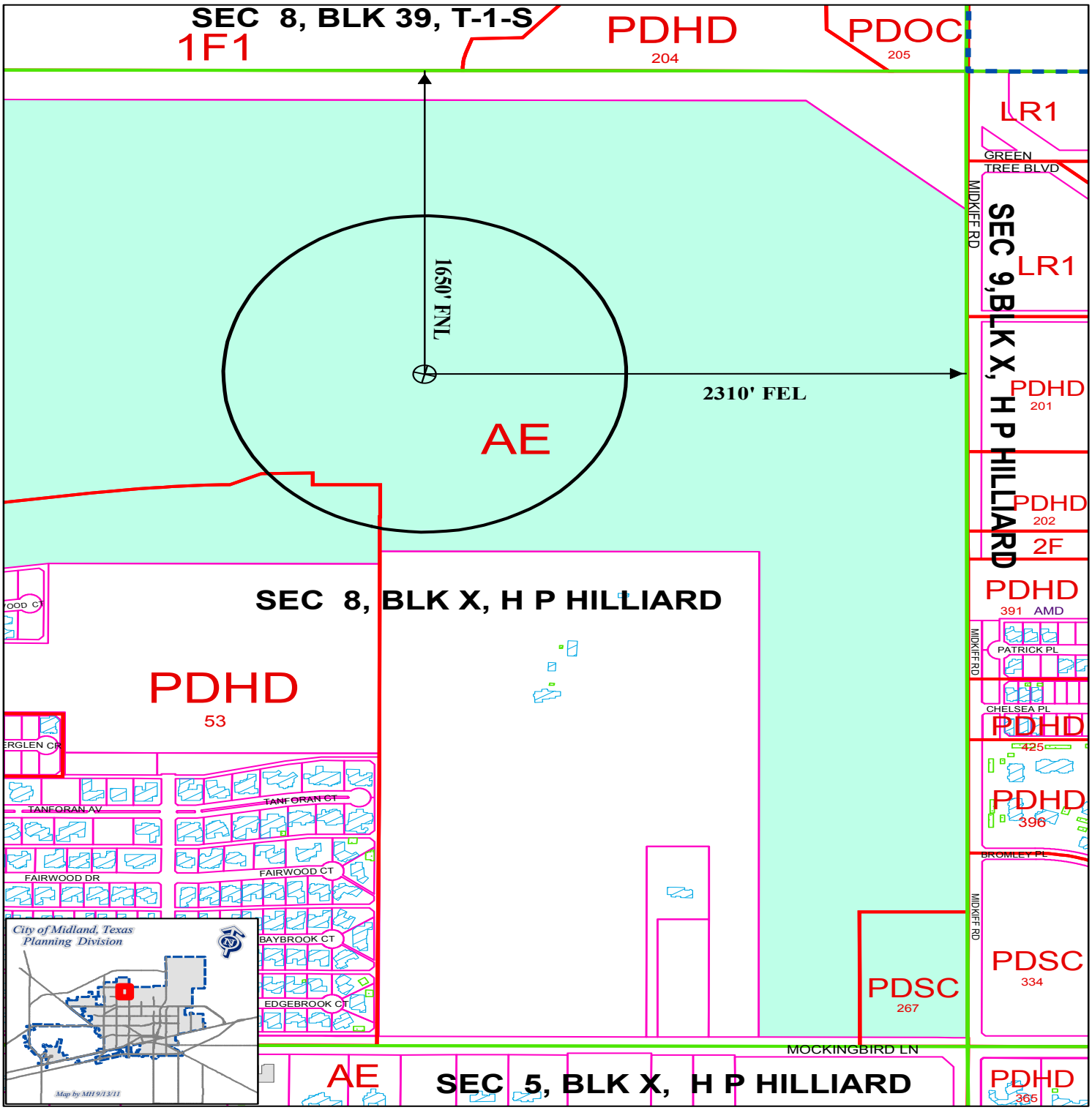
Bluestem Energy Holdings, LLC

UDI Rig #230

Mouse Hole - 6'4" Ahead @ 3°

Rat Hole - 6'3" Ahead 11' Rt. @ 9°

EXHIBIT O



LOCATION AND ZONING MAP

O - 11 - 003 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1650' FNL and 2310' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Evans "G" #1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

		BP	BUSINESS PARK
FD	FUTURE DEVELOPMENT	P	PARKING
PD	PLANNED DISTRICT	01, O2	OFFICE
AE	AGRICULTURE 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

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **O-11-004a; consider a motion approving an amendment to an oil and gas well drilling permit for Bluestem Energy (Evans "H" #1) on the east side of Midland Drive, north of Mockingbird Lane.**

Purpose:

To consider an amendment to Resolution 2011-284 on a request from Bluestem Energy to drill an oil and gas well on property located 1,650' FNL and 990' FEL of the land described as Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. Council approved the proposed drill site on November 8, 2011; however, the applicant is requesting consideration of amended drilling conditions.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

The amended conditions proposed by Bluestem Energy are listed below.

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Attachments: Application, Exhibit A (letter); Exhibits E, G, N and O; Drill site location.

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
07/22/2011	Bluestem Energy Holdings, LLC	301 Commerce St, Ste.2001, Fort Worth, TX 76102

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)687-4414
Wendell Brown	400 W. Illinois, Ste. 1630, Midland, TX 79701	Rep. Fax (432)682-4497
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: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

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 "H" #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:

1650' FNL and 990' 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:** None

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 _____
Its John M. Cherry, Executive Vice President

State of Texas)
County of Tarrant)

, 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.

_____
Notary Public, State of_____

[S E A L]

BLUESTEM | ENERGY

December 14, 2011

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City of Midland Oil and Gas Compliance Officer
300 N. Loraine
Midland, Texas 79702

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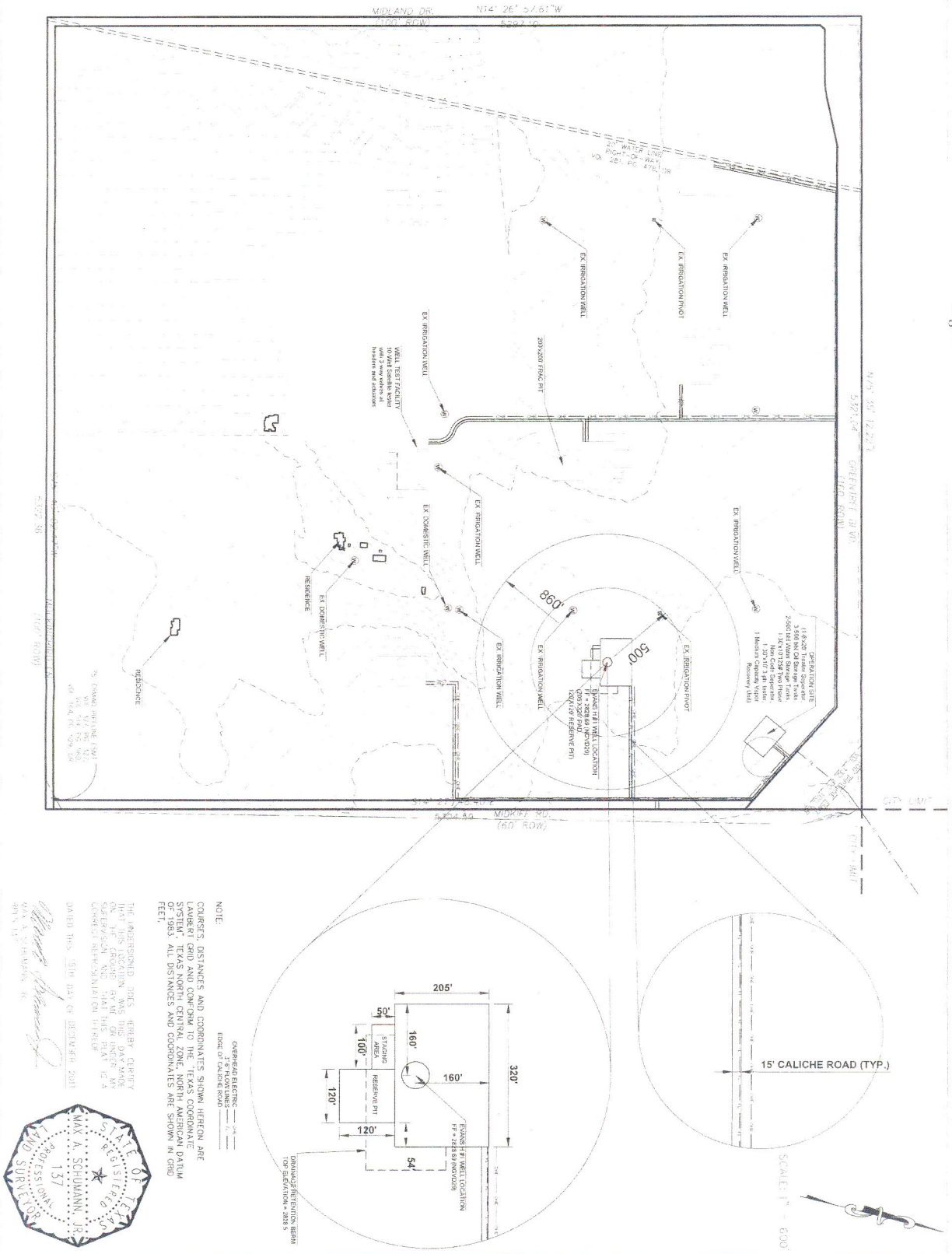
James C. Gresham, Jr. CPL
Vice President, Land



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OVERHEAD ELECTRIC
3" 6" FLOW LINES
EDGE OF CALICHE ROAD

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DATED THIS 15TH DAY OF DECEMBER 2011

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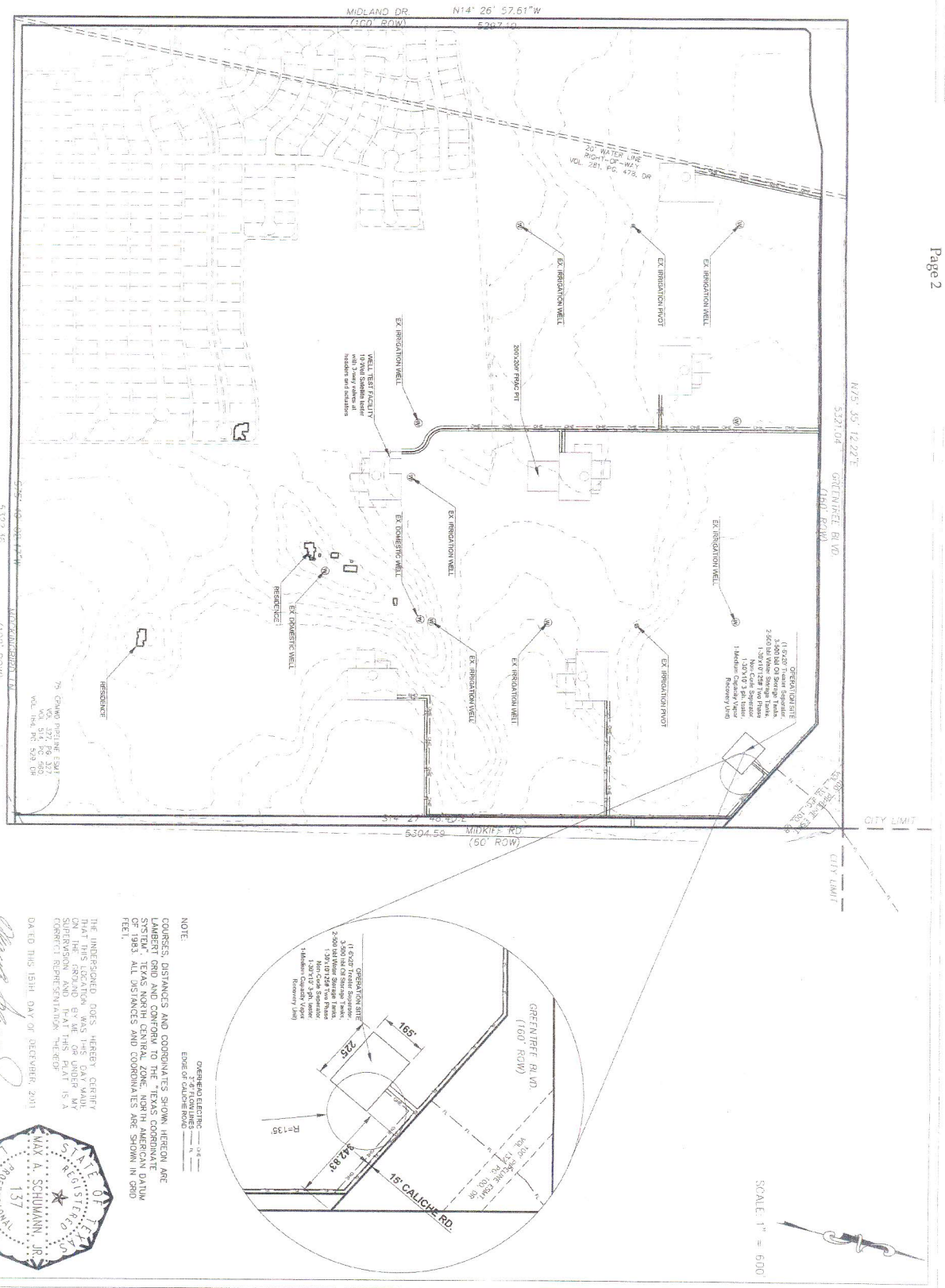
JOB NO. 72,747-D

EXHIBIT E



THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THE PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 15TH DAY OF DECEMBER, 2011

MAX A. SCHUMANN, JR.
RPLS 137

STATE OF TEXAS
MAX A. SCHUMANN, JR.
REGISTERED
PROFESSIONAL
137
LAND SURVEYOR

NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" (CLASS CENTRAL ZONE) NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

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

BLUESTEM ENERGY HOLDINGS, LLC

OPERATION SITE

SECTION 8, ABSTRACT 17, BLOCK X,
T-1-S, H.P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS

SITE PLAN

PROJECT: 727470JD
JOB NO: 72,747-D

EXHIBIT E

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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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BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS "H" #1 EVANS LEASE
1650 FEET FROM THE NORTH AND
990 FEET FROM THE EAST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
T-1-S, H.P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS

SITE PLAN

PROJECT: 727470JD
JOB NO: 72,747-D

EXHIBIT G

Exhibit "N"

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MIDLAND COUNTY, TEXAS

SITE PLAN

PROJECT: 727470JD
JOB NO: 72,747–D

EXHIBIT N

Exhibit O

Reserve Pit:

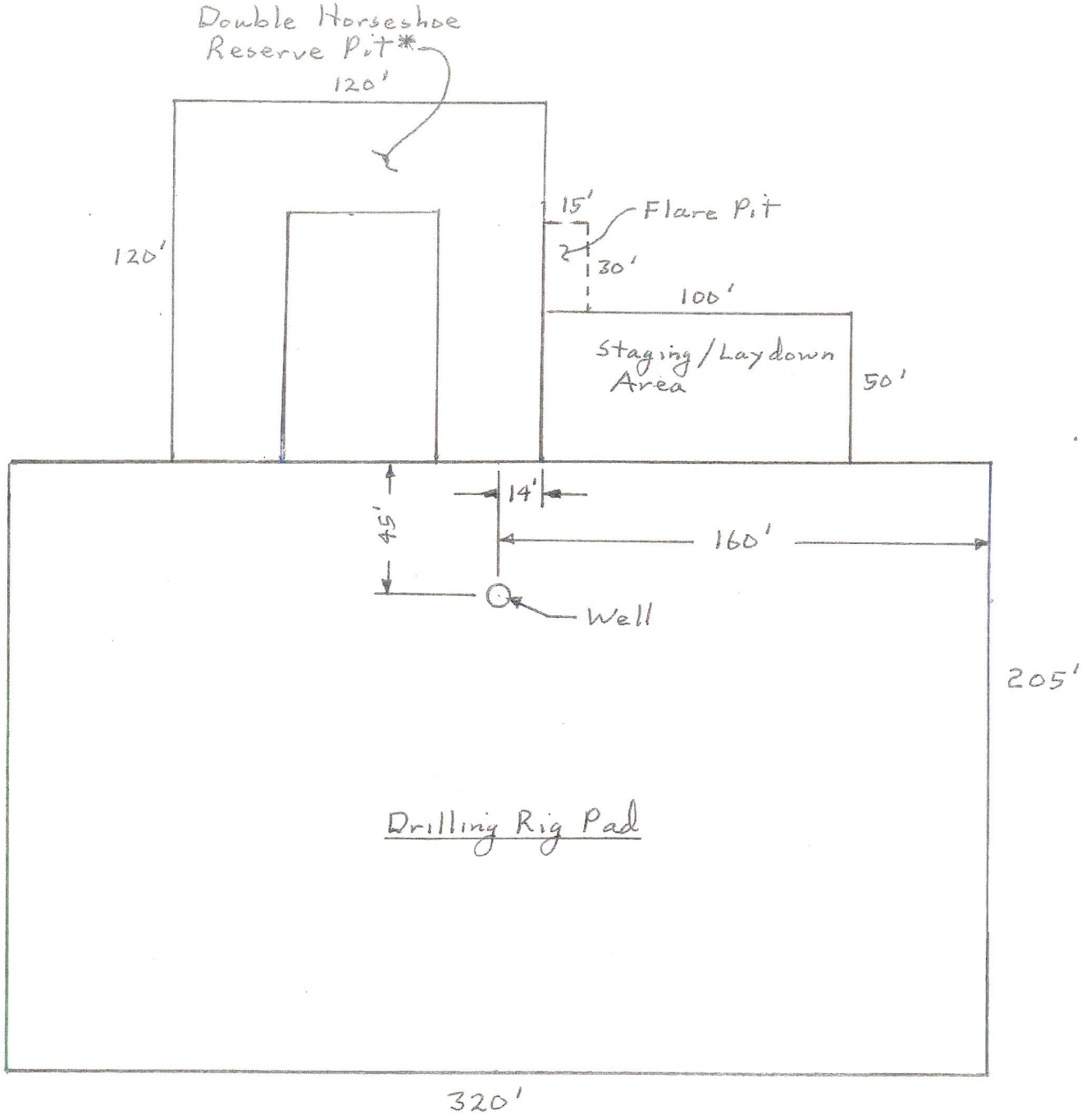
Bluestem Energy Holdings, LLC will use a 120 ft. x 120 ft. double horse shoe reserve pit for circulation of the mud system. Reserve pit size could increase to 150 ft. x 150 ft. depending on the needs of the drilling operation. This pit will be lined with a 8 mil cross laminated liner and will be fenced on all sides with a four strand barbed wire fence. The pit will be de-watered as soon as drilling and completion operations have been finished. The pit will be deep buried immediately next to the existing pit within 180 days from drilling cessation. The cuttings will be buried and covered with an impermeable liner and covered with 36" of soil. A survey and description of the deep bury pit will be recorded in the real property records as specified in the City of Midland Drilling Ordinance.

Future Stimulation Pit:

Bluestem Energy Holdings, LLC will use a 200 ft. x 200 ft. pit to supply fresh water for the fracture stimulation treatments on the proposed well. This pit will be lined with a 12 mil cross laminated liner and will be fenced on all sides. The pit will be de-watered as soon as drilling and completion operations have been finished on the Evans lease, and will be remediated to meet the surface land owner's requirements. This pit will contain fresh water only; therefore the deep burial requirement in the ordinance (L.27.C.CV) is not applicable.

421 W. 3rd Street, Ste.700, Fort Worth, TX 76102 ♦ Phone: 817-872-9800 ♦ Fax: 817-872-9888

Bluestem Energy Holdings, L.L.C. Exhibit O



* Reserve pit size could increase to 150' x 150' depending on the needs of the drilling operation.

EXHIBIT O

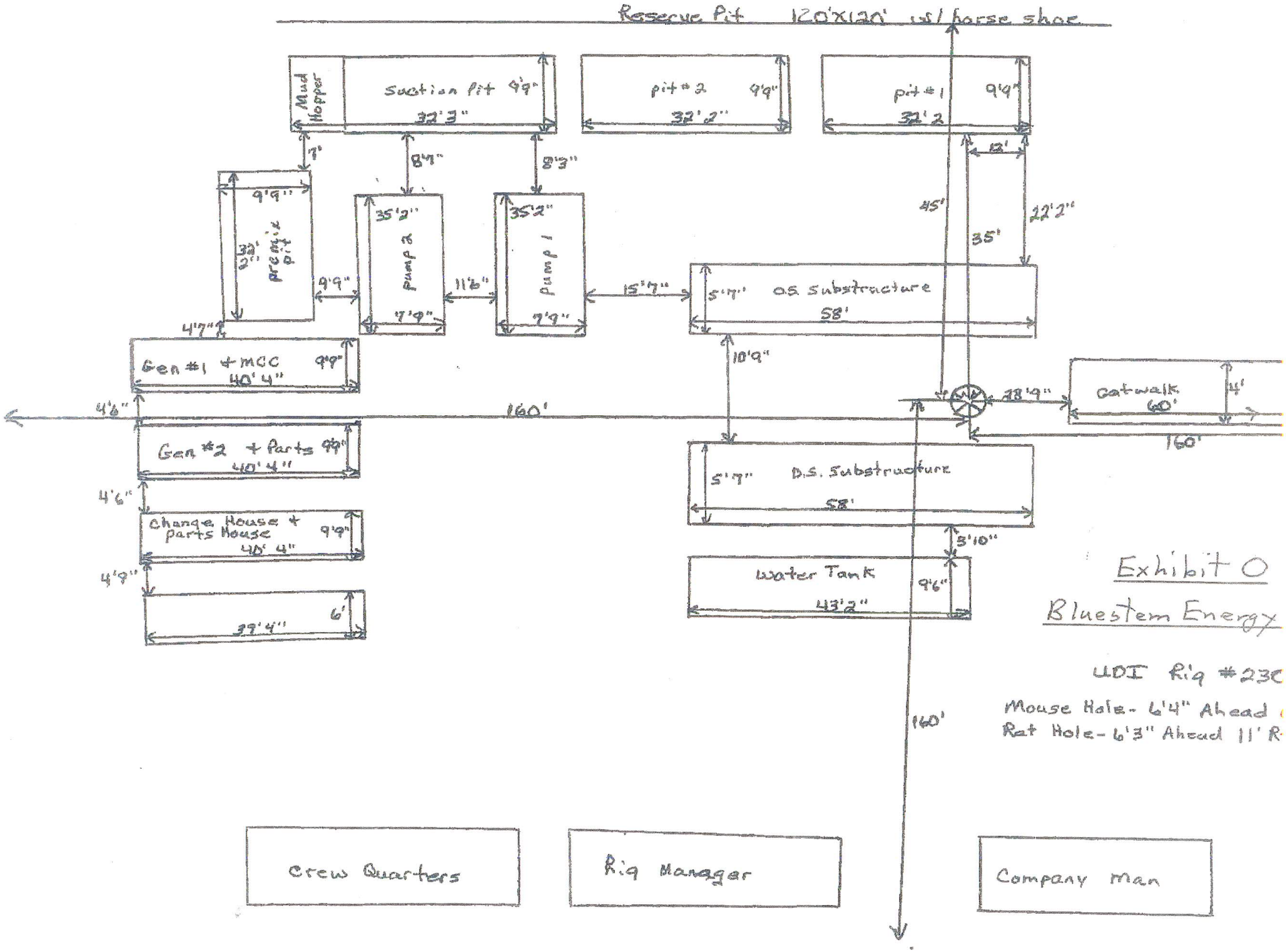
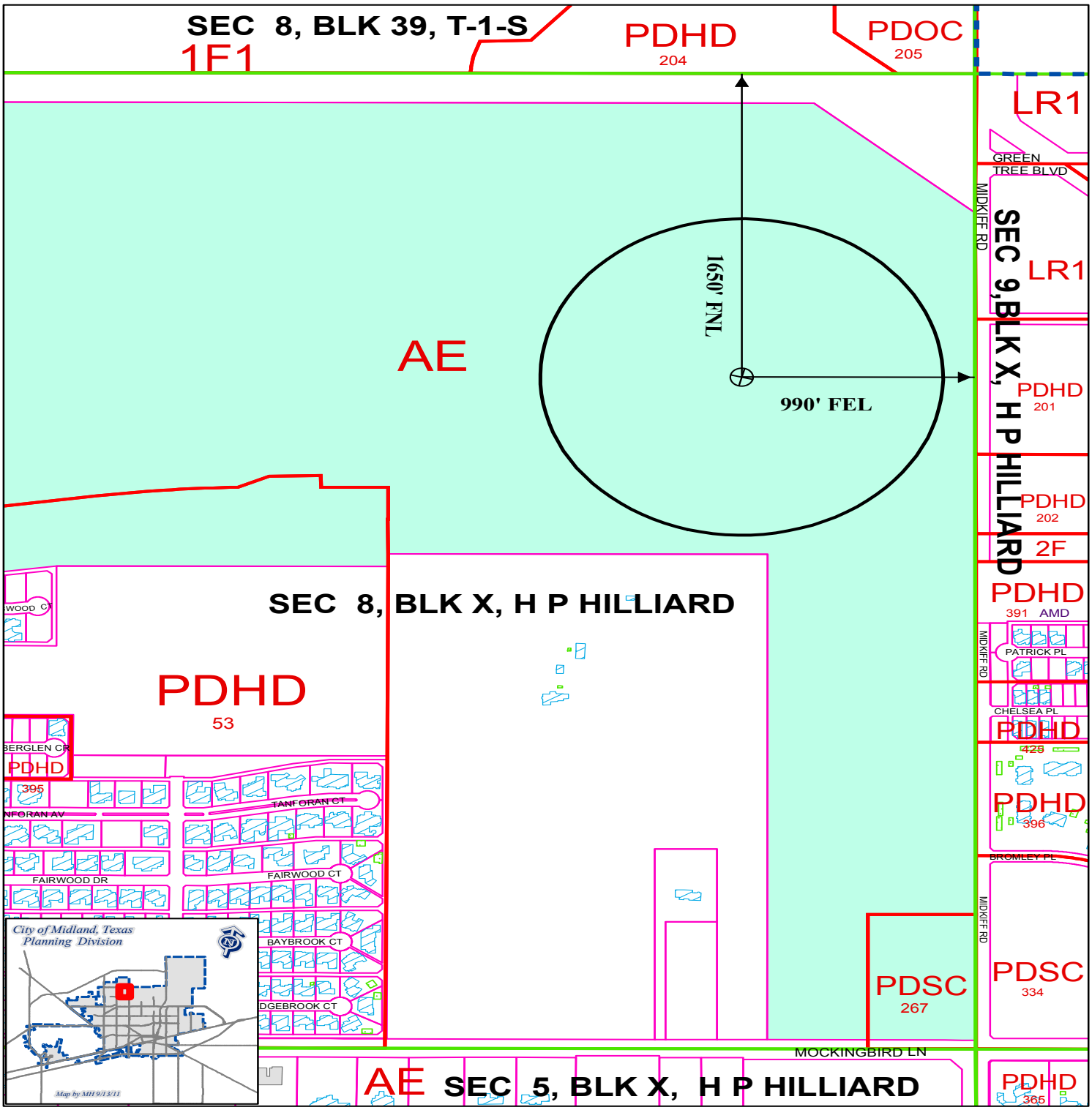

Reserve Pit 120'x120' w/ horse shoe
Mud Hopper
Suction Pit 9'9"
32'3"
pit #2 9'9"
32'2"
pit #1 9'9"
32'2
7'
8'7"
8'3"
12'
9'9"
32'2"
premix pit
35'2"
pump 2
35'2"
pump 1
45'
35'
22'2"
9'9"
11'6"
15'7"
5'7"
O.S. substructure
58'
7'9"
7'9"
4'7"
Gen #1 + MCC 9'9"
40'4"
10'9"
Catwalk
60'
4'
28'9"
4'6"
160'
160'
Gen #2 + Parts 9'9"
40'4"
5'7"
D.S. Substructure
58'
4'6"
Change House + parts House 9'9"
40'4"
3'10"
Water Tank
9'6"
43'2"
4'9"
6'
39'4"
Exhibit O
Bluestem Energy
UDI Rig #23C
Mouse Hole- 6'4" Ahead
Rat Hole- 6'3" Ahead 11' R
160'
Crew Quarters
Rig Manager
Company Man

EXHIBIT O



LOCATION AND ZONING MAP

O - 11 - 004 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1650' FNL and 990' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Evans "H" #1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

		BP	BUSINESS PARK
FD	FUTURE DEVELOPMENT	P	PARKING
PD	PLANNED DISTRICT	01, O2	OFFICE
AE	AGRICULTURE 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

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **O-11-005a; consider a motion approving an amendment to an oil and gas well drilling permit for Bluestem Energy (Evans "I" #1) on the east side of Midland Drive, north of Mockingbird Lane.**

Purpose:

To consider an amendment to Resolution 2011-285 on a request from Bluestem Energy to drill an oil and gas well on property located 2,310' FSL and 990' FEL of the land described as Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. Council approved the proposed drill site on November 8, 2011; however, the applicant is requesting consideration of amended drilling conditions.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

The amended conditions proposed by Bluestem Energy are listed below.

REVISION #1: Attached is an Amendment to Application for Oil and Gas Permit where on page 2, we have modified the text regarding the manner in which our electrical lines will be installed. These changes are in accordance with our Surface Agreement with the surface owners.

REVISION #2: Attached is a Revised Exhibit “E”, (Plat Setting out Surface Culture), for the Amendment which modifies the original Exhibit “E” in accordance with the following:

- Adds a 200' x 200' frac pit to be located adjacent to and south of the Evans G #1 well location.
- Changes the electric power designation from "underground electric" to "overhead electric".
- Changes the pipeline designation from “3" pipeline" to “3" - 6" flowlines".
- Adds a well test facility to the Evans J #1 location to accommodate combining a well location with a well test facility.
- Revises the location and size of the central tank battery, (“CTB”) location that we plan to install in the Northeast corner of the Evans Lease. The new location honors the 135' ROW ordinance for tanks and facilities.
- Revises the drilling pad sizes and orientations to reflect our current drilling rig footprint.
- Adds the oil and gas pipelines to the oil purchase line and to WTG which crosses the Evans lease from the CTB.
- Adds a Vapor Recovery Unit, (“VRU”) with associated compressor equipment to contain the fugitive emissions from the tanks and the equipment at the CTB. Please note that we feel that the addition of a VRU is the most prudent manner of conducting our operations on the Evans lease, even though it is not a requirement of the Drilling Ordinance. A Quincy QRNG 4125 30 HP compressor, manufactured by Seimens will be installed to power the VRU. This unit is a single stage reciprocating, 900 RPM unit. Bluestem hereby requests a variance to paragraph L. 19, which provides that no compressors can be located at the CTB. This compressor is mounted on a skid that measures 5’ x 6’ with 4” cross members. Electricity will be the power source and the decibel level for the compressor is 80 decibels.

REVISION #3: Attached is a Revised Exhibit “G”, (Location Site Plan) for the Amendment which sets out the same information as REVISION #3 above.

REVISION #4: Attached is a Revised Exhibit “N”, (Concept Plan), for the Amendment which sets out the same information as REVISION #3 above.

REVISION #5: Attached is a Revised Exhibit “O”, (Closure of Pit Plan), which sets out in great detail the schematic of the drilling location.

Attachments: Application, Exhibit A (letter); Exhibits E, G, N and O; Drill site location.

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
07/22/2011	Bluestem Energy Holdings, LLC	301 Commerce St, Ste.2001, Fort Worth, TX 76102

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)687-4414
Wendell Brown	400 W. Illinois, Ste. 1630, Midland, TX 79701	Rep. Fax (432)682-4497
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: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

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 "I" #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:

2310' FSL and 990' 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: None

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 _____
Its John M. Cherry, Executive Vice President

State of Texas)
County of Tarrant)

, 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.

_____
Notary Public, State of_____

[S E A L]

BLUESTEM | ENERGY

December 14, 2011

Ron Jenkins
City of Midland Oil and Gas Compliance Officer
300 N. Loraine
Midland, Texas 79702

RE: Revision of City of Midland Oil and Gas Permit
Bluestem Energy Holdings, LLC Evans I 1 Well
Evans Prospect
Midland County, Texas

Dear Ron:

Reference is made to our drilling permit Application for the Bluestem Energy Holdings, LLC Evans C 1 well, which was granted final approval by the City Council on November 8, 2011. As you are aware, several revisions have become necessary to this Application, and this letter and the enclosed attachments shall represent such revisions. Such revisions are set forth below:

REVISION #1: Attached is an Amendment to Application for Oil and Gas Permit where on page 2, we have modified the text regarding the manner in which our electrical lines will be installed. These changes are in accordance with our Surface Agreement with the surface owners.

REVISION #2: Attached is a Revised Exhibit "E", (Plat Setting out Surface Culture), for the Amendment which modifies the original Exhibit "E" in accordance with the following:

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421 West 3rd St., Suite 700, Fort Worth, TX 76102 ♦ Phone: 817-872-9800 ♦ Fax: 817-872-9888

EXHIBIT A

- Adds a Vapor Recovery Unit, ("VRU") with associated compressor equipment to contain the fugitive emissions from the tanks and the equipment at the CTB. Please note that we feel that the addition of a VRU is the most prudent manner of conducting our operations on the Evans lease, even though it is not a requirement of the Drilling Ordnance. A Quincy QRNG 4125 30 HP compressor, manufactured by Seimens will be installed to power the VRU. This unit is a single stage reciprocating, 900 RPM unit. Bluestem hereby requests a variance to paragraph L. 19, which provides that no compressors can be located at the CTB. This compressor is mounted on a skid that measures 5' x 6' with 4" cross members. Electricity will be the power source and the decibel level for the compressor is 80 decibels.

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REVISION #5: Attached is a Revised Exhibit "O", (Closure of Pit Plan), which sets out in great detail the schematic of the drilling location.

Also enclosed is a check in the amount of $1,000.00 as consideration for this Amendment. Please let me know if the attached information is in accordance with your needs so that final approval of this as well as the other Amendments can be secured at the City Council meeting scheduled for January 10, 2012.

Thank you again for your assistance in this regard.

Sincerely:

Bluestem Energy Holdings, LLC

James C. Gresham, Jr. CPL
Vice President, Land

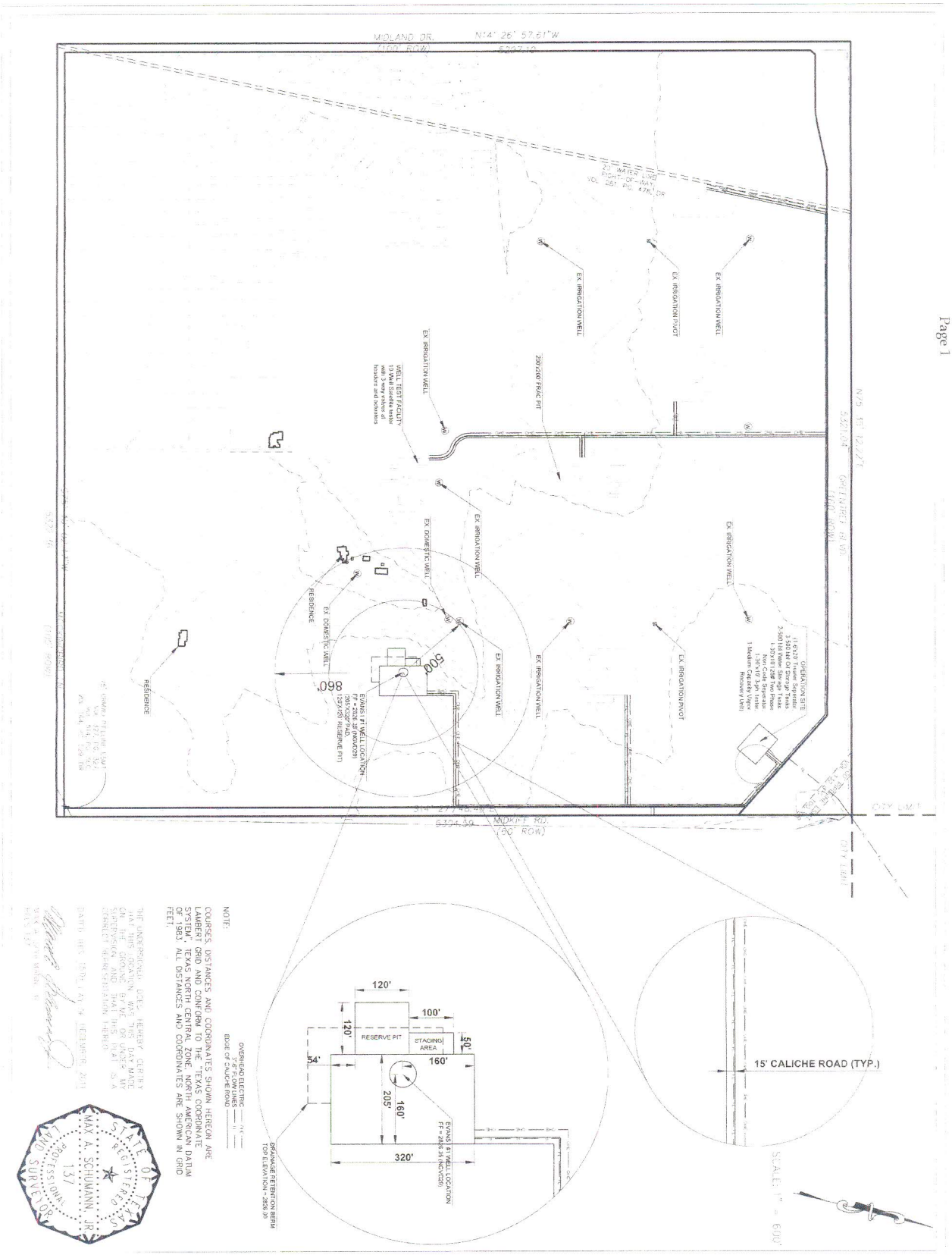

Exhibit "E"
Page 1

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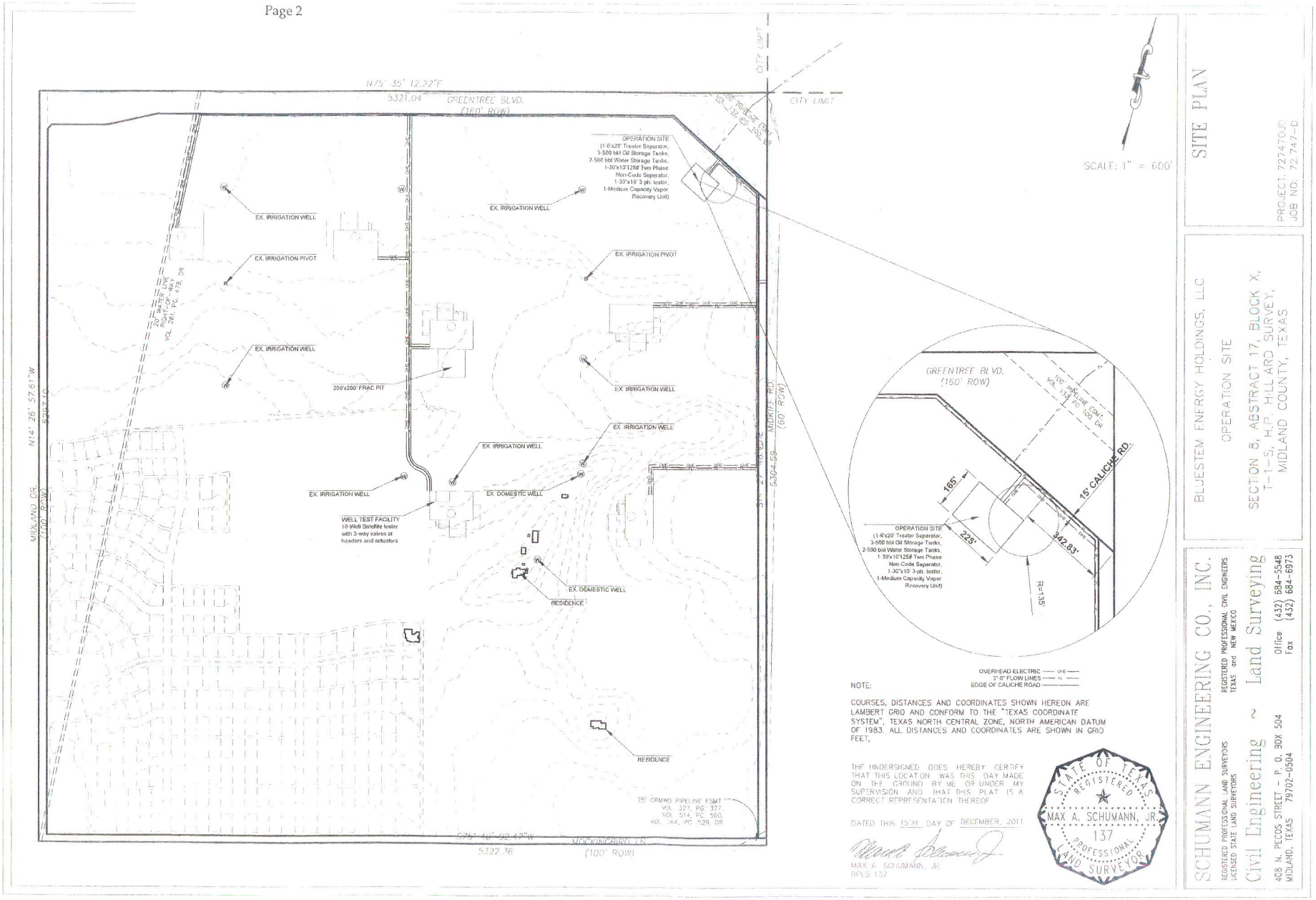
Page 2



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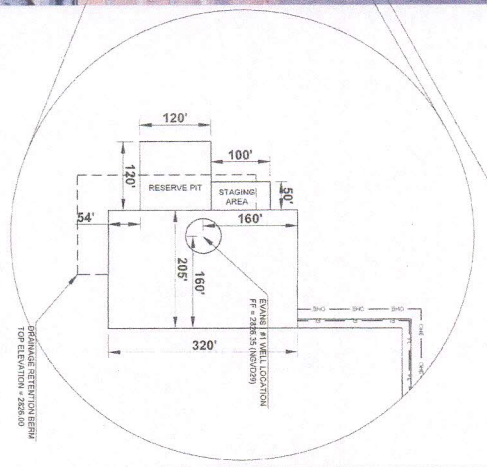

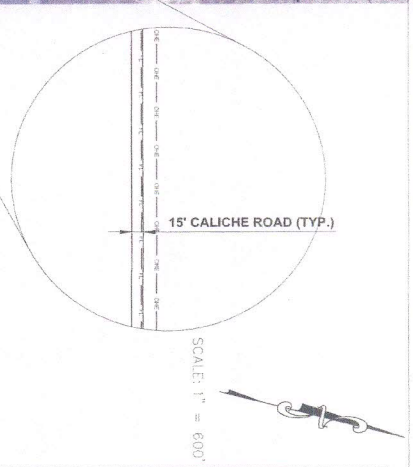

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SECTION 8, ABSTRACT 17, BLOCK X,
T-1-S, H.P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS

SITE PLAN

PROJECT: 72747OJD
JOB NO: 72,747-E

EXHIBIT G

Exhibit "N"

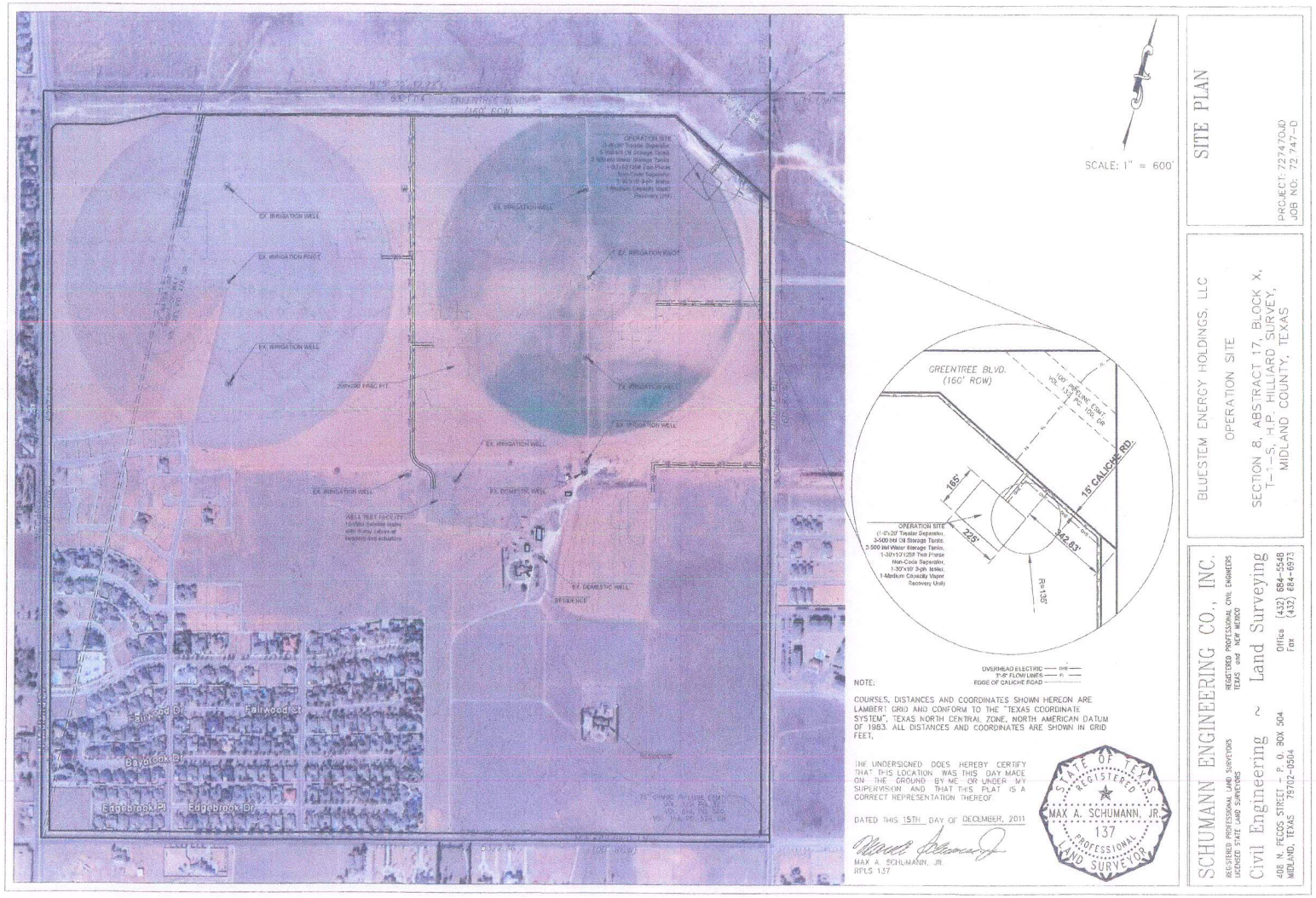

EXHIBIT N

BLUESTEM | ENERGY

Exhibit O

Reserve Pit:

Bluestem Energy Holdings, LLC will use a 120 ft. x 120 ft. double horse shoe reserve pit for circulation of the mud system. Reserve pit size could increase to 150 ft. x 150 ft. depending on the needs of the drilling operation. This pit will be lined with a 8 mil cross laminated liner and will be fenced on all sides with a four strand barbed wire fence. The pit will be de-watered as soon as drilling and completion operations have been finished. The pit will be deep buried immediately next to the existing pit within 180 days from drilling cessation. The cuttings will be buried and covered with an impermeable liner and covered with 36" of soil. A survey and description of the deep bury pit will be recorded in the real property records as specified in the City of Midland Drilling Ordinance.

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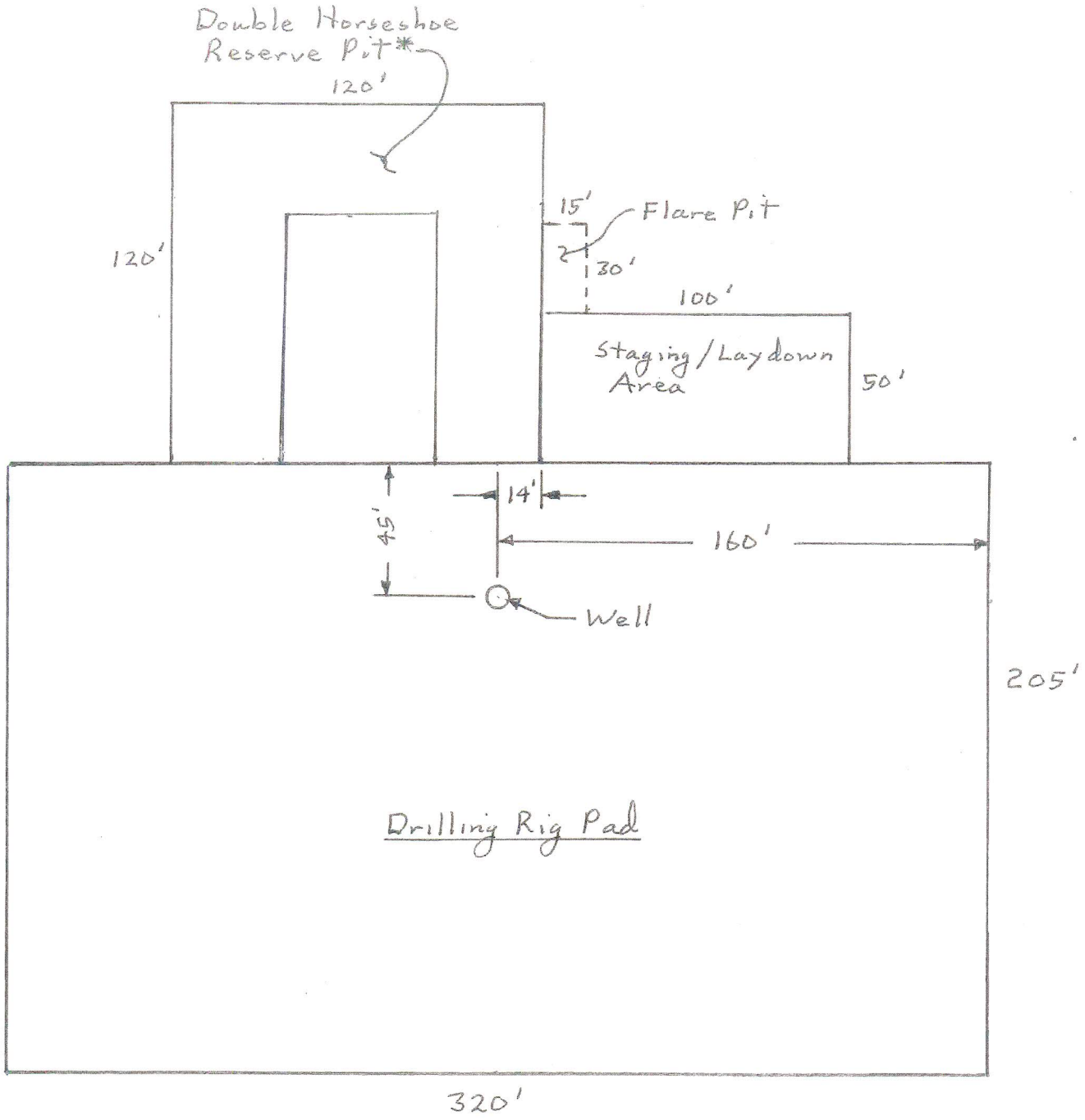
421 W. 3rd Street, Ste.700, Fort Worth, TX 76102 ♦ Phone: 817-872-9800 ♦ Fax: 817-872-9888

Bluestem Energy Holdings, LLC Exhibit O



* Reserve pit size could increase to 150' x 150' depending on the needs of the drilling operation.

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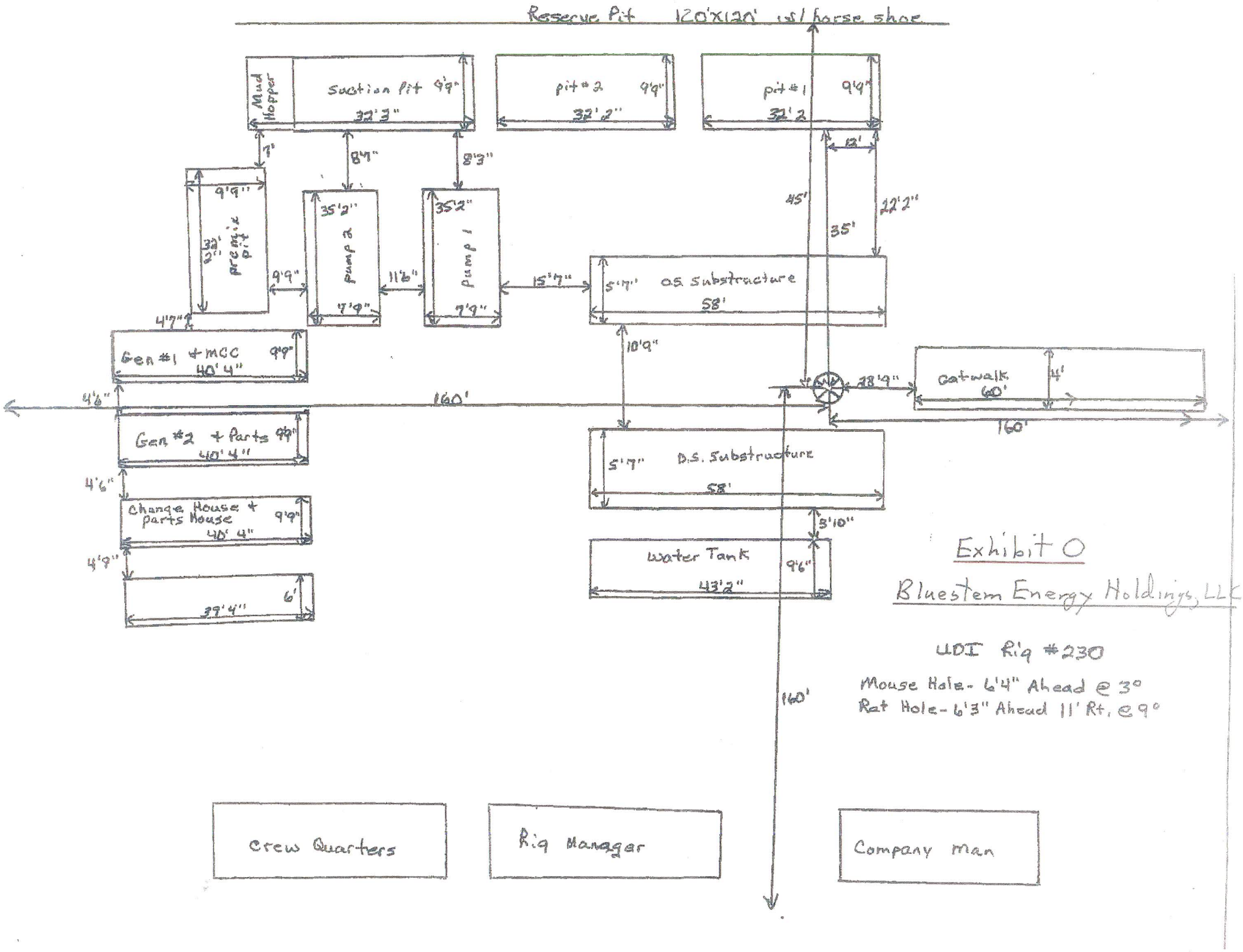


Exhibit O

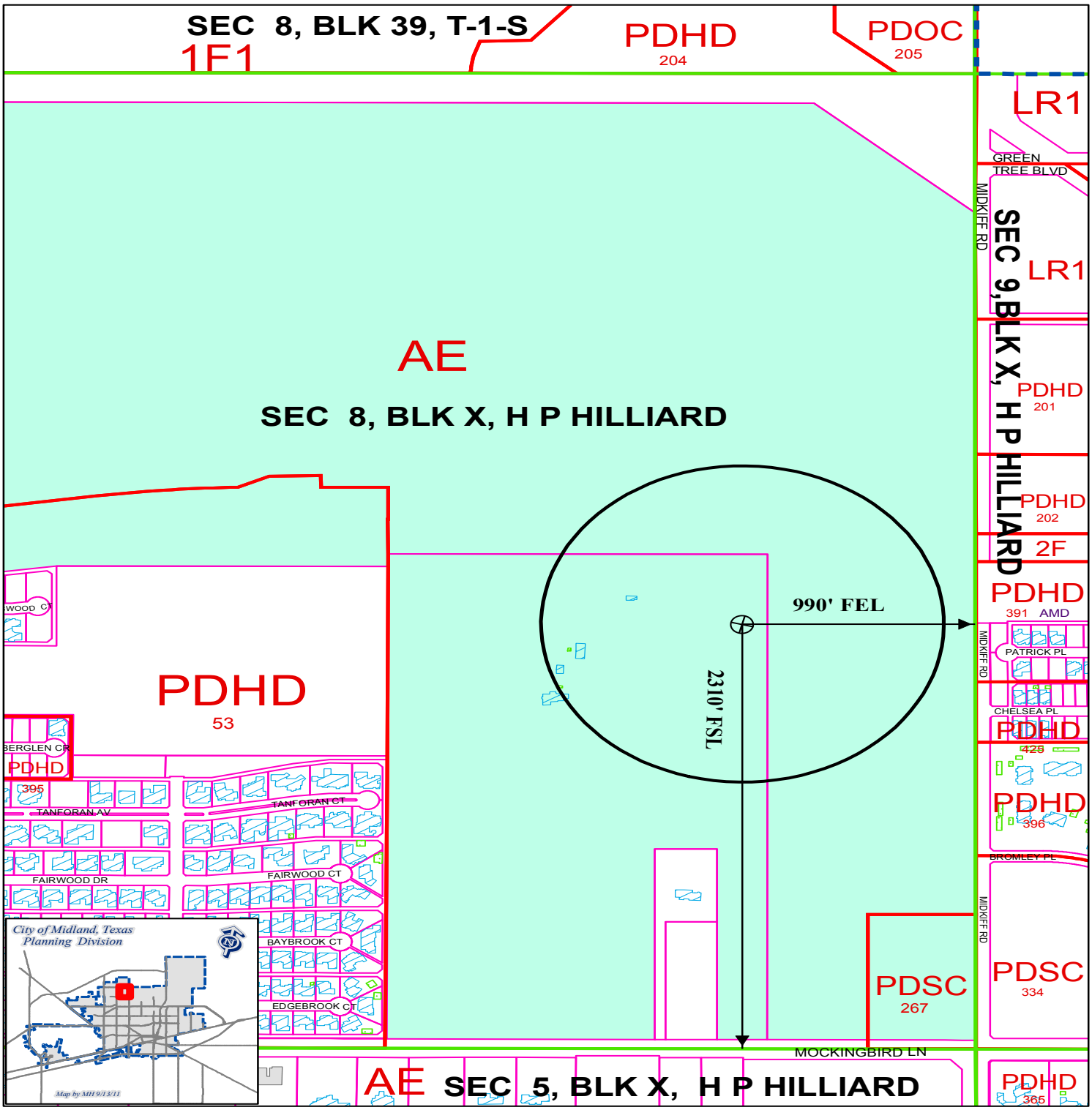
Bluestem Energy Holdings, LLC

UDI Rig #230

Mouse Hole - 6'4" Ahead @ 3°

Rat Hole - 6'3" Ahead 11' Rt. @ 9°

EXHIBIT O



LOCATION AND ZONING MAP

O - 11 - 005 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2310' FSL and 990' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Evans "I" #1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

		BP	BUSINESS PARK
FD	FUTURE DEVELOPMENT	P	PARKING
PD	PLANNED DISTRICT	01, O2	OFFICE
AE	AGRICULTURE 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

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **January 10, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **O-11-006a; consider a motion approving an amendment to an oil and gas well drilling permit for Bluestem Energy (Evans "J" #1) on the east side of Midland Drive, north of Mockingbird Lane.**

Purpose:

To consider an amendment to Resolution 2011-301 on a request from Bluestem Energy to drill an oil and gas well on property located 2,322' FSL and 2,310' FEL of the land described as Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. Council approved the proposed drill site on December 13, 2011; however, the applicant is requesting consideration of amended drilling conditions.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

The amended conditions proposed by Bluestem Energy are listed below.

REVISION #1: Attached is an Amendment to Application for Oil and Gas Permit where on page 2, we have modified the text regarding the manner in which our electrical lines will be installed. These changes are in accordance with our Surface Agreement with the surface owners.

REVISION #2: Attached is a Revised Exhibit “E”, (Plat Setting out Surface Culture), for the Amendment which modifies the original Exhibit “E” in accordance with the following:

- Adds a 200' x 200' frac pit to be located adjacent to and south of the Evans G #1 well location.
- Changes the electric power designation from "underground electric" to "overhead electric".
- Changes the pipeline designation from “3" pipeline" to “3" - 6" flowlines".
- Adds a well test facility to the Evans J #1 location to accommodate combining a well location with a well test facility.
- Revises the location and size of the central tank battery, (“CTB”) location that we plan to install in the Northeast corner of the Evans Lease. The new location honors the 135' ROW ordinance for tanks and facilities.
- Revises the drilling pad sizes and orientations to reflect our current drilling rig footprint.
- Adds the oil and gas pipelines to the oil purchase line and to WTG which crosses the Evans lease from the CTB.
- Adds a Vapor Recovery Unit, (“VRU”) with associated compressor equipment to contain the fugitive emissions from the tanks and the equipment at the CTB. Please note that we feel that the addition of a VRU is the most prudent manner of conducting our operations on the Evans lease, even though it is not a requirement of the Drilling Ordinance. A Quincy QRNG 4125 30 HP compressor, manufactured by Seimens will be installed to power the VRU. This unit is a single stage reciprocating, 900 RPM unit. Bluestem hereby requests a variance to paragraph L. 19, which provides that no compressors can be located at the CTB. This compressor is mounted on a skid that measures 5’ x 6’ with 4” cross members. Electricity will be the power source and the decibel level for the compressor is 80 decibels.

REVISION #3: Attached is a Revised Exhibit “G”, (Location Site Plan) for the Amendment which sets out the same information as REVISION #3 above.

REVISION #4: Attached is a Revised Exhibit “N”, (Concept Plan), for the Amendment which sets out the same information as REVISION #3 above.

REVISION #5: Attached is a Revised Exhibit “O”, (Closure of Pit Plan), which sets out in great detail the schematic of the drilling location.

Attachments: Application, Exhibit A (letter); Exhibits E, G, N and O; Drill site location.

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
07/22/2011	Bluestem Energy Holdings, LLC	301 Commerce St, Ste.2001, Fort Worth, TX 76102

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)687-4414
Wendell Brown	400 W. Illinois, Ste. 1630, Midland, TX 79701	Rep. Fax (432)682-4497
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: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

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 "J" #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:

2322' FSL and 2310' 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:** None

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 _____
Its John M. Cherry, Executive Vice President

State of Texas)

County of Tarrant)

, 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.

_____
Notary Public, State of_____

[S E A L]

BLUESTEM | ENERGY

December 14, 2011

Ron Jenkins
City of Midland Oil and Gas Compliance Officer
300 N. Loraine
Midland, Texas 79702

RE: Revision of City of Midland Oil and Gas Permit
Bluestem Energy Holdings, LLC Evans J 1 Well
Evans Prospect
Midland County, Texas

Dear Ron:

Reference is made to our drilling permit Application for the Bluestem Energy Holdings, LLC Evans C 1 well, which was granted final approval by the City Council on November 8, 2011. As you are aware, several revisions have become necessary to this Application, and this letter and the enclosed attachments shall represent such revisions. Such revisions are set forth below:

REVISION #1: Attached is an Amendment to Application for Oil and Gas Permit where on page 2, we have modified the text regarding the manner in which our electrical lines will be installed. These changes are in accordance with our Surface Agreement with the surface owners.

REVISION #2: Attached is a Revised Exhibit "E", (Plat Setting out Surface Culture), for the Amendment which modifies the original Exhibit "E" in accordance with the following:

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421 West 3rd St., Suite 700, Fort Worth, TX 76102 ♦ Phone: 817-872-9800 ♦ Fax: 817-872-9888

EXHIBIT A

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REVISION #5: Attached is a Revised Exhibit "O", (Closure of Pit Plan), which sets out in great detail the schematic of the drilling location.

Also enclosed is a check in the amount of $1,000.00 as consideration for this Amendment. Please let me know if the attached information is in accordance with your needs so that final approval of this as well as the other Amendments can be secured at the City Council meeting scheduled for January 10, 2012.

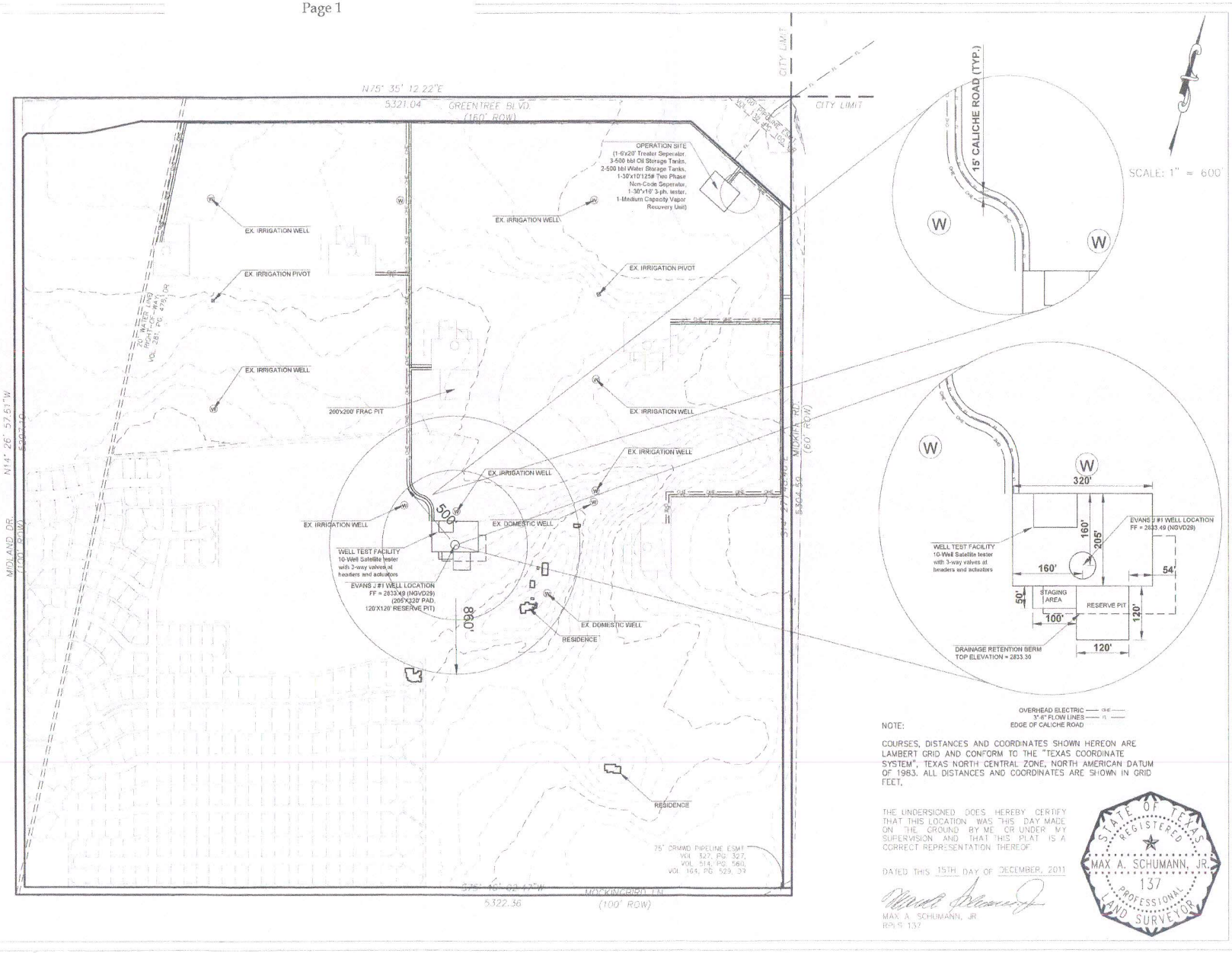
Thank you again for your assistance in this regard.

Sincerely:

Bluestem Energy Holdings, LLC

James C. Gresham, Jr. CPL
Vice President, Land

Exhibit "E"
Page 1



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 15TH DAY OF DECEMBER, 2011

MAX A. SCHUMANN, JR
REG. # 137

STATE OF TEXAS
REGISTERED
MAX A. SCHUMANN, JR.
137
PROFESSIONAL
LAND SURVEYOR

SITE PLAN

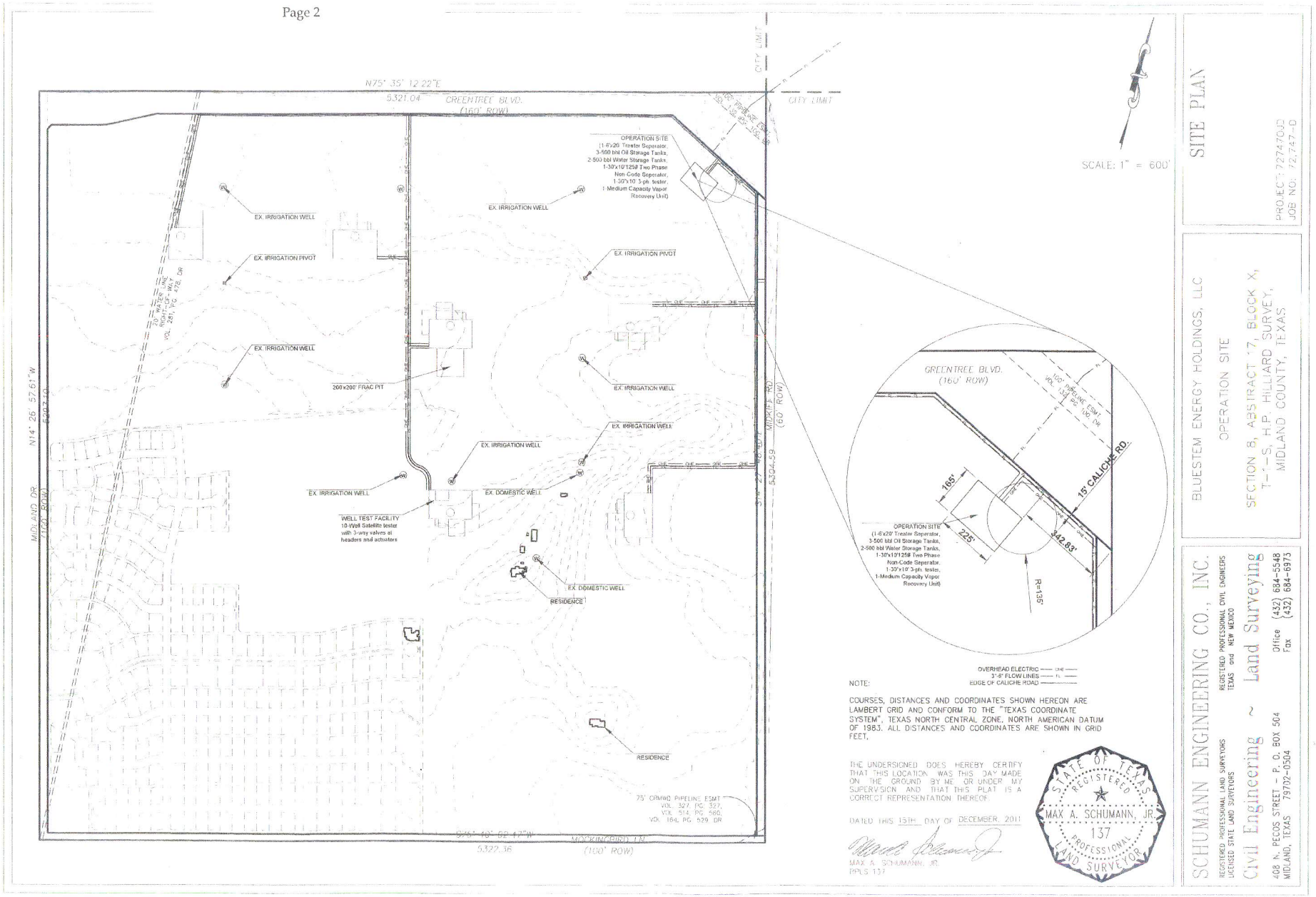
PROJECT 72747000
JOB NO: 72,747-F

BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS "J" #1 EVANS LEASE
2322 FEET FROM THE SOUTH AND
2310 FEET FROM THE EAST LINE
SECTION 8, ABS RACI 17, BLOCK X,
T-1-S, H.P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS

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

EXHIBIT E

Exhibit "E"
Page 2



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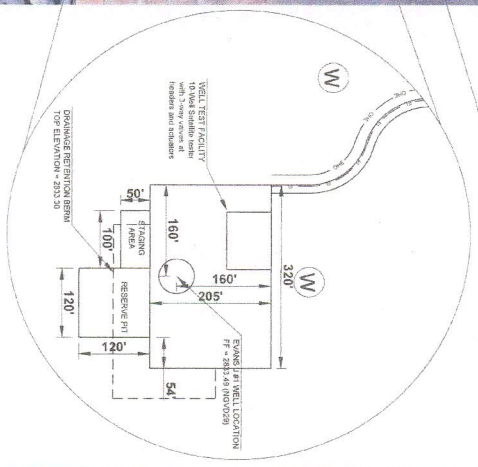

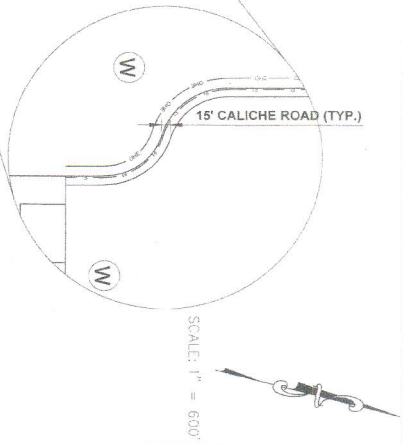

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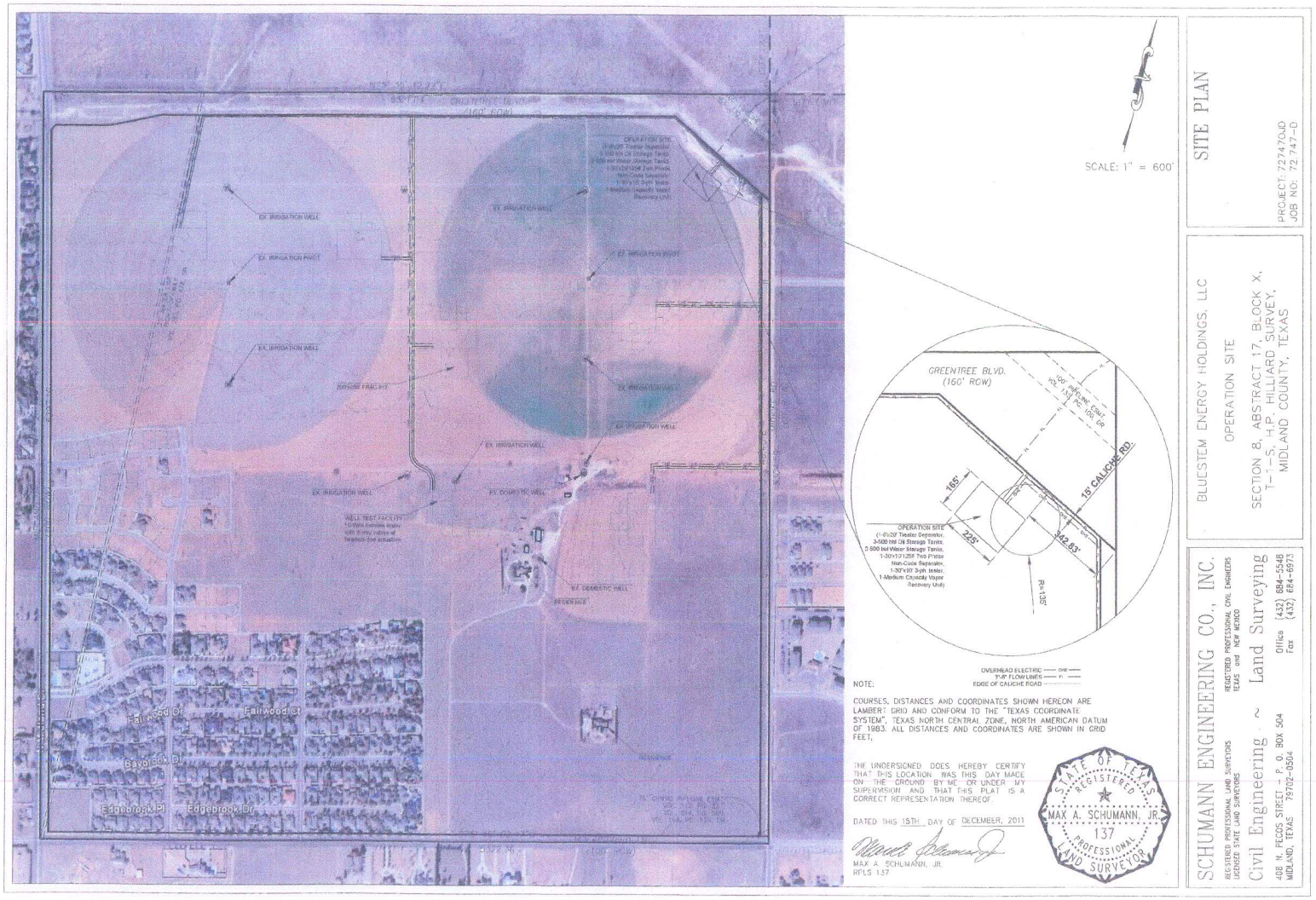

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BLUESTEM | ENERGY

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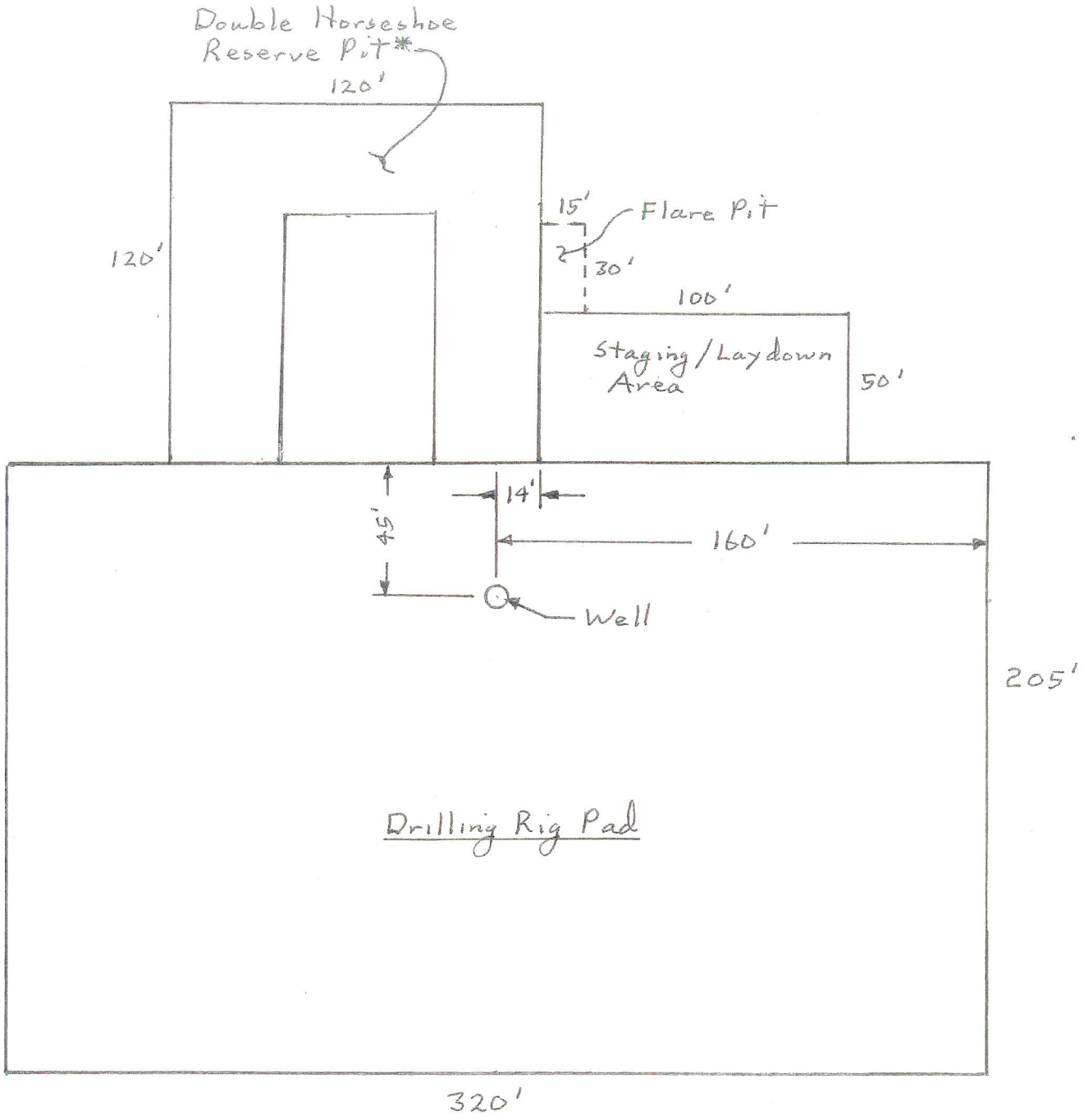

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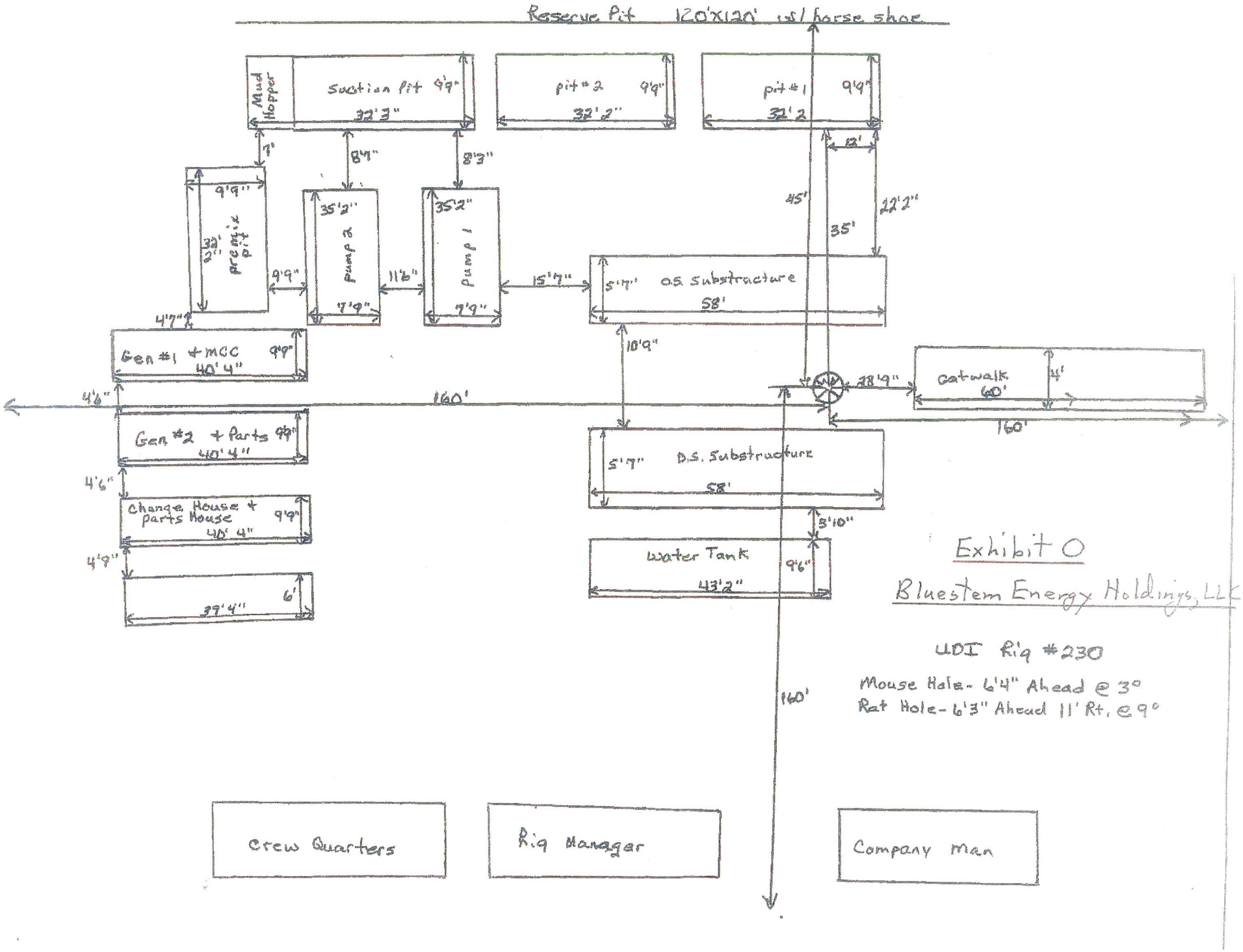
Reserve Pit 120'x120' w/ horse shoe
Mud Hopper
Suction Pit 9'9"
32'3"
pit #3 9'9"
32'2"
pit #1 9'9"
32'2
premix pit
9'9"
32'2"
pump 2
35'2"
pump 1
35'2"
9'9"
11'6"
15'7"
5'7" O.S. substructure
58'
Gen #1 + MCC 9'9"
40'4"
Gen #2 + Parts 9'9"
40'4"
Change House + parts House 9'9"
40'4"
39'4"
6'
160'
10'9"
18'9"
Catwalk 4'
60'
160'
5'7" D.S. substructure
58'
5'10"
Water Tank 9'6"
43'2"
45'
35'
22'2"
160'
Exhibit O
Bluestem Energy Holdings, LLC
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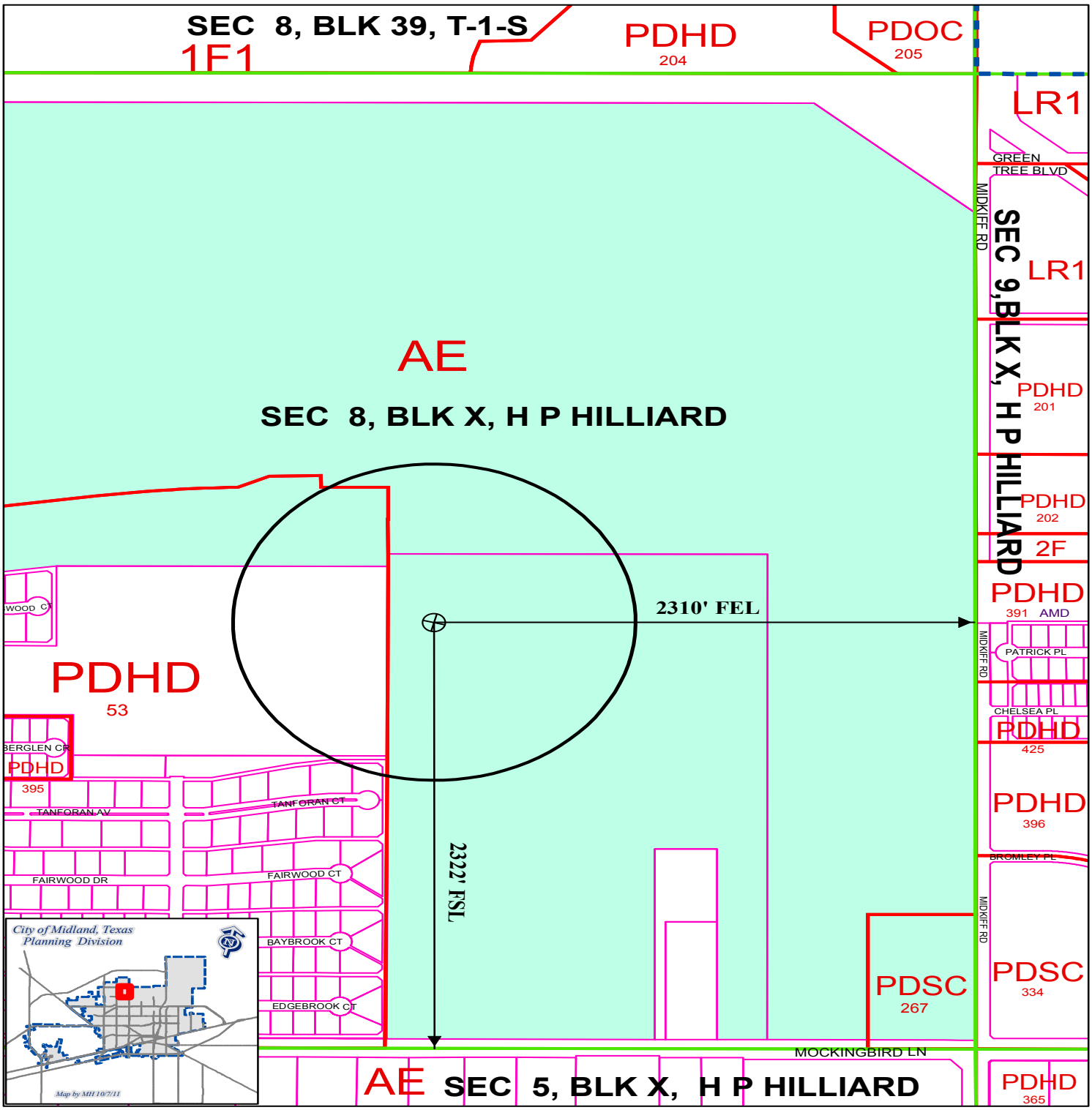
Mouse Hole - 6'4" Ahead @ 3°
Rat Hole - 6'3" Ahead 11' Rt. @ 9°
Crew Quarters
Rig Manager
Company Man

EXHIBIT O



LOCATION AND ZONING MAP

O - 11 - 006 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2322' FSL and 2310' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Evans "J" #1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

		BP	BUSINESS PARK
FD	FUTURE DEVELOPMENT	P	PARKING
PD	PLANNED DISTRICT	01, O2	OFFICE
AE	AGRICULTURE 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

City of Midland

City Secretary's Office

Interoffice Memorandum

Date: January 5, 2012

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 10, 2012. Remaining expirations and vacancies are listed below:

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS –Two terms expired on September 30, 2011 and two vacancies for Alternate terms expired on September 30, 2007.

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, two terms expired on January 1, 2010 and one term expired on January 1, 2012.

MIDLAND HOUSING FINANCE CORPORATION –One vacancy expired on September 30, 2010 and two terms expired on September 30, 2011.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

PARKS AND RECREATION COMMISSION –One term expired on September 30, 2011.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico) and three terms expired on September 30, 2011.

PLANING AND ZONING COMMISSION – One term expired on September 30, 2011.

TAX INCREMENT REINVESTMENT ZONE BOARD – One term expired on March 20, 2009 (one College representative), seven terms expired on March 20, 2010 and two terms expired March 20, 2011. (Four City representatives, two Hospital representatives, two County representatives and one College representative.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- Two terms expired on September 30, 2011, one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

Should you have any questions, please call me on 685-7432.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

December 13, 2011

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)
(Membership-10; Terms - 3 Years expiring 3-3-4.)

	Appt Date	Term Expires	Eligibility Expires
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 2012	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
Brooks Smith	11/11	Sept 30 2014	Sept 30 2017
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)

	Appt Date	Term Expires	Eligibility Expires
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)

	Appt Date	Term Expires	Eligibility Expires
James Riggen	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

* **Indicates appointment to an unexpired term.**

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)
(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	Appt Date	Term Expires	Eligibility Expires
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Lena Margita	10/09	Sept 30 2013	Sept 30 2013
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)
To sunset December 31, 2011

	Appt Date	Term Expires	Eligibility Expires
Joe Molina, Jr.	**09/03**	**Sept 30 2011**	**Sept 30 2011**
James W. Riggen (Architect)	**09/99**	**Sept 30 2011**	**Sept 30 2011**
Don Woodward (At Large)	11/11*	Sept 30 2012	Sept 30 2020
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018

ALTERNATES:

Vacancy	**Sept 30 2007**	
Vacancy	**Sept 30 2007**	

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)
(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Tyler Wolfe	04/11*	Sept 30 2012	Sept 30 2012
Jon S. Blair	02/09*	Sept 30 2012	Sept 30 2014
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	9/09	Sept 30 2013	Sept 30 2013
Alice Church	4/11*	Sept 30 2013	Sept 30 2015
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
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.)

	Appt Date	Term Expires	Eligibility Expires
Rosie Gransberry	06/08*	Oct 2012	Oct 2012
Norma Duran	11/08*	Oct 2012	Oct 2014
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 2013
ALTERNATES:			
Dennis Bade	11/11	Oct 2013	Oct 2015

JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	Appt. Date
(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	01/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	Appt. Date
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.

- **Indicates appointment to an unexpired term.**

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		Appt Date	Term Expires	Eligibility Expires
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
Ttracy 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)

	Appt Date	Term Expires
Fred Poe	12/95	Dec 31 2011

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
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

- **Indicates appointment to an unexpired term.**

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION

(Decision Making)
Membership - 7; Terms - 2 Years)

	Appt Date	Eligibility Term Expires	Expires
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)

	Appt Date	Term Expires	Eligibility Expires
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 2012**	**Jan 1 2012**

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)
(Membership - 5; Terms - 2 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Vacancy - (Damon L. Blakeley)	**07/07***	**Sept 30 2010**	
Adrianne 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

- **Indicates appointment to an unexpired term.**

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)

	Appt Date	Term Expires	Eligibility Expires
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Raymond McCarthy	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

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	Appt Date	Term Expires	Eligibility Expires
Richard D. Dunham (Realtor/Petro Eng.)	01/10	Sept 30 2013	Sept 30 2016
D. Patrick Darden (Petroleum Eng.)	02/10	Sept 30 2012	Sept 30 2015
Don Eubank (Drilling Eng.)	04/10	Sept 30 2012	Sept 30 2015
Paul Brown	11/11	Sept 30 2014	Sept 30 2017
David Rosen	11/11	Sept 30 2014	Sept 30 2017

* **Indicates appointment to an unexpired term.**

PARKS AND RECREATION COMMISSION

(Advisory)
(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	Appt Date	Term Expires	Eligibility Expires
Berry Simpson	**09/10***	**Sept 30 2011**	**Sept 30 2017**
Amanda McCann	11/11*	Sept 30 2012	Sept 30 2018
David Ham	09/06	Sept 30 2012	Sept 30 2012
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
Richard J. McGrath	09/10	Sept 30 2013	Sept 30 2016
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014

PERMIAN BASIN AIRPORT BOARD

(Advisory)
(Membership - 30; Terms - 1 year.)

	Appt. Date	Term Expires
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**
Isabelle Blanchard (Pecos)	**10/10**	**Sept 30 2011**
David Harrell (Snyder)	**10/07**	**Sept 30 2011**
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2012
Jim Little (Big Spring)	09/03	Sept 30 2012
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Don Bethel (Lamesa)	02/91	Sept 30 2012
Henry Cutbirth (Monahans)	09/05	Sept 30 2012
Willie Taylor (Odessa)	02/00	Sept 30 2012
Gloria Pena (Odessa)	03/03*	Sept 30 2012
Barbara Graff (Odessa)	06/10*	Sept 30 2012
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012
Glenn Wortham (Sweetwater)	10/07	Sept 30 2012
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2012
Larry Fry (Roswell, NM)	09/00	Sept 30 2012

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

* **Indicates appointment to an unexpired term.**

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION

(Decision Making)
(Membership - 2 (City); Terms - 2 Years)

	Appt Date	Term Expires	Eligibility Expires
Janet R. Pritchett (City)	05/09*	June 2012	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms.)

	Appt. Date
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)

	Appt Date	Term Expires	Eligibility Expires
Becky Ferguson, Chairman	**03/04***	**Sept 30 2011**	**Sept 30 2011**
Kevin Wilton	09/08*	Sept 30 2012	Sept 30 2015
Bill Woodruff	02/05*	Sept 30 2012	Sept 30 2012
Royce Watkins	02/08*	Sept 30 2012	Sept 30 2015
Karen York	01/10*	Sept 30 2012	Sept 30 2018
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
ALTERNATES:			
Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017

- **Indicates appointment to an unexpired term.**

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	Appt Date	Term Expires	Eligibility Expires
Neil Florer (College)	**07/01**	**Mar 20 2009**	**Mar 20 2009**
Dan Rush (City)	**07/01**	**Mar 20 2010**	**Mar 20 2010**
Mark T. Wellen (City), Vice Chairman	**07/01**	**Mar 20 2010**	**Mar 20 2010**
Jay Reynolds (Hospital)	**03/02**	**Mar 20 2010**	**Mar 20 2010**
Ralph Way (College)	**07/01**	**Mar 20 2010**	**Mar 20 2010**
Jimmy Davis (Hospital)	**03/07**	**Mar 20 2010**	**Mar 20 2013**
Randy Prude (County)	**03/07**	**Mar 20 2010**	**Mar 20 2013**
Judge Mike Bradford (County)	**01/07***	**Mar 20 2010**	**Mar 20 2014**
C. Mark Wheeler (City), Treasurer	**04/08**	**Mar 20 2011**	**Mar 20 2014**
Bob Lanier (City), Secretary	**04/03**	**Mar 20 2011**	**Mar 20 2011**
Brent Kennedy (City)	06/09	Mar 20 2012	Mar 20 2015
John L. Kennedy (City)	10/09*	Mar 20 2012	Mar 20 2018

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.)

	Appt Date	Term Expires	Eligibility Expires
Trudi Edwards	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Manny Ribera	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Todd Byars	02/08*	Sept 30 2012	Sept 30 2014
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015

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.**