

AGENDA FOR CITY COUNCIL MEETING
January 22, 2013 – 10:00 AM
Council Chamber - City Hall

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

OPENING ITEMS

1. Invocation - Rev. Pat Bryant, Travis Baptist Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Receive presentation from Midland Retired Seniors Volunteer Program.

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. Special Meeting of January 7, 2013.
 - b. Regular Meeting of January 8, 2013.
6. Consider a resolution authorizing the execution of a contract with Waldrop Construction Company, Incorporated, for the construction of an addition to the maintenance building plus the construction of a new storage building and soil storage bins at the Scharbauer Sports Complex at a cost of \$484,285.00; and allocating funds; and rejecting all bids received for the construction of an indoor batting cage facility. (GENERAL SERVICES) (2013 - 016)

7. Consider a resolution authorizing the purchase of nineteen (19) Police Package Sport Utility Vehicles from the sole bidder, Caldwell Country Chevrolet, of Caldwell, Texas, at a total cost of \$516,296.00. (GENERAL SERVICES) (2013 - 017)
8. Consider a resolution approving the award of a 1-year renewable Professional Services Agreement with Icon Enterprises, Incorporated, dba Civicplus, Incorporated, through the Texas Department of Information Resources, for the re-design and implementation of the City of Midland's Website at a total first-year cost of \$49,918.00; and this item was not bid but purchased through a State of Texas Cooperative Program. (GENERAL SERVICES) (2013 - 018)
9. Consider a resolution authorizing the execution of the second amendment to the land lease with W-T Hangar, LLC at the Midland International Airport; the original lease was authorized by Resolution No. 2012-178 and adopted by the Midland City Council on June 12, 2012; the first amendment was authorized by Resolution No. 2012-371 adopted by the Midland City Council on November 13, 2012. (CITY ATTORNEY'S OFFICE) (2013 - 019)
10. Consider a resolution authorizing the acceptance of a General Drainage Easement located on Lot 15A, Block 26, Wyndwood Estates, Midland, Midland County, Texas; and ordering recordation by the City Secretary. (ENGINEERING SERVICES) (2013 - 020)
11. Consider a resolution authorizing the acceptance of a 0.32-acre Utility Easement located in Section 25, Block 40, T-1-S, T&P RR Co. Survey, Midland, Midland County, Texas; and ordering recordation by the City Secretary. (ENGINEERING SERVICES) (2013 - 021)
12. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with Mockingbird Oaks Development, LLC for development of Los Patios Addition, Section 3, City and County of Midland, Texas (Generally located on the southwest corner of the intersection of Briarwood Avenue and Holiday Hill Road); and allocating and appropriating funds in the amount of \$102,035.00 therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2013 - 022)
13. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with Dr Horton-Texas, Ltd. for development of Legacy Addition, City and County of Midland, Texas (Generally located south of Deauville Boulevard and west of the Legends Park Development); and appropriating funds in the amount of \$98,552.00 therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2013 - 023)
14. Consider a resolution approving an Economic Development Agreement between the Midland Development Corporation and the City of Midland for the extension

of Tradewinds Boulevard and the construction of Associated Drainage and Utility Improvements between Thomason Drive and the Gateway Plaza Addition, as authorized by Chapter 501 of the Texas Local Government Code; and appropriating funds therefor. (ENGINEERING SERVICES) (2013 - 024)

15. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with SBC, LP for development of Westridge Park Addition, Section 23, City and County of Midland, Texas (Generally located west of Avalon Drive, south of Deauville Boulevard); and appropriating funds in the amount of \$46,374.00 therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2013 - 025)
16. Consider a 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. (FIRE) (2013 - 026)
17. Consider a resolution authorizing the Department of Utilities to cause to be published, in the Midland Reporter Telegram, all notices required pursuant to Chapter 26 of the Texas Parks and Wildlife Code of a public hearing regarding the City's intent to execute a Temporary Right-of-Way License with Oncor Electric Delivery Company, L.L.C., across a portion of Windlands Park; and directing the Utilities Director to comply with all requirements of Chapter 26 of the Texas Parks and Wildlife Code. (UTILITIES) (2013 - 027)
18. Consider a resolution authorizing the execution of a lease agreement with New Cingular Wireless PCS, L.L.C., for space at the Westwood Shell Avenue water tower site; said non-renewable lease agreement shall be for a term of five (5) years with a monthly rental of \$2,500.00. (CISD) (2013 - 028)

SECOND READINGS

19. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 5.00-acre tract of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned C-3, Commercial District, to be used as a PD, Planned District for a Housing Development (Generally located on the west side of Fairgrounds Road, south of Golf Course Road); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9094)
20. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 14.05-acre tract of land out of Section 19, Block 39, T-1-S, T&P RR

Co. Survey, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned PD, Planned District for Housing Development, to be used as an Amended Planned District (Generally located at the south side of West Wadley Avenue, approximately 450 feet east of Sunburst Drive); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9100)

21. Consider an ordinance on second reading amending Title III, "Departments", Chapter 1, "Water Department", Section 2, "Rates," Subsection (A), "Customers Inside of City Limits," Sub-Subsection 2., "Sewer Rates," of the City Code of Midland, Texas, so as to clarify the rates charged to customers inside the City limits for sewer service; containing a cumulative clause; containing a savings and severability clause; and ordering publication; and the City Manager shall notify all customers outside the City limits as required by state law. (UTILITIES) (9103)

PUBLIC HEARINGS

22. A approximately 10:30 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 3.395-acre tract of land out of Blocks 83 and 86, East Midland, City and County of Midland, Texas, which is presently zoned 2F, Two-Family Dwelling District, to be used as a C-3, Commercial District (Generally located on the east side of Tilden Street, approximately 780 feet south of East Golf Course Road); containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9105)
23. At approximately 10:33 a.m. hold a public hearing and consider an ordinance changing the Zoning Use Classification of the property described as Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas (Generally located on the east side of North Fairgrounds Road, approximately 900 feet south of East Golf Course Road), which is presently zoned AE, Agriculture Estate District, by permitting said property to be used under a Specific Use Permit Without Term for a Manufactured Home Park; 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) (9106)
24. At approximately 10:36 a.m. hold a public hearing and consider an ordinance changing the Zoning Use Classification of the property described as Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas (Generally located on the southwest corner of the intersection of West Louisiana

Avenue and North Colorado Street), 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 Restaurant 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. (DEVELOPMENT SERVICES) (9107)

MISCELLANEOUS

25. Consider an ordinance amending Title X, "Traffic Regulations", Chapter 1, "General Traffic Regulations", Section 2, "Permit Required for Parades and Processions", of the City Code of Midland, Texas, so as to clarify the permitting process and other regulations related to special events; containing a process for appealing the denial of a permit; containing a cumulative clause and expressly repealing any ordinance or portion thereof in conflict with this ordinance; containing a savings and severability clause; providing for a maximum penalty or fine of five hundred dollars (\$500.00) and not requiring a culpable mental state; establishing an effective date of March 1, 2013; and ordering publication. (CITY ATTORNEY'S OFFICE) (9108)
26. Consider a motion appointing a Mayor Pro Tempore. (CITY MANAGER)
27. Consider a motion making appointments to various Boards and Commissions.

EXECUTIVE SESSION

28. 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

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

**MIDLAND CITY COUNCIL
MINUTES
January 07, 2013**

The City Council convened in a Special Session in the Council Chamber, City Hall, Midland, Texas, at 10:05 a.m. on January 07, 2013.

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

1. Conduct Swearing-In Ceremony and all ancillary matters related thereto for the newly-elected Council Members.

The invocation was led by Pastor Tommy Hale of Mt. Calvary Missionary Baptist Church.

The Midland Fire Department Honor Guard presented the colors followed by the Pledge of Allegiance to the Flag.

City Secretary Amy Turner administered the Oath of Office to each newly elected officer, as follows:

W. Jeffrey Sparks	Council Member, District 1
John B. Love	Council Member, District 2
Jerry F. Morales	Council Member, At-Large
A. Scott Dufford	Council Member, At-Large

Mayor Perry presented a proclamation, flowers and a clock to outgoing Council Member Vicky Hailey thanking her for her dedicated service to the City of Midland.

Each Council Member was given an opportunity to speak. Many thanked Vicky Hailey for her service to the Council, and thanked their families and the residents of Midland for placing their trust in them.

All of the business at hand having been completed, the meeting adjourned at 10:30 a.m.

PASSED AND APPROVED the 22nd day of January, 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, Interim City Secretary

**MIDLAND CITY COUNCIL
MINUTES
January 08, 2013**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:30 a.m. on January 08, 2013.

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

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, Utilities Director Stuart Purvis, Downtown Development Manager Genora Young, Assistant Code Administration Manager Ron Jenkins, Building Official Steve Thorpe, Customer Service Manager Tony Goyang, Public Information Officer Sara Higgins, and Multimedia Developer Ryan Stout,

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

Jose Cuevas reported that the pipeline is ahead of schedule and expressed appreciation for the confidence placed in them.

Jay Edward provided an update on the project confirming they were ahead of schedule on the pipeline and on schedule for the rest of the project. He reviewed the administrative milestones achieved and reported that the operator has been hired and is in town assisting with the completion of the project. They received an award of for bond buyer deal of the year. He reviewed the construction milestones and shared pictures of the project in progress.

When asked about water quality, Mr. Edwards reported that preliminary testing has shown good water quality that will be ready to be delivered by summer.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:58 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:05 a.m., January 08, 2013.

Council Members present: Mayor W. Wesley Perry, Mayor Pro Tem Jerry Morales (At-Large), Council Member Scott Dufford (At-Large), Council Member Jeff Sparks (District 1), Council Member John Love (District 2), Council

Member John James (District 3), and Council Member Michael Trost (District 4).

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

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

OPENING ITEMS

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

PRESENTATIONS

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

- a. Recognition of the 2012 Christmas Parade Float Winners.

Parks & Recreation Supervisor Mike Sadler presented trophies to the Christmas Parade Float Winners. 3rd place – Grace Lutheran Church; 2nd place – Rock Church Ministries; 1st place – Natural Gas Services Group; Best Lit Float – American Eagle Logistics.

- b. Presentation of a Proclamation for Crime Stoppers Month.

Council Member Trost presented a proclamation for Crime Stoppers Month.

PUBLIC COMMENT

4. Receive public comments where individuals may address the City Council on City related issues and projects. Any deliberation of or decision by the City Council regarding the item being discussed shall be limited to a motion to place the item on the agenda for a subsequent meeting.

Ryder Warren, MISD Superintendant, updated the Council noting that 100 new students had been checked in. He provided Council with copies of presentations previously made to the school board, spoke briefly about security procedures on campus, addressed teen suicides, asked for help in finding replacement adolescent counseling services and answered questions about school finance and the current legislative session.

CONSENT AGENDA

Council Member Sparks moved to approve Consent Agenda items 6 - 13 excluding 5a, 11, 14; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love,

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

6. Approved a resolution approving a contract for pivot irrigation systems and parts for the Spraberry Farm. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 001

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

7. Approved a resolution approving a Professional Services Agreement with Freese & Nichols for consulting services for the Comprehensive Zoning Ordinance Update for the Planning Division. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 002

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

8. Approved a resolution approving a contract for dry cleaning services for 3 years for the Police Department, Fire Department, Municipal Court, Garage and Water & Wastewater. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 003

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

9. Approved a resolution of the City of Midland, Texas, requesting the Texas State Legislature and Governor of Texas take action to compel payday and auto title lenders to stop usurious lending and comply with the same standards as licensed consumer lenders in Texas. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2013 - 004

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

10. Approved a resolution approving an Interlocal Cooperation Contract for the employment of a Downtown Development Coordinator ("Coordinator") and rescinding Resolution #2012-337. (DOWNTOWN DEVELOPMENT)

RESOLUTION NO. 2013 - 005

RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERLOCAL

COOPERATION CONTRACT BETWEEN THE CITY OF MIDLAND, THE MIDLAND DEVELOPMENT CORPORATION ("MDC"), THE DOWNTOWN MIDLAND MANAGEMENT DISTRICT ("DMMD") AND THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NUMBER ONE ("TIRZ") REGARDING THE CITY OF MIDLAND'S EMPLOYMENT OF A DOWNTOWN DEVELOPMENT COORDINATOR, AS AUTHORIZED BY CHAPTER 791 OF THE TEXAS LOCAL GOVERNMENT CODE; AND RESCINDING RESOLUTION NO. 2012-337

12. Approved a resolution authorizing staff to accept a sewer easement along the east side of Tradewinds Boulevard between Thomason Drive and Champions Drive. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 007

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A 0.16-ACRE SEWER LINE EASEMENT LOCATED IN THE REMAINDER OF LOT 1, BLOCK 6, WESTRIDGE PARK ADDITION, SECTION 6, MIDLAND, MIDLAND COUNTY, TEXAS; AND ORDERING RECORDATION BY THE CITY SECRETARY

13. Approved a resolution to approve an Operating Certificate for a Taxicab Business. (POLICE)

RESOLUTION NO. 2013 - 008

RESOLUTION AUTHORIZING AN OPERATING CERTIFICATE FOR KHODIAR TRADE INVESTMENT DBA METRO TAXI, TO OPERATE A TAXICAB BUSINESS; SETTING FORTH CONDITIONS ACCOMPANYING THE CERTIFICATE; AND ESTABLISHING THE TERMS OF THE CERTIFICATE

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

5. Consider a motion approving the following minutes:

a. Regular Meeting of December 18, 2012.

Council Member James moved to approve the minutes of December 18, 2012; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: Love. ABSENT: None.

11. Consider a resolution authorizing staff to accept an offsite utility easement along the north side of I-20 between Terrell Street and Lamesa Road. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 006

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A 0.0916-ACRE UTILITY EASEMENT FROM VICTOR R. CESENA; AUTHORIZING THE ACCEPTANCE OF A 0.4769-ACRE UTILITY EASEMENT FROM THE ESTATE OF PAUL B. HANDEL; AUTHORIZING THE ACCEPTANCE OF A 0.2712-ACRE UTILITY EASEMENT FROM BAREFOOT 6/91, LTD.; SAID EASEMENTS BEING LOCATED IN SECTION 2, BLOCK 39, T-2-S, T&P RR CO. SURVEY, MIDLAND, MIDLAND COUNTY, TEXAS; AND ORDERING RECORDATION BY THE CITY SECRETARY

Council Member Love moved to adopt Resolution No. 2013 - 006; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

14. Consider a resolution approving a contract for the Municipal Solid Waste Landfill Cell 7 Excavation and Liner Construction project. (SOLID WASTE)

RESOLUTION NO. 2013 - 009

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH R.E. MONKS CONSTRUCTION COMPANY, LLC FOR THE LABOR, MATERIAL, EQUIPMENT, AND SUPERVISION NECESSARY FOR THE CONSTRUCTION OF CELL 7 EXCAVATION AND LINER CONSTRUCTION AT THE CITY OF MIDLAND LANDFILL; SAID CONTRACT TO BE FOR A TOTAL AMOUNT OF \$5,772,510.20; AND APPROPRIATING FUNDS

Council Member Dufford asked if this item was worth rebidding or was it better to have as one big project.

Solid Waste Director Morris Williams reported it is better to bid as one big project. He noted that they separated it to ensure that they would be in budget. He explained that the other items were bid as alternates.

Council Member Morales moved to adopt Resolution No. 2013 - 009; seconded by Council Member Sparks.

Discussion ensued about the difference in the bids and whether a local contractor should be given preference.

Holly Holder of Parkhill Smith and Cooper reported that it is not uncommon to do a base bid and add alternates to ensure that a municipality comes in under budget. He reported he has experience with Ranger Excavation noting they have not made a final decision on the use of their subcontractors for subcomponents. The fact that the bids were \$5,000 apart is good from an engineer's aspect because it means the bids were clear enough that the bidders could sharpen their pencils to give the best bid.

When asked if change orders were common with a cell excavation, Mr. Holder reported that if the plans are thorough you generally don't see change orders. His last cell project was twice the size and had no change orders. He clarified that standard practice is to recommend the lowest bidder as long as there are no red flags associated with the contractor.

City Attorney Keith Stretcher suggested that a motion should include the change of the date on the contract to January 9th.

Council Member Dufford moved to amend the motion by changing the date of the contract to January 9, 2013; seconded by Council Member Love. The motion to amend carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

The motion, as amended, carried by the following vote: AYE: Love, Morales, Perry,

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

SECOND READINGS

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

ORDINANCE NO. 9093

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

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

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9093 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

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

ORDINANCE NO. 9094

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

OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

Questions were raised about the second phase and whether the entire fence could be built in the first phase. The applicant was not present.

Council Member Morales moved to continue the item to a future date when applicant could be present; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

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

ORDINANCE NO. 9095

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 3.911-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, AND A 7.709-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND MOCKINGBIRD LANE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

Council Member James moved to approve the second and final reading of Ordinance No. 9095 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

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

ORDINANCE NO. 9098

AN ORDINANCE DESIGNATING THE I-20 WILDLIFE PRESERVE AS PARKLAND; AMENDING TITLE IX, "PUBLIC WAYS AND PROPERTY", CHAPTER 5, "PARKS AND PLAYGROUNDS", SECTION 18, "HOURS OF USE OF PUBLIC PARKS",

ESTABLISHING SUBSECTION (C) OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO ESTABLISH PROVISIONS CONCERNING HOURS OF USE AND RULES AND REGULATIONS FOR THE I-20 WILDLIFE PRESERVE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); AND ORDERING PUBLICATION

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

Council Member Love moved to approve the second and final reading of Ordinance No. 9098 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

19. At approximately 10:30 a.m. hold a public hearing and consider an ordinance on a request by Kenneth Gray for the vacation of a 45 foot by 311.94 foot portion of the right-of-way of North State Highway 349 adjacent to Lots 1, 2 and 3, Block 1, 349 Ranch Estates. (Generally located on the northeast corner of North State Highway 349 and Tejas.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9099

AN ORDINANCE VACATING AND ABANDONING A 45-FOOT BY 311.94-FOOT PORTION OF RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1, 2 AND 3, BLOCK 1, 349 RANCH ESTATES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH BIG SPRING STREET, BETWEEN ARAPAHOE ROAD AND TEJAS); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$14,037.00; AND ORDERING RECORDATION BY THE CITY SECRETARY.

Planning Division Manager gave an overview of the item noting Mr. Chalmers was requested vacation of the right-of-way in the front portion of his property. He also noted that another property owned by Mr. Gray has also requested vacation of the right-of-way (Agenda Item 29). There is a third owner that owns one of the five lots, Kevin Wilton, who submitted a letter of objection to the vacation. The appraisal district has estimated the land to be \$1 a square foot and the applicant is requesting the property be sold between 10 and 25 cents per square foot.

Mayor Perry opened the public hearing at 11:01 a.m.

Kevin Wilton, 503 West Broadway, stated he was the owner of Lot 3. He felt vacating the right-of-way would make his lot worthless because it would take away his ability to get in and out of his property in the front. He is already constrained with water and drainage issues on his property and expects to lose half of his property to deal with those issues. He has close to \$5,000 invested in planning of the building and a drainage study. He has not had time to get a solution planned that would suit everyone. He objected to this item and asked for more time to find a solution. He clarified that the change would force access to his property off of Tejas and it may force entry onto the property from a location that he does not want. He stated he did not want his name included on the other applications.

Ken Gray, 4505 Meadowlark, reported he filed his application in an effort to protect himself. He has storage units and a cell tower on his property. His concern is that he does not want to lose access to his property from Arapahoe and didn't feel comfortable doing this without having access from at least one direction, but prefers to keep both. When asked if he would be okay with deferring this item, Mr. Gray noted he would have no problem with a deferral.

Cliff Chalmers, 5100 Ashdown Place, he bought his initial piece of property for ten cents a square foot and property across the street was appraised at 25 cents a square foot. He felt that between 11 cents and 25 cents a square foot would be a more reasonable price. His intent is not to harm Mr. Gray's business and he felt he could still have access from Highway 349. He created access to a different property on Highway 349 that was approved by TXDOT at a cost of \$3,500. He is trying to acquire the 45 foot strip of land in front of his two lots because he is giving up about 100 feet on the east end of his property to create a retention basin.

Kevin Wilton stated he would just like to see this item die because he does not want it to continue hanging over his head.

There being no one else present wishing to speak, the public hearing was closed at 11:24 a.m.

Council Member Sparks moved to change the price to 11.5 cents per square foot; seconded by Council Member Dufford. The motion failed by the following vote: AYE: Sparks. NAY: Love, Morales, Trost, Perry, Dufford, James. ABSTAIN: None. ABSENT: None.

Council Member James moved to deny the ordinance on a request by Kenneth Gray for the vacation of a 45 foot by 311.94 foot portion of the right-of-way of North State Highway 349 adjacent to Lots 1, 2 and 3, Block 1, 349 Ranch Estates and to waive the application fee if resubmitted; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: Sparks. ABSTAIN: None. ABSENT: None.

20. At approximately 10:33 a.m. hold a public hearing regarding a proposed Oil and Gas Permit to Bluestem Energy Holdings, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Evans P 1) located 490 feet from the south line and 565 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the North Midkiff Drive, approximately 490 feet north of Mockingbird Lane.) (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins gave an overview of the item noting that one letter of objection had been received after the agenda packet went out. The Oil & Gas Advisory Committee reviewed the application and voted 2-2 against granting a two year variance for landscape and irrigation.

Mayor Perry opened the public hearing at 11:45 a.m. There being no one present wishing to speak, the public hearing was closed. No further action was taken on this item.

21. At approximately 10:36 a.m. hold a public hearing regarding a proposed Oil and Gas Permit to Bluestem Energy Holdings, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Evans A 1) located 993 feet from the north line and 490 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the North Midkiff Drive, approximately ¾ mile north of Mockingbird Lane.) (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins gave an overview of the item reporting that no letters of objection had been received. This item was reviewed by the Oil & Gas Advisory Committee and received unanimous recommendation for a two-year variance for landscaping and irrigation.

Mayor Perry opened the public hearing at 11:47 a.m. There being no one present wishing to speak, the public hearing was closed. No further action was taken on this item.

22. At approximately 10:39 a.m. hold a public hearing regarding a proposed Oil and Gas Permit to Bluestem Energy Holdings, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Evans B 2) located 490 feet from the north line and 2,328 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of North Midkiff Drive, approximately 1 mile north of Mockingbird Lane.) (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins gave an overview of the item noting that no letters of objection had been received and that the Oil & Gas Advisory Committee recommended that the two-year variance for landscaping and irrigation be approved.

Mayor Perry opened the public hearing at 11:58 a.m. There being no one present wishing to speak, the public hearing was closed. No further action was taken on this item.

23. At approximately 10:42 a.m. hold a public hearing regarding a proposed Oil and Gas Permit to Bluestem Energy Holdings, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Evans O 1) located 654 feet from the south line and 1,860 feet from the east line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the north side of Mockingbird Lane, approximately 1/3 mile west of North Midkiff Drive.) (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins gave an overview of the item noting that no letters of objection had been received and that the Oil & Gas Advisory Committee had a split vote on the two-year variance for landscape and irrigation.

Mayor Perry opened the public hearing at 11:58 a.m. There being no one present wishing to speak, the public hearing was closed. No further action was taken on this item.

24. At approximately 10:45 a.m. hold a public hearing and consider an ordinance on a request by David Miller for a zone change from PD, Planned District for a Housing Development to an Amended Planned District on 14.05-acres out of Section 19, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located at the south side of West Wadley Avenue, approximately 450 feet east of Sunburst

Drive.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9100

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 14.05-ACRE TRACT OF LAND OUT OF SECTION 19, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED AT THE SOUTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 450 FEET EAST OF SUNBURST DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Cameron Walker gave an overview of the item noting the intent is to build a three-story apartment complex. The development company has changed the building materials and has submitted new elevations for the record. Two letters of objection were received. He clarified that no other changes were being made and that a sight-line study was completed last fall.

Mayor Perry opened the public hearing at 12:05 a.m.

David Miller, McDougal Construction and Development, reported that previously the buildings were all stucco. When they looked at the surrounding neighborhood they felt that a stucco brick combination would be a better fit for the neighborhood.

There being no one else wishing to speak, the public hearing was closed at 12:09 p.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9100.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9100 in accordance with the Charter of the City of Midland; seconded by Council Member James.

Council Member Dufford moved to amend the motion by changing Section 2 Paragraph one to read "proposal shall conform to the conditions"; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

City Attorney Stretcher clarified that the Ordinance controls; not an elevation. He asked that any concerns be specified before the second reading of the Ordinance.

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

MISCELLANEOUS

25. Consider a resolution approving the issuance of a permit to Endeavor Energy Resources, L.P. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Chaps No. 2) located 2,167 feet from the north line and 600 feet from the west line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the south side of the Passage Way, approximately 600 feet east of North Midkiff Road.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 010

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO ENDEAVOR ENERGY RESOURCES, LP ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2,167 FEET FROM THE NORTH LINE AND 600 FEET FROM THE WEST LINE, SECTION 9, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF PASSAGE WAY, APPROXIMATELY 600 FEET EAST OF NORTH MIDKIFF ROAD)

Oil & Gas Compliance Officer Ron Jenkins gave an overview of the item noting it was reviewed by the Oil & Gas Advisory Committee. He reported that since the prior meeting Endeavor has added Control of Well Insurance. He also reported that a surface agreement was not being required due to the prior settlement with Chaps #1. Four letters of objection were received. When asked how Endeavor conducted business in the City limits, Mr. Jenkins reported they were very prompt in addressing items and that they had a good working relationship.

Council Member James moved to adopt Resolution No. 2013 - 010; seconded by Council Member Love.

Council Member Trost asked Janet Walton to address the City Council.

Janet Walton, 2700 N. Garfield, reported she has not continued to meet with Endeavor because it is unclear who is representing them due to a divorce. She spoke about certain restrictions that would be placed on Endeavor that were not in the first statute. She noted there is an appeal pending in Eastland Court of Appeals on a takings lawsuit filed against the City of Midland and that if it is ruled there was a takings, the City will be required to reimburse them.

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

26. Consider a resolution approving the issuance of a permit to Endeavor Energy Resources, L.P. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Chaps No. 3) located 2,167 feet from the north line and 1,950 feet from the west line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the south side of the Passage Way, approximately 1,950 feet east of North Midkiff Road.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 011

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO ENDEAVOR ENERGY RESOURCES, LP ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2,167 FEET FROM THE NORTH LINE AND 1,950 FEET FROM THE WEST LINE, SECTION 9, BLOCK "X", H.P. HILLIARD

SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF PASSAGE WAY, APPROXIMATELY 1,950 FEET EAST OF NORTH MIDKIFF ROAD)

Oil & Gas Compliance Officer Ron Jenkins reported two letters of objection had been received, this was the same as the previous application and Control of Well Insurance has been provided.

Council Member Love moved to adopt Resolution No. 2013 - 011; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: Perry. ABSENT: None.

27. Consider a resolution authorizing the execution of a Road Repair Agreement with Endeavor Energy Resources, LP, regarding its applications to drill oil and gas wells (Chaps No. 2 and Chaps No. 3) within the City Limits, in Section 9, Block "X", H.P. Hilliard Survey, Midland County, Texas. The Road Repair Agreement will cover Midkiff Road and be in the amount of \$75,000.00. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 012

RESOLUTION AUTHORIZING THE EXECUTION OF A ROAD REPAIR AGREEMENT WITH ENDEAVOR ENERGY RESOURCES, LP REGARDING ITS APPLICATIONS TO DRILL OIL AND GAS WELLS (CHAPS NO. 2 AND CHAPS NO. 3) WITHIN THE CITY LIMITS IN SECTION 9, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

Oil & Gas Compliance officer Ron Jenkins reported the agreement included \$75,000 for multiple wells.

Council Member James moved to adopt Resolution No. 2013 - 012; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: Perry. ABSENT: None.

28. Consider a resolution authorizing a right-of-way crossing license with the City of Midland, Texas and Endeavor Energy Resources, L.P. for the purpose of installing one 3" Gas, Oil and Production Water poly pipeline and one 4" Fresh Water poly pipeline line contained within an 8 1/2" standard steel casing under a portion of Passage Way right-of-way within the City of Midland, Texas, Section 9, Block X, H.P. Hilliard Survey, City of Midland, Midland County Texas. (ENGINEERING SERVICES)

ORDINANCE NO. 2013-013

RESOLUTION AUTHORIZING A RIGHT-OF-WAY CROSSING LICENSE WITH THE CITY OF MIDLAND, TEXAS AND ENDEAVOR ENERGY RESOURCES, L.P.; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF INSTALLING ONE (1) THREE INCH (3") OIL AND GAS, PRODUCTION WATER POLY PIPELINE, AND ONE FOUR INCH (4") FRESH WATER POLY PIPELINE ALL CONTAINED WITHIN AN EIGHT AND ONE-HALF INCH (8 1/2) STANDARD STEEL CASING UNDER A PORTION OF PASSAGE WAY; THE CASING IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 9, BLOCK "X", H.P. HILLIARD SURVEY, MIDLAND, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE (5) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND MAY BE RENEWED AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 90 DAYS WRITTEN

REQUEST PRIOR TO EXPIRATION

Traffic Engineer Gary Saunders provided an overview of the item noting it was for flow lines and gathering lines for the permit that was just issued.

Council Member Trost moved to adopt Resolution No. 2013-013; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: Perry. ABSENT: None.

29. Continue consideration of an ordinance vacating a 45 foot by 215 foot portion of the right-of-way of North State Highway 349 adjacent to Lots 1 and 2, Block 18, 349 Ranch Estates, Section 3. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9101

AN ORDINANCE VACATING AND ABANDONING A 45-FOOT BY 215-FOOT PORTION OF RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1 AND 2, BLOCK 18, 349 RANCH ESTATES ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF STATE HIGHWAY 349 AND ARAPAHOE ROAD); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$9,675.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

Council Member James moved to deny an ordinance vacating a 45 foot by 215 foot portion of the right-of-way of North State Highway 349 adjacent to Lots 1 and 2, Block 18, 349 Ranch Estates, Section 3 with the amendment to waive the application fee if a new application is received; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: Sparks. ABSTAIN: None. ABSENT: None.

30. Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Evans E 1) located 2,073 feet from the north line and 1,009 feet from the west line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the east side of the North Midland Drive, approximately 3/4 mile north of Mockingbird Lane.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 014

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2,073 FEET FROM THE NORTH LINE AND 1,009 FEET FROM THE WEST LINE, SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 3/4 OF A MILE NORTH OF MOCKINGBIRD LANE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

Oil & Gas Compliance Officer Ron Jenkins gave an overview of the item noting that one letter of objection had been received and that the Oil & Gas Advisory Committee recommended no variance be given for landscape and irrigation but the landowner was requesting the variance be granted.

Council Member Sparks moved to adopt Resolution No. 2013 - 014; seconded by Council Member Love.

Council Member James moved to amend the motion by not granting a two year variance on landscaping and irrigation. Due to a lack of a second, the motion died.

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

31. Consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Pecan Acres 23 #11) located 947 feet from the west line and 660 feet from the south line located in Section 23, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the north side of Briarwood Avenue, approximately one half mile west of Golden Gate Drive.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 015

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CALLON PETROLEUM OPERATING COMPANY ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 947 FEET FROM THE WEST LINE AND 660 FEET FROM THE SOUTH LINE, SECTION 23, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY ½ MILE WEST OF GOLDEN GATE DRIVE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

Oil and Gas Compliance Officer Ron Jenkins reported that no letters of objection had been received and that the Oil & Gas Advisory Committee recommended that no variance be given for landscaping and irrigation. The road repair agreement will be consolidated with their other permits.

Council Member James moved to adopt Resolution No. 2013 - 015; seconded by Council Member Morales.

Jimmy Wright, 1608 Bedford, land manager for Callon Petroleum, clarified they are requesting a temporary two-year waiver for the installation of landscaping and irrigation because they have a number of other wells in the area that they have received a variance for and would like to maintain flexibility for future development in the next couple of years. They do not want to plant trees and then have to rip them out later. They are trying to maintain consistency.

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

32. Consider an ordinance on a request for the vacation of the 0.23-acre north/south and east/west alley adjacent to Lot 1, Block 10, and to Lot 15, Block 11, Trueland Addition, Section 2, City and County of Midland, Texas. (Generally located near the southwest corner of E. Scharbauer Drive and N. Fairgrounds Road.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9102

AN ORDINANCE VACATING AND ABANDONING A 0.23-ACRE NORTH/SOUTH AND EAST/WEST ALLEY ADJACENT TO LOT 1, BLOCK 10, AND LOT 15, BLOCK 11, TRUELAND ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NEAR THE SOUTHWEST CORNER OF THE INTERSECTION OF SCHARBAUER DRIVE AND NORTH FAIRGROUNDS ROAD); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$902.00; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY.

Planning Division Manager Cameron Walker gave an overview of the item noting the property had been platted on two separate occasions but never developed. When the property is developed they will give land to the City for the widening of Midland Draw. He noted that they do not expect this item back for a second reading for some time.

Deputy City Secretary Reyes read the caption of Ordinance No. 9102.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9102 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

33. Consider a motion interpreting Ordinances 7500 and 6862 as they relate to the development of property for medical office and residential uses. Said ordinances regulate property generally located on the south side of Andrews Highway 200 feet east of Upland Drive. (DEVELOPMENT SERVICES)

Planning Division Manager Cameron Walker provided an overview of the item noting that Dr. Wasenburg would like to build a single residence behind his chiropractic clinic and asked Council to make an interpretation of governing ordinances to determine if it is an appropriate use. He reported the current ordinance specifies where the clinic has to be and regulates signage, but does not regulate any additional use of the property for residential purposes. He noted if approved, the site plan would need to be amended to show where the residence would be located. In his opinion there was room at the back of the property for a residence. He also noted that many of the businesses were made to look like private residences in the area.

Council Member Sparks moved to approve interpreting Ordinances 7500 and 6862 as they relate to the development of property for medical office and residential uses to allow for building a residential structure; seconded by Council Member Trost.

Dr. Wasenburg noted the request was important to him. He stated he intentionally built his business to look like a home as did others in the area. He intends to live in the home and continue to practice part-time while share his practice with another practitioner.

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

34. Consider an Ordinance Amending Title III. "Departments", Chapter 1, "Water

Department", Section 2, "Rates", Subsection (A), "Customers Inside of City Limits", of the City Code of Midland, Texas, so as to Clarify the Rates Charged for Water and Sewer Services; Containing a Cumulative Clause; Containing a Savings and Severability Clause; and Ordering Publication; and the City Manager Shall Notify All Customers Outside the City Limits as Required by State Law. (UTILITIES)

ORDINANCE NO. 9103

AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 1, "WATER DEPARTMENT", SECTION 2, "RATES," SUBSECTION (A), "CUSTOMERS INSIDE OF CITY LIMITS," SUB-SUBSECTION 2., "SEWER RATES," OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO CLARIFY THE RATES CHARGED TO CUSTOMERS INSIDE THE CITY LIMITS FOR SEWER SERVICE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION; AND THE CITY MANAGER SHALL NOTIFY ALL CUSTOMERS OUTSIDE THE CITY LIMITS AS REQUIRED BY STATE LAW

Utility Director Stuart Purvis reported that the rates are not being changed they are only clarifying what rates are currently being charged today.

Deputy City Secretary Reyes read the caption of Ordinance No. 9103.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9103 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

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

No appointments were made.

EXECUTIVE SESSION

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

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

Mayor Perry recessed the meeting to Executive Session at 12:15 p.m. noting that the remaining items would be heard at 1:00 p.m.

The entire Council met in Executive Session until 1:04 p.m. The regular meeting reconvened at 1:06 p.m.

All of the business at hand having been completed, the meeting adjourned at 1:53 p.m.

PASSED AND APPROVED the 22nd day of January, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 1/22/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution appropriating funds and approving a contract for the construction of a maintenance building addition, new storage building and soil storage bins and rejecting all bids received for the batting cage facility at the Scharbauer Sports Complex. 5842-13

Purpose:

Approval of a contract for the construction of a maintenance building addition, new storage building and soil storage bins and rejecting all bids received for the indoor batting cage facility at the Scharbauer Sports Complex.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$484,285.00 Scharbauer Sports Complex Fund

Discussion:

We received bids from four contractors. The 4B Board recommended that a contract be entered into with the low bidder, Waldrop Construction Co., Inc., for the construction of a maintenance building, new storage building and soil storage bins. They also recommended rejecting all bids for the batting cage facility. Please see the attached memo from Tina Jauz, Community Services Director, for additional information.

Therefore, please consider approval of a resolution authorizing a contract with Waldrop Construction Co., Inc. of Brownwood, Texas for the items shown below for a total cost of \$484,285.00.

A.	Maintenance Building Addition	\$391,800.00
B.	New Storage Building	\$137,800.00
	Discount for awarding items A&B	(\$99,315.00)
D.	Soil Storage Bins	\$54,000.00
	Total Cost	<u>\$484,285.00</u>

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: January 11, 2013
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Capital Projects - SSC

Bids were opened on December 19, 2012, for four capital projects at the Scharbauer Sports Complex. They include the Maintenance Building Expansion, Indoor Batting Cage, Storage Area at Citibank, and Soil Bins for Citibank.

The 4B Board met on January 9, 2013, to discuss the bids. Given the totals of the bids, the 4B recommends funding three of the four projects with already approved capital project funding instead of recommending additional funding. The three projects that 4B is recommending include:

Maintenance Building Expansion	\$391,800
New Storage Building at Citibank	\$137,800
<i>Discount for awarding</i>	
<i>Maintenance Building and</i>	
<i>Storage Area</i>	(\$99,315)
Soil Storage Bins at Citibank	<u>\$54,000</u>
Total	\$484,285

The 4B recommends waiting to construct the Indoor Batting Cage and to use the funds approved through the budget for the other three projects. Construction costs on all four projects were significantly higher than originally estimated. The lowest bid received for an Indoor Batting Cage was \$564,800. Originally budgeted was \$350,000. The 4B anticipates recommending the project again in the future as a capital item. Originally budgeted for the Maintenance Building Expansion was \$250,000 and originally budgeted for the new Storage Area was \$20,000.

The Maintenance Building, located on the east side of Grande Stadium, is used by the city to store equipment and office the foreman onsite. The plans would allow for more storage space, including a separate entrance area for MISD to store their equipment. The project doubles the space adding 1,500 square feet.

The Storage Area at Citibank was part of the original plans of the SSC. The project was cut in an effort to keep the project within budget. The same is true for the batting cage. The storage area will allow the RockHounds to store their novelty items.

That the sum of \$262,285 is hereby allocated from the Scharbauer Sports Complex Fund (620) Sports Complex (620) Interfund Transfer (0629) Sports Complex Construction Fund (6398) budget account to the SSC Maintenance Building and Storage Improvements Project (9012)

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH WALDROP CONSTRUCTION COMPANY, INCORPORATED, FOR THE CONSTRUCTION OF AN ADDITION TO THE MAINTENANCE BUILDING PLUS THE CONSTRUCTION OF A NEW STORAGE BUILDING AND SOIL STORAGE BINS AT THE SCHARBAUER SPORTS COMPLEX AT A COST OF \$484,285.00; AND ALLOCATING FUNDS; AND REJECTING ALL BIDS RECEIVED FOR THE CONSTRUCTION OF AN INDOOR BATTING CAGE FACILITY

WHEREAS, the City Manager approved plans and specifications and authorized the advertisement for bids for the construction of an addition to the maintenance building, plus the construction of a new storage building, soil storage bins and a new indoor batting cage facility at the Scharbauer Sports Complex; and

WHEREAS, bids received for the construction of the indoor batting cage facility came in much higher than was expected; and

WHEREAS, the City Council finds it to be in the public interest to reject all bids received for the construction of the indoor batting cage facility; and

WHEREAS, Waldrop Construction Co., Inc., submitted the lowest and most responsible bid for the construction of an addition to the maintenance building, plus the construction of a new storage building and soil storage bins at the Scharbauer Sports Complex (“Construction”) in the total amount of \$484,285.00, as shown on the bid tabulation attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Waldrop Construction Co., Inc., for said Construction, at a cost of \$484,285.00; and

WHEREAS, the City Council finds it to be in the public interest to appropriate the necessary funds;

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

SECTION ONE. The recitals stated above are hereby adopted.

SECTION TWO. That all bids received for the construction of the indoor batting

cage facility are hereby rejected.

SECTION THREE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Waldrop Construction Co., Inc., for said Construction, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION FOUR. That the sum of \$262,285.00 is hereby allocated from the Scharbauer Sports Complex Fund (620) Sports Complex (620) Interfund Transfer (0629) Sports Complex Construction Fund (6398) budget account to the SSC Maintenance Building and Storage Improvements Project (9012).

SECTION FIVE. That the City Treasurer is hereby authorized and directed to pay Waldrop Construction Co., Inc., pursuant to the terms of said contract from funds available in the SSC Maintenance Building and Storage Improvements Project (9012) upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

RFP 5842-13 Maintenance Bldg, Storage Rm, Batting Cage at SSC OPENED December 19, 2012 Est. Cost:			Mid-Tex of Midland 5206 West Wadley Midland, Texas Alan White (432) 697-2282		J.C. Roberts 400 S. Meadow Odessa, Texas Jeff Roberts (432) 580-6161		Minnix Commercial P.O. Box 64895 Lubbock, Texas Jerry Smith (806) 798-9761		Waldrop Construction P.O. Box 3298 Big Spring, Texas Lee George (432) 263-2416	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
A	1	Maintenance Building Addition - Base Bid, Lump sum	\$430,000.00	\$430,000.00	\$352,386.00	\$352,386.00	\$387,000.00	\$387,000.00	\$391,800.00	\$391,800.00
B	1	New Storage Building - Base Bid, Lump sum	\$88,000.00	\$88,000.00	\$99,283.00	\$99,283.00	\$89,400.00	\$89,400.00	\$137,800.00	\$137,800.00
C	1	New Indoor Batting Cage Facility - Base Bid, Lump sum	\$658,000.00	\$658,000.00	\$651,283.00	\$651,283.00	\$568,300.00	\$568,300.00	\$564,800.00	\$564,800.00
C.1	1	Alternate 1 - Smaller Batting Cage Facility - Base Bid, Lump sum	\$562,000.00	\$562,000.00	\$579,245.00	\$579,245.00	\$490,000.00	\$490,000.00	\$468,300.00	\$468,300.00
D	1	Alternate 2 - Soil Storage Bins	\$51,000.00	\$51,000.00	\$67,990.00	\$67,990.00	\$51,700.00	\$51,700.00	\$54,000.00	\$54,000.00
E	1	Combined Base Bid for Items A,B and C listed above, Lump sum	\$1,176,000.00	\$1,176,000.00	\$1,102,952.00	\$1,102,952.00	\$1,044,700.00	\$1,044,700.00	\$1,094,400.00	\$1,094,400.00
		If bid items A & B are awarded deduct \$99,315.00 from total of A & B								(\$99,315.00)
										\$995,085.00
F	1	Combined Base Bid for Items A,B,C and D Listed above, Lump sum	\$1,227,000.00	\$1,227,000.00	\$1,170,942.00	\$1,170,942.00	\$1,096,400.00	\$1,096,400.00	\$1,148,400.00	\$1,148,400.00
		If bid items A & B are awarded deduct \$99,315.00 from total of A & B								(\$99,315.00)
										\$1,049,085.00
G	1	Combined Base Bid for Items A,B and C.1 Listed above, Lump sum	\$1,080,000.00	\$1,080,000.00	\$1,030,914.00	\$1,030,914.00	\$966,400.00	\$966,400.00	\$997,900.00	\$997,900.00
		If bid items A & B are awarded deduct \$99,315.00 from total of A & B								(\$99,315.00)
										\$898,585.00
H	1	Combined Base Bid for items A,B,C.1 and D Listed above, Lump sum	\$1,131,000.00	\$1,131,000.00	\$1,098,904.00	\$1,098,904.00	\$1,018,100.00	\$1,018,100.00	\$1,051,900.00	\$1,051,900.00
		If bid items A & B are awarded deduct \$99,315.00 from total of A & B								(\$99,315.00)
										\$952,585.00
		Project Completion		240 days		180 days		180 days		180 days



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 1/22/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 18 two wheel drive white police package SUVs and 1 four wheel drive red police package SUV for the Garage Division. 5986-13

Purpose:

Approval of a resolution authorizing the purchase of police package sport utility vehicles for the Garage Division.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$516,296.00 Garage Fund

Discussion:

Ten car dealerships were emailed a request for bid. A single bid was received for 18 two wheel drive white sport utility vehicles at \$26,984.00 each and 1 four wheel drive red sport utility vehicle at \$30,584.00 from Caldwell Country Chevrolet.

Therefore, please consider a resolution authorizing the purchase of:

18	Two wheel drive SUVs, white	\$26,984.00	\$485,712.00
1	Four wheel drive SUV, red	\$30,584.00	\$30,584.00

from Caldwell Country Chevrolet of Caldwell, Texas for a total cost of \$516,296.00.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE PURCHASE OF
NINETEEN (19) POLICE PACKAGE SPORT UTILITY
VEHICLES FROM THE SOLE BIDDER, CALDWELL
COUNTRY CHEVROLET, OF CALDWELL, TEXAS, AT
A TOTAL COST OF \$516,296.00**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for eighteen (18) 2-wheel-drive white police package sport utility vehicles and one (1) 4-wheel-drive red police package sport utility vehicle; and

WHEREAS, Bid No. 5986-13 was opened on January 9, 2013, with the lowest and most responsible bid, which was also the only bid, being submitted from Caldwell Country Chevrolet, of Caldwell, Texas, at a total cost of \$516,296.00, 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 is hereby authorized and directed to purchase the eighteen (18) 2-wheel-drive white police package sport utility vehicles, and the one (1) 4-wheel-drive red police package sport utility vehicle, as specified in the bid tabulation, from Caldwell Country Chevrolet, of Caldwell, Texas, at an estimated total price not to exceed \$482,090.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Caldwell Country Chevrolet, of Caldwell, Texas, an amount not to exceed \$516,296.00, from funds available in the Fiscal Year 2012 – 2013 Garage Fund (750) General Services (040) Garage (0752) Light and Medium Trucks (8820) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5986-13 Police Package SUV OPENED January 9, 2013 Est. Cost: \$570,000.00			Caldwell Country Chevrolet PO Box 271 Caldwell, TX 77836 Avery Knapp (979) 567-6116	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	18	Police Package SUV White 2 WD	26,984.0000	\$485,712.00
			Chevrolet Tahoe PPV CC10706	
			3 Year/36,000m Warranty	
2	1	Police Package SUV Red 4WD	30,584.0000	\$30,584.00
			Chevrolet Tahoe SSV 4x4 CK10706	
			3 year/36,000m Warranty	
		Delivery Time	90-120 Days	
TOTALS:				\$516,296.00

Bidding Summary:

10 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.

9 Bidders did not respond.

All American Chevrolet, Lithia Motors, Planet Ford, Rogers Ford, Sam Packs 5 Star Ford, Scoggin-Dickey
 Sewell Cheverolet, Meador Auto, Gene Messer



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 1/22/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving an agreement with Icon Enterprises, Inc., dba CivicPlus, Inc. for the redesign and implementation of the City of Midland's website for the Communications and Information Systems Department. 5787-13

Purpose:

Approval of an agreement for the redesign and implementation of the City of Midland's website.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$49,918.00 General Fund

Discussion:

This website redesign service is available from Icon Enterprises, Inc., dba CivicPlus, Inc. through Texas Contract DIR-SDD-1636. The agreement with Icon Enterprises, Inc., dba CivicPlus, Inc. has no liability or worker's compensation insurance requirements. Please see the memo from the Chief Information Officer for further discussion on this purchase.

Therefore, please consider the approval of an agreement for website redesign and implementation with Icon Enterprises, Inc., dba CivicPlus, Inc. of Manhattan, Kansas in accordance with Texas Contract DIR-SDD-1636 for a total cost of \$49,918.00.

RESOLUTION NO. _____

RESOLUTION APPROVING THE AWARD OF A 1-YEAR RENEWABLE PROFESSIONAL SERVICES AGREEMENT WITH ICON ENTERPRISES, INCORPORATED, DBA CIVICPLUS, INCORPORATED, THROUGH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES, FOR THE RE-DESIGN AND IMPLEMENTATION OF THE CITY OF MIDLAND'S WEBSITE AT A TOTAL FIRST-YEAR COST OF \$49,918.00; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A STATE OF TEXAS COOPERATIVE PROGRAM

WHEREAS, the Texas Department of Information Resources (DIR) is a cooperative program in which the City participates on purchases; and

WHEREAS, the Director of the Information Systems Department has negotiated the terms of a 1-year renewable professional services agreement with Icon Enterprises, Inc., dba CivicPlus, Inc., ("CivicPlus") for the re-design and implementation of the City of Midland's website, at a total proposed first-year cost to the City of \$49,918.00 through the DIR; and

WHEREAS, the Council finds the price proposed for said re-design and implementation services through the DIR to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a professional services agreement with CivicPlus for said re-design and implementation services through the DIR;

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 1-year renewable professional services agreement with CivicPlus for the re-design and implementation of the City of Midland's website through the DIR, at a total estimated first-year cost of \$49,918.00, said agreement 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

CivicPlus for said re-design and implementation services from funds available in the Fiscal Year 2012 – 2013 General Fund (001) Communications and Information Systems (030) Information Systems (0032) Software Maintenance (3405) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sharlett Chowning, Information Services Director

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PROFESSIONAL SERVICES AGREEMENT
FOR WEBSITE REDESIGN AND IMPLEMENTATION
5787-13

THIS AGREEMENT is made and effective the 23rd day of January 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "OWNER", and Icon Enterprises, Inc., dba CivicPlus, Inc., hereinafter referred to as "CONSULTANT."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CONSULTANT shall create a unique website for the OWNER that includes the all functionality as defined in Exhibit A – CivicPlus Website Redesign and Implementation, attached hereto.

ARTICLE II. SERVICES TO BE PERFORMED

1. CONSULTANT shall provide those services described in Exhibit "A."
2. CONSULTANT shall perform all the services under this Agreement consistent with the same level of skill and care as other design professionals in approximately the same location at approximately the same point in time and for the same type of projects. CONSULTANT represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A". After 48 consecutive months under these terms and associated pricing, OWNER becomes fully eligible for a CP Basic Redesign at no additional cost. See Exhibit A, page 22, for complete details.

ARTICLE III. FINANCIAL CONSIDERATIONS

OWNER agrees to pay CONSULTANT according to the schedule set forth in Exhibit "A". One-third of the total First Year Fee will be billed upon completion of design; one-third of the total First Year Fee will be billed upon completion of content. The remainder of the total First Year Fee and any additional Project Development services will be invoiced after training has been completed.

The OWNER shall sign a project completion and acceptance form prior to project go-live. The date may be extended if material system or operational failures are encountered. Immediately after completing training the final bill for the project development services will be billable and

payable. All Parties agree that the website will not go-live until the project is accepted in writing by the OWNER.

Total First Year invoices are due by the first of the following month, but no later than 30 days from invoice date. Project Development will be discontinued if payment is not made within 30 days after the invoice due date.

Invoicing for subsequent years Annual Support, Maintenance & Hosting begins one (1) year from contract signing. Annual charges may be pro-rated to correlate with the OWNER's budget year.

Provided the OWNER's account is current, at any time the OWNER may request an electronic copy of the website Customer Content (graphic designs, web content, page designs and banners). OWNER agrees to pay \$250 per completed request. Provided the OWNER's account is current, upon termination of services OWNER may request a complimentary electronic copy of website Customer Content and GCMS Software.

After project go-live, if the OWNER's account exceeds 60 days past due, Support will be discontinued until the OWNER's account is made current. If the OWNER's account exceeds 90 days past due, Annual Support, Maintenance & Hosting will be discontinued until the OWNER's account is made current. Owner will be given 30 days notice prior to discontinuation of services for non-payment.

A finance charge of 0.5 percent (%) per month, will be added to past due accounts. Payments received will be applied first to finance charges, then to the oldest outstanding invoice(s).

ARTICLE IV. TERM

The term of this Agreement shall be for one year with an Annual Support, Maintenance & Hosting Agreement available at the end of the contract term. Either party may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to the Consultant. The parties to this Contract understand and agree that it is in the Owner's sole discretion to cancel the Contract during the term of the Contract without penalty to the Owner. The Consultant has no expectation and has received no guarantees that this Contract will not be

terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective. .

In the event of early termination of this Agreement by the OWNER, full payment of services rendered prior to the termination date is due within 15 days of termination and OWNER forfeits eligibility for the CP Basic Redesign (Exhibit A - page 22) and all funds applied to such eligibility.

In the event that neither party gives one hundred eighty (180) days' notice prior to the end of the initial or any subsequent term, this Agreement will automatically renew for up to three (3) additional contract terms. After 48 consecutive months under the terms of this contract and associated pricing, OWNER will be fully eligible for a CP Basic Redesign at no additional cost. Each year this Agreement is in effect, a technology investment and benefit fee of 5 percent (%) of the total Annual Support, Maintenance & Hosting costs will be applied.

ARTICLE V. CONTRACT PERSONAL

This Agreement provides for personal or professional services, and CONSULTANT shall not assign this Agreement, in whole or in part, without the prior written consent of OWNER.

ARTICLE VI. OWNERSHIP AND CONFIDENTIALITY OF DOCUMENTS AND OTHER WORK PRODUCT

OWNER owns all data and software associated with the website – the design, the page content, all module content, all importable / exportable data, all archived information and the GCMS. The OWNER's data is not to be shared and daily site backups, redundant power and internet systems, site redundancy and emergency recovery procedures should be in use.

If this contract is canceled due to the wishes of the OWNER, CONSULTANT will transfer to the OWNER all associated data and software in order to make a smooth transition to the OWNER's new hosting arrangement and, if necessary, management platform.

If CONSULTANT were to cease support for the software due to bankruptcy, acquisition, a change in business operations or other circumstances, OWNER would also receive full and

complete control of all website data and software. OWNER would further receive provision of the core code.

ARTICLE VII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that CONSULTANT 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 CONSULTANT shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondent superior shall not apply as between OWNER and CONSULTANT, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between OWNER and CONSULTANT. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the OWNER. 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. CONSULTANT 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 and any provisions in this Agreement which may appear to give OWNER the right to direct CONSULTANT as to details of doing the work herein covered or to exercise a measure of control over the work shall be deemed to mean that CONSULTANT shall follow the desires of the OWNER in the results of the work only. OWNER shall not have the power to direct the order in which the work is done. OWNER shall not have the right to control the means, methods or details of CONSULTANT's work. CONSULTANT shall assume exclusive responsibility for the work. CONSULTANT is entirely free to do the work in its own way.

ARTICLE IX. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, THE PARTIES AGREE TO WAIVE AND DO HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM EITHER HAS OR MAY HAVE IN THE FUTURE AGAINST THE OTHER, 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. EACH PARTY SPECIFICALLY AGREES THAT IF EITHER 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 PARTIES AGREE TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH EACH MIGHT OTHERWISE BE ENTITLED.

THE PARTIES AGREE THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE PARTIES ACKNOWLEDGE THAT EACH UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

ARTICLE X. SOVEREIGN IMMUNITY

By executing this agreement 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.

ARTICLE XI. NO THIRD PARTY BENEFICIARIES

The OWNER'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 XII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, CONSULTANT 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 CONSULTANT 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.

ARTICLE XIII. INTELLECTUAL PROPERTY, OWNERSHIP & CONTENT RESPONSIBILITY

Upon full and complete payment of submitted invoices for the Project Development and upon launch of the website, OWNER will own the graphic designs, web content, page designs and banners ("OWNER Content"), as well as the GCMS Software.

Upon completion of the development of the site, OWNER will assume full responsibility for website content maintenance and content administration. OWNER, not CONSULTANT, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Content.

OWNER shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Software in any way; (ii) modify or make derivative works based upon the software; (iii) create Internet "links" to the Software or "frame" or "mirror" any Government Content Management System administrative access on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Software in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Software, or (c) copy any ideas, features, functions or graphics of the Software.

The CONSULTANT name, the CONSULTANT logo, and the product and module names associated with the GCMS System are trademarks of CivicPlus, and no right or license is granted to use them.

ARTICLE XIV. MARKETING

CONSULTANT will create a case study related to OWNER's website and will include an example of the OWNER's home page and a link to the OWNER's website on the CONSULTANT corporate website.

OWNER will work with the CONSULTANT's Marketing Department to create a news item to be released in conjunction with their project Go-Live date.

OWNER allows to display a "Powered by CivicPlus" insignia, and web link at the bottom of their web pages. OWNER understands that the pricing and any related discount structure provided under this agreement assumes such perpetual permission.

ARTICLE XV. GENERAL PROVISIONS

A. Waiver. No waiver by OWNER 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.

D. 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 OWNER: City Manager's Office
 P.O. Box 1152

Midland, Texas 79702

If to CONSULTANT: Icon Enterprises
dba CivicPlus, Inc.
317 Houston Street
Suite E
Manhattan, KS 66502

The parties hereto may change the above-designated addresses by giving notice pursuant to the terms of this Section.

E. 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.

F. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.

G. 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.

H. 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.

I. Assignment. CONSULTANT 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 Owner. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Owner.

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

ARTICLE XVI. INDEMNITY

INDEMNITY: THE CONSULTANT 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 CONSULTANT, 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 CONSULTANT WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE OWNER OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES.

THE CONSULTANT 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 CONSULTANT OR THE CONSULTANT'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 CONSULTANT WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE OWNER OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES.

THE CONSULTANT 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 CONSULTANT SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE

BEEN PAID, DISCHARGED OR WAIVED. THE CONSULTANT, 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 CONSULTANT 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.

ARTICLE XVII. PROMPT PAY ACT

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

ARTICLE XVIII.

Additional Services

OWNER may contract with CONSULTANT for additional Consulting, Website Design, Setup, Programming, site modification, Training services (Project Development Services), Additional Page and/or Graphic Design that exceed those defined in Exhibit A. CONSULTANT will invoice OWNER for the additional services immediately prior to project Go-Live. Services that involve billable time beyond the contracted amount will be documented and invoiced. Written approval by the OWNER is necessary before billable time is incurred.

OWNER may contract with CONSULTANT for additional Annual Support, Maintenance & Hosting services that exceed those defined in Exhibit A. CONSULTANT will invoice OWNER for annual services immediately prior to project Go-Live. Modules that incur additional usage fees may be purchased and activated at any time.

Acceptance of this Agreement signifies OWNER's approval of any billable time specifically related to training services as detailed in Exhibit A, wherein a stated number of attendees is

specified. Coverage for additional attendees not covered under this agreement is billed at a per diem rate specified in Exhibit A.

Support

CONSULTANT will provide unlimited telephone support Monday-Friday, 7:00 am – 7:00 pm (Central Time) excluding holidays, for all trained OWNER staff. Emergency Support is provided on a 24/7/365 basis for emergency contacts named by the OWNER. OWNER is responsible for providing CONSULTANT with contact updates.

Support includes providing technical support of the CivicPlus Government Content Management Software, application support (pages and modules), and technical maintenance of OWNER's website. Following initial setup, additional page design, graphic design, user training, site modification, and custom programming may be contracted separately for an additional fee.

During the period of this agreement and subsequent annual renewals, CONSULTANT warrants that it will, without additional charge to the OWNER, take action to correct any problems or defects discovered in the Software and reported to CONSULTANT by the OWNER, such warranty to include ongoing maintenance upgrades and technical error correction.

CONSULTANT provides online website statistics software at no extra charge. If OWNER desires to use other website statistic software, CONSULTANT will provide the necessary log file access.

Force Majeure

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civic disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

APPROVED AS TO FORM

By: _____
Courtney B. Sharp, City Manager

By: _____
Keith Stretcher, City Attorney

ATTEST: _____
Amy M. Turner, City Secretary

CIVICPLUS: _____ By: _____

Name: _____

Title: _____

CONSULTANT Corporate Acknowledgment: Agreement No: 5787-13

STATE OF KANSAS §

§

COUNTY OF RILEY §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of Icon Enterprises, Inc. dba CivicPlus, 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 _____, 2013.

Notary Public, State of Kansas



CIVICPLUS™
HELPING COMMUNITIES ENGAGE & INTERACT



Website Redesign and Implementation of a Web Content Management System

The City of Midland, TX • October 4, 2012

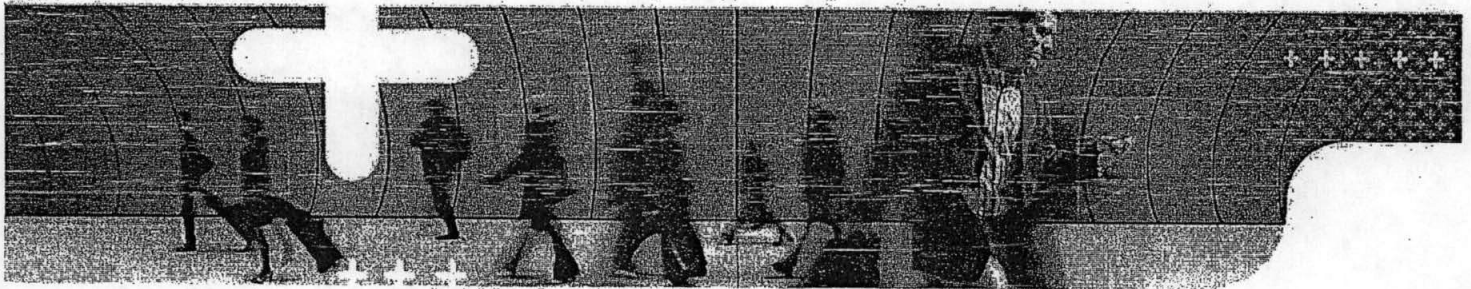


Exhibit "A"

+ CONNECTING PEOPLE

DEVELOPED BY CARRIE BROECKELMANN
Regional Sales Manager
317 Houston Street, Suite E Manhattan, KS 66502
888.228.2233 x315 + DIRECT 785.323.4755
FAX 785.587.8951 + Broeckelmann@CivicPlus.com

Serving more than **1,200 clients** in 49 states, Canada and Australia,
we partner with governments to create **award-winning websites**.



Dear Selection Committee Members:

Thank you for considering CivicPlus as a partner for Midland's website redevelopment. I've carefully reviewed your requirements, and am excited to present a solution to your challenges in creating a navigationally friendly, easy-to-update and visually appealing website.

Of the proposals you review, all should offer a good website design and navigation solution; however, the best solution should also include the latest innovations in government functionality.

CivicPlus is the unique provider of the Government Content Management System – and one of the most innovative, knowledgeable sources for engaging eGovernment websites. Our expertise lies in our ability to deliver a comprehensive solution that considers administrative ease and collaboration, end-user empowerment ... all housed within a sophisticated design that resonates with your community – and all with citizen engagement in mind.

Now in our second decade, CivicPlus has created eGovernment solutions for more than 1,200 towns, cities and counties serving more than 44 million people in 49 states, Canada and Australia, including the Texas cities of McKinney, Missouri City and (soon to launch) Plano and Sugar Land, to name a few. These communities are using CivicPlus technology to connect in more engaging ways with their residents, visitors and businesses.

In addition to a solution-centric website, CivicPlus provides unrivaled service, support, automatic upgrades and enhancements at no additional charge – guaranteed. Our relentless pursuit of government innovations ensures that our clients' websites, regardless of where they begin on our Community Engagement Scale™ (see page 3), continues to move upward today and tomorrow.

The following proposal details how the CivicPlus solution will reduce your staff's workload, respect budget constraints and, most importantly, provide your community with a powerful online resource that promotes open and transparent access to your municipal offices and becomes an engaging communication hub for your community.

I sincerely welcome the opportunity to elaborate further on our proposal and answer additional questions you may have about partnering with CivicPlus.

We look forward to working with Midland.

Respectfully,

Carrie Broeckelmann • Regional Sales Manager • Direct Line 785-323-4755 • Broeckelmann@CivicPlus.com



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Executive Summary and Introduction

The City of Midland, an organization serving more than 120,000 residents, has initiated a request for pricing to transform its website with an innovative design that enables visitors to find the services and information they need. The website should be user-friendly and utilize the latest technology to provide a convenient source of information to better communicate with citizens.

The CivicPlus Proven Development Approach

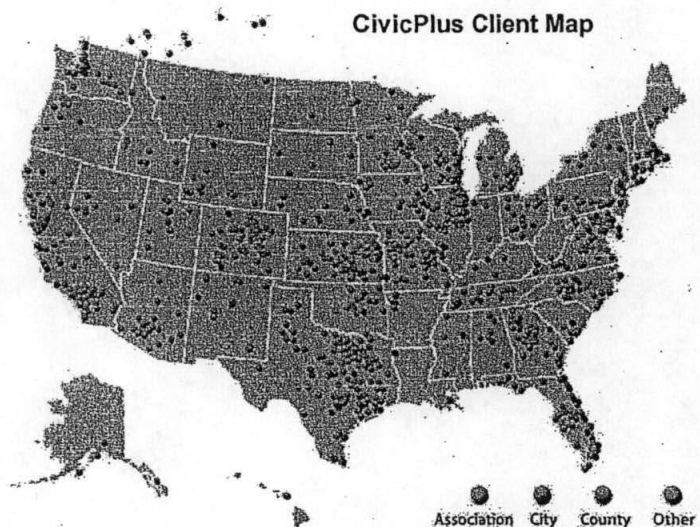
CivicPlus provides our eGovernment communication solution to more than 1,200 municipalities – cities and counties of every size across the United States, Canada and Australia – serving more than 44 million citizens. For more than a decade, CivicPlus has focused on government clients, giving our customers access to the latest in next-generation applications that meet and exceed their needs. Those needs include:

- A unique and customized website design
- Intuitive navigation and page layout with unlimited submenus and subpages
- Interactive functionality through our Government Content Management System (GCMS)
- Continuously updated, cutting-edge solutions designed by eGovernment experts for governments
- A per-project, customized pricing model with comprehensive training and unlimited support always included

Why are Hundreds of Cities and Counties Upgrading to CivicPlus Each Year?

It's simple: CivicPlus knows municipal government.

- No one else can offer the CivicPlus Government Content Management System (GCMS).
- No one can match our interactive suite of tools that enable governments to better engage and communicate with their citizens.
- No one can match the CivicPlus development process and the depth of our implementations designed by experts who know local government – its people and its processes.
- No one can match our track record – period.



CivicPlus for the City of Midland

The following proposal contents include:

- CivicPlus' capabilities, experience and commitment to clients, and our approach and methodology to transform your site
- Ongoing training and consultation
- Creativity and recommended functionality usage to engage and attract site visitors
- Price estimate

These recommendations for Midland were developed to address your defined needs. All estimates are negotiable based on client requests. We encourage you to schedule a 45-minute demonstration of the latest site developments and the administrative interface that allows non-technical users the ability to update the website as needed.

What Is Community Engagement?

At its core, Community Engagement is expectation.

More than 75 percent of U.S. residents are connected online. They bank online. They pay bills online. They chat, they opine, they find love ... all via the Internet. The web has become the first resource for the vast majority of people when they need to find an answer to a question, locate a service, file a complaint or conduct business.

The expectation is that local government should be conducting business online as well.

Community Engagement is going beyond the basics of the web. Community Engagement is:

- **Transparency** - Removing the veil from local government by providing citizens with open access to government through citizen-centric technologies and information structures.
- **Citizen Sourcing** - Encouraging citizens to get active, get involved and take ownership of local issues, all through an easily available communication method that they're likely to use.
- **MicroVoting** - Allowing citizens' voices to be heard, and making that voice resonate with government leaders in ways that allow for a finger to be placed on the pulse of the citizen's wants and needs.

Local governments provide so much service, infrastructure and support to our communities, but too often, those efforts go unnoticed and unappreciated. Community Engagement is a two-way street – it's letting your citizens have a voice, and it's letting them know why government matters.

Where You Rank on the Community Engagement Scale™

Governments across the nation find themselves in various stages on the Community Engagement Scale™. Some may inhabit multiple stages, and others may be reluctant to engage more deeply due to concerns of openness and the criticism that may accompany it.

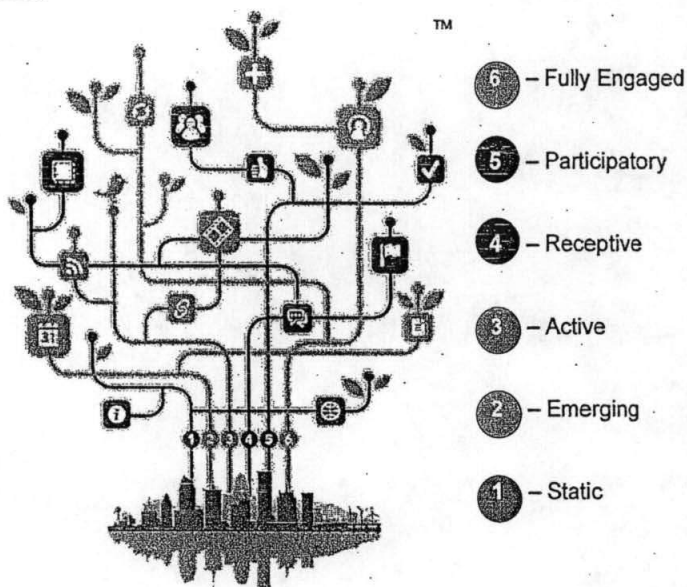
Where does Midland fit within the 6 Levels of Digital Community Engagement? What does each stage look like? What will it take to reach the top?

Only CivicPlus can provide these answers, because CivicPlus is the only government website provider focused on equipping communities to better engage and interact with their citizens through digital means.

How Can CivicPlus Take You Higher?

All of our modules and features are designed to help improve interaction with citizens and users on your website, but here are a few that help take community engagement to the next level:

- | | | |
|----------------------------|-----------------------------|----------------|
| • Citizen Request Tracker™ | • Community Voice™ | • Alert Center |
| • Calendar | • Facilities & Reservations | • Form Center |
| • Media Center | • News Flash | • ePayment |





History of CivicPlus

Since our inception, CivicPlus has been capturing the passion our customers have for their communities and their residents with high-quality, next-generation websites. We consider it a privilege to partner with municipalities to provide the individuals, families and organizations of your community a website that serves as a primary, interactive communication tool.

Icon Enterprises, Inc., does business as CivicPlus and Networks Plus and employs more than 100 people. Incorporated in Kansas in 1998, they began providing technical-related services in 1994.

CivicPlus was born out of four rural cities' desire for a progressive way to maintain their websites without the burden of employing a continual webmaster. They sought a system that would allow routine updates and changes to be implemented by city staff, regardless of technical skill. After close consultation with these four initial cities, an innovative tool that automated the process of updating website content was developed.

Today, under the leadership of founder Ward Morgan, CivicPlus has 134 staff members and continues to implement new technologies and services to maintain the highest standards of excellence and efficiency for our more than 1,200 clients. Our commitment to setting the standard in website design, management and government communication has been instrumental in making CivicPlus a leader in web design, communication programming, and hosting.

Our technical and development staff holds a variety of certifications including: Microsoft Certified System Engineer, Cisco Certified Engineer, Microsoft Certified Software Developer, Microsoft Office User Specialist and Project Management Professional from the Project Management Institute.

Company and Contact Info

Contact Information	Carrie Broeckelmann Regional Sales Manager Broeckelmann@CivicPlus.com Toll Free 888-228-2233, Ext. 315 Cell 785-477-4982	Primary Office	317 Houston Street Suite E Manhattan, KS 66502 Toll Free 888-228-2233 Fax 785-587-8951
Company Founder	Ward Morgan, President/CEO	Additional Locations	Charleston, SC Chicago, IL Columbus, OH Fort Collins, CO Glen Carbon, IL New Boston, NH Olathe, KS Omaha, NE Seffner, FL Sherwood, OR Tacoma, WA Topeka, KS Wichita, KS
Legal Name	Icon Enterprises, Inc., d/b/a CivicPlus		
Company Website	www.CivicPlus.com		
GSA Contract	# GS-35F-0124U		
DIR Contract	# DIR SDD 1636		

At CivicPlus, we have a passion for building websites.
We'd like to partner with you to build a website that will serve as
a communication hub for your community.



Dedicated Project Team

CivicPlus maintains a staff of dozens of personnel who excel in the development and support of government websites. From project management, design and development to training and support, our highly qualified staff ensures the success of your website throughout all phases of construction and beyond. Our expert project leaders – listed below – will match you and your needs to a team of highly qualified specialists who will work directly with you throughout your entire project.

Carrie Broeckelmann – Regional Sales Manager

Education	15+ Years Experience	Role at CivicPlus
BS Elementary Education	Manage multiple client accounts in higher education and technology industry	Determine the best solution for your website and budget
Resume		
Client Sales	Communicate and negotiate with executive management	Overall account management
Sales Management	Develop and forecast marketing prospectus	Ensure customer satisfaction
	Client-first focus to achieve collaborative website goals	Oversee product development and product marketing

Cole Cheever – Manager of Project Administration

Education	5+ Years Experience	Role at CivicPlus
BS Business Administration	Client needs analysis & account management	Direct tasks and staff members
Resume		
Marketing Specialist	Customer service	Timeline allocation
Account Management	Deadline satisfaction goals	Project consultation and quality assurance
Senior Project Manager	City maintenance	
	Marketing analysis and statistics	
	Consulting and business analysis	

Tammy Irvine – Manager of Creative Services

Education	16+ Years Experience	Role at CivicPlus
BA Fine Art	Print and web design	Head creative development and graphic representations
Resume		
Scientific Illustrator	Realistic and stylistic drawings	Direct design team and programming
Freelance illustration business	Branding expertise	
Nationally published designs	High-level skills in color coordination and design management	Responsible for each website overview and uniqueness
Thorough recognition of full publishing, project management and pre-press processes	Proficient in site layout, initial design, setup of initial pages and functionality of site	



Larissa Palmer – Manager of Content Development

Education	4+ Years Experience	Role at CivicPlus
Agriculture	Data Management	Oversee content quality management
Business Administration	Contract Negotiation and Review	Test new products and services for CivicPlus
Resume	Sales and Customer support	Ensure incoming projects remain on schedule and are completed in an excellent manner
Project Management	Cost Analysis	
Business Strategy	Strategic Project Reporting	
Contract Development and Administration		

Quinton Randel – Manager, Training and Consulting

Education	10+ Years Experience	Role at CivicPlus
Information Assurance and Network Security	Website usability expertise	Customize the training and consulting experience to your skill set
	Content development	
Resume	Customer service	Provide creative application ideas for the CivicPlus GCMS
Trainer & Consultant	Expertise in MS Word, Website Management	Effective communication in plain language
Operation Management	Systems, module functionality, admin functions and creativity	
Technology Sales	Account Management	
Lending Analyst		

Amy Vikander – Manager of Website Administration

Education	10+ Years Experience	Role at CivicPlus
Graphic Design	Customer Service	Conscientious care of the continuing relationship between CivicPlus and client
Resume	Project management	Prompt aid on support issues
Property Management	Team management and leadership	Knowledgeable answers for "how to" questions from client's staff
Client Service Team Leader	Managing customer relationships	
Client Implementation Coordinator	Training	

References

League City, TX www.ci.league-city.tx.us

(Pop. 83,560) Client since May 2003

Jaree Hefner, Communications Specialist, 281-554-1023, jaree.hefner@leaguecity.com

Temple, TX www.ci.temple.tx.us

(Pop. 55,000) Client since September 2007; Redesign in February 2011

Shannon Gowan, Communications Dir., 254-298-5600, sgowan@ci.temple.tx.us

The Woodlands Township, TX www.thewoodlandstowship-tx.gov

(Pop. 92,300) Client since January 2008

Mary Connell, Communications Dir., (281) 210-3890, meconnell@catw-tx.org

"The information provided during the RFP process instilled confidence. But our experience with CivicPlus absolutely exceeded our wildest dreams. Regarding cost, what we did, and what I'd recommend, is to not only look at upfront costs, but to also look at a five-year projection. CivicPlus was already competitive on initial costs, but the long-term outlook showed us CivicPlus was by far the most competitive on price over all other competitors."

-Sandi Turner, Athens-Clarke County, Georgia

The CivicPlus Effect – Award-Winning Websites and Exceptional Results

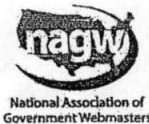
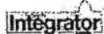
Since 2006, CivicPlus clients have won an amazing 271 awards for their websites, and recently, the Center for Digital Government awarded CivicPlus their "Best Fit Integrator" award for being among the best private sector information technology integrators for delivering extraordinary digital solutions to public IT projects. This distinction puts CivicPlus alongside Accenture, IBM, Motorola and Northrup Grumman as the true leaders in municipal government technology.

Our customers are proof that by partnering with CivicPlus, your new website will be amazing. Below is just a sampling of some of the most prestigious awards in the industry earned by CivicPlus customers.

Some of our Award-Winning Clients

Castle Rock, CO	crgov.com	Park County, CO	parkco.us
Watertown, MA	ci.watertown.ma.us	Fremont, CA	fremont.gov
Nassau County, FL	nassaucountyfl.com	Madison County, TN	co.madison.tn.us
Hutto, TX	huttotx.gov	Maui County, HI	co.maui.hi.us
Wheat Ridge, CO	ci.wheatridge.co.us	Rowlett, TX	rowlett.com
League City, TX	leaguecity.com	Guthrie, OK	cityofguthrie.com
Richmond, CA	ci.richmond.ca.us	Montrose, CO	cityofmontrose.org
Surprise, AZ	surpriseaz.gov	Missoula, MT	ci.missoula.mt.us
Cumberland County, PA	ccpa.net	Onslow Water & Sewer Authority, NC	onwasa.com
Green River, WY	cityofgreenriver.org	Carlsbad Dept. of Development, NM	developcarlsbad.org
Raymore, MO	raymore.com	Webster, TX	cityofwebster.com

Recognition





Technical, Support & Hosting Specifications

We realize that you want to be a good steward of taxpayer dollars, and that means minimizing the total cost of ownership of your new website. Our clients are reassured by our proven commitment to customer service, exhibited by the following technical and supportive services:

Automatic CivicPlus Software & Module Updates

All CivicPlus customers receive the benefits of new features and upgrades that we add to our ever-growing government content management system. The core of the CivicPlus product offering grows with you and your community, ensuring that your site never grows stale and that your website is truly an investment.

Around-the-Clock Technical Support

Our support personnel are ready to answer your staff members' questions and ensure their confidence in using our site. When you choose CivicPlus, our knowledgeable staff is available from 7:00 am to 7:00 pm CST to field your calls and emails, and emergency services are available after regular hours with our staff on-call 24-hours a day.

In addition to fielding support requests, CivicPlus is proactive in identifying any potential system issues. Through regularly scheduled reviews of site logs, error messages, servers, router activity and the Internet in general, our personnel often identify and correct issues before they even affect our clients' websites. Our expertise in website management provides assurance to our clients that their site is in good hands.

Annual Maintenance & Support Includes:	
Support	Maintenance of CivicPlus Application & Modules
7-7 (CST) Mon-Fri (excluding holidays)	Install Service Patches for OS
24/7 Emergency Support	Upgrades
Dedicated Support Personnel	Fixes
2-hour Response During Normal Hours	Improvements
Usability Improvements	Integration
Integration New & Upgraded Services	Testing
Proactive Support for Updates & Fixes	Development
Online Training Manuals	Usage License
Monthly Newsletters	
Phone Consulting	
CivicPlus Connection & CivicPlus University	

Supported Browsers

Websites built by CivicPlus are viewable in all common browsers; however, they are optimized for administrative use with Windows 2000+ and supported in the following: **Internet Explorer 7.0+, Firefox 3.5+, Safari 4+ and Chrome.**

Mobile Website Detection & Browsing

Mobile browsing is automatically available with a CivicPlus-developed website, meaning your residents can easily access and refresh your site and its important content from any mobile platform, like iPhone, Android, Blackberry, etc. For more information, see the Features & Functionality section.

Automated Programming Interfaces (APIs)

We have nearly a dozen Automated Programming Interfaces (APIs) scattered throughout the system, and continue to build more to make integrations with the GCMS and disparate applications as straightforward as possible. It's this "open architecture" approach that allows your IT staff and programmers to spend time creating applications and systems that are specific to your community's needs and tie them into the site, using the site itself as a sturdy platform on which to build. Maintaining the site's base code will fall on CivicPlus' shoulders, saving you time, effort, and most importantly, money.



Hosting & Security Features

CivicPlus' Network Operations Center – based in Kansas City, MO – is set up specifically for website hosting and administration. Redundant power sources and Internet access ensure consistent and stable connections, and regular hardware upgrades make certain that CivicPlus-hosted sites are maintained on up-to-date, reliable equipment.

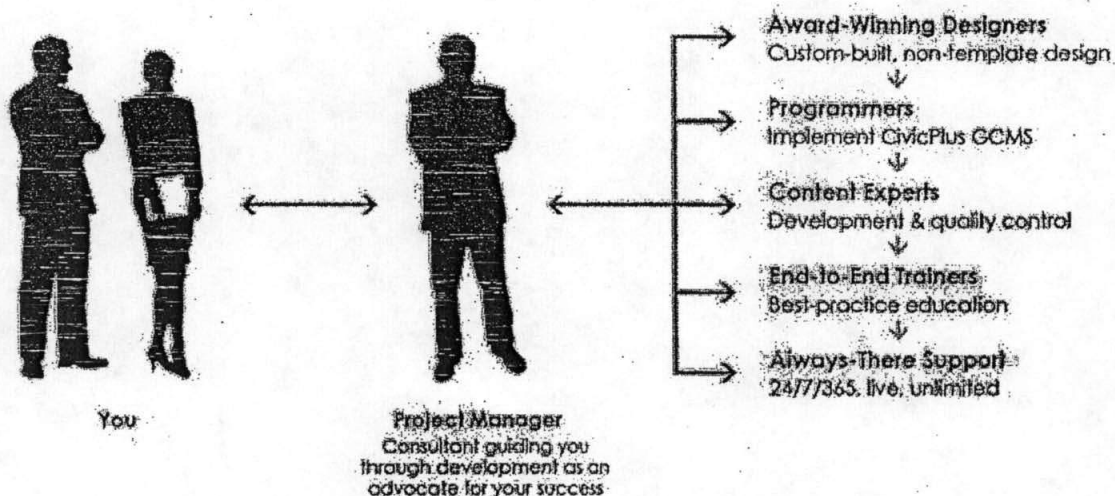
Hosting with CivicPlus Includes:	
• Shared Web/SQL Server • DNS Consulting & Maintenance • Monitor Bandwidth-Router Traffic • Redundant ISP • Redundant Cooling	• Natural Gas Powered Generator • Nightly Tape Backup • Intrusion Detection & Prevention • Antivirus Protection • Hardware Upgrades
Physical Security	• Biometric access • Proximity card key system prevents unauthorized access to servers • High-res, closed circuit video with time lapse recording covering secured areas • All visitors require a full-time escort within hosting area • Redundant cooling systems
Power	• All systems fed by Uninterruptible Power Supplies (UPSs) with natural gas-powered generator backup
Bandwidth	• 145Mbps of bandwidth for optimal speed – upgrading to 4GB of Internet capability • Multiple carriers to provide redundancy for continuous connectivity – including MCI/Verizon, Hurricane Electric and Cogent • AT&T: 45Mbps fiber optic network • Cox: 100Mbps fiber optic network • BGB Internet routing; continuously monitor and manually balance Internet load between carriers for optimal speed • Redundant Cisco routers
Monitoring	• Round-the-clock (24/7/365) monitoring of all critical components, including: Internet connectivity, servers, routers, switches and power systems
Backup	• Tape backup performed daily • Off-site tape archive
Antivirus	• Continuously scan system • Signature files auto-updated every 4 hours from national registry
Data Security	• Server operating systems applied as necessary • Router level port blocking and reporting • Router level packet filtering and reporting • Server level port blocking and logging • Ongoing security analysis by Cisco Security Specialist
Data Redundancy	• RAID Level 5 data storage array • RAID 1 + 0
Intrusion Detection	• Redundant Cisco ASA multi-service firewalls, combining intrusion detection and prevention
Staff Certifications	• Full-time Electrical Engineers (EE) • Full-time Microsoft Certified Systems Engineers (MCSE) • Full-time Cisco Certified Network Associates (CCNA) • Full-time Cisco Certified Network Professionals (CCNP)

Let Our Experts Be Your Trusted Advisors

Only CivicPlus offers the depth and breadth of staff for next-generation eGovernment communication projects. Dependent on the size of and duration of your project and whether you utilize our creative, branding, and advisory consulting teams, we will engage between six to 11 experienced staff members, representing approximately 7-13% of our full-time staff.

Utilizing her strong technology background, your dedicated Regional Sales Manager, Carrie Broeckelmann, initially works with you to determine the best solutions for your administrative users and website visitors.

A member of our seasoned project management team oversees the inter-departmental and client interactions, assuring that your project will be developed in a timely manner by professional website experts. Using their knowledge of effective online citizen engagement techniques – with specific case studies and examples – they will ensure the process transitions smoothly from phase to phase. After the completion of each phase, you will be encouraged to fill out a survey rating the project process and the CivicPlus personnel. The CEO receives the surveys and is personally accountable for your satisfaction, which we guarantee, or we'll refund your money.



A Process Dedicated to Helping You Succeed

Upon completion of a custom design, setup of the website, development of modules, content development and quality control review, your trainer works to ensure your staff masters the simple Government Content Management System and learns basic website usability concepts. Your new site is then launched and your support calls are handled by our Client Care department.

Your Role

Your role during the project will be to answer questions and provide input, gain your staff's feedback to complete worksheets and provide necessary information so CivicPlus can develop recommendations for your design, navigation and content. Your project manager will explain the work required to achieve your goals. Pre-project on-site strategic planning sessions can be added to the project at an additional cost.

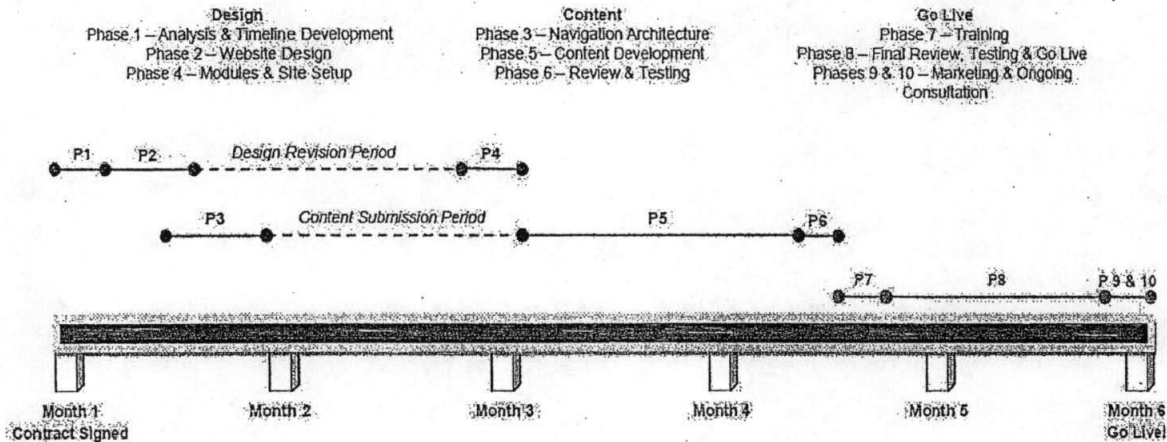
"A company is created by its people. The CivicPlus staff is phenomenal. CivicPlus is going to understand what your town means to you and your residents and how you want your town or city to appear. They are just as passionate about promoting your area as you are."

-Karen McGrath, Castle Rock, Colorado



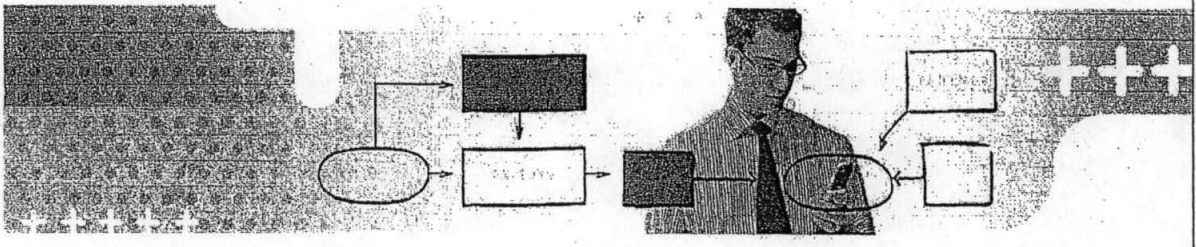
Our Project Development Approach

Consulting, design, usability guidance, programming, secure hosting and dedicated training: CivicPlus delivers all of this and more during the development of your new website. During the initial hand-off meeting you'll work with your Project Manager to set your website goals that will affect your timeline. Whether you prefer a more relaxed schedule or a more aggressive timeline, your Project Manager will discuss the implications of deadlines and the expectations required to keep the project on track. Timelines may be modified upon discussion with your Project Manager.



Typical Project Timeline	Timeline
Phase 1 - Needs Assessment and Timeline (may vary with on-site meetings)	1-2 weeks
Includes: Timeline approval, statistics from current website due, department listing from client	
Phases 2 & 3 - Website Design and Navigation Architecture	4-5 weeks
Includes: Main navigation & standards meeting, main navigation & standards worksheet due, pictures due, initial design meeting, initial content meeting, content process meeting, website design comp due to client, initial design feedback meeting, design approval	
Phase 4 - Site Development and Module Set-up (can vary)	2-3 weeks
Includes: Wireframe due	
Phase 5 - Content Development (varies based upon amount of content)	7-8 weeks
Includes: Content worksheets due, content starts, content completed, content finalized and approved	
Phase 6 - Reviews and Testing	2 weeks
Phase 7 - Training	1 week
Phase 8 - Final Review and Test	1-2 weeks
Phase 9 - Marketing	1 week
Phase 10 - Ongoing Consulting	Ongoing
Go-Live	21-26 Weeks (On Average)

Due to the unpredictable timelines associated with bidding processes, we rarely supply a custom timeline in our proposal responses. Working together, we want to ensure a realistic timeline is available to meet your specific goals. Through the outline of our proven development model provided in this proposal, development timelines can be estimated based on the date of the project's initiation.



Phase 1: Analysis & Timeline Development

In the beginning stages of project development, the CivicPlus team will help you craft the position and image that you want to portray to the site visitor.

Information Gathering and Brainstorming

Your Project Manager will suggest information-gathering techniques to prepare for the design and content development phases of the project, like:

- What image do you desire?
- What services and tasks will the site deliver?
- What are the key messages or themes for the community as a whole?
- What are the key messages and themes for individual departments and services?
- Why is this important to your community?
- What data needs to be presented on the website for self-service?
- What collaborative tools does your community need to effectively communicate concerns?

Communication Goals Development

After brainstorming and setting your site's focus, the information gathered will be organized into specific goals and solutions.

- Identify the site and establish a brand
- Set the tone and personality of your site
- Marketing to stakeholders (visitors, businesses, residents, etc.)
- Help users get a sense of what that site is about
- Let site visitors find critical information to start key tasks immediately
- Effectively guide people on the right development path, with efficiency as the core focus

Collaboration and Implementation

With information-gathering and goal-setting complete, further collaboration with design and functionality experts will begin to shape your website into an effective communication resource.

"CivicPlus is the company for municipal websites. I can't imagine working with anyone else."

-Krystal Britton, Hinesville, Georgia



Phases 2 & 3: Website Design & Navigation Architecture

Our designers will collaborate with your staff to create a website that is visually engaging, intuitive to use and reflective of the uniqueness of your community. Your project manager will lead kick-off meetings between your staff and our designers and content developers to identify specific design elements, navigational structures and the overall focus of your site.

- **Custom Design**

Custom designs are a rarity with other companies. We've created custom-designed websites for more than 1,200 clients, each done to their specifications. Our designers incorporate your input and your ideas with functionality and ease-of-use standards to establish the content, a color palette, images, navigation and layout options that best suit your communication objectives.

Custom designs are rarely produced in anticipation of a project. Copyright authorization and/or photography production are required unless you already have quality, usable photographs. Additional fees for stock photographs or other images are not included in the estimate.

Design/Wireframe Review

You will have the opportunity to revise your design composition as many times as you deem necessary, up to the deadline that you and your project manager agree upon during the timeline meeting (the average client requests a total of three). After that deadline, your Project's Go Live date will be adjusted. Multiple initial design comps can be provided for an additional cost, with revisions made only to the one you select.

Following design approval and functionality development, we conduct a review to ensure your expectations are met and best website practices are upheld.

- **Intuitive, Usable Navigation**

Simple navigation and consistent page layouts will ensure that your visitors can easily find the information they seek. We'll provide you with a complete recommended navigation for your new website based on our prior experience in working government entities.

- **Accessibility Compliance**

Our designers and programmers automatically implement all the accessibility features necessary to ensure your site is compliant with accessibility standards outlined within Section 508. We will make recommendations on best practices for keeping their content accessible and available for all users by ensuring that, among other things:

- all menu items are clickable
- submenus display throughout the site
- alt tags are used for images
- site maps are dynamically generated
- documents and links can be set to open in the same window

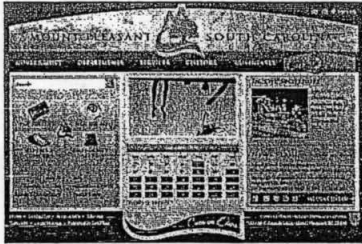
CivicPlus recognizes accessibility standards recommendations made by a variety of groups, including the World Wide Web Consortium (W3C) and the Web Accessibility Initiative (WAI) as written in the Web Content Accessibility Guidelines (WCAG). Through adherence to Section 508, CivicPlus is able to meet almost all Priority One, Two and Three guidelines set forth in the WCAG. Those left unmet do not need to be addressed in order to allow basic access to content; some of the more stringent requirements of the WCAG may limit design and content development options.

"The design phase was great. Your design team was really great. They could take our little comments and make our design reflect our city. They were so good about making our changes and coming up with great ideas."

-Melissa Weiss, Creve Coeur, Missouri

High-Impact Custom Designs Created Specifically for Your Community

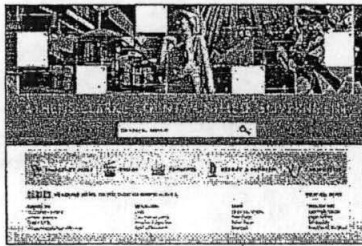
Our programmers implement our designers work – not the other way around – so options for a unique site are endless. Designs that truly represent your unique image, message and brand come through extensive access to and consultation with our design team. Our portfolio demonstrates our graphic designers' vast creative abilities and styles. Additional examples can be provided upon request or can be viewed at www.CivicPlus.com/designs



Mount Pleasant, SC - tompssc.com

Design Details: Client wanted a design that showcased the vibrant history of the area and also the recent economic growth, allowing the website to market all of the Town's features.

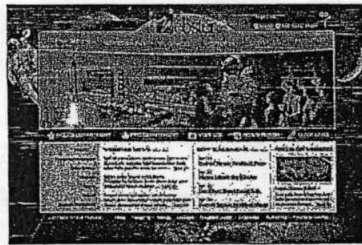
Also Look For: Extensive use of the CivicPlus ePayment, Media Center and Citizen Request Tracker modules.



Athens-Clarke County, GA - athensclarkecounty.com

Design Details: Client wanted a design that looked like a cross between Apple and Google websites. Banner features pop-out navigation. Simple homepage for ease of search and navigation.

Also Look For: Extensive use of CivicPlus Alert Center and Notify Me modules.



Webster, TX - cityofwebster.com

Design Details: The home of NASA's Johnson Space Center, Webster highlighted ties to the space program through striking imagery, as well as a simple and clean navigational structure.

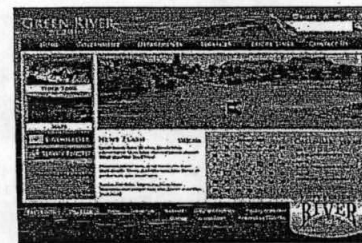
Also Look For: Departmental sections for Fire and Police department.



Monroe County, FL - monroecounty-fl.gov

Design Details: Being the County that encompasses the Florida keys, Monroe County showcased all the beautiful imagery and scenery it has to offer. The result is a vibrant and brilliant design.

Also Look For: Tie-ins with social media and use of CivicPlus Agenda Center module.



Green River, WY - cityofgreenriver.org

Design Details: A great example of how a "dark" website can still be robust and appealing to the eye. Panoramic images burst from the page to highlight the beauty of the Rocky Mountains.

Also Look For: Integrations with live webcams and a front-and-center button to file a service request.

Designs Continued...



Plumas County, CA - countyofplumas.com

Design Details: Plumas County has five distinct regions ranging from wide-open prairies to mountainous vistas. Their design is a reflection of this distinctly beautiful County.

Also Look For: Mouse-over map and click-through scrolling buttons to popular features on homepage.



Daggett County, UT - daggettcounty.org

Design Details: A small county of less than 1,000 people, Daggett County relies heavily on tourism to help drive the economy, and their website design is a reflection of the unique natural formations that dominate the landscape.

Also Look For: Navigation that focuses heavily on tourism and economic development, and emergency alert module.



New Berlin, WI - newberlin.org

Design Details: A striking color scheme first jumps off the page. An intuitive navigation takes over from there, guiding the user to important information while maintaining the site's artistic integrity.

Also Look For: Integration with SIRE for meeting agendas and videos and property assessment and tax information lookup.



Beaverton, OR - beavertonoregon.gov

Design Details: This simple yet elegant design goes to the heart of the culture in this community – a community focused on cleanliness, sustainability and interactivity.

Also Look For: Multiple integrations with home-grown apps, as well as a police department subsite.



Roanoke County, VA - roanokecountyva.gov

Design Details: Straightforward navigation coupled with an uncluttered homepage and subtle color scheme make the user experience an enjoyable – and easy – one.

Also Look For: I Want To section that makes online services and answers to questions available with one click.



Phase 4: Modules & Site Setup

You ultimately control the functionality that your site offers by selecting which modules to use and showcase. During project development, review and testing ensures the site features ensure that you are taking advantage of our expertise in web communication as well as meeting your specific communication goals.

A website for today...and tomorrow

CivicPlus has developed dozens of modules to meet the diverse needs of our clients. All of our functionality and modules are included in our Premium Package so that clients may reap the benefits of our diverse offerings. We will make recommendations concerning which modules to incorporate into the design of your website.

Additionally, you will receive upgrades and enhancements made to our system – automatically and at no additional cost – throughout your contract. This ensures your site is constantly evolving to meet the ever-changing needs of your web audience without the hassle of additional budgets or annual upgrades.

Keys to creating a robust government website

To have a successful website experience, people have to be able to:

- Find what they need – Our intuitive designs facilitate easy recognition of which path to take
- Understand what they find – Quality, usable content development is essential
- Act on that understanding – Comprehensive functionality makes completing tasks quick and easy

Some important and/or common elements and themes which will help your site visitors include:

- Site identification (banner)
- Homepage links to most requested items
- Graphic buttons customized to provide instant access to citizen information and communication
- Print or email page, RSS, social media on every page
- News items with Notify Me and RSS capabilities
- Permanent links on every page
- Calendar with RSS, FAQs, or other frequently used services
- Global navigation with hierarchical structure
- Powerful search ability
- Emergency alerts to notify citizens of urgent developments

Phase 5: Content Development

CivicPlus will further develop a pre-defined number of pages for your site to make initial content available upon site deployment. Our Content Usability Experts use standards and formatting practices during this phase to create the most usable and highly accessible content possible on your site. There is no limit to the pages you can create after you have gone through training.

Content Development and Page Layout

We implement an effective website architecture with the latest trends in usability and web writing. While other companies perform a glorified copy and paste of content from your old site to your new one, we promise content development, not merely content migration.

CivicPlus' content developers apply our own time-tested best-practice standards, as well as those documented by online usability experts Steve Krug, Ginny Redish and Jakob Nielsen. We'll format and reorganize your content so it is easy for the visitor to quickly scan and retrieve desired information.

Characteristics of Highly Effective Page Layouts

- Increase heading and subhead sizes
- Action items placed near the top of the page
- Shorter, easy-to-scan blocks of text
- Separate contact information from main text
- Bullet large lists for easy scanning
- Large, clear tables



Phase 6: Review & Testing

Each phase of your project undergoes review and testing. Before you begin your work on the site with training and preparation for your Go Live date, our Quality Control team ensures your site lives up to best-practice standards.

Quality Control

At the completion of content development and page layout, the following reviews will take place:

- **Content Development Review**

CivicPlus conducts a quality control review to ensure the content and layout meet web usability standards, knowing that the way content is written and displayed directly affects usability. Included in this review is a spelling and grammar check.

- **Pre-Training Review**

We will identify any programming, design or content issues that need to be addressed prior to training.

- **Testing Period**

Approximately one month is provided between the completion of training and your site's Go Live date. This will allow you to add, create, and make adjustments to content on your production site, as well as ensure overall satisfaction with your website. CivicPlus is browser-based, which means content changes will display and function the same way before and after your Go Live date.

Phase 7: Training

Before your site is launched, CivicPlus provides in-person or online webinar training to equip your staff with the knowledge, tools and comfort level needed to maintain the site's integrity upon Go Live. Training concludes with consultation and hands-on practical application to apply the web-usability standards directly to your site.

Website Best-Practice and Usability Consultation

Based on your internal daily tasks and workflow, CivicPlus consultants share best practices with your staff for delivering automated services to your site's visitors. One-on-one or department-specific task analysis is included. Each hands-on session is designed to enhance your team's communication skills and highlight their individual specialties that emphasize your public value.

Features, Module and Page Creation Training for Administrators and Content Contributors

To better understand your site's navigation and page layout and how these affect target audiences, we will instruct your staff on creating area-rights and back-end features for site administration, and review all the modules included with your site. Your staff will learn how to create links, format text and lay out pages for usability and scannability.

Typical CivicPlus Training Schedule

Admin Training	Modules (cont.)	Modules (cont.)	Pages & Wrap-up
Introduction to Website	News Flash	Media Center	Page Creation
Admin Dashboard	Document Ctr / Archive Ctr	Alert Center	Advanced Page Creation
Admin Tools	Opinion Polls	Community Voice	Assist departments and staff in page creation
Intranet	Staff Directory	Facilities & Reservations	Consult with departments and staff on further development and ways to enhance site
Urchin Statistics	Resource Directory	Forms	Wrap-up session
Set Up Groups & Users	Notify Me	Request Tracker	
Modules Training	Jobs, Bids & OJA	Agenda Center	
Quick Links	Photo Gallery & Postcard	Featured Info	
FAQs	Slideshow	Real Estate Locator	
Calendar	My Dashboard	Carb. Calc. & Healthy City	

Training schedules vary depending on the number users to be trained and hours available but will cover the topics shown. Training manuals are available online and can be downloaded at no cost.

Phase 8: Final Review, Testing & Go Live

You will typically have three weeks after training to become familiar with your site. Upon completion of a collaborative final review of the website and a final spelling and links checkup by our Quality Control team, your domain name is directed to the developed website. With that, your new website is launched to the public.

We will confirm that your initial communication goals developed in Phase I have been met, and though this phase marks the launch of your new site, you will continue to receive both technical and consultative support.

Phases 9 & 10: Marketing & Ongoing Consultation

The CivicPlus business strategy is based upon our clients' successes. CivicPlus employees constantly research web standards, principles and trends of effective government websites, and we share that information and provide reasoning and explanation with our clients even after their launch date to ensure they are capable of maintaining an effective site for years to come, while allowing you and your staff to become communication experts.

- **Opportunities for Peer Communication and Idea Sharing**

Throughout the year, there are several opportunities for peers to communicate and share ideas. We hold regular webinars for clients, host regional trainings and user groups, feature client case studies and new clients on our website and provide contact information for clients willing to share unique experiences and the resulting solutions. CivicPlus Connection, further detailed on the next page, also helps foster the CivicPlus client family, where idea-sharing and client-to-client communication is encouraged.

- **Continuous Consultation Beyond Site Deployment**

Our Support Team members are available to assist your staff with any questions once the site is deployed. They provide ongoing support and recommendations for maintaining your website in several ways.

Search Engine Registration & Optimization

Before Go Live, your site will be registered with the top search engines. A brief description and a list of key words pertaining to your new website will provide search engines the necessary information to find the website when a user enters a search for your website.

Search Engine Optimization (SEO) is an important tool to improve search engine page rankings. CivicPlus is currently using several tools to improve the SEO of our websites. These include development of quality content, use of strong keywords and solid page descriptions. In the near future, changes are planned to further strengthen SEO for our clients. These changes include but are not limited to: user friendly URL's, optimized images and improvements to the site map and page descriptions. These changes will help drive your website to the top of search engine results.

Continued Communication

After your site launches CivicPlus will provide ongoing support. As your site grows, our support team will ensure that you receive the following resources:

- Press release creation
- Monthly e-newsletter
- Website award submissions
- CivicPlus online support
- Annual site reviews
- Regional trainings and user groups

"I think that the modules that are offered give a lot of flexibility to not only the taxpayers but our employees. We can use this site as much as a tool as the taxpayers do"

-Michael Leiker, Ellis County, Kansas

Ongoing Training and Support Opportunities

We want your website to be an investment that holds its value over time rather than a big expense that you have to budget for every few years. We apply this same thinking to our approach toward training and support, too. After the launch of your website you should be able to keep current staff as well as new-hires trained and supported as they update and maintain your site. CivicPlus offers ongoing training and support, as well as the incredible resource of more than 1,200 other municipalities that use the CivicPlus Government Content Management System. Stay up-to-date and always informed with unlimited access to:

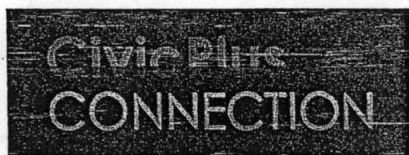


Enroll in CivicPlus University. Once you've completed the initial training for your website, enroll in CPU to earn your Master of the Government Content Management System, online and on your own time. There's no charge. Every CivicPlus client gets a full-ride scholarship.

At CivicPlus University, you can:

- Earn different levels of CivicPlus Certification, from Contributor to Webmaster, at our online CPU Testing Center
- Access online training manuals and videos to learn the tips, tricks and processes to become the expert at creating the best website for your users
- Attend webinar series for refresher trainings or for sneak peeks at the newest features and functionality in development
- Try to stump the CivicPlus Trainers with a question

CivicPlus University is another exciting benefit to the CivicPlus client experience and available only for clients who have been through initial training.



CivicPlus Connection. When you join the CivicPlus community, you're connecting with our entire staff as well as a network of more than 1,200 cities, counties and other government entities that use the CivicPlus solution. CivicPlus Connection – a social network for CivicPlus users – invites our customers to engage us and each other even more!

By logging onto CivicPlus Connection, you can:

- Share ideas and contribute to bettering our community through opinion polls, surveys and group discussions
- Stay up-to-date on the latest trends in web technology, design and government processes through blogs, webinars and informational updates tailored to local government professionals
- Access our always-available online support center for our clients
- Signup to be a part of the CivicPlus Beta Testers to get your hands on the newest features and functionality first

"With CivicPlus, you're not just getting a website. It's social media, it's emergency alerts, it's my weekly blog, it's the mobile version of the site. Our website is tied to Facebook and Twitter, so updates are automatic. We're pushing information to where the people are. What good is all the good in your community if no one knows about it?"

-Thomas Russo, Newton Township, New Jersey



CivicPlus Project Development Estimate

All Quotes are in US Dollars and Valid until December 31, 2012.

Project Development	\$52,418
First Year's Annual Support, Maintenance & Hosting <i>Server Storage not to exceed 30 GB; Media Center Storage not to exceed 10 GB</i>	Included
Case Study Marketing Discount (see page 43 item 21 for details)	(-\$2,500)
Total Fees Year 1	\$49,918

With CivicPlus, you'll enjoy all the benefits of our Ultimate Service Plan – 24/7 support, software maintenance, unlimited upgrades, recurring training and access to the CivicPlus community. Protecting your investment is important, and our Ultimate Service Plan allows you to receive maximum benefit at minimal cost. Over the course of a year, you'll receive nearly \$500,000 in software upgrades, maintenance and optimization. Additionally, your staff will have full access to our support staff, ensuring that they're always up-to-date on our latest features and functionality.

With the Ultimate Service Plan, CivicPlus will handle the workload, with redundant hosting services, daily backups and extensive disaster recovery plans. And if the Ultimate Service Plan isn't right for you, the site and software are yours – our websites are as portable as they are powerful.

Year 2 and Beyond Annual Support, Maintenance & Hosting <i>Subject to annual 5% increase year 3 and beyond</i>	\$9,319
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Optional Payment Plan – CivicPlus Advantage

CivicPlus Advantage offers local governments an alternative payment plan that eases the impact of a new website on your budget and spreads the one-time project development costs over a longer period of time.

Through a minimum three-year contract, CivicPlus Advantage dramatically lowers the one-time project development and start-up costs of launching a new website, **combining one-time and recurring fees and spreading them over the life of the contract**. And because we value our continuing relationships with our customers, those who extend their contract beyond the three-year minimum will receive a redesign at the end of their fourth year with CivicPlus – at no additional charge.

The CivicPlus Advantage Plan provides a fixed fee for an Agreement term of 36 months from the first date of billing. At 36 months, Client has the following options:

1. Terminate the CivicPlus Advantage Plan by providing written notice and contract for Annual Support, Maintenance & Hosting services. Base rate of \$9,319 is subject to 5% annual increase.
2. After forty-eight (48) months of continuous service, Client is entitled to a no-cost redesign. Redesigns that include additional features not available on the original website may be subject to additional charges. Additional features include, but are not limited to, additional modules, integration of third-party software or capabilities, additional design services beyond the standard website redesign and custom programming for new site modules or features.
3. Terminate services with CivicPlus.

CivicPlus Advantage	1st Year	2nd Year	3rd Year	4th Year
Annual Recurring Fees	\$22,852	\$22,852	\$22,852	\$9,319



The CivicPlus Redesign Option

At CivicPlus, we realize that over time, you might decide that you want to change up your design – give it a visual refresh, so to speak. On average, we see this happening about every four or five years in the life of a typical government website.

But instead of starting completely over from scratch with a new website rebuild, CivicPlus has an option that can not only help save you time and effort, but LOTS of money too!

With our CivicPlus Redesign Option, at the end of your fourth year of continuous service with us, you automatically get a website redesign, with no further out-of-pocket expense. The cost of the redesign is included in your annual fees each year, giving you the knowledge that your website design will never become stale with the times, and you'll never have to build your site from the ground up again!

The CivicPlus Redesign Option Includes:

- New CP Advanced Redesign
- Redevelop banner
- Up to 3 graphic buttons to promote special services
- Redevelop navigation method (may choose top drop-down or other options)
- Select color scheme to match new graphics
- Design setup – wireframe
- Print this page option
- Email this page option
- Breadcrumbs
- Sitemap
- Redevelop graphic elements of website (Newsflash, FAQs, Calendar, etc.)
- Project Management
- Testing
- Review
- Content Migration – Includes retouching of all existing pages on the redesigned website to ensure proper formatting, menu structure, and application of new site styles. Note: Content will be rewritten or pages broken up (shortened or resectioned)
- Site styles and page layouts will be touched so all pages match the new design and migrate cleanly

**Project Development**

Phase 1: Analysis and Timeline Development <u>Deliverable:</u> Project Timeline and worksheets	\$6,141
Phase 2: Website Design <u>Deliverable:</u> Website Design Composition	\$7,490
Phase 3: Navigation Architecture Development <u>Deliverable:</u> Navigation structure optimized for your website	\$1,686
Phase 4: Modules and Site Setup <u>Deliverable:</u> Set up fully functional site, software that runs the site, and site's statistical analysis.	\$8,206
Phase 5: Content Development up to 100 standard pages and up to 500 supporting elements <u>Deliverable:</u> Website content development and module content.	\$5,851
Phase 6: Test and Review, Establish Future Expectations <u>Deliverable:</u> List of items that need to be addressed	\$4,458
Phase 7: Four (4) Days of On-Site Training for up to 12 People <i>Additional students are \$80/student/day</i> <i>Travel expenses are included in quote</i> <u>Deliverable:</u> Train System Administrator(s) on GCMS Administration, permissions, setting up groups and users, module administration. Basic User training on pages, module entries, applying modules to pages. Applied use and usability consulting to result in effective communication through your website.	\$7,600
Phase 8: Go-Live and Project Review <u>Deliverable:</u> Final project review report	\$3,492
Phase 9: Marketing <u>Deliverable:</u> Registration of site with all major search engines	\$694
Phase 10: Ongoing Consultation <u>Deliverable:</u> Site review with recommendations for enhancements to improve visitor interaction; layout, design and content recommendations.	Included
Additional Functionality	
Google Translation Tool	Included
Unlimited Users - Citizen's Request Tracker	Included
Gov. 2.0 Upgrades	
Blog	Included
Facebook Integration	Included
Share	Included
Twitter Integration	Included
Options Included in One-Time Fee	
Onsite Meeting for Individualized Content Planning Three days (up to 18 Departments) to analyze call logs, review assignments, review individual sections' navigation, identify services/needs of departments, demonstrate best practices, review functionality and how it applies to individual sections. Quote includes travel expenses. <u>Deliverable:</u> Presentation on best practices, review worksheet assignments and review design composite.	\$6,800
Total Project Development Fee	\$52,418
First Year Annual Support, Maintenance and Hosting Fee	
Server storage not to exceed 30 GB; Media Center storage not to exceed 10 GB	Included
Case Study Marketing Discount (see page 43 item 21 for details)	(\$2,500)
Total Fees Year 1	\$49,918



Project Development Includes the Following:

Modules	Functionality
• Agenda Center • Alerts Center & Emergency Alert Notification • Archive Center • Bid Postings • Business/Resource Directory • Calendar • Carbon Calculator • Citizen Request Tracker (5 users) • Community Voice • Document Center • ePay • Facilities & Reservations • FAQs • Featured Info Module • Forms Center • Healthy City Initiative • Intranet • Job Postings • Media Center • My Dashboard • NewsFlash • NotifyMe Email & SMS Text Subscription • Online Job Application w/1 Generic Application • Opinion Poll • Permits & Licensing • Photo Gallery • Postcard Module • Quick Links • Real Estate Locator • Staff Directory	• Action Items Queue • Audit Trail / History Log • Automated PDF Converter • Automatic Content Archiving • Content Library • Dynamic Breadcrumbs • Dynamic Sitemap • Expiring Items Library • Generic Mobile App (iOS & Android) • Graphic Link Administration • Links Redirect and Broken Links Finder • Menu Management • Mouse-over Menu Structure • MuniMobile • Online Editor for Editing and Page Creation (WYSIWYG) • Online Web Statistics (Only with CivicPlus Hosting) • Page Wizard w/Multiple Layouts • Printer Friendly/Email Page • Rotating Content • RSS • Search Engine Registration • Site Layout Options • Site Search & Entry Log • Slideshow • Social Media Integration (Facebook & Twitter) • User & Group Administration Rights • Web Page Upload Utility • Website Administrative Log

Annual Support, Maintenance & Hosting Service Include the Following:

Support	Maintenance of CivicPlus Application & Modules	Hosting
7-7 (CST) Mon-Fri (excluding holidays) 24/7 Emergency Support Dedicated Support Personnel 2-hour Response during Normal Hours Usability Improvements Integration New & Upgraded Services Proactive Support for Updates & Fixes Online Training Manuals Monthly Newsletters Phone Consulting CivicPlus Connection CivicPlus University	Install Service Patches for OS Upgrades Fixes Improvements Integration Testing Development Usage License	Shared Web/SQL Server DNS Consulting & Maintenance Monitor Bandwidth-Router Traffic Redundant ISP Redundant Cooling Natural Gas Powered Generator Daily Tape Backup Intrusion Detection & Prevention Antivirus Protection Upgrade Hardware



System Ownership

Under our standard operating model, our clients own all data and software associated with the website – the design, the page content, all module content, all importable / exportable data, all archived information and the GCMS. This allows them the peace-of-mind of remaining in total control of all website content and functionality. While hosted and maintained with CivicPlus, this data is never shared, and CivicPlus retains tight controls over our hosting operations, allowing for daily site backups, redundant power and internet systems, site redundancy and emergency recovery procedures.

If the contract between your organization and CivicPlus were to be canceled due to the wishes of the client, our Support Department would work with you to transfer all associated data and software in order to make a smooth transition to the client's new hosting arrangement and, if necessary, management platform.

In the highly unlikely event that CivicPlus were to cease support for the software due to bankruptcy, acquisition, a change in business operations or other circumstances, you would also receive full and complete control of all website data and software.

Under either circumstance, provision of the core code, all associated modules and functionality would allow the client to move the entire website to an alternative hosting location without altering the management tools or modifying operation of the website in any way.

Conclusion

As your website committee narrows the search for a partner to create the website for the City of Midland, CivicPlus would like to be your partner of choice.

Our experienced and knowledgeable professionals are committed to creating the communication infrastructure that Midland desires.

- Your city will have access to the most experienced staff in the municipal website management market, and your project team will work with you to create a unique and engaging site that reflects your community.
- CivicPlus will remain a trusted advisor and support resource after the site launches – Midland will always have access to government communication experts.
- Your site will grow and change with you as industry trends and technology change. CivicPlus will ensure that your website is on the cutting edge – ALWAYS.

**We have the expertise to build
award-winning eGovernment websites.**

**Our promise: We will work with you until you
are 100-percent happy with the look, content
and functionality of your website.**



CivicPlus Features & Functionality

Developed for organizations that have a need to update their site frequently, CivicPlus provides a powerful government content management structure and website menu management system. The system allows non-technical employees the ability to easily update any portion of your website instantaneously. The CivicPlus Government Content Management System utilizes Microsoft SQL Server, ASP, JavaScript, and HTML for web development.

No HTML knowledge is needed to update your website. If desired, HTML code can be used throughout the website for advanced users.

With extensive web applications in place, continual enhancement and an easy-to-use interface, our clients are the proud owners of their websites and are excited to be part of the CivicPlus community.

Additional benefits of the CivicPlus GCMS include: webpage version controls, customizable levels of user-rights, searchable data, accessible customer support services, instantaneous functionality updates, comprehensive security, and much more.

Each website begins with a unique design developed to meet your specific communication and marketing goals, while showcasing the individuality of your community. Features and capabilities are added and customized as necessary and all content is organized in accordance with web usability standards.

CivicPlus Modules and Features

Modules are constantly being developed that meet the needs of our clients. Modules are displayed according to the client's specifications. A list of our modules follows:

Agenda Center

The CivicPlus Agenda Center is an all-inclusive agenda creation module. No longer will you have to build your agendas in a word-processing program, print it out and pass it around the office for approval, export the final version to a PDF and then upload it to the website. Agenda Center allows for the creation and management of the entire agenda process, from submitting preliminary items at the departmental level, to a robust and easy-to-use workflow, to the publishing of the agenda live to the public – one smooth and seamless process.

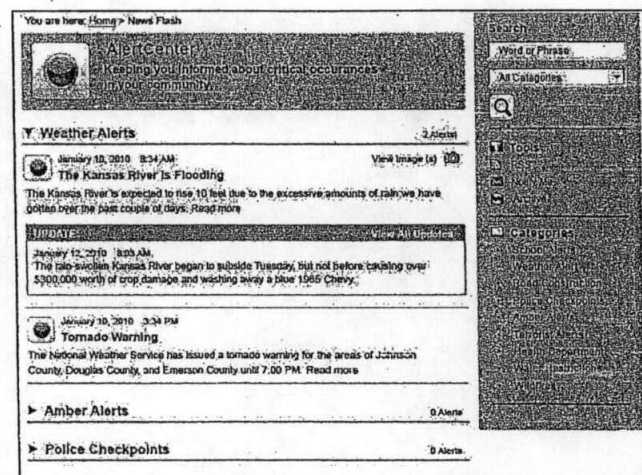
Agenda Center not only offers a one-stop-shop for agenda creation, but upon publish of the approved agenda, a template for the minutes of that meeting can be generated as well.

Agenda Center ties in with the Archive Center, so published agendas and minutes can be placed in an Archive Center category for immediate storage and easy search-ability. Update your residents in a fast and timely manner as well, as published agendas and minutes can also be sent out through the Notify Me module as email and text message updates.

Alerts Center

The Alerts Center provides an efficient and noticeable way to get important news out to your community, whether it be local inconveniences like street closures and road conditions, or critical, up-to-the-minute emergencies like flood warnings and Amber Alerts. With one click, graphics and information can be activated on your website from a variety of layouts that best fit the alert's importance, with public notifications sent out through emails, text messages, and social media.

When a user clicks on an alert that is displayed on the site, they will be taken to the module information that details the alert, as well as provides photos, links to other resources, and a history of updates.





Archive Center

The Archive Center has been developed specifically for the storage and retrieval of agendas, minutes, newsletters, and other date-driven documents. The Archive Center allows you to categorize and store documents in date order, allowing users to find time sensitive documents easily and efficiently. Archives can be searched by date, category, or keyword, and the unique "View Most Recent" link functionality on your website pages automatically updates to the most recent uploaded item every time you load a new document.

Bid Postings

Bid Postings provides a simple and easy-to-use method of posting and organizing bids, RFPs, and RFQs online for vendors or local contractors that are interested in providing products and services to your community. Provide links to upload the full RFP package, links to related web pages, or post other bid details like the scope of work. Bids can be searched by category, title, or closing date and by open, closed, cancelled, or awarded. This module is integrated with the Notify Me module, allowing site-visitors to sign up to be notified when new bids are available, and bids can be updated throughout the process to let interested parties know of amendments, cancellations, and to whom the bid was awarded. Bids can also be set to automatically expire off the site.

Blog

The Blog module helps to open up the lines of communications between administrators and citizens, increasing government transparency and citizen interaction. The Blog features the option to allow citizen comments for feedback, and comments can be moderated before publishing live to the website.

Business/Resource Directory

Think of the Business/Resource Directory as the yellow pages of your website, as it provides site visitors with information about and links to organizations and services within your community. Site visitors can search by business or organization name or category, and entries can be organized by business (yellow pages style) or by category (topical directory style).

Display useful information like a description, a link to a map, address, phone, email and a link to the business' website. Citizens can also download the included iPhone App at no cost, allowing them to search for businesses or services on the go.

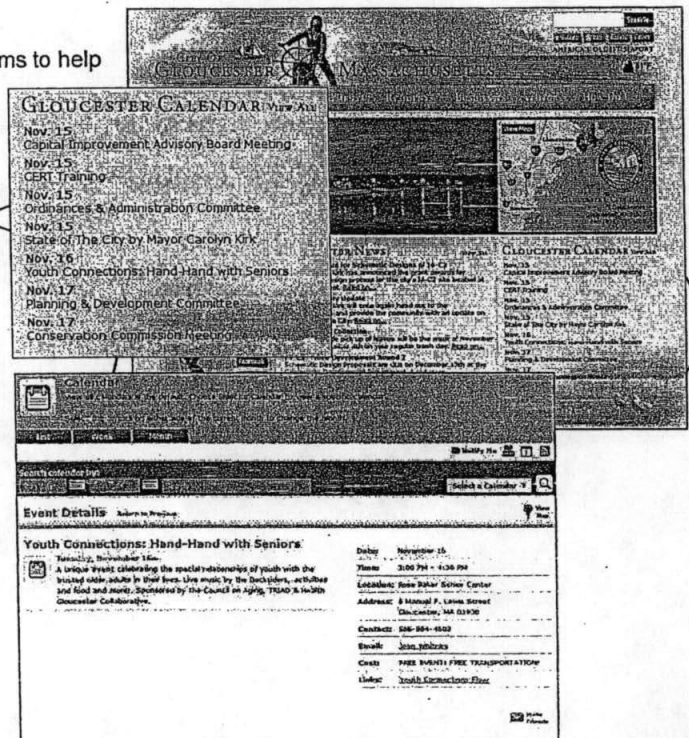
Calendar

The Calendar allows administrators to set up calendar items to help keep the public informed about goings-on in your community. Events can be set on a one-time basis or as recurring events for multiple months in advance, with short descriptions and hyperlinks to display the event details. The calendar recognizes the current date as the starting date for the display of events and also provides for easy navigation to future events. Multiple calendars are available.

Department Calendar: Any page on your site can display the most current calendar items in a special content area, great for departments or sections of the website that wish to have their calendar events appear on their page(s).

Featured Events: The Featured Events functionality within the Calendar Module allows you to highlight special upcoming events to draw attention to an event in advance.

The Calendar supports multiple views, including a monthly view that displays all the events in a month.





Carbon Calculator

Help your website keep up with green initiatives by allowing your citizens to track their carbon footprint.

Community Voice™

Community Voice™ is an interactive module that uses citizen sourcing to create dialog on your site while allowing you to showcase things you are implementing in your community. The module encourages citizen idea submission, engaging discussions, voting, user recognition and more. Your site administrator creates general topics that citizens can provide input on. Citizens can create a user account through My Dashboard to submit their ideas, leave comments and vote other ideas up or down within each topic.

Showcasing Community Voice on your website increases communication and citizen satisfaction within your community, showcases projects and initiatives within your community, and helps consistently drive traffic to your site.

Document Center

The Document Center is a document storage center that allows for a variety of file types (e.g., PDF, spreadsheets, pictures, video files, sound clips, and more) to be downloaded or viewed by the end user, allowing for easy access for your site visitors. Instead of bogging down your employees with requests for documentation, site visitors can locate the forms and documents they need.

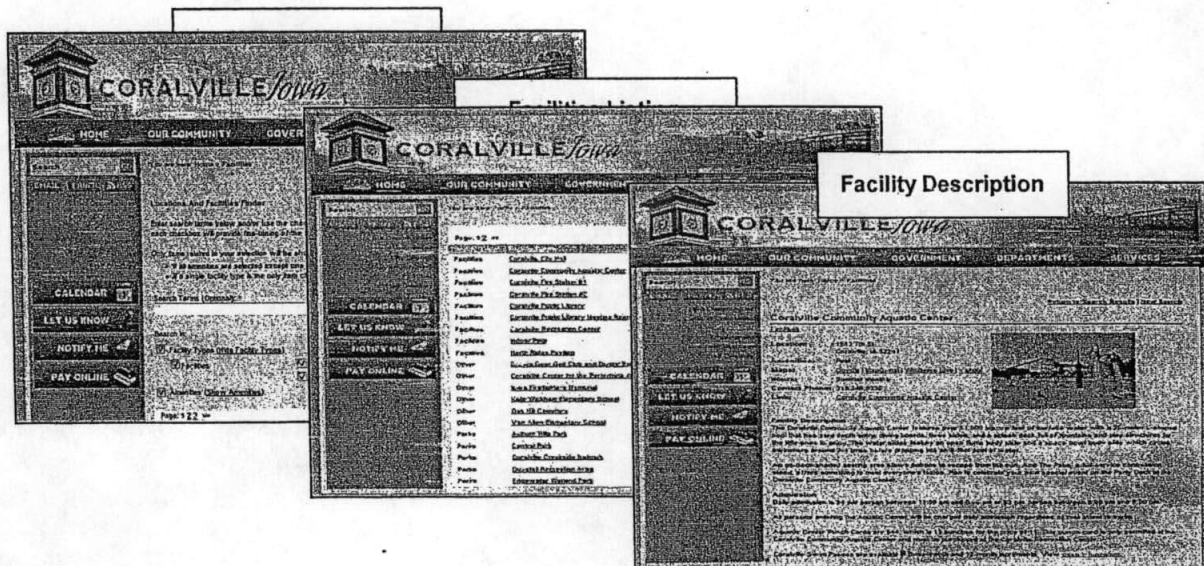
Your employees can easily add new documents and direct residents to the information they requested online, without sending out extra paperwork. Moreover, all files are organized by our structured filing system of folders and subfolders, keeping all of your information easily obtainable by your citizenry 24/7.

ePayment Center

Integrate eCommerce on your website with no third-party store to setup, and save your citizens time and effort by affording them the opportunity to pay for services right through your website. You have the ability to customize or make changes to any form that you create to take in online payments like permit fees, registration fees, pool passes, etc., and email notifications are sent out to both customer and client when a transaction is made. Financial reporting through our trusted PCI-compliant partner is also available with the click of a button.

Facilities & Reservations

The Facilities module allows the site administrator to display local facilities and their amenities, and to manage their availability to the public. A site visitor can search for facilities by type or amenities available, review the amenities for each facility, retrieve location information and reserve the facility. Search results will offer additional options such as admission requirements, handicap accessibility, and how to reserve or make payments. Descriptions with details of the facility (location, contact info, photographs, video, map, handicap accessibility, rental availability, etc.) display within each facility's listing, with your staff able to allow for online reservation requests and to create calendars specific to a facility in order to display approved reservations.





Frequently Asked Questions

Help your citizens reduce time-consuming phone calls or trips to government offices by answering commonly asked questions through your website. FAQs – which can be organized by departments and/or category – may be added to any page and can be set up to link to additional information or documentation for easy reference.

FAQs also have their own search feature, so your site visitors can easily find answers to the questions they ask the most.

Forms Development Tool

Having online forms makes it easy for you to receive useful information from your community and for your community to complete tasks online. These completely customizable forms can be used as a means for citizens to contact you with questions, requests and feedback, or to sign-up for various events and activities. You can create as many online forms as you need with this module, with forms easily built from scratch or from our library of sample online forms. Various field options include long answer, radio button, drop-down lists and multiple choice (among others), with formatting options that include font colors, background colors, text alignment, and more.

A screenshot of a web-based form titled "Lost and Found Report". The form is divided into several sections with labels like "Pet Information", "Owner Information", and "Lost Item Information". It contains various input fields, including text boxes, radio buttons, and dropdown menus. At the bottom of the form, there are buttons for "Submit", "Submit and Print", "Reset", and "Cancel". A small note at the bottom left says "Indicates required fields.".

You can preview forms as you create and edit them instead of sending it to someone else for changes. The Forms Development Tool lets you develop every aspect of your online form with no programming knowledge necessary.

In addition to being able to create your own form, you can *track your forms through your website!* No more lost emails and sorting for statistical data through multiple emails. Any form submitted on your website can be received via email to as many people as you wish, and/or be kept in a backend database. This data can then be exported to Microsoft Access, Excel, or other database software.

Healthy City

Help keep your citizens more health-conscious by giving them a way to track their daily and weekly exercise routine.

Job Postings

Display available jobs within your organization on your website in an easy-to-search-and-retrieve format for your site visitors. The Jobs module allows you to provide as many details as you like and link to a number of files supporting the available position(s), with the ability to allow the site-visitor to download a job application and email their resume to the person/department of your choice. Website visitors can sort jobs by date or job type, and can sign up to be notified of new jobs through the Notify Me module. You can also choose to allow for online applications using the Online Job Application system (another module featured later).

The Jobs module also can be set up to allow employers within your community to be able to post their own available job openings in a controlled environment on your website, helping to boost your community's economic standing and further make your website the hub of information within your community.

Licenses and Permits

This online service gives you the ability to let residents submit request for and payment for simple permits online. Once a resident fills out the required fields on their license or permit submission form, they are issued the printable version of their license/permit immediately, and you can set these requests to utilize CivicPlus ePayment module or to be cost-free.

Creating a new license or permit request form is done through the Forms Development Tool, and you can utilize one of our 10 default forms or create your own customized form. You can also add number and letter formatting as a way of tracking permits (ex: 01234-Kansas).



Media Center with Live Streaming Video

The Media Center module provides an affordable way to upload video files and stream live video right through your website, without the need to purchase costly third-party solutions.

Media Center is optimized for the storage of video files, but it takes you a step further by providing an avenue to stream meetings, demonstrations, and events right through your website and all you need to get started is a camera connected to a computer with Internet access.

This unparalleled offering from CivicPlus comes standard with our product with 10 GB of storage (roughly 40 hours), something our competitors simply cannot match.

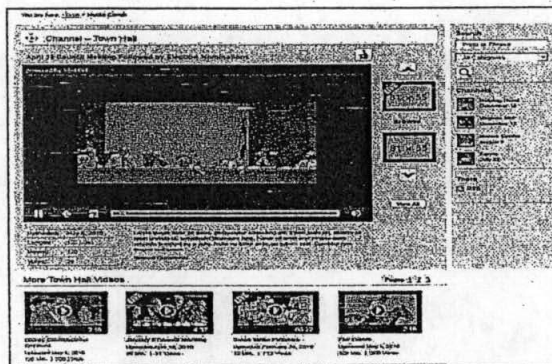
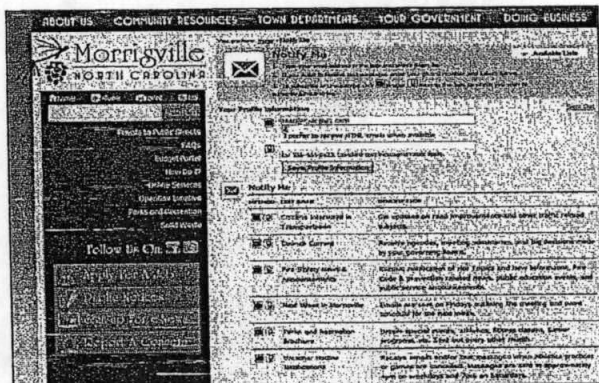
My Dashboard

With My Dashboard, residents and users can set up a profile on your website that allows them to pick and choose the information that gets automatically fed to their dashboard upon site login. In one simple and streamlined view, your users can immediately see important news, available job openings, keyword searches, favorite pages, calendar feeds, and much more.

Your users will be able to login to My Dashboard using the Facebook Connect feature, negating the need for multiple usernames and passwords.

News Flash

News Flash provides your website with an area where important and timely news and announcements are posted. Any department may utilize News Flash for posting information that is specific to their department like a change in meeting location, results from an election, rainout announcements for sports fields, and more. News Flash is a dynamic page element that may be placed on any page, and each News Flash item has its own start and expiration date.



Notify Me®

With Notify Me®, visitors can sign up to be notified via email and/or SMS text message about community activities, meetings, and other updates to your website. Users can self-manage multiple subscriptions at once, and unsubscribing is easy. You can send out unlimited emails, and the first 500 text message subscribers are free, with the option to add more for additional fees.

Administrators can create as many Notify Me® lists as they want, and the module also automatically integrates with our Alerts Center, News Flash, Calendar, Job Postings, Bid Postings, and Blog modules.

Notify Me® supports HTML and plain text versions of email messages, and newsletter templates can be created for added presentation quality.

You can set up notifications as drafts and set them to send to subscribers at a specified date and time, and most current subscriber notification lists can be imported to our system, while the email lists created by your CivicPlus system can be exported for other files and/or purposes.

All of these features make Notify Me® an excellent and valuable communication tool for your website, allowing you to continuously stay in contact with your residents by sending them important information updates that they are interested in receiving.



Online Job Application

Save yourself and your residents' time, save paper, and give your website users instant access to apply for available positions with CivicPlus Online Job Application system.

Allow applicants to apply completely online by filling in the application, attaching supplemental paperwork, and submitting to your HR department, with applications time and date stamped. Applicants can also create an online profile, which allows them to update their application and apply for other jobs without filling out multiple applications.

Your staff can be notified by email when a new application has been received, which then allows you to view, sort and download submitted applications. And fear not about lost applications – they're databased on the website for easy retrieval.

Opinion Poll

This module allows you to interact with your site visitors. Once a user submits their vote, the poll results are displayed. This is a popular module and is an easy way to keep people coming back to see what's new on your site.

We recommend that the poll questions be non-controversial items, as results are not scientific. The results may be used to provide website decision-makers with valuable information in order to make informed decisions. Also, having the Opinion Poll module demonstrates even further the true interest your community has in residents and stakeholders.

Photo Gallery

The Photo Gallery module is designed to allow you to store and display photographs in a central location to showcase to your citizens and the world the best that your community has to offer. Photo Gallery helps your website become the place to put your community's best face out there and to attract new citizens to your area. Users will be able to:

- Explore your city through albums and favorites
- Browse your featured photos and events
- Share with friends or send as postcard
- Submit images
- View images as thumbnails or full-size
- Write descriptions with each photo
- Search the Photo Gallery
- View a slideshow of photos
- Give photo credits
- Give images "thumbs up"



You can use the Photo Gallery to store and organize photo files by department, division, and/or event. Like the Document Center, you can store as many pictures in as many albums as you like.

Postcard

Highlight your community by giving visitors the opportunity to email virtual picture postcards with personalized messages.

Quick Links

The Quick Links module allows you to place links to related and often-requested information directly on the page of your choice. The entire collection of these links is contained within the actual module, and is unlimited in the amount of categories and links that you can provide to your users. The links can be to interior pages of your website, to documents and forms, or to outside websites. You can organize the links by category or item and can set them up to auto-publish and unpublish.



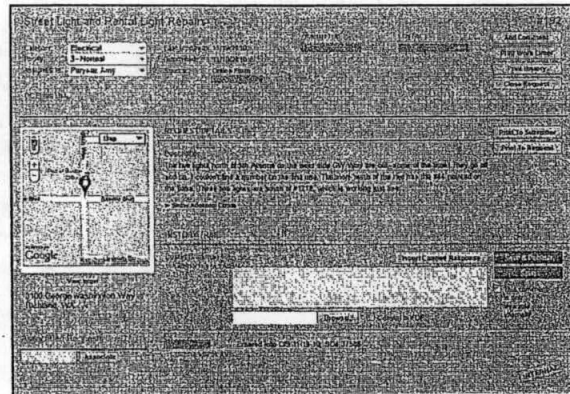
Real Estate Locator

Another way to make your website the hub of information for your community, the Real Estate Locator helps attract incoming businesses and residents by providing a one-stop shop for available real estate listings in your community. Properties – commercial or residential – can be organized by and searched for by neighborhood, street or zone, and price range.

The Real Estate Locator can be set up to allow realtors and brokers the ability to post their own available properties in a controlled environment on your website, further helping to boost economic development.

Citizen Request Tracker™

The Citizen Request Tracker™ (CRT) is a powerful tool that facilitates interoffice and government-to-citizen communication and workflow concerning requests reported by residents. Users create a profile and submit requests or complaints, view pending issues, reopen closed issues, request additional information, and more. Once a profile is set up, contact information is automatically filled in when a user submits a new request. Furthermore, problems reported over the phone can be manually entered into the system for increased efficiency. Marketing the CRT™ system as the primary tool for communication on problems and requests in your area will allow you to reduce staff time spent on addressing issues by hand, and it will allow your constituents to interact with your staff any time of the day.



The CRT™ system makes it easy to:

- Add comments and action items
- Assign the request to a staff member
- Review the history of the issue
- Send messages to the constituent
- Close the request
- Print and/or export statistics and reports
- Print work orders
- Generates efficiency statistics and reports
- Export data in CSV or tab-separated format

Spotlight

Spotlight creates an additional space on a webpage that allows you to highlight important text or widgets in a compact, easy-to-update module. The information posted with this module can relate to one or more pages.

Staff Directory

If the Business/Resource Directory is your website's yellow pages, then the Staff Directory module is the white pages. A time-saving resource for your residents, Staff Directory provides detailed contact information for your staff and various offices all in one place, decreasing the number of calls requesting contact information. You can include as much or as little employee and department information as you deem necessary; plus, Staff Directory entries can be linked to pages throughout your site, providing quick access to a specific department or employee's information.

Employee information can include title, bio, photo, and contact links via email or form submittal (email addresses are blocked from e-mail harvesting programs). Website users can search the directory for a specific employee by last name, first name, and by department.



Administrative Features and Services

Feature	Description	Benefit
Multiple Page Creation Options	The CivicPlus GCMS makes it easy to upload new content and keep a consistent page layout through use of either: Page Wizard, Online Editor, HTML upload, Front-End Edit.	Timesaver/Ease – The multiple options for page creation ensures that everyone on your staff can update the site, regardless of key items on the homepage.
Unlimited Levels of Depth	With a properly designed website, you may easily add as many levels as you would like to promote your services.	Money Saver – As your site grows, you will not have to redevelop the underlying structure.
Instantaneous Updates	Updates are posted to the live site in real-time once the administrator publishes the page.	Timesaver – Ensures your site is communicating the most up-to-date information.
Browser Based	No installation of programs or software needed, meaning you and your staff can update the site from any Internet connection or platform (Mac or PC) at any time.	Convenience – Updates can be made anywhere at any time. Money Saver – Doesn't require \$ per seat to install software.
Level of Rights	Central administrator establishes specific editing rights.	Timesaver – Administrator can distribute work among specific departments while still maintaining control over the content and layout of the site.
Mobile Updates	Immediately update your site from any location with urgent announcements using your PDA.	Crisis Communication – Warn audiences of crisis situations from anywhere at any time.
Action Items	Direct access to a queue of items waiting to be published or reviewed by the administrator provided immediately upon login.	Convenience – Helps the administrator stay organized and timely with the site.
Content Scheduling	Pages can be set with a start and/or expiration date, meaning pages can be created in advance and be automatically released and/or removed from the site as indicated.	Convenience/Timesaver – Ensures your site is communicating only timely information.
Site Search and Site Search Log	Powerful site search automatically indexes all content making it easy for all visitors to find information. This feature also keeps a log of all words that are searched by your visitors.	Knowledge – The search log serves as a tool in making decisions about updates and upgrades as well as placement of key items on the homepage.
Subsite	Specific areas of your website, e.g., Parks & Recreation, Police or Fire, can provide their own calendar and news items.	Ease – Site visitors can find relevant information for their area of interest by following a redirect link, e.g., www.yoursite.org/police
Automatic Alt Tags	Built-in features ensure your site is Section 508 compliant.	Convenience – Editor does not need to know Section 508 requirements as the system will automatically format to accommodate for Section 508 Compliance.

Bad Links Identifier

You may not be aware of any broken links on your website, but your guests are. This module creates a list of the broken links on your site when they are accessed. It also allows a site visitor the ability to enter comments concerning how they accessed the page. On the administrative of the system an asterisk alerts you that a comment concerning a bad link has been posted.

Content Library

The Content Library features galleries full of templates and pages all at your fingertips. It is a way for you to create and share page templates and layouts between co-workers, departments, or with the entire CivicPlus Community. The Fire Department is not sure what pages to include under their section? Search the Content Library. Need some ideas on how to set up a fantastic Permits and Licenses page? Find examples in the Content Library. Want to share a great page that you made on your website? Share with the entire CivicPlus Community.

Templates and pages are categorized by type or department and available in all site sizes, and CivicPlus includes its own personal picks and best practices for each type and department. Pages and templates can be voted on and



rated by your peers, with top downloads and top contributors can be viewed throughout the entire CP Community. The highest rated and downloaded templates will have their creator placed in a CivicPlus Hall of Fame.

Dynamic Layout

The layout for your website is determined by you and the designer. The placement of navigation and dynamic areas are important in guiding site visitors to key information quickly and easily. Our consultants make recommendations based upon website-user studies and research on best practices.

Dynamic Page Components

Events Calendar, FAQs, Opinion Poll, News Flash and other new features may be included as dynamic page components. Dynamic Page Components may be placed on any page and will help dedicated areas of the site appear as its own website. For example, the entry page for your Parks and Recreation department can be customized with specific lists of events, FAQs, and news announcements, pertaining to that department.

Dynamic Breadcrumbs & Site Map

When a user visits your site, Dynamic Breadcrumbs are used to show their location within the website. Breadcrumbs are automatically generated by the CivicPlus system. This feature assists a site visitor in understanding the site structure and navigation. A dynamically generated site map automatically updates itself to your menu system. So if a menu item is renamed, added, or deleted in your navigation, the site map will reflect those changes.

eCommerce Integration

While CivicPlus does offer our ePayment Center, we also work with numerous trusted third-party payment processors to handle payment and account information, allowing your citizens to easily log on and pay bills ranging from property taxes to utilities. The payment processor used for transactions is dependent upon the city's wants and needs, with every effort made to ensure a clean, seamless on-site presentation of the payment portal.

Of the vendors that we've worked with, many allow for one-time credit card or debit card payments, payment through the Automated Clearing House (ACH) network and even Interactive Voice Response (IVR) payment options via telephone. Many give users the option for automatic bill payment, with payment being automatically withdrawn from the specified account on a certain day each month. These payment processors feature payment and usage reporting, and all of our e-commerce partners meet the Payment Card Industry's Data Security Standard (PCI DSS). Integration of third-party vendors is subject to scope and additional fees.

History Log

Easily track changes made to your website by all of your users with the History Log. Track changes made to items in your Page Menu, Archive Center, Document Center and more. History Log information is searchable, sortable, and exportable.

Integration/Interfacing

CivicPlus has performed a variety of integration services for our clients, all of which work cohesively with most third-party software applications. The CivicPlus GCMS is different from other standard design programs, in that we have the ability to link with most software or databases you are currently utilizing. Systems such as purchasing, taxes, assessment, and utilities have been developed for many of our clients.

Integration can take place on varying levels, from simply linking to a third-party hosted site to dynamically drawing in content from other existing sites to actual custom programming to integrate services into our GCMS. Our typical method of integration involves dynamically scraping content from an existing web application, allowing continuously updating content or form fields to access an application to be drawn directly into the CivicPlus-created site.

If a web interface currently exists for an application on a client's web server, we recommend moving it to a third-level domain so that it can remain active when the CivicPlus site is launched; CivicPlus can then draw in that content from the third-level domain directly into the primary site at a lower cost than actual integration into the GCMS.

If true integration rather than interfacing is required, the project will need to be more fully scoped and additional charges may be incurred.



Intranet

We can set up an Intranet for your site to be used by employees or other groups that need to share non-public resources. An Intranet is a secure location on your website that allows employees to login and access information specific to them, and you have the ability to set up multiple Intranet groups with varying view rights.

Most modules available to the public on your site are also available for use on the Intranet. For example, you can use the Calendar module to notify employees of work events; FAQs to answer questions about wages; Notify Me to send notification of flexible benefits deadlines; and News Flash module to let employees know of births, marriages, and other personal events.

Levels of Rights

Most information is constantly changing and needs to be updated frequently. With CivicPlus, each department is capable of updating their own content. Even though each department can update their department's information and web pages, the menu structure, top of page, banner and navigation throughout the site remains the same.

A central administrator is given the ability to establish groups with specific rights and capabilities to update the website. Users are then assigned to those groups based upon the role they will have in updating the website.

Users of the administrative system may be defined as publishers or authors of the content, or as administrators of modules. A central publisher for each department can then approve the pages.

LDAP Authentication

We are excited about our new LDAP authentication functionality. LDAP will provide our clients with a powerful and simple way to manage users and permissions within our system by syncing your website up with your existing Active Directory database, negating the need for multiple user upload and sign-on. Features of this new functionality include:

- Log on with existing network account credentials
- Automatic user creation
- Automatic permissions setup
- Integrate with other non-LDAP authentication systems
- Easy-to-use "Remember Me" sign-in
- Security features like "next required login"

Because LDAP authentication requires custom programming time, additional fees apply.

Link Redirects

This is helpful in marketing an area of your website by creating a web address that is easy to remember. Instead of sending your users to <http://civicplus.com/index.aspx?nid=351>, you can send them to <http://civicplus.com/awards>. A more obvious link is great for print materials and much easier to tell people how to find a particular page on the website.

Live Edit

This front-end edit feature makes updating website content even quicker and easier, as Live Edit allows users Point-Click-Edit access to information...right from the front-end of the website.

Step 1: Find the blue Live Edit icon and click on the area of the website that you wish to edit.

Step 2: Make changes to the website, then click 'Save'. Changes are immediately reflected on the site.

A great tool for those non-technical users to use to update the website from the public view, Live Edit allows you to see where your information will be posted before you make any changes. Live Edit is becoming available to more and more modules and functionality as we continue to enhance our product.

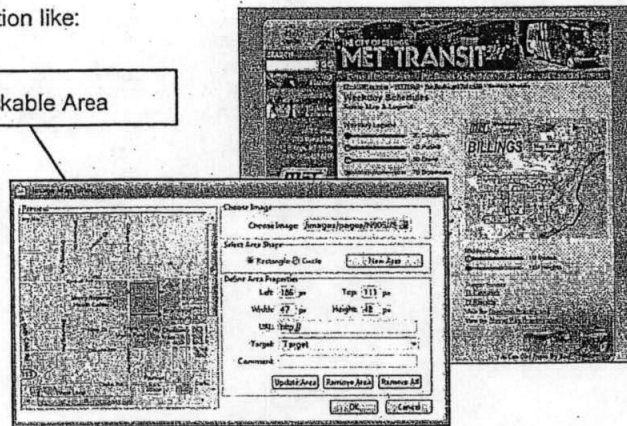


Maps – Clickable, JavaScript or Flash

Help website users find commonly requested information like:

- Bus Schedules
- Parks
- Walking Tours
- Bike Paths
- Trash Pick Up Schedules
- Location of highways
- Tourist attractions
- Education Information
- Major Employers
- Demographics

Clickable Area



Maps can be customized as simple, clickable maps, through the use of our Image Map Editor, or more sophisticated JavaScript or Flash (additional fees required for Javascript or Flash development). Either one provides a great way to present your community to web visitors.

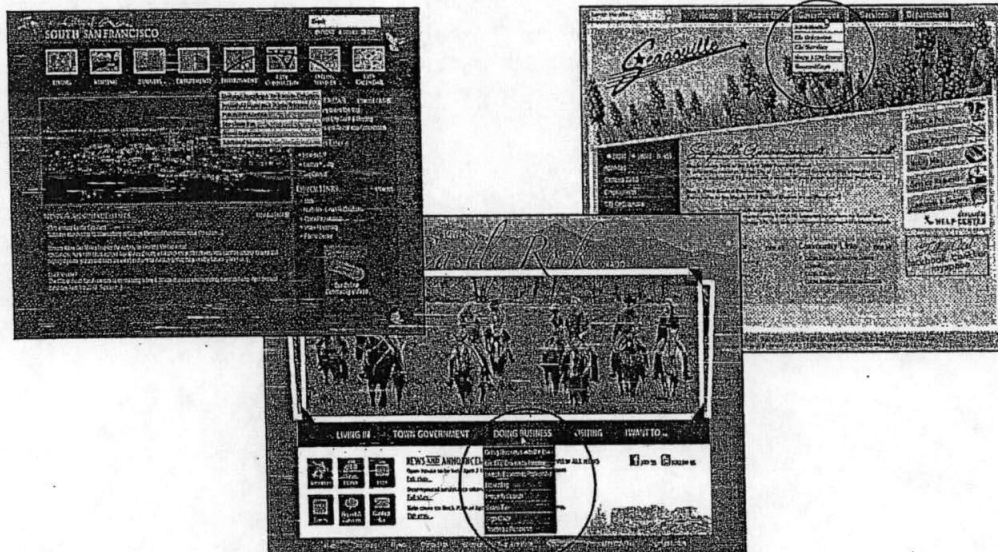
MuniMobile™

CivicPlus' MuniMobile™ feature ensures that your website will have a mobile-compatible version, automatically and with no extra work required. Given the near-ubiquitous demand for full mobile sites, CivicPlus offers this functionality at no additional cost.

The design, navigation, and content of your website will be automatically configured in such a way that a person viewing the site from a mobile device will still be afforded the same ease-of-use and intuitive setup as if they were navigating the website on a computer, with an option to view the full website available as well.

Navigation Options

CivicPlus provides many different navigation structures and options. A few are presented here.



Portal Page Development

Portal pages are often developed to bring numerous site resources together into one central entry location. Creating a graphic overview, the portal provides direction to a diverse group of site visitors while reinforcing your website's key message. Portal pages may be simple links or may be developed using animation such as JavaScript or flash programming. Because there is additional design and programming time involved with portals, additional fees apply.



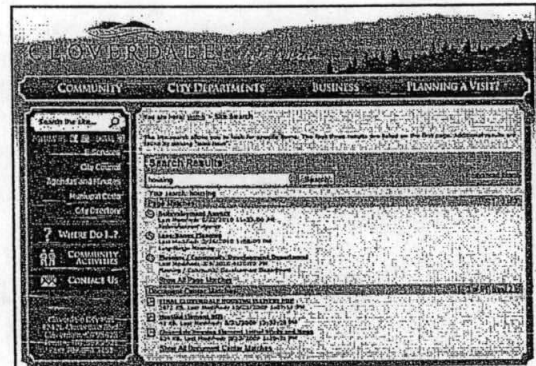
RSS Feeds

RSS stands for Real Simple Syndication, and in short, it's a way of bringing your site to the people rather than waiting for them to come to your site to find out new information. When a user signs up for RSS feeds, they receive email notifications of the latest news information updates without having to visit your website. RSS begins with downloading a free reader and then subscribing to the feed. Then, as often as the website is updated, the subscriber receives notifications of these updates at their earliest convenience.

Site Search

On the public side of the site, we supply all our clients with a robust Site Search with advanced search features. The CivicPlus Site Search will search through web pages on your site, PDF documents, any module entries, and document files. Video and sound files are searched by name. The site search organizes the results by the type of information (calendar item, web page, Microsoft files, PDF documents, etc.)

With the Site Search Log, site administrators can review a history of searched-for words by frequency, date, time, and exact terms input by site visitors. This is a helpful tool for your site users and also a means of keeping your staff in-the-know of what items are being regularly searched on your site.



Social Networking and Gov 2.0

CivicPlus understands the importance of Gov 2.0 and how social networking sites like Facebook and Twitter help governments connect with their residents in unique and innovative ways. CivicPlus is committed to helping municipalities establish a presence on the most popular social networking sites and advising governments on Gov 2.0 management policies. From community-centric pages on Facebook to real-time Twitter feeds that can deliver emergency alerts, our production teams are dedicated to helping our clients integrate their web content into the most dynamic social media sites and make their marks in the growing world of Gov 2.0.

- **Facebook**

Facebook is the most popular social networking website in the world, and more and more, governments are jumping in with their own Facebook profiles. Many governments are finding this social networking tool to be an essential part of their online presence, as it provides another avenue to share news, announcements, events, pictures and videos with a wide range of regular site visitors. CivicPlus can create your Facebook page and sync up your website to automatically push news and calendar events out to Facebook, with a link to your website for more information.

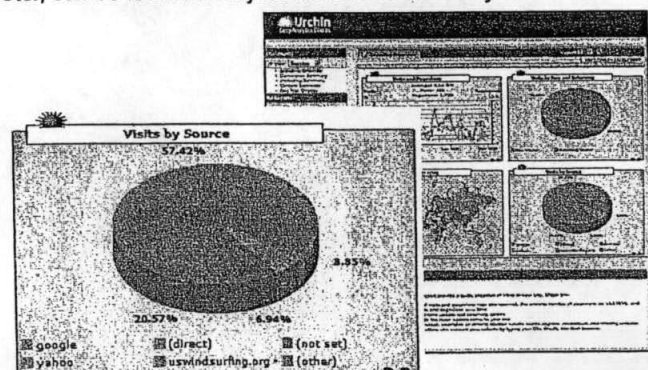
- **Twitter**

Twitter is a micro-blogging service that enables users to send short updates to other interested users. Twitter's short, 140-character "tweets" offer a way for municipalities to distribute information quickly and effectively. Much like Facebook setup, CivicPlus can link your website to your Twitter account for automatic publishing of news and announcements like road closings, meeting schedules, and emergency notifications.

Other social networking sites like LinkedIn, YouTube, etc., can be featured on your website as links to your organization's profile on those particular websites.

Website Statistics

In order to review how your site visitors are using the site, administrators will be trained on the use and analysis of the web statistics, which are provided through Google Urchin Analytics. Important information can be pulled from this data in order to make decisions about the use of the website.





CivicPlus Product Roadmap

Internet trends and technology change at a rapid pace. At CivicPlus, we're committed to helping our customers keep up-to-date with the latest and greatest in online tools for governments. That's why, as a Software as a Service (SaaS) provider, we offer our clients nearly half-a-million dollars worth of software upgrades and maintenance each year...just for being part of the CivicPlus Community. Here's a look at where we're headed...

Layout Upgrade – Available mid 2013

We're undergoing a major overhaul of our system that, once completed, will completely revitalize and revamp the design and site layout experience for our clients. By incorporating more aspects of HTML 5 into our system, the Layout Upgrade will:

- Push CivicPlus designs to the forefront of website capabilities with greater flexibility
- Reduce website development time, meaning your new site launches faster
- Allow CivicPlus clients to have more design control than ever, which will make changing the design for seasonal or special events quick and easy
- Provide more feature-rich Mega Menus that enhance the end-user's navigational ease-of-use
- Lay the foundation for device independence, meaning the website display automatically renders optimally for different devices like tablets, smartphones and computers.

Parks & Recreation Suite

This interactive suite of modules will give your Parks & Recreation Department a direct way to better communicate and engage with your citizens by offering ways to complete registrations or make reservations online, saving time, effort and money all around! This suite of modules will include:

- **Facilities & Reservations Redesign – Available late 2012**
We're upgrading our current Facilities & Reservations module to streamline the reservation process and incorporate ePayments and Google mapping into the process, while giving the module a visual facelift.
- **Sports Module – Available early 2013**
Allow your residents to sign up teams for different sports – from little league baseball to adult league volleyball – and also allow residents to join teams that aren't full. Manage team rosters from an administrative standpoint as well.
- **Classes Module – Available spring 2013**
Allow your residents to sign up for and pay for various classes and programs that your Parks & Recreation Department offers. Manage class rosters from an administrative standpoint as well.
- **Activities Module – TBD**

Newsletter Module – Available late 2012

Create feature-rich newsletters online without the need for third-party tools and send completed newsletters automatically to your subscribers via email and text message.

Citizen Request Tracker Upgrades – Available late fall 2012

In an effort to continually increase citizen interaction and engagement within our current module offerings, the CRT module will receive an upgrade to not only utilize our new Forms Center module, but also add in increased reporting and statistical analysis capabilities and enhanced user experience functions.

Search Upgrade – Available late 2012

We're building a fuller, richer, more robust search tool, one that incorporates some of the latest search trends and technology to enhance the end user experience on our client websites.



Recent Upgrades Include:

Agenda Center Redesign

Our Agenda Creator received a complete overhaul, with the end result being a module that allows for the complete creation of agendas – from the input of preliminary items to the approval workflow to the publishing of the agenda live to the public – one smooth and seamless process. Once an agenda has been published, you can also create a skeleton of the agenda to create on-the-fly minutes of your meetings.

Forms Center Redesign

Creating and managing online-fillable forms is now easier and more intuitive than ever with our upgrade to our Forms Development Tool. We added in drag-and-drop build-out functionality, the ability to apply conditional fields, form statistics and much more. In all, we added more than 20 new pieces of functionality to the module!

Community Voice Module

The Community Voice module allows residents to submit their ideas for improvements and changes they'd like to see implemented within the community, and in turn allows other residents to comment on ideas and vote ideas up or down. The Community Voice module is yet another way CivicPlus is continuously seeking out better and easier ways to connect with and engage with your residents.

CITY OF MIDLAND
Communication and Information Services Department
Interoffice Memorandum

Date: January 22, 2013

Subject: Consider a resolution approving the development and off-site hosting of a website

Since the Internet has become the face of the City to many people, it was determined that we need an Internet presence befitting the professionalism and advancement of our city. This is going to be accomplished by updating our primary website at www.midlandtexas.gov.

City staff requests a contract be entered into between Icon Enterprises, Inc. d/b/a CivicPlus to develop, host and maintain a website for the City of Midland. Icon has a history of providing state of the art websites to cities within the state. Using their proprietary content management system, a website will be created in such a way that content can be managed by the City departments. CISD and PIO will work with Icon to develop a site that is uniquely Midland.

CISD is asking for approval to contract with Icon Enterprises, Inc. in the amount of \$49,918 to include site development, content management software and hosting for a year.



DATE: January 14, 2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Second Amendment to the Hangar Agreement between the City of Midland and W-T Hangar, LLC

Council Member Dufford asked that this item be placed on the agenda for your consideration. The proposed resolution amends the Hangar Lease Agreement between the City and W-T Hangar, LLC. The original lease provided for a 40-year lease term. The proposed amendment also provides for a 40-year lease term but after the first year of the lease, if W-T Hangar, LLC is in compliance and has paid all fees and taxes, the lease term will automatically be renewed for a term of 40 years. This same process will continue during the first ten years of the lease so after every year the term of the lease will be 40 years. After the tenth year of the lease, this provision will no longer apply and the term of the lease shall be reduced accordingly.

Mr. Rick Davis, general counsel of W-T Hangar, LLC, will be at the council meeting to answer any questions.

If you have any questions or if I may be of any assistance do not hesitate to contact me.

Keith Stretcher

KS/lo

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF THE SECOND AMENDMENT TO THE LAND LEASE WITH W-T HANGAR, LLC AT THE MIDLAND INTERNATIONAL AIRPORT; THE ORIGINAL LEASE WAS AUTHORIZED BY RESOLUTION NO. 2012-178 AND ADOPTED BY THE MIDLAND CITY COUNCIL ON JUNE 12, 2012; THE FIRST AMENDMENT WAS AUTHORIZED BY RESOLUTION NO. 2012-371 ADOPTED BY THE MIDLAND CITY COUNCIL ON NOVEMBER 13, 2012

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of the Second Amendment to the Land Lease with W-T Hangar, LLC at the Midland International Airport; and

WHEREAS, the original lease was authorized by Resolution No. 2012-178 and adopted by the Midland City Council on June 12, 2012 and subsequently amended by Resolution No. 2012-371 on November 13, 2012;

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

SECTION ONE. That the City Manager and the City Secretary are hereby authorized and directed to execute on behalf of the City of Midland, the Second Amendment to the lease agreement between the City of Midland, Texas and W-T Hangar, LLC, at the Midland International Airport. Said amendment being attached hereto, marked as Exhibit “A”, and incorporated herein for all purposes.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**SECOND AMENDMENT TO THE MIDLAND INTERNATIONAL AIRPORT
LEASE AGREEMENT FOR AIRPORT HANGAR FACILITY BETWEEN
THE CITY OF MIDLAND, TEXAS AND W-T HANGAR, LLC**

WHEREAS, the City of Midland and W-T Hangar, LLC previously entered into an agreement authorizing the execution of a land lease with W-T Hangar, LLC to lease land from the City of Midland International Airport, Industrial Park Addition, Section 6; and

WHEREAS, said Agreement was duly authorized by Resolution No. 2012-178 of the City Council on June 12, 2012 and subsequently amended as duly authorized by Resolution No. 2012-371 of the City Council on November 13, 2012; and

WHEREAS, the City and W-T Hangar, LLC desire to amend Article 5, Term, of said Agreement as shown below;

W I T N E S S E T H:

For and in consideration of the execution of the Agreement and the covenants and conditions of the parties hereto, it is mutually promised, understood, and agreed that said land lease agreement with W-T Hangar, LLC is hereby amended, effective on the date when signed by the last party, as follows:

Article 5, TERM, OF THE AGREEMENT SHALL BE AMENDED TO READ AS FOLLOWS:

Term: The primary term of this Agreement shall commence on the date hereof (the "Commencement Date"), with rent payments commencing on the 1st day of the month following the earlier of (i) 250 days from the "Delivery Date" (defined below) or (ii) the issuance of a Certificate of Occupancy for the aircraft hangar to be constructed on the Leased Premises (the "Rent Commencement Date"), and shall expire on the fortieth (40th) anniversary date of the Rent Commencement Date (the "Primary Lease Term"), unless terminated at an earlier time as permitted by the terms of this Agreement or extended as permitted by the terms of this Agreement. The pro rata Rent attributable to any partial month of occupancy by Lessee under (ii) above shall be paid with and in addition to the first rent payment. For each of the first ten years following the Rent Commencement Date, if, at the annual anniversary date of the Rent Commencement Date, Lessee is not in default of the Lease, the Primary Lease Term shall automatically be extended for forty years. Prior to the Rent Commencement Date, Lessee shall have possession of the Leased Premises for the exclusive purpose of construction of the hangar improvements pursuant to the terms contained hereinafter. The "Delivery Date" refers to the date Lessee receives written notice from City that City has fulfilled City's obligation to install (at its cost) all electric, water and sewer services to the boundary of the Leased Premises.

There are no other changes or modification to the subject Agreement, and all remaining terms shall continue in full force and effect.

Agreed to this ____ day of _____, 2013.

CITY:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

W-T Hangar, LLC

S. Javaid Anwar, Manager

STATE OF TEXAS §

COUNTY OF MIDLAND §

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by S. Javaid Anwar, as Manager of W-T Hangar, LLC, a Texas limited liability company, on behalf of that limited liability company.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 22, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: David D. Beard, P.E. – City Engineer

SUBJECT: Consider a resolution authorizing staff to accept a standard drainage easement in the Wydewood Estates Addition (Section 32). (District #4 – Trost)

Purpose:

Consider a resolution authorizing staff to accept a blanket drainage easement for Lot 15A, Block 26, Wydewood Estates.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

This purpose of this easement is to provide a means of taking runoff from the La Quinta site and directing it through the Rooms to Go site to the public right-of-way at Preston Drive.

Attachments:

Standard Drainage Easement Agreement
Drainage Easement Exhibit
File Receipt and Email

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE ACCEPTANCE OF
A GENERAL DRAINAGE EASEMENT LOCATED ON
LOT 15A, BLOCK 26, WYDEWOOD ESTATES,
MIDLAND, MIDLAND COUNTY, TEXAS; AND
ORDERING RECORDATION BY THE CITY
SECRETARY**

WHEREAS, the City Council finds it to be in the public interest to authorize the acceptance of a general drainage easement located on Lot 15A, Block 26, Wydeewood Estates, Midland, Midland County, Texas, for the use and benefit of the public for utility purposes;

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

SECTION ONE. That the general drainage easement located on Lot 15A, Block 26, Wydeewood Estates, Midland, Midland County, Texas, is hereby accepted. A copy of said easement is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION TWO. That the City Secretary is hereby authorized and directed to file said easement in the Deed Records of Midland County, Texas.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

STANDARD DRAINAGE EASEMENT

THE STATE OF TEXAS §
COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS:

THAT, Road Runner – MDL Properties, LLC (“Grantors”), for and in consideration of the sum of ONE DOLLAR (\$1.00) and other valuable considerations the receipt of which is hereby acknowledged, does hereby give, grant and dedicate to the City of Midland, Texas (“Grantee”), whose mailing address is P. O. Box 1152, Midland, Texas 79702, a General Drainage Easement for the use and benefit of the public for public drainageways, to accommodate runoff from an adjacent property to flow through said tract to the public right-of-way deemed necessary by the Grantee, and all of them upon, over, under and along the following described tract of land lying and being situated in Midland County, Texas (the “Easement Property”), to-wit:

Lot 15A, Block 26, Wydeewood Estates, City and Count of Midland, Texas in all locations except where otherwise obstructed by a building.

together with the right of GRANTEE, their agents, employees or independent contractors to go upon the above-described easement and so much of GRANTOR(S) land adjacent thereto as may be reasonably necessary for the purpose of constructing, maintaining and repairing the improvements and appurtenances thereto, including the right to cut, top and trim brush and trees, if any, on or adjacent to said easement, as may be necessary or desirable to maintain any facilities thereon. Upon completion of such construction, maintenance or repair, the land of the GRANTOR(S) shall be restored to approximately the same condition that existed prior to the entry upon it.

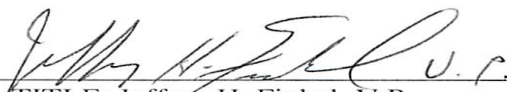
By the granting of this easement, it shall not be construed to prohibit the GRANTOR(S) from developing any adjoining property or from the laying out, establishing and constructing pavement, surfacing of roadways, curbing and gutters along, upon, over or across said easement or any portion thereof; provided, however, said easement shall be kept free from additional depth of overburden, buildings, and any other structure or obstruction (except sidewalks, roadways pavement, grass, shrubs, fences, or curbs), which will interfere with the GRANTEE in entering upon said adjacent land and easement for the purpose of laying, constructing, reconstructing, operating, repairing and maintaining such improvements and appurtenances.

GRANTEE WILL INDEMNIFY AND HOLD GRANTORS AND THEIR SUCCESSORS AND ASSIGNS, HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, COSTS

AND EXPENSES INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEY'S FEES IN ANY MANNER ARISING FROM OR PERTAINING TO THE REPAIR, MAINTENANCE AND RECONSTRUCTION OF INFRASTRUCTURE ON THE EASEMENT PROPERTY BY GRANTEE OR GRANTEE'S AGENTS, SERVANTS, CONTRACTORS, EMPLOYEES OR REPRESENTATIVES OR ANY APPURTENANCES THERETO, INCLUDING, WITHOUT LIMITATION, ANY SUCH CLAIM, INJURY LOSS OR DAMAGE ATTRIBUTABLE TO ANY AGENT, SERVANT, EMPLOYEE, CONTRACTOR OF GRANTEE.

GRANTOR(S) further state that they are lawfully seized of any indefeasible title in fee of the lands through which said easement is granted, and that they have good and lawful title and right to convey said easement to the GRANTEE aforesaid.

WITNESS THE EXECUTION HEREOF this 19th day of October, 2012.


NAME, TITLE: Jeffrey H. Finkel, V.P.
COMPANY Road Runner – MDL Properties, LLC

THE STATE OF GEORGIA §

COUNTY OF Dekalb §

Before me, Terri Thiro, a notary public, on this day 19 personally appeared Jeffrey H. Finkel, known to me (or proved 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.



Given under my hand and seal of office this 19 day of October 2012


Notary Public State of Georgia



Drainage Easement

3108

5210

3100

PRESTON DR

N LOOP 250 W

N 250 LOOP W

SUNBURST DR

1 inch = 105 feet

EG 1/10/12

©THE CITY OF MIDLAND - 2012

THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

10.6

La Quinta Inn-North 2606

Loop 250 Self Storage 2504

Loop 250 Self Storage Loop 250 Self Storage Loop 250 Self Storage

Legend

- Parcel
- Easement

5211
Bethel United Methodist Church

2900

2800

2915
Residence

2913
Residence

Residence
2911

2909
Residence

2907
Residence

2905
Residence

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206



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 22, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: David D. Beard, P.E. – City Engineer

SUBJECT: Consider a resolution authorizing staff to accept an off-site utility easement serving the Heritage Oaks Addition – Section 2. (District #4 – Trost)

Purpose:

Consider a resolution authorizing staff to accept a utility easement extending west from Barton Creek Road in Heritage Oaks Addition, Section 2 and north of Medina Drive.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

The purpose of this easement is to provide a utility easement along a future planned alley that serves existing dry utilities in the proposed easement, an anticipated future sewer line, and potentially a future water line if one is needed or desired.

Attachments:

Utility Easement Agreement
Exhibit 'A'
File Receipt and Email

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE ACCEPTANCE OF
A 0.32-ACRE UTILITY EASEMENT LOCATED IN
SECTION 25, BLOCK 40, T-1-S, T&P RR CO. SURVEY,
MIDLAND, MIDLAND COUNTY, TEXAS; AND
ORDERING RECORDATION BY THE CITY
SECRETARY**

WHEREAS, the City Council finds it to be in the public interest to authorize the acceptance of a 0.32-acre utility easement located in Section 25, Block 40, T-1-S, T&P RR Co. Survey, Midland, Midland County, Texas, for the use and benefit of the public for utility purposes;

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

SECTION ONE. That the 0.32-acre utility easement located in Section 25, Block 40, T-1-S, T&P RR Co. Survey, Midland, Midland County, Texas, is hereby accepted. A copy of said easement is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION TWO. That the City Secretary is hereby authorized and directed to file said easement in the Deed Records of Midland County, Texas.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

UTILITY EASEMENT

**THE STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF MIDLAND §**

THAT SBC, LP, herein called "GRANTOR", for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) to GRANTOR in hand paid by the **CITY OF MIDLAND**, a Home Rule Municipal Corporation of Midland County, Texas, the receipt and sufficiency of which is hereby acknowledged and confessed, and for the further good and valuable consideration in benefits accruing and to accrue to the remainder of GRANTOR'S property, has by these presents GRANTED, BARGAINED, SOLD and CONVEYED and by these presents does GRANT, BARGIN, SELL and CONVEY unto the CITY OF MIDLAND, its legal representatives, successors and assigns, for the use of the public as a perpetual and permanent utility easement, the free and uninterrupted use, liberty of passage in, on, over, upon, along, under, and across all that property lying and being situated in the City of Midland, Midland County, Texas, and being more particularly described in the attached Exhibit A.

SO LONG AS THE CITY OF MIDLAND continues to use said property for the purposes herein stated, said easement includes, but is not limited to, the free and uninterrupted use, liberty and privilege of passage in, along, over, across, under, upon and against the hereinafter described land for the purpose of constructing, reconstructing, maintaining, repairing, cleaning and clearing said premises for the installation of underground utilities, together with the right of ingress, egress and regress for such purposes in, on, along, through and across all the property described in Exhibit A.

Buildings or like permanent structures shall not be erected, built, constructed or allowed to be erected, built or constructed in, upon, over, along or across the real estate described in Exhibit A and if such erection, building or construction does occur in violation of this prohibition, the CITY OF MIDLAND shall have the right to remove said building or structure from the aforesaid real estate.

TO HAVE AND TO HOLD the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging pepetually unto the CITY OF MIDLAND, its successors and assigns, for so long as the CITY OF MIDLAND uses the same for the purposes herein granted.

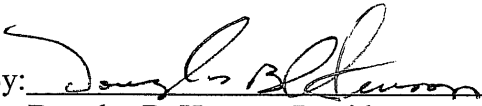
2012.

WITNESS THE EXECUTION OF THIS INSTRUMENT this 18th day of December

SBC, LP

By: SBC GP, LP

Its Sole General Partner

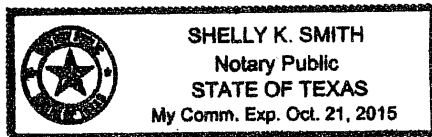
By: 
Douglas B. Henson, President

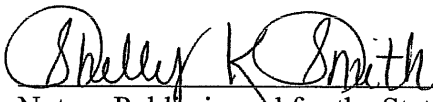
THE STATE OF TEXAS §

§

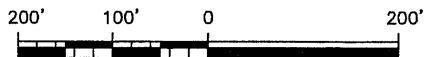
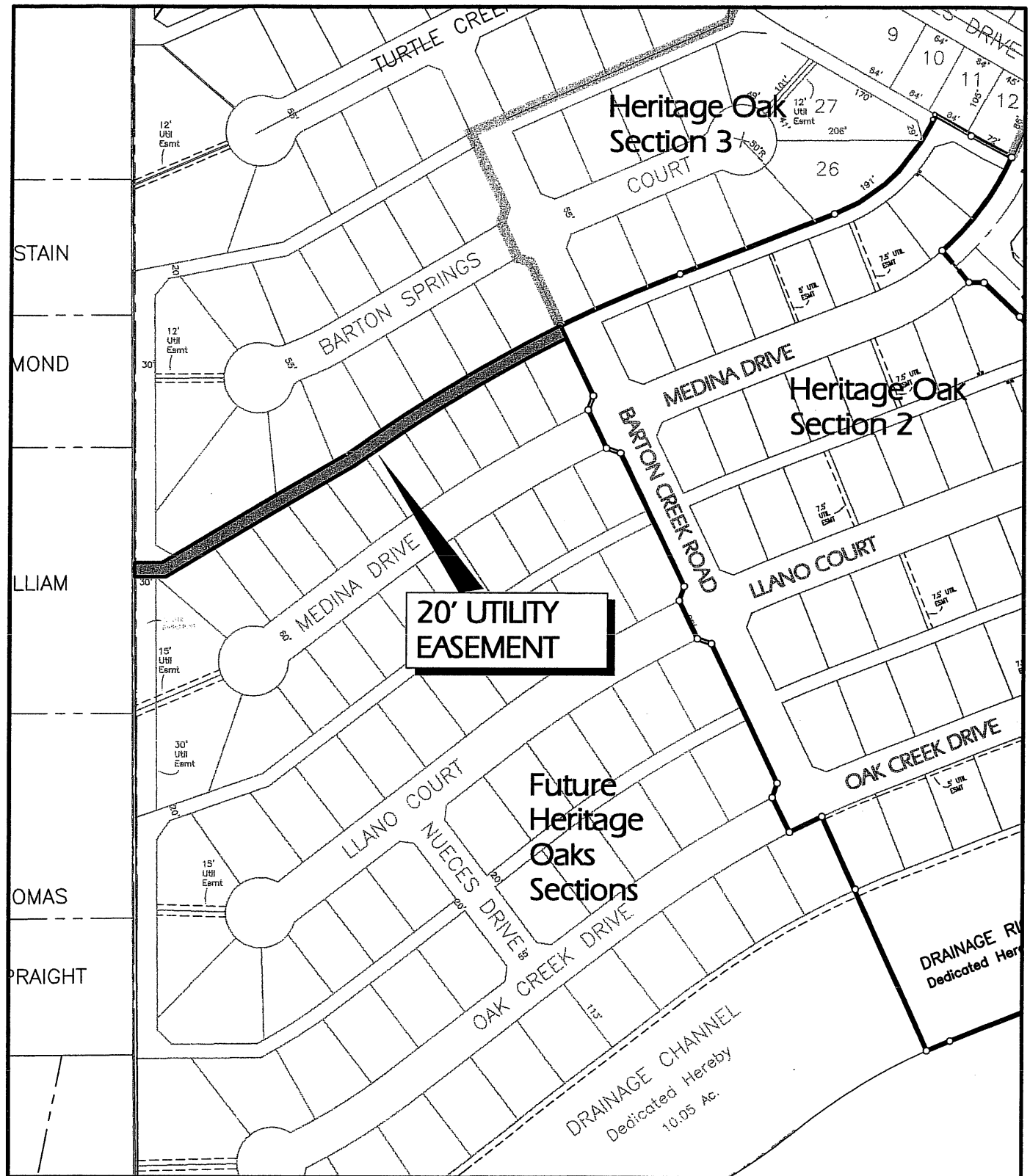
COUNTY OF MIDLAND §

This instrument was acknowledged before me on December 18, 2012, by Douglas B. Henson, President of SBC GP, LLC, a Texas limited liability company and general partner of SBC, LP, a Texas limited partnership, on behalf of said limited liability company and limited partnership.




Notary Public in and for the State of Texas

My Commission Expires: _____



Original Scale: 1"=200'

Midland, Texas

Heritage Oaks
Section 2

UTILITY EASEMENT
EXHIBIT A

20 FOOT UTILITY EASEMENT

LEGAL DESCRIPTION FOR A 0.32 ACRE TRACT LOCATED IN SECTION 25, BLOCK 40, T-1-S, T. & P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,700,556.81' E= 1,725,436.58') a ½" iron rod with plastic cap marked "PLS 1974" set in the West boundary line of said Section 25 and the Southwest corner of this tract, from whence a 1" iron pipe marked "SW25" by R.E. Estes found at the Southwest corner of said Section 25, bears S14°33'58"E, a distance of 1766.30 feet;

THENCE N14°33'58"W with the West line of said Section 25, a distance of 20.00 feet to a ½" iron rod with plastic cap marked "PLS 1974" set at the Northwest corner of this tract;

THENCE N75°41'50"E, a distance of 38.60 feet to a ½" iron rod with plastic cap marked "PLS 1974" set at an interior corner of this tract;

THENCE N45°26'00"E, a distance of 304.04 feet to a ½" iron rod with plastic cap marked "PLS 1974" set at an interior corner of this tract;

THENCE along a curve to the right in a Northeasterly direction with the North line of a proposed alley, with a radius of 2197.00 feet, with a delta angle of 9°20'51", with an arc length of 358.43 feet, and a chord length of 358.03 feet, which bears N45°02'37"E to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Northwest corner of Heritage Oaks Addition, Section 2 as recorded in Cabinet "I", Page 116, Plat Records of Midland County and the Northeast corner of this tract;

THENCE S39°33'56"E with a West line of said Heritage Oaks Addition, Section 2 and West right-of-way line of Barton Creek Road, a distance of 20.00 feet to a ½" iron rod with plastic cap marked "PLS 1974" set at the Southeast corner of this tract;

THENCE along a curve to the left in a Southwesterly direction with the South line of a proposed alley, with a radius of 2177.00 feet, with a delta angle of 9°21'51", with an arc length of 355.80 feet, and a chord length of 355.40 feet, which bears S45°01'43"W to a 1/2" iron rod with a plastic cap marked "PLS 1974" set an exterior corner of this tract;

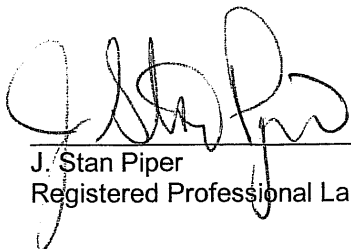
THENCE S45°26'00"W with the South line of said alley, a distance of 310.33 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at an exterior corner of this tract;

THENCE S75°41'50"W with the South line of said alley, a distance of 43.92 feet to the **PLACE OF BEGINNING**.

Tract contains 14,111 square feet or 0.32 acres of land.

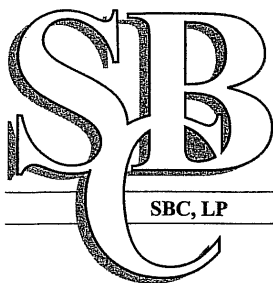
Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combine grid factor of 0.9998995, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground on various dates to November 6, 2012.


J. Stan Piper
Registered Professional Land Surveyor #1974



Prepared for:
Parkhill, Smith, and Cooper, Inc.
1700 W. Wall Street, Suite 100
Midland, TX 79701



SBC, LP

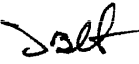
1811 Heritage Blvd., Suite 100

Midland, Texas 79707-9751

432-522-2040

Fax 432-618-0180

MEMO

TO: Larry Bell
RE: Utility Easement – Heritage Oaks Section 2
FROM: Douglas B. Henson 
DATE: December 18, 2012

Please find attached a fully executed “Utility Easement” requested of us in an email dated December 11th.

We would appreciate a copy with recording information once it is available.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 22, 2013

TO: City Council / City Manager

FROM: David D. Beard, P.E. – City Engineer

SUBJECT: Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$102,035 with Mockingbird Oaks Development, LLC (Mike Jackson) for the utility and drainage improvements to serve the Los Patios Addition. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (District #4 – Trost)

Purpose:

Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$102,035 with Mockingbird Oaks Development, LLC (Mike Jackson) for the utility and drainage improvements to serve the Los Patios Addition.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Utility Improvements (Oversized Water Main) – Developer	\$ 26,130
Water / Wastewater Utility Improvements	\$ 18,195
Draiage Improvements – City	\$ 57,710
Total OPC (Newton Engineering)	\$ 102,035 (2.7%)

That the sum of \$44,325 is hereby allocated from Water and Sewer Fund (300) Utilities (300) Interfund Transfer (0339) Water and Sewer Construction Fund (6341) to the Los Patios Drainage and Utilities Improvement Project(9031); and

That the sum of \$57,710 is hereby appropriated from General Fund(001) Unappropriated Fund Balance (5650) to the Los Patios Drainage and Utilities Improvement Project(9031)

Discussion:

The Los Patios Addition is located on at the southwest corner of the Briarwood Ave. and Holiday Hill Rd. intersection. The developer is requesting City participation for the construction of an oversized water main and drainage improvements. The City's contribution to this development agreement is 2.7% of the total cost of the Los Patios Addition.

Staff recommends approval of the development agreement indicating City participation in the amount of \$102,035 (2.7%).

Attached is an opinion of probable cost from the engineer of record (Newton Engineering – John M. Newton, P.E.) and a location map.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH MOCKINGBIRD OAKS DEVELOPMENT, LLC FOR DEVELOPMENT OF LOS PATIOS ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF BRIARWOOD AVENUE AND HOLIDAY HILL ROAD); AND ALLOCATING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$102,035.00 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, the developer of Los Patios Addition, Section 3, City and County of Midland, Texas, has requested City participation in the development of this addition; and

WHEREAS, the City Code allows City participation; and

WHEREAS, the City Council finds that in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing the developer to connect to capital improvements by promoting the health, safety, and public welfare and providing for efficient and well-planned urban growth and development; and

WHEREAS, the City Council finds it to be in the public interest to execute a development agreement with Mockingbird Oaks Development, LLC which sets forth the extent of the City's participation in the construction of public improvements related to the development of the Los Patios Addition, Section 3, and to allocate and appropriate funds therefor;

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, Texas, a Public Improvement Development Agreement with Mockingbird Oaks Development, LLC. Said agreement is marked as Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION TWO. That the sum of \$44,325.00 is hereby allocated from the Water

and Sewer Fund (300) Utilities (300) Interfund Transfer (0339) Water and Sewer Construction Fund (6341) to the Los Patios Drainage and Utilities Improvement Project (9031); and that the sum of \$57,710.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Los Patios Drainage and Utilities Improvement Project (9031).

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for said agreement, in amount not to exceed \$102,035.00, out of funds that are available in the said budget account upon receipt of proper invoice or statement therefor approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN MOCKINGBIRD OAKS DEVELOPMENT, LLC
AND THE CITY OF MIDLAND, TEXAS**

THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT (“Agreement”) is made and effective this 23rd day of January, 2013, by and between **MOCKINGBIRD OAKS DEVELOPMENT, LLC** (“Developer”) and the **CITY OF MIDLAND, TEXAS** (“City”), a home rule municipal corporation.

W I T N E S S E T H:

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this Public Improvement Development Agreement for the construction of appropriate and necessary public facilities;

NOW, THEREFORE, in consideration of the covenants, conditions, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer does hereby agree to the terms set forth in this Agreement:

1. The Developer desires to develop the Property described as Los Patios Addition, Section 3. Pursuant thereto, the Developer agrees to make certain public improvements as set forth below. The improvements are more particularly described in specifications and contract documents related to the construction of the public improvements related to the development of the Property prepared by Newton Engineering, PC (hereafter collectively called “the Specifications”). The Specifications are incorporated herein by reference and made a part hereof for all purposes, and Developer shall comply with the Specifications in the performance of all work pursuant to this Agreement. No amendment to the Specifications may be made without the written approval of the City Manager.

2. The public improvements to be constructed by Developer pursuant to this Agreement shall be generally described as follows:

See Exhibit “A”, attached hereto and incorporated herein by reference.

3. Developer must submit any bids it receives for the proposed public improvements to the City for approval prior to engaging any contractor or subcontractor in such work, which approval shall not be unreasonably withheld. If City fails to object within ten (10) days (excluding weekends and City holidays) after receipt from the Developer of the bid tabulations and written notification of whom the Developer intends to award the contract, the bid which the Developer indicated it is accepting shall be deemed to have been accepted by the City. The City reserves the right to reject any and all bids for work that involves City participation. In rejecting any bid pursuant to the provisions of this Paragraph 3, the City shall issue a notice of rejection in writing to the Developer stating each and every ground or reason relied upon by the City for such rejection.

4. Upon completion of the improvements called for in Paragraph 2, the Developer shall notify the City’s Director of Development Services for inspection. Project inspection for required public improvements will be done by the City during the construction phase. The City’s Director of Development Services shall cause such work to be inspected within five (5) days, excluding weekends and holidays, of being notified by the Developer. Notwithstanding anything herein to the contrary, project inspection must be completed prior to water or sewer systems being backfilled. If the Director of Development Services determines that all work has been completed in conformance with the Specifications, then the Director of Development Services shall give his approval for that improvement work.

5. After completion and acceptance of all work, the Developer must furnish to City an affidavit of all bills paid with respect to the completed work.

6. In consideration of the obligations incurred by the Developer pursuant to this Agreement, the City agrees to participate in the funding of the construction of the public improvements listed in Exhibit "A" attached hereto and incorporated herein by reference said amount to be no more than \$102,035.00. In no case shall the City's contributions to the public improvements required to be constructed on the Property exceed 30 percent of the actual cost of all the public improvements associated with the development without Developer complying with the applicable competitive sealed bid procedures set forth in state law and the ordinances and regulations of the City of Midland, Texas. If the City's contribution for public improvements for any contract exceeds 30 percent of the total cost of all public improvements associated with such contract and such public improvements were constructed without complying with said applicable competitive sealed bid procedures, then the City's maximum contribution under this contract for such phase shall not exceed 30 percent of the actual cost of all public improvements associated with the particular contract.

7. Developer 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, including accidental death, losses, property damage and expenses of any character whatsoever, including attorney's fees, brought for or on account of any injuries or damages received or sustained by any person or persons or property, on account of any negligent act of Developer, its agents or employees, or any subcontractor, in the execution, supervision and operations growing out of or in any way connected with the performance of this Agreement,

and Developer will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including attorney's fees.

DEVELOPER 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, INCLUDING ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF 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 DEVELOPER OR DEVELOPER'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 DEVELOPER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8. The Developer agrees to indemnify and save the City harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen, and suppliers of machinery and parts thereof, equipment, power tools, all supplies, including

commissary incurred in the furtherance of the performance of this contract. When City so desires, the Developer shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

9. Developer shall obtain and maintain continuously in effect at all times during the construction of the public improvements described in Paragraph 2, above, at Developer'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. The following requirements shall be met in regard to workers' compensation insurance coverage: Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/persons's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Developer shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer providing services on the project, for the duration

of the project.

C. The Developer must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Developer's current certificate of coverage ends during the duration of the project, the Developer must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Developer shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Developer shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Developer shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Developer shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Developer shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Developer, prior to that person beginning work on the

project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Developer:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Developer is representing to the governmental entity that all employees of the Developer who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Developer's failure to comply with any of these provisions is a breach of

contract by the Developer which entitles the governmental entity to declare the contract void if the Developer does not remedy the breach within 10 days after receipt of notice of breach from the governmental entity.

Developer shall also comply with the following:

L. Comprehensive General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Property, in at least the amount of \$250,000.00 per individual, \$1,000,000.00 per occurrence and \$100,000.00 with respect to property damage; said insurance shall name the City as an additional insured and shall waive all rights of subrogation against the City.

M. Automobile Liability Coverage on all motor vehicles owned, leased and/or operated by the Developer or its employees in amounts of not less than \$1,000,000.00 combined single limit or equivalent, provided, however, separate automobile coverage shall not be required if such coverage is provided under the Developer's comprehensive general liability policy. The insurance shall name the City as an additional insured and waive all rights of subrogation against the City.

All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which the Developer may carry.

10. **All insurance required pursuant to Paragraph 9, except worker's compensation, shall name the City as an additional insured.** The comprehensive general liability policy shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by the Developer in the indemnity and hold harmless provisions included in this Agreement. Developer'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. Developer shall furnish to the City a certificate of insurance showing City as an additional insured and evidencing that all of the herein stated requirements have been met. **All insurance coverage required pursuant to Paragraph 9 shall include in its provisions a waiver of any rights of subrogation against City.**

DEVELOPER SHALL CONTRACTUALLY REQUIRE ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS THAT WORK ON ANY PORTION OF THE WORK THAT IS THE SUBJECT OF THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT TO OBTAIN INSURANCE COVERAGE THAT MEETS OR EXCEEDS THE 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 (EXCEPT WORKERS COMPENSATION).

11. Insurance must be approved by the City Attorney's office prior to this Agreement being executed.

12. This Agreement may be modified or amended only by the mutual consent of the parties hereto.

13. This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

14. Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

Mockingbird Oaks Development, LLC

4910 N. Midkiff
Midland, Texas 79705
Attn: Mike Jackson

If to City:

City of Midland
P.O. Box 1152
Midland, Texas 79702
Attn: City Engineer

15. Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

16. This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties hereunder are performable in Midland County, Texas. Exclusive venue for any cause of action 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.

17. In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (TEX. CIV. PRAC. & REM. CODE §37.001 et seq., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys fees to which the prevailing party might otherwise be entitled.

BY EXECUTING THIS AGREEMENT, DEVELOPER 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 DEVELOPER SPECIFICALLY AGREES THAT IF THE DEVELOPER 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 DEVELOPER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH DEVELOPER MIGHT OTHERWISE BE ENTITLED.

DEVELOPER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. DEVELOPER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS

AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE DEVELOPER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

18. It is expressly understood and agreed that Developer 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 Developer 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 Developer, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Developer. No person performing any of the work and services described hereunder by Developer shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this contract is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Developer 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 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 Developer's work. Developer shall assume exclusive responsibility for the work. Developer is entirely free to do the work in its own way.

19. RELEASE: DEVELOPER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING UNDER OR ASSOCIATED WITH THIS AGREEMENT WHICH DEVELOPER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO QUANTUM MERUIT, DUE PROCESS AND TAKINGS CLAUSES UNDER THE TEXAS AND UNITED STATES CONSTITUTION, TORT CLAIMS OR CITY'S NEGLIGENCE.

20. 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.

21. 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, Developer or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one (1) original and seven (7) 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 Developer will settle, the physical and mailing addresses of Developer at the time and date the claim was presented and the physical and mailing addresses of Developer for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Developer 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 Developer that Developer's notice is insufficient. The 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, Developer's failure to comply with the requirements herein shall perpetually bar Developer's claim for damages under Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code, regardless if the City has actual or constructive notice or knowledge of said claim or alleged damages. Developer agrees that the requirements of this entire agreement are reasonable.

22. This agreement is made under the authority of Section 395.081 of the Texas Local Government Code and the laws of the State of Texas and Ordinances and the Charter of the City of Midland. The City finds in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing the Developer

to connect to the capital improvements. The City finds that this benefit will promote the public health, safety, and public welfare of the citizens of Midland. The City finds that the benefit the City of Midland receives will be efficient and well-planned urban growth and development, in coordination with public services. The benefit is also that this agreement will help preserve and increase the ad valorem tax base of the City. The City finds that the Developer's land adjoins the capital improvement or is within five (5) miles of the capital improvement. The five (5) miles is the specified distance required in Section 395.081 of the Texas Local Government Code.

23. Notwithstanding any other provision hereof, the City shall not be obligated to provide payment to Developer under this Agreement until Developer has met all requirements of this Agreement, including, but not limited to, the City's approval of the improvement work as set forth in Paragraph 4 and the City's determination that Developer has furnished satisfactory evidence that all obligations described in Paragraph 8 have been paid, discharged or waived. Determination of whether Developer has furnished satisfactory evidence that all such obligations have been paid, discharged or waived shall be in the sole discretion of the City.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

M O C K I N G B I R D O A K S
DEVELOPMENT, LLC

By: _____
Mike Jackson, President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared MIKE JACKSON, 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 MOCKINGBIRD OAKS DEVELOPMENT, LLC, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2013.

Notary Public, State of Texas

Midland, TX

AS OF JANUARY 8, 2013

Cost Sharing	96.56%	3.44%
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Los Patios Addition - Section 3 (Mike Jackson)

Wastewater Collection and Sanitary Sewer Improvements

Midland, TX

ENGINEER'S OPINION OF PROBABLE COSTS (Revised by DDB)

AS OF JANUARY 8, 2013

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	PRICE	Total	DEVELOPER SHARE	DEVELOPER COST	MIDLAND SHARE	MIDLAND COST
	Paving and Drainage								
1	24" Type A Curb &Gutter	LF	18028	\$ 13.55	\$ 244,279.40	100.00%	\$ 244,279.40	0.00%	\$ -
2	24" Type B Curb &Gutter	LF	950	\$ 13.55	\$ 12,872.50	100.00%	\$ 12,872.50	0.00%	\$ -
3	Sawtooth Curb	LF	132	\$ 18.90	\$ 2,494.80	100.00%	\$ 2,494.80	0.00%	\$ -
4	2' Concrete Valley Gutter	SF	3774	\$ 6.30	\$ 23,776.20	100.00%	\$ 23,776.20	0.00%	\$ -
5	4' Concrete Valley Gutter	SF	1128	\$ 6.30	\$ 7,106.40	100.00%	\$ 7,106.40	0.00%	\$ -
5B	4' Concrete Valley Gutter (Pilot Channel)	SF	2660	\$ 6.30	\$ 16,758.00	0.00%	\$ -	100.00%	\$ 16,758.00
4	1-3/4" Type D HMAc (Street)	SY	39160	\$ 8.80	\$ 344,608.00	100.00%	\$ 344,608.00	0.00%	\$ -
5	1-3/4" Type D HMAc (Alley)	SY	10362	\$ 9.90	\$ 102,583.80	100.00%	\$ 102,583.80	0.00%	\$ -
6	8" Base (Street)	SY	39160	\$ 9.00	\$ 352,440.00	100.00%	\$ 352,440.00	0.00%	\$ -
7	8" Base (Alley)	SY	10362	\$ 11.55	\$ 119,681.10	100.00%	\$ 119,681.10	0.00%	\$ -
8	Cement Stabilized Subgrade on CRMWD	SF	6237	\$ 5.25	\$ 32,744.25	100.00%	\$ 32,744.25	0.00%	\$ -
9	Concrete Flatwork	LS	28905	\$ 7.35	\$ 212,451.75	100.00%	\$ 212,451.75	0.00%	\$ -
9B	Concrete Flatwork (Flume in Balmorhea)	LS	2002	\$ 7.35	\$ 14,714.70	0.00%	\$ -	100.00%	\$ 14,714.70
10	Erosion Control	LS	1	\$ 100,000.00	\$ 100,000.00	100.00%	\$ 100,000.00	0.00%	\$ -
11	Rock Rip Rap	LS	1	\$ 12,900.00	\$ 12,900.00	100.00%	\$ 12,900.00	0.00%	\$ -
12	Earthwork Cut to Fill	SY	1	\$ 584,200.00	\$ 584,200.00	100.00%	\$ 584,200.00	0.00%	\$ -
13	Subgrage Preparation	EA	57569	\$ 2.55	\$ 146,800.95	100.00%	\$ 146,800.95	0.00%	\$ -
14	Concrete Headwall (Basin)	EA	1	\$ 5,932.50	\$ 5,932.50	0.00%	\$ -	100.00%	\$ 5,932.50
15	36" HDPE Strom Sewer (Under Balmorhea)	EA	131	\$ 155.00	\$ 20,305.00	0.00%	\$ -	100.00%	\$ 20,305.00
16	ADA Ramp	EA	34	\$ 1,323.00	\$ 44,982.00	100.00%	\$ 44,982.00	0.00%	\$ -
17	Adjust Manhole	EA	31	\$ 830.00	\$ 25,730.00	100.00%	\$ 25,730.00	0.00%	\$ -
18	Adjust Water Valve	EA	39	\$ 305.00	\$ 11,895.00	100.00%	\$ 11,895.00	0.00%	\$ -
									\$ -
									\$ -
									\$ -
Total (Base Bid)					\$ 2,439,256.35		\$ 2,381,546.15		\$ 57,710.20

Cost Sharing

97.63%

2.37%



NEWTON ENGINEERING, PC

4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0489

F-13856

November 5, 2012

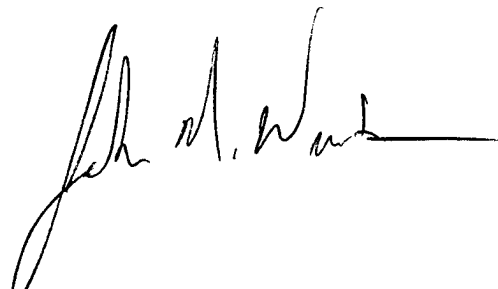
David Beard, PE
City of Midland Texas
300 N. Loraine
Midland, Texas 79702

RE: Los Patios Section 3

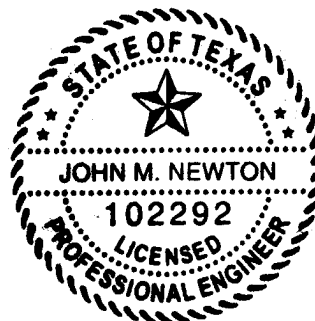
Mr. Beard:

On behalf of my client, Mike Jackson, we are asking the City of Midland to consider entering into a development agreement for the construction of water, sanitary sewer, storm sewer, and drainage facilities in Los Patios Section 3. I have enclosed a construction cost estimate for the public improvements which we are requesting the City of Midland's participation. We are requesting the City of Midland to participate the oversize cost for the extension of a 16" water main in Crowley Blvd., 100% cost of water line extension across Balmorhea Tr. at Guadalupe St. and Crowley, 100% cost in the extension of sewer line across Balmorhea Tr. at Alley E and H, Flume in Balmorhea that services the development to the north, the pilot channel in the detention pond, and the concrete headwall at the exit of the existing detention pond. We request that this item be placed on the next scheduled City Council meeting. If you have any question or need any additional information, please do not hesitate to call. Thank you for your consideration.

Sincerely,



John M. Newton, P.E.



CITY OF MIDLAND
CITY ENGINEER'S OFFICE
APPROVED: 1/14/2012
☒ As submitted
☐ Subject to changes as indicated
☐ Rejected
Review based on applicants submitted information.

Los Patios Section 3 - Development Agreement

Los Patios Section 3 Development Water and Sewer						
Item	Quantity	Unit	ty	Quant	Unit	

Crossing at Guadalupe and West down Balmorhea
* 335LF 8 to 16 diff + 65LF full cost

Crossing at Alley E and Alley H

Water → 36,625⁰⁰ > 44,325⁰⁰ ⇒ utilities

Wastewater → 7,700⁰⁰

Storm Sewer → 20,305⁰⁰ > 57,710²⁰ ⇒ Paving + Drainage

Paving → 37,405²⁰

102,035²⁰ ⇒ 102,035⁰⁰

28,005⁰⁰

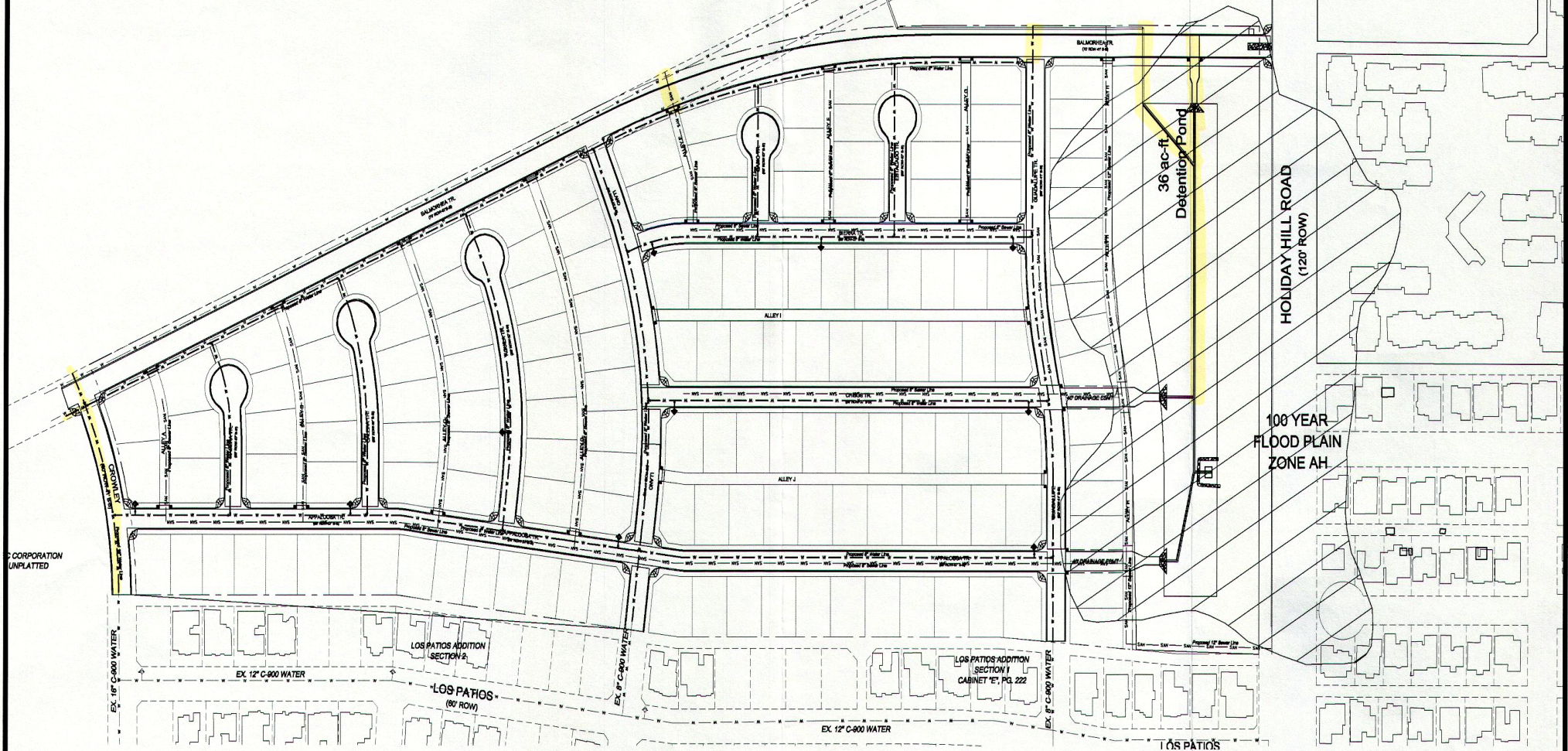
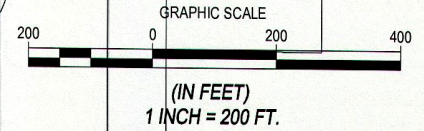
Los Patios Section 3 - Development Agreement

Los Patios Section 3 Development Streets and Alleys									
Item	Quantity	Unit	Qty	Unit	Unit Cost	Project Total	City Share	Developer Share	
Paving & Earthwork									
24" Type A Curb and Gutter	18,028	LF	0	LF	\$ 13.55	\$ 244,279.40	\$ -	\$ 244,279.40	
24" Type B Curb and Gutter	950	LF	0	LF	\$ 13.55	\$ 12,872.50	\$ -	\$ 12,872.50	
Sawtooth Curb	132	LF	0	LF	\$ 18.90	\$ 2,494.80	\$ -	\$ 2,494.80	
2" Concrete Valley Gutter	3,774	SF	0	SF	\$ 6.30	\$ 23,776.20	\$ -	\$ 23,776.20	
4" Concrete Valley Gutter	3,788	SF	2660	SF	\$ 8.80	\$ 23,864.40	\$ 16,758.00	\$ 7,106.40	Pilot Channel
1-3/4" Type D HMA Street	39,160	SY	0	SY	\$ 8.80	\$ 344,608.00	\$ -	\$ 344,608.00	
1-3/4" Type D HMA Alley	10,362	SY	0	SY	\$ 9.90	\$ 102,583.80	\$ -	\$ 102,583.80	
8" Base Street	39,160	SY	0	SY	\$ 9.00	\$ 352,440.00	\$ -	\$ 352,440.00	
8" Base Alley	10,362	SY	0	SY	\$ 11.55	\$ 119,681.10	\$ -	\$ 119,681.10	
Cement Stabilized Subgrade on CRMW	6,237	SF	0	SF	\$ 5.25	\$ 32,744.25	\$ -	\$ 32,744.25	
Concrete Flat Work	30,907	SF	2002	SF	\$ 7.35	\$ 227,166.45	\$ 14,714.70	\$ 212,451.75	Flume in Balmorea
Erosion Control	1	LS	0	LS	\$ 100,000.00	\$ 100,000.00	\$ -	\$ 100,000.00	
Rock Rip Rap	1	LS	0	LS	\$ 12,900.00	\$ 12,900.00	\$ -	\$ 12,900.00	
Earthwork Cut to Fill	1	LS	0	LS	\$ 584,200.00	\$ 584,200.00	\$ -	\$ 584,200.00	
Subgrade Preparation	57,569	SY	0	SY	\$ 2.55	\$ 146,800.95	\$ -	\$ 146,800.95	
Concrete Head Wall	1	EA	1	EA	\$ 5,932.50	\$ 5,932.50	\$ 5,932.50	\$ -	
ADA Ramp	34	EA	0	EA	\$ 1,323.00	\$ 44,982.00	\$ -	\$ 44,982.00	
Adjust Manhole	31	EA	0	EA	\$ 830.00	\$ 25,730.00	\$ -	\$ 25,730.00	
Adjust Water Valve	39	EA	0	EA	\$ 305.00	\$ 11,895.00	\$ -	\$ 11,895.00	
Los Patios Section 3 Paving and Earthwork Subtotal=					\$ 2,418,951.35	\$ 37,405.20	\$ 37,405.20	\$ 2,381,546.15	
Grand Totals =					\$ 3,728,629.35	\$ 94,335.20	\$ 94,335.20	\$ 3,626,594.15	
Percent Participation						3%		97%	

BRIARWOOD AVE
(75' ROW)

LOS PATIOS SECTION 3 DEVELOPMENT AGREEMENT EXHIBIT MIDLAND, MIDLAND COUNTY, TEXAS

SBC CORPORATION
UNPLATTED



SBC CORPORATION
UNPLATTED



NEWTON ENGINEERING, PC

4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499

F-13856



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 22, 2013

TO: City Council / City Manager

FROM: David D. Beard, P.E. – City Engineer

SUBJECT: Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$98,552 with DR Horton-Texas, Ltd (Don Allen) for the construction of the west side of Avalon Dr. south of Westridge Park Addition – Section 23 (Chevron site) to serve the Legace Addition. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (District #4 – Trost)

Purpose:

Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$98,552 with DR Horton-Texas, Ltd (Don Allen) for the construction of the west side of Avalon Dr. south of Westridge Park Addition – Section 23 (Chevron site) to serve the Legace Addition.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Paving Improvements (Half Width - Avalon Drive) – Developer	\$ 226,254
Paving Improvements (Half Width - Avalon Drive) – City	\$ 102,252 (31.1%)
Total OPC (Parkhill Smith & Cooper)	\$ 328,506

Reduce City Participation to 30% - \$98,552

That the sum of \$98,552 is hereby appropriated from the 2012 GPCO Street Improvements Bond Fund (163) Unappropriated Fund Balance (5650) to the Avalon Dr. Legacy Addition Project (9029)

Discussion:

The Legacy Park Addition – Section 23 is located on the east side to Avalon Dr. approximately 977' south of Deauville Blvd. due west of the Legends Park development. The developer is requesting City Participation for the construction of paving improvements along Avalon Dr.

Paving improvements include construction of the paving extension of Avlaon Dr. (full width) from the south property line of Westridge Park Addition – Section 23 (Chevron site) along the frontage of the Legacy Addition. Based on the calculations, the City's contribution to the paving of this development agreement is 31.1% of the total cost. Due to ongoing construction in the vicinity, the developer has selected a contractor to perform the work. Therefore, the developer has elected to reduce the request for City's participation to 30% to avoid the City's bidding and procurements procedures.

Staff recommends approval of the development agreement indicating City participation in the amount of \$98,552 (30.0%).

Attached is an opinion of probable cost from the engineer of record (Parkhill, Smith & Cooper – Eric West, P.E.) and a location map.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH DR HORTON-TEXAS, LTD. FOR DEVELOPMENT OF LEGACY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTH OF DEAUVILLE BOULEVARD AND WEST OF THE LEGENDS PARK DEVELOPMENT); AND APPROPRIATING FUNDS IN THE AMOUNT OF \$98,552.00 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, the developer of Legacy Addition, City and County of Midland, Texas, has requested City participation in the development of this addition; and

WHEREAS, the City Code allows City participation; and

WHEREAS, the City Council finds that in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing the developer to connect to capital improvements by promoting the health, safety, and public welfare and providing for efficient and well-planned urban growth and development; and

WHEREAS, the City Council finds it to be in the public interest to execute a development agreement with DR Horton-Texas, Ltd. which sets forth the extent of the City's participation in the construction of public improvements related to the development of the Legacy Addition, and to appropriate funds therefor;

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, Texas, a Public Improvement Development Agreement with DR Horton-Texas, Ltd. Said agreement is marked as Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION TWO. That the sum of \$98,552.00 is hereby appropriated from the 2012 GPCO Street Improvements Bond Fund (163) Unappropriated Fund Balance (5650) to the Avalon Drive Legacy Addition Project (9029).

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for said agreement, in amount not to exceed \$98,552.00, out of funds that are available in the said budget account upon receipt of proper invoice or statement therefor approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN DR HORTON-TEXAS, LTD.
AND THE CITY OF MIDLAND, TEXAS**

THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT (“Agreement”) is made and effective this 23rd day of January, 2013, by and between **DR HORTON-TEXAS, LTD.** (“Developer”) and the **CITY OF MIDLAND, TEXAS** (“City”), a home rule municipal corporation.

W I T N E S S E T H:

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this Public Improvement Development Agreement for the construction of appropriate and necessary public facilities;

NOW, THEREFORE, in consideration of the covenants, conditions, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer does hereby agree to the terms set forth in this Agreement:

1. The Developer desires to develop the Property described as Legacy Addition. Pursuant thereto, the Developer agrees to make certain public improvements as set forth below. The improvements are more particularly described in specifications and contract documents related to the construction of the public improvements related to the development of the Property prepared by AMD, LLC (hereafter collectively called “the Specifications”). The Specifications are incorporated herein by reference and made a part hereof for all purposes, and Developer shall comply with the Specifications in the performance of all work pursuant to this Agreement. No amendment to the Specifications may be made without the written approval of the City Manager.

2. The public improvements to be constructed by Developer pursuant to this Agreement shall be generally described as follows:

See Exhibit “A”, attached hereto and incorporated herein by reference.

3. Developer must submit any bids it receives for the proposed public improvements to the City for approval prior to engaging any contractor or subcontractor in such work, which approval shall not be unreasonably withheld. If City fails to object within ten (10) days (excluding weekends and City holidays) after receipt from the Developer of the bid tabulations and written notification of whom the Developer intends to award the contract, the bid which the Developer indicated it is accepting shall be deemed to have been accepted by the City. The City reserves the right to reject any and all bids for work that involves City participation. In rejecting any bid pursuant to the provisions of this Paragraph 3, the City shall issue a notice of rejection in writing to the Developer stating each and every ground or reason relied upon by the City for such rejection.

4. Upon completion of the improvements called for in Paragraph 2, the Developer shall notify the City’s Director of Development Services for inspection. Project inspection for required public improvements will be done by the City during the construction phase. The City’s Director of Development Services shall cause such work to be inspected within five (5) days, excluding weekends and holidays, of being notified by the Developer. Notwithstanding anything herein to the contrary, project inspection must be completed prior to water or sewer systems being backfilled. If the Director of Development Services determines that all work has been completed in conformance with the Specifications, then the Director of Development Services shall give his approval for that improvement work.

5. After completion and acceptance of all work, the Developer must furnish to City an affidavit of all bills paid with respect to the completed work.

6. In consideration of the obligations incurred by the Developer pursuant to this Agreement, the City agrees to participate in the funding of the construction of the public improvements listed in Exhibit "A" attached hereto and incorporated herein by reference said amount to be no more than \$98,552.00. In no case shall the City's contributions to the public improvements required to be constructed on the Property exceed 30 percent of the actual cost of all the public improvements associated with the development without Developer complying with the applicable competitive sealed bid procedures set forth in state law and the ordinances and regulations of the City of Midland, Texas. If the City's contribution for public improvements for any contract exceeds 30 percent of the total cost of all public improvements associated with such contract and such public improvements were constructed without complying with said applicable competitive sealed bid procedures, then the City's maximum contribution under this contract for such phase shall not exceed 30 percent of the actual cost of all public improvements associated with the particular contract.

7. Developer 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, including accidental death, losses, property damage and expenses of any character whatsoever, including attorney's fees, brought for or on account of any injuries or damages received or sustained by any person or persons or property, on account of any negligent act of Developer, its agents or employees, or any subcontractor, in the execution, supervision and operations growing out of or in any way connected with the performance of this Agreement,

and Developer will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including attorney's fees.

DEVELOPER 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, INCLUDING ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF 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 DEVELOPER OR DEVELOPER'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 DEVELOPER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8. The Developer agrees to indemnify and save the City harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen, and suppliers of machinery and parts thereof, equipment, power tools, all supplies, including

commissary incurred in the furtherance of the performance of this contract. When City so desires, the Developer shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

9. Developer shall obtain and maintain continuously in effect at all times during the construction of the public improvements described in Paragraph 2, above, at Developer'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. The following requirements shall be met in regard to workers' compensation insurance coverage: Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/persons's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Developer shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer providing services on the project, for the duration

of the project.

C. The Developer must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Developer's current certificate of coverage ends during the duration of the project, the Developer must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Developer shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Developer shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Developer shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Developer shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Developer shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Developer, prior to that person beginning work on the

project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Developer:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Developer is representing to the governmental entity that all employees of the Developer who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Developer's failure to comply with any of these provisions is a breach of

contract by the Developer which entitles the governmental entity to declare the contract void if the Developer does not remedy the breach within 10 days after receipt of notice of breach from the governmental entity.

Developer shall also comply with the following:

L. Comprehensive General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Property, in at least the amount of \$250,000.00 per individual, \$1,000,000.00 per occurrence and \$100,000.00 with respect to property damage; said insurance shall name the City as an additional insured and shall waive all rights of subrogation against the City.

M. Automobile Liability Coverage on all motor vehicles owned, leased and/or operated by the Developer or its employees in amounts of not less than \$1,000,000.00 combined single limit or equivalent, provided, however, separate automobile coverage shall not be required if such coverage is provided under the Developer's comprehensive general liability policy. The insurance shall name the City as an additional insured and waive all rights of subrogation against the City.

All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which the Developer may carry.

10. All insurance required pursuant to Paragraph 9, except worker's compensation, shall name the City as an additional insured. The comprehensive general liability policy shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by the Developer in the indemnity and hold harmless provisions included in this Agreement. Developer'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. Developer shall furnish to the City a certificate of insurance showing City as an additional insured and evidencing that all of the herein stated requirements have been met. **All insurance coverage required pursuant to Paragraph 9 shall include in its provisions a waiver of any rights of subrogation against City.**

DEVELOPER SHALL CONTRACTUALLY REQUIRE ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS THAT WORK ON ANY PORTION OF THE WORK THAT IS THE SUBJECT OF THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT TO OBTAIN INSURANCE COVERAGE THAT MEETS OR EXCEEDS THE 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 (EXCEPT WORKERS COMPENSATION).

11. Insurance must be approved by the City Attorney's office prior to this Agreement being executed.

12. This Agreement may be modified or amended only by the mutual consent of the parties hereto.

13. This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

14. Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

DR Horton-Texas, Ltd.

6751 N. Freeway
Fort Worth, Texas 76131
Attn: Don Allen

If to City:

City of Midland
P.O. Box 1152
Midland, Texas 79702
Attn: City Engineer

15. Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

16. This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties hereunder are performable in Midland County, Texas. Exclusive venue for any cause of action 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.

17. In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (TEX. CIV. PRAC. & REM. CODE §37.001 et seq., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys fees to which the prevailing party might otherwise be entitled.

BY EXECUTING THIS AGREEMENT, DEVELOPER 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 DEVELOPER SPECIFICALLY AGREES THAT IF THE DEVELOPER 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 DEVELOPER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH DEVELOPER MIGHT OTHERWISE BE ENTITLED.

DEVELOPER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. DEVELOPER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS

AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE DEVELOPER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

18. It is expressly understood and agreed that Developer 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 Developer 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 Developer, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Developer. No person performing any of the work and services described hereunder by Developer shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this contract is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Developer 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 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 Developer's work. Developer shall assume exclusive responsibility for the work. Developer is entirely free to do the work in its own way.

19. RELEASE: DEVELOPER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING UNDER OR ASSOCIATED WITH THIS AGREEMENT WHICH DEVELOPER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO QUANTUM MERUIT, DUE PROCESS AND TAKINGS CLAUSES UNDER THE TEXAS AND UNITED STATES CONSTITUTION, TORT CLAIMS OR CITY'S NEGLIGENCE.

20. 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.

21. 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, Developer or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one (1) original and seven (7) 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 Developer will settle, the physical and mailing addresses of Developer at the time and date the claim was presented and the physical and mailing addresses of Developer for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Developer 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 Developer that Developer's notice is insufficient. The 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, Developer's failure to comply with the requirements herein shall perpetually bar Developer's claim for damages under Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code, regardless if the City has actual or constructive notice or knowledge of said claim or alleged damages. Developer agrees that the requirements of this entire agreement are reasonable.

22. This agreement is made under the authority of Section 395.081 of the Texas Local Government Code and the laws of the State of Texas and Ordinances and the Charter of the City of Midland. The City finds in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing the Developer

to connect to the capital improvements. The City finds that this benefit will promote the public health, safety, and public welfare of the citizens of Midland. The City finds that the benefit the City of Midland receives will be efficient and well-planned urban growth and development, in coordination with public services. The benefit is also that this agreement will help preserve and increase the ad valorem tax base of the City. The City finds that the Developer's land adjoins the capital improvement or is within five (5) miles of the capital improvement. The five (5) miles is the specified distance required in Section 395.081 of the Texas Local Government Code.

23. Notwithstanding any other provision hereof, the City shall not be obligated to provide payment to Developer under this Agreement until Developer has met all requirements of this Agreement, including, but not limited to, the City's approval of the improvement work as set forth in Paragraph 4 and the City's determination that Developer has furnished satisfactory evidence that all obligations described in Paragraph 8 have been paid, discharged or waived. Determination of whether Developer has furnished satisfactory evidence that all such obligations have been paid, discharged or waived shall be in the sole discretion of the City.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

DR HORTON-TEXAS, LTD.

By: _____
Don Allen, Assistant Secretary

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared DON ALLEN, 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 DR HORTON-TEXAS, LTD.,
in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of
_____, 2013.

Notary Public, State of Texas



PARKHILLSMITH&COOPER

December 19, 2012

Mr. David Beard, PE
City Engineer
City of Midland
P. O. Box 1152
Midland, TX 79702

CITY OF MIDLAND
CITY ENGINEER'S OFFICE
APPROVED: DDB 1/13/2013
☒ As submitted
☐ Subject to changes as indicated
☐ Rejected
Review based on applicants submitted
information.

Re: Legacy Addition
Development Agreement Request – Avalon Drive

Dear Mr. Beard:

This project includes the full-width construction of an arterial street in the City of Midland, Avalon Drive. Our client is responsible for constructing the west side of the street for approximately 2078 linear feet. We are requesting City of Midland participation in these items and an associated Development Agreement to facilitate the City participation. Participation is based on previously agreed upon breakouts for the east side of the roadway, for which a Development Agreement has been entered into with Betenbough Homes.

Enclosed please find an exhibit and Preliminary Opinions of Probable Cost for this portion of the project including a cost opinion for proposed City of Midland participation. This was calculated two different ways and resulted in a less than \$5 difference. Since this project was not bid per the City's requirements, the City participation is limited to 30% of the total cost of the project. The preliminary participation total is therefore \$98,552. We propose that this be the final City of Midland participation value.

The Development Agreement would be contracted with DR Horton-Texas, Ltd, 6751 N. Freeway, Ft. Worth, Texas 76131, Attn: Don Allen, 432-230-0800.

Please call if there are any questions concerning this information.

Sincerely,

PARKHILL, SMITH & COOPER, INC.

By Eric L. West
Eric L. West, P.E.

cc: Mr. Jim Nichols, PE – City of Midland
Mr. Don Allen – DR Horton

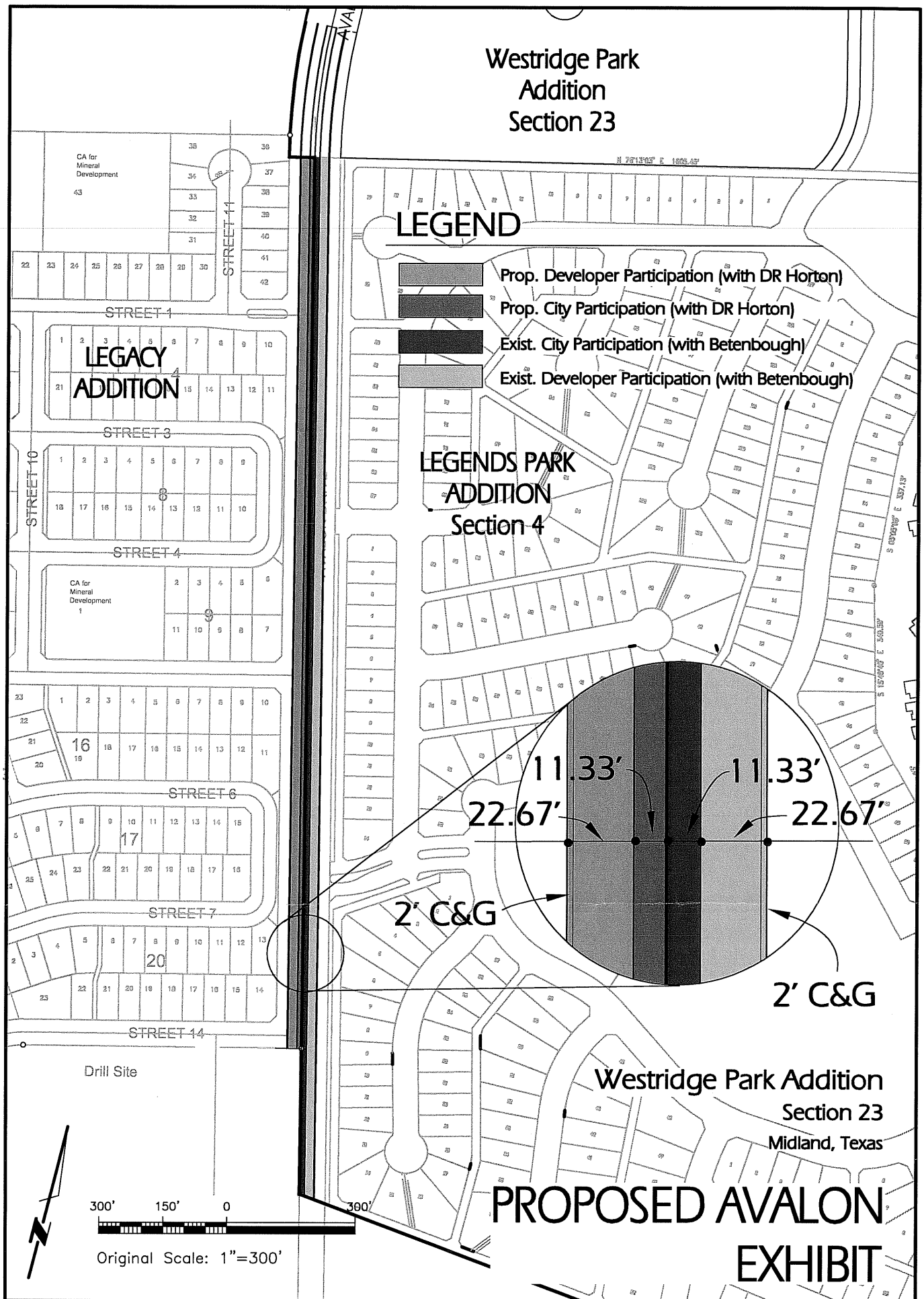
Amarillo
El Paso
Las Cruces
Lubbock
Midland

Enclosures

\\Data1\Projects\2012\9676.12\CIVIL\ENGR\9676.12-ReqDevAgree&ParticipationLetter.DOC

1700 W. Wall Street Suite 100 Midland, Texas 79701 432.697.1447 Fax 432.697.9758

\\data\projects\2012\6676.12\CADD\01_CIVIL\plating\Proposed Avalon Exhibit between Legacy & Legends.dwg, Proposed Avalon Addition, 12/19/2012 11:55:43 AM, TONY, \\muskelung\mid-03, Letter, 1:1



**ESTIMATED OPINION OF PROBABLE COST
DR HORTON - AVALON DRIVE - DEVELOPMENT AGREEMENT
ROADWAY IMPROVEMENTS**

December 19, 2012

Item No.	Description	Quantity	Unit	Unit Price	Amount
<i>Paving Improvements (West Side of Avalon), 2078.5 LF</i>					
1	Subgrade Prep.	7,391.2	SY	\$9.43	\$69,699.02
2	12" Base/Prime Coat/3.5" HMA	7,391.2	SY	\$29.65	\$219,149.08
3	24" C&G	2,078.5	LF	\$13.65	\$28,371.53
				Sub-Total:	\$317,219.62
4	Construction Staking	2,078.5	LF	\$5.43	\$11,286.26
				TOTAL CONSTRUCTION COST	\$328,505.88

City Participation: Middle 1/3 of Street (1/6 of West Side), 2078.5 LF

5	Subgrade Prep.	2,616.6	SY	\$9.43	\$24,674.54
6	12" Base/Prime Coat/3.5" HMA	2,616.6	SY	\$29.65	\$77,582.19
				TOTAL OPINION OF PROBABLE COST:	\$102,256.73

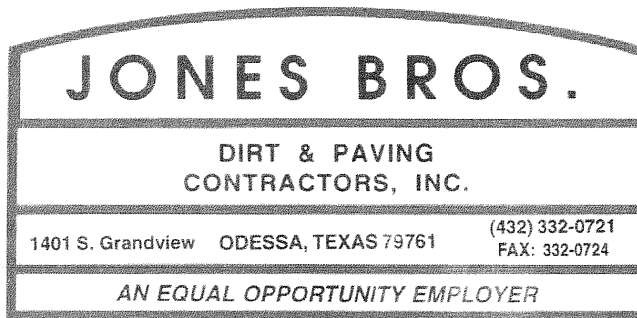
$$\frac{11.33}{(22.67 - 2.0) + 11.33} = \boxed{\begin{array}{l} \text{City share} \\ 35.40\% \end{array}} \quad \begin{array}{l} \text{DOB} \\ 1/13/2013 \end{array}$$

Midland, TX

AS OF DECEMBER 19, 2012

Total (Base Bid)	\$	328,505.88	\$	226,253.65	\$	102,252.23
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31.13%



To: D.R. HORTON

6751 N. FREEWAY

FORT WORTH, TEXAS 76131

Atten:MR. DON ALLEN

Ofc:817-230-0800 Fax:817-703-7122

dallen@drhorton.com

Location: AVALON (LEGENDS PARK)

Job Description: FULL WIDTH OF AVALON

Date:11/20/20112

Job #

We agree to furnish labor, equipment and material to do the following work:

Item No.	Description	Quantity	Unit	Price	Total
CF-1	Sub-Grade Prep. Work including all cut, fill, and compaction for paving of Avalon	8641	SY	\$9.43	\$81,484.63
P-4	Standard City of Midland 24" wide, 7" standard concrete curb & gutter in Avalon, sub-grade prep., reinforcement, finishing, and jointing, including all necessary accessories, furnished and installed, complete and in place, per liner foot	2430	LF	\$13.65	\$33,169.50
P-5	Standard City of Midland Type "D" asphalt paving for Avalon (Full Width), including 3.5" HMAc and 12" compacted caliche base, including all necessary accessories, furnished and installed, complete and in place, per square yard.	8641	SY	\$29.65	\$256,205.65
E-1	Street Engineering and Curb & Gutter Staking	2430	LF	\$5.43	\$13,194.90
TOTAL QUOTE					\$384,054.68

PLEASE READ BEFORE YOU SIGN. SALES TAX NOT INCLUDED.

Purchaser agrees we are authorized to adjust & repair (at the expense of the purchaser) any utility line or obstruction encountered or damaged. If required by city, customer to pay for city permit, bumper blocks & striping. Seller is not responsible for delays due to conditions beyond its control or for removal or disposal of any hazardous materials. Purchaser is responsible for any grass or weed poisoning. **Quoted prices good for 30 days.** Progress payments due monthly. If purchaser is a corporation, the individual signing for purchaser agrees this contract shall be personally binding upon him as well as the corporation. This contract shall be payable at Odessa, Ector County, Texas on the 10th day of the month next following the date of the invoice. Maximum legal rate of interest will be charged on past due accounts. If this contract is not paid when due, purchaser agrees to pay attorney's fees if turned over for collection.

ACCEPTED BY PURCHASER _____

By: _____
Title: _____

Respectfully submitted by:

JONES BROS. DIRT & PAVING CONTRACTORS, INC.

By: _____

Company Representative

Upon acceptance of QUOTATION, please sign and return one copy to this office.
Thank you for the opportunity of bidding this job. If further information is needed, please call.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 22, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: David D. Beard, P.E. – City Engineer

SUBJECT: Consider a resolution to approve a contract between City of Midland and Midland Development Corporation in the amount of \$6,000,000 for the construction of public improvements to serve the Tradewinds Corridor project between Thomason Rd. and the Gateway Plaza Addition. (District #2 – Love)

Purpose:

Consider a resolution to approve a contract between City of Midland and Midland Development Corporation (MDC) in the amount of \$6,000,000 for the construction of public improvements to serve the Tradewinds Corridor project between Thomason Rd. and the Gateway Plaza Addition.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

That upon receipt of Funds from the Midland Development Corporation by the City of Midland said funds shall be deposited as follows and appropriated to the Tradewinds Street and Sewer Project (9016)

General Fund (001) Unappropriated Fund Balance (5650)	\$5,000,000
Water and Sewer Fund (300) Unappropriated Fund Balance (5650)	\$1,000,000

Discussion:

The purpose of this agreement is to approve an agreement between the City of Midland and MDC for the development of public infrastructure to serve the Tradewinds Corridor between Thomason Rd. and the Gateway Plaza Addition.

RESOLUTION NO. _____

RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE CITY OF MIDLAND FOR THE EXTENSION OF TRADEWINDS BOULEVARD AND THE CONSTRUCTION OF ASSOCIATED DRAINAGE AND UTILITY IMPROVEMENTS BETWEEN THOMASON DRIVE AND THE GATEWAY PLAZA ADDITION, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE; AND APPROPRIATING FUNDS THEREFOR

WHEREAS, on October 26, 2012, the Midland Development Corporation authorized the negotiation and execution of an economic development agreement with the City of Midland for the extension of Tradewinds Boulevard and the construction of associated drainage and utility improvements between Thomason Drive and the Gateway Plaza Addition; and

WHEREAS, the City Council must consider and approve all economic development agreements approved by the Midland Development Corporation before the agreements can become effective; and

WHEREAS, the City Council finds it to be in the public interest to approve an economic development agreement between the Midland Development Corporation and the City of Midland for said extension and improvements;

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

SECTION ONE. That the economic development agreement between the Midland Development Corporation and the City of Midland, which is attached hereto, marked as Exhibit "A", and incorporated herein for all purposes, is hereby approved.

SECTION TWO. That upon the City of Midland's receipt of \$6,000,000.00 from the Midland Development Corporation pursuant to the terms of said agreement, said funds shall be deposited as follows and appropriated in the associated amounts to the Tradewinds Street and Sewer Project (9016):

General Fund (001) Unappropriated Fund Balance (5650).....\$5,000,000
Water and Sewer Fund (300) Unappropriated Fund Balance (5650).....\$1,000,000

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between the MIDLAND DEVELOPMENT CORPORATION (“MDC”), an Economic Development Corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and the CITY OF MIDLAND, TEXAS (“City”), a home-rule municipal corporation.

I.

Recitals

- A. The MDC and the City desire to set forth the terms and conditions upon which \$6,000,000 in incentive funds will be provided to the City as consideration for the City’s extension of Tradewinds Boulevard and the construction of associated drainage and utility improvements between Thomason Drive and the Gateway Plaza Addition (the “Project”).
- B. The Project is expected to facilitate commercial and industrial development in the City of Midland.
- C. The MDC Board of Directors (the “Board”) and the City Council of the City of Midland, Texas (the “Council”) find that the purpose of this Agreement qualifies as an infrastructure improvement project under Section 501.103 of the Texas Local Government Code, and is therefore eligible for MDC funding.
- D. The Board and the Council find that the Project and expenditures therefor are required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises within the City of Midland.
- E. The Board and the Council find that this Agreement does not constitute a direct incentive to or expenditure on behalf of a business enterprise as described in Section 501.158 of the Texas Local Government Code.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MDC and the City hereby agree as follows:

II.

Obligations of the MDC

- A. On or before February 15, 2013, the MDC shall provide to the City an interest-free forgivable loan in the amount of \$6,000,000.00 which shall be disbursed in one lump sum and repaid as provided in Section III of this Agreement (the “Loan”). The MDC

agrees to forgive repayment of the Loan if the conditions contained in Section III of this Agreement are met.

III. Obligations of the City

- A. **The Project.** The City agrees to use the Loan for costs associated with the extension of Tradewinds Boulevard and the construction of associated drainage and utility improvements between Thomason Drive and the Gateway Plaza Addition.

The extension of Tradewinds Boulevard and associated drainage improvements shall consist of extending the roadway (collector street standard) from Thomason Drive approximately 6,500 linear feet to the Gateway Plaza Addition, including potential east/west connections and drainage improvements in accordance with the Master Thoroughfare Plan and Master Drainage Plan. Utility improvements shall include expanding the wastewater collection and water distribution systems to serve the property along the Tradewinds Boulevard corridor while providing capacity to meet future needs.

The Project shall include all necessary excavation, embedment, backfill, grading, sub-grade preparation, crushed aggregate base, HMAC/concrete pavement, cross drainage, curb and gutter, water and wastewater main installation, and necessary appurtenances or other such features as determined to be necessary by the City.

Associated costs shall include but not be limited to engineering costs, surveying costs, right-of-way acquisition costs, bidding costs, construction costs, and inspection costs for the Project.

- B. **Completion.** Upon completion of the Project, the City shall certify such to the MDC in accordance with Section VII(B)(1) hereof.
- C. **Return of Unexpended Loan Funds.** Within thirty (30) days of the City's certification that the Project has been completed, the City agrees to repay to the MDC any remaining Loan funds in the possession of the City that were not expended for the Project.
- D. **Repayment.** If the City fails to complete the above-describe Project by December 31, 2014, then the City agrees to repay the Loan to the MDC. The amount repayable from the Loan provided herein, shall be repaid, without interest, to the MDC on or before thirty (30) days after the MDC gives written notice to the City. Notwithstanding anything to the contrary contained anywhere in this Agreement,

under no circumstances shall the City be obligated to repay the MDC an amount in excess of the total dollar amount of the Loan actually received by the City from the MDC under this Agreement.

IV. Term

Upon execution by all of the parties, this Agreement becomes effective on January 23, 2013 (the “effective date”), and shall terminate when the requirements set forth in Sections II and III of this Agreement are completed, or when terminated by mutual agreement of the parties, or when terminated as hereinafter provided.

V. Law

The parties are aware of statutory limitations on the Loan and the use of funds under Chapters 501 and 504 of the Texas Local Government Code, and the parties acknowledge that the funds herein granted or guaranteed shall be utilized solely for purposes authorized under that law and by the terms of this Agreement.

VI. Documents

Prior to any payment by MDC, the City shall deliver to MDC an executed copy of this Agreement.

VII. Special Conditions

A. **Financial Commitment.** The following provisions shall apply:

1. Notwithstanding any provision hereof which might be interpreted otherwise, the MDC’s total financial commitment during a fiscal year of the MDC, October 1 to September 30, shall not exceed the Loan amount it is obligated to pay to the City during that fiscal year.
2. Notwithstanding any provision hereof which might be interpreted otherwise, the MDC’s total financial commitment during the term of this Agreement shall not exceed \$6,000,000.00 in the aggregate.

- B. **Certification.** As to any certification required under this Agreement, the City shall provide a letter from the City Manager. E-mail shall not be an acceptable form of certification under this Agreement.
- C. **Payments.** Payments to be made to the City under Section II hereof shall be made upon a written request from the City and completion of all necessary supporting documentation. The payment request and documentation should be directed to MDC Chairman, c/o City Secretary, City of Midland, P.O. Box 1152, Midland, Texas 79702.

VIII. General Terms

- A. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.
- B. **No Third-Party Beneficiary.** The parties approval of the Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.
- C. **Legal Relationship.** The parties are not, and shall not be considered as, joint venturers, partners, or agents of each other; and neither shall have the power to bind nor obligate the other, except as set forth in this Agreement. The parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between the MDC and 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.
- D. **Terminations.** This Agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein if the default is not cured within thirty (30) days after written notice from the other party.

- E. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- F. **Venue.** The obligations of the parties to this Agreement are deemed to have been performed in Midland County, Texas, and if legal action is necessary to enforce same, exclusive venue shall be in Midland County, Texas. All payments under this Agreement are deemed to have taken place in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have been performed in Midland County, Texas.
- G. **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- H. **Law.** This Agreement is subject to all applicable state and federal laws, and the Company agrees that it will comply in all material respects with all such applicable laws, regulations, orders and rules of the State of Texas and other such governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.
- I. **Assignment.** This Agreement shall be binding upon the parties hereto and their successors and assigns. This Agreement may not be assigned by the City without the prior written consent of the MDC.
- J. **Notices.** All notices to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

MDC Chairman
c/o City Secretary
City of Midland
P. O. Box 1152
Midland, Texas 79702

If to City:

City Manager
City of Midland
P.O. Box 1152
Midland, Texas 79702

with copy to:

MDC President
109 N. Main
Midland, Texas 79701

- K. **Amendment.** This Agreement may be amended by written instrument executed by both parties expressly stating the intention to amend this Agreement.
- L. **Payments.** All payments to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All payments shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

MDC Chairman
c/o City Secretary
City of Midland
P. O. Box 1152
Midland, Texas 79702

If to City:

City Manager
City of Midland
P.O. Box 1152
Midland, Texas 79702

- M. MDC and the City hereby agree and acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.
- N. This Agreement shall not be effective until approved by the Midland City Council.

IN WITNESS WHEREOF, the MDC and the Company have executed this Agreement on the _____ day of _____, 2013.

**MIDLAND DEVELOPMENT
CORPORATION**

Laura Roman, Chairman

ATTEST:

Robert Rendall, Secretary

CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 22, 2013

TO: City Council / City Manager

FROM: David D. Beard, P.E. – City Engineer

SUBJECT: Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$46,374 with SBC, LP (Doug Henson) for the construction of the west side of Avalon Dr. south of Deauville Dr. to serve the Westridge Park Addition – Section 23 (Chevron site). Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (District #4 – Trost)

Purpose:

Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$46,374 with SBC, LP (Doug Henson) for the construction of the west side of Avalon Dr. south of Deauville Dr. to serve the Westridge Park Addition – Section 23 (Chevron site).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Paving Improvements (Half Width - Avalon Drive) – Developer	\$ 106,458
Paving Improvements (Half Width - Avalon Drive) – Developer	\$ 48,123 (31.1%)
Total OPC (Parkhill Smith & Cooper)	\$ 154,581

Reduce City Participation to 30% - \$46,374

That the sum of \$46,374 is hereby appropriated from the 2012 GPCO Street Improvements Bond Fund (163) Unappropriated Fund Balance (5650) to the Avalon Dr. - Westridge Park 23 Project (9030).

Discussion:

The Westridge Park Addition – Section 23 is located at the southeast corner of Avalon Dr. and Deauville Blvd. The developer is requesting City Participation for the construction of paving improvements along Avalon Dr.

Paving improvements include construction of the paving extension of Avalon Dr. (full width) from Deauville Blvd. to the south property line. Based on the calculations, the City's contribution to the paving of this development agreement is 31.3% of the total cost. Due to ongoing construction in the vicinity, the developer has selected a contractor to perform the work. Therefore, the developer has elected to reduce the request for City's participation to 30% to avoid the City's bidding and procurements procedures.

Staff recommends approval of the development agreement indicating City participation in the amount of \$46,374 (30.0%).

Attached is an opinion of probable cost from the engineer of record (Parkhill, Smith & Cooper – Eric West, P.E.) and a location map.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH SBC, LP FOR DEVELOPMENT OF WESTRIDGE PARK ADDITION, SECTION 23, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED WEST OF AVALON DRIVE, SOUTH OF DEAUVILLE BOULEVARD); AND APPROPRIATING FUNDS IN THE AMOUNT OF \$46,374.00 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, the developer of Westridge Park Addition, Section 23, City and County of Midland, Texas, has requested City participation in the development of this addition; and

WHEREAS, the City Code allows City participation; and

WHEREAS, the City Council finds that in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing the developer to connect to capital improvements by promoting the health, safety, and public welfare and providing for efficient and well-planned urban growth and development; and

WHEREAS, the City Council finds it to be in the public interest to execute a development agreement with SBC, LP which sets forth the extent of the City's participation in the construction of public improvements related to the development of the Westridge Park Addition, Section 23, and to appropriate funds therefor;

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, Texas, a Public Improvement Development Agreement with SBC, LP. Said agreement is marked as Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION TWO. That the sum of \$46,374.00 is hereby appropriated from the 2012 GPCO Street Improvements Bond Fund (163) Unappropriated Fund Balance (5650) to the Avalon Drive Westridge Park 23 Project (9030).

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for said agreement, in amount not to exceed \$46,374.00, out of funds that are available in the said budget account upon receipt of proper invoice or statement therefor approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN SBC, LP
AND THE CITY OF MIDLAND, TEXAS**

THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT (“Agreement”) is made and effective this 23rd day of January, 2013, by and between **SBC, LP** (“Developer”) and the **CITY OF MIDLAND, TEXAS** (“City”), a home rule municipal corporation.

W I T N E S S E T H:

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this Public Improvement Development Agreement for the construction of appropriate and necessary public facilities;

NOW, THEREFORE, in consideration of the covenants, conditions, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer does hereby agree to the terms set forth in this Agreement:

1. The Developer desires to develop the Property described as Westridge Park Addition, Section 23. Pursuant thereto, the Developer agrees to make certain public improvements as set forth below. The improvements are more particularly described in specifications and contract documents related to the construction of the public improvements related to the development of the Property prepared by AMD, LLC (hereafter collectively called “the Specifications”). The Specifications are incorporated herein by reference and made a part hereof for all purposes, and Developer shall comply with the Specifications in the performance of all work pursuant to this Agreement. No amendment to the Specifications may be made without the written approval of the City Manager.

2. The public improvements to be constructed by Developer pursuant to this

Agreement shall be generally described as follows:

See Exhibit “A”, attached hereto and incorporated herein by reference.

3. Developer must submit any bids it receives for the proposed public improvements to the City for approval prior to engaging any contractor or subcontractor in such work, which approval shall not be unreasonably withheld. If City fails to object within ten (10) days (excluding weekends and City holidays) after receipt from the Developer of the bid tabulations and written notification of whom the Developer intends to award the contract, the bid which the Developer indicated it is accepting shall be deemed to have been accepted by the City. The City reserves the right to reject any and all bids for work that involves City participation. In rejecting any bid pursuant to the provisions of this Paragraph 3, the City shall issue a notice of rejection in writing to the Developer stating each and every ground or reason relied upon by the City for such rejection.

4. Upon completion of the improvements called for in Paragraph 2, the Developer shall notify the City’s Director of Development Services for inspection. Project inspection for required public improvements will be done by the City during the construction phase. The City’s Director of Development Services shall cause such work to be inspected within five (5) days, excluding weekends and holidays, of being notified by the Developer. Notwithstanding anything herein to the contrary, project inspection must be completed prior to water or sewer systems being backfilled. If the Director of Development Services determines that all work has been completed in conformance with the Specifications, then the Director of Development Services shall give his approval for that improvement work.

5. After completion and acceptance of all work, the Developer must furnish to

City an affidavit of all bills paid with respect to the completed work.

6. In consideration of the obligations incurred by the Developer pursuant to this Agreement, the City agrees to participate in the funding of the construction of the public improvements listed in Exhibit “A” attached hereto and incorporated herein by reference said amount to be no more than \$46,374.00. In no case shall the City’s contributions to the public improvements required to be constructed on the Property exceed 30 percent of the actual cost of all the public improvements associated with the development without Developer complying with the applicable competitive sealed bid procedures set forth in state law and the ordinances and regulations of the City of Midland, Texas. If the City’s contribution for public improvements for any contract exceeds 30 percent of the total cost of all public improvements associated with such contract and such public improvements were constructed without complying with said applicable competitive sealed bid procedures, then the City’s maximum contribution under this contract for such phase shall not exceed 30 percent of the actual cost of all public improvements associated with the particular contract.

7. Developer 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, including accidental death, losses, property damage and expenses of any character whatsoever, including attorney’s fees, brought for or on account of any injuries or damages received or sustained by any person or persons or property, on account of any negligent act of Developer, its agents or employees, or any subcontractor, in the execution, supervision and operations growing out of or in any way connected with the performance of this Agreement, and Developer will be required to pay any judgment with costs which may be obtained

against City or any of its officers, agents or employees, including attorney's fees.

DEVELOPER 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, INCLUDING ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF 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 DEVELOPER OR DEVELOPER'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 DEVELOPER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8. The Developer agrees to indemnify and save the City harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen, and suppliers of machinery and parts thereof, equipment, power tools, all supplies, including commissary incurred in the furtherance of the performance of this contract. When City so

desires, the Developer shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

9. Developer shall obtain and maintain continuously in effect at all times during the construction of the public improvements described in Paragraph 2, above, at Developer'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. The following requirements shall be met in regard to workers' compensation insurance coverage: Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/persons's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Developer shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer providing services on the project, for the duration of the project.

C. The Developer must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Developer's current certificate of coverage ends during the duration of the project, the Developer must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Developer shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Developer shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Developer shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Developer shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Developer shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Developer, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration

of the project;

(3) provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Developer:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Developer is representing to the governmental entity that all employees of the Developer who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Developer's failure to comply with any of these provisions is a breach of contract by the Developer which entitles the governmental entity to declare the contract void if the Developer does not remedy the breach within 10 days after receipt

of notice of breach from the governmental entity.

Developer shall also comply with the following:

L. Comprehensive General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Property, in at least the amount of \$250,000.00 per individual, \$1,000,000.00 per occurrence and \$100,000.00 with respect to property damage; said insurance shall name the City as an additional insured and shall waive all rights of subrogation against the City.

M. Automobile Liability Coverage on all motor vehicles owned, leased and/or operated by the Developer or its employees in amounts of not less than \$1,000,000.00 combined single limit or equivalent, provided, however, separate automobile coverage shall not be required if such coverage is provided under the Developer's comprehensive general liability policy. The insurance shall name the City as an additional insured and waive all rights of subrogation against the City.

All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which the Developer may carry.

10. **All insurance required pursuant to Paragraph 9, except worker's compensation, shall name the City as an additional insured.** The comprehensive general liability policy shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by the Developer in the indemnity and hold harmless provisions included in this Agreement. Developer'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. Developer shall furnish to the City a certificate of insurance showing City as an additional insured and evidencing that all of the herein stated requirements have been met. **All insurance coverage required pursuant to Paragraph 9 shall include in its provisions a waiver of any rights of subrogation against City.**

DEVELOPER SHALL CONTRACTUALLY REQUIRE ALL

CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS THAT WORK ON ANY PORTION OF THE WORK THAT IS THE SUBJECT OF THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT TO OBTAIN INSURANCE COVERAGE THAT MEETS OR EXCEEDS THE 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 (EXCEPT WORKERS COMPENSATION).

11. Insurance must be approved by the City Attorney's office prior to this Agreement being executed.

12. This Agreement may be modified or amended only by the mutual consent of the parties hereto.

13. This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

14. Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

SBC, LP
1811 Heritage Blvd.
Midland, Texas 79707

Attn: Douglas B. Henson

If to City:

City of Midland
P.O. Box 1152
Midland, Texas 79702
Attn: City Engineer

15. Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

16. This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties hereunder are performable in Midland County, Texas. Exclusive venue for any cause of action 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.

17. In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (TEX. CIV. PRAC. & REM. CODE §37.001 et seq., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys fees to which the prevailing party might otherwise be entitled.

BY EXECUTING THIS AGREEMENT, DEVELOPER 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 DEVELOPER SPECIFICALLY AGREES THAT IF THE DEVELOPER 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 DEVELOPER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH DEVELOPER MIGHT OTHERWISE BE ENTITLED.

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

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

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

18. It is expressly understood and agreed that Developer 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 Developer 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 Developer, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Developer. No person performing any of the work and services described hereunder by Developer shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this contract is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Developer 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 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 Developer's

work. Developer shall assume exclusive responsibility for the work. Developer is entirely free to do the work in its own way.

19. RELEASE: DEVELOPER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING UNDER OR ASSOCIATED WITH THIS AGREEMENT WHICH DEVELOPER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO QUANTUM MERUIT, DUE PROCESS AND TAKINGS CLAUSES UNDER THE TEXAS AND UNITED STATES CONSTITUTION, TORT CLAIMS OR CITY'S NEGLIGENCE.

20. 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.

21. 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, Developer or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one (1) original and seven (7) 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 Developer will settle, the physical and mailing addresses of Developer at the time and date the claim was presented and the physical and mailing addresses of Developer for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Developer 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 Developer that Developer's notice is insufficient. The 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, Developer's failure to comply with the requirements herein shall perpetually bar Developer's claim for damages under Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code, regardless if the City has actual or constructive notice or knowledge of said claim or alleged damages. Developer agrees that the requirements of this entire agreement are reasonable.

22. This agreement is made under the authority of Section 395.081 of the Texas Local Government Code and the laws of the State of Texas and Ordinances and the Charter of the City of Midland. The City finds in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing the Developer to connect to the capital improvements. The City finds that this benefit will promote the

public health, safety, and public welfare of the citizens of Midland. The City finds that the benefit the City of Midland receives will be efficient and well-planned urban growth and development, in coordination with public services. The benefit is also that this agreement will help preserve and increase the ad valorem tax base of the City. The City finds that the Developer's land adjoins the capital improvement or is within five (5) miles of the capital improvement. The five (5) miles is the specified distance required in Section 395.081 of the Texas Local Government Code.

23. Notwithstanding any other provision hereof, the City shall not be obligated to provide payment to Developer under this Agreement until Developer has met all requirements of this Agreement, including, but not limited to, the City's approval of the improvement work as set forth in Paragraph 4 and the City's determination that Developer has furnished satisfactory evidence that all obligations described in Paragraph 8 have been paid, discharged or waived. Determination of whether Developer has furnished satisfactory evidence that all such obligations have been paid, discharged or waived shall be in the sole discretion of the City.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

SBC, LP
By: SBC GP, LP
Its Sole General Partner

By: _____
Douglas B. Henson, President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared DOUGLAS B. HENSON, 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 SBC, LP, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2013.

Notary Public, State of Texas

ENGINEER'S OPINION OF PROBABLE COSTS (Revised by DDB)
AS OF JANUARY 13, 2013

15.23



December 19, 2012

Mr. David Beard, PE
City Engineer
City of Midland
P. O. Box 1152
Midland, TX 79702

CITY OF MIDLAND
CITY ENGINEER'S OFFICE
APPROVED: DDB 1/13/2013
☒ As submitted
☐ Subject to changes as indicated
☐ Rejected
Review based on applicants submitted
information.

Re: Westridge Park Addition, Section 23
Development Agreement Request – Avalon Drive

Dear Mr. Beard:

This project includes the full-width construction of an arterial street in the City of Midland, Avalon Drive. Our client is responsible for constructing the west side of the street for approximately 977 linear feet. We are requesting City of Midland participation in these items and an associated Development Agreement to facilitate the City participation. Participation is based on previously agreed upon breakouts for the east side of the roadway, for which a Development Agreement has been entered into with Betenbough Homes.

Enclosed please find an exhibit and Preliminary Opinions of Probable Cost for this portion of the project including a cost opinion for proposed City of Midland participation. This was calculated two different ways and resulted in a less than \$60 difference. Since this project was not bid per the City's requirements, the City participation is limited to 30% of the total cost of the project. The preliminary participation total is therefore \$46,374. We propose that this be the final City of Midland participation value.

The Development Agreement would be contracted with SBC, LP, 1811 Heritage Boulevard, Suite 100, Midland, Texas 79707, Attn: Doug Henson, 432-522-2040.

Please call if there are any questions concerning this information.

Sincerely,

PARKHILL, SMITH & COOPER, INC.

By Eric L. West
Eric L. West, P.E.

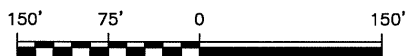
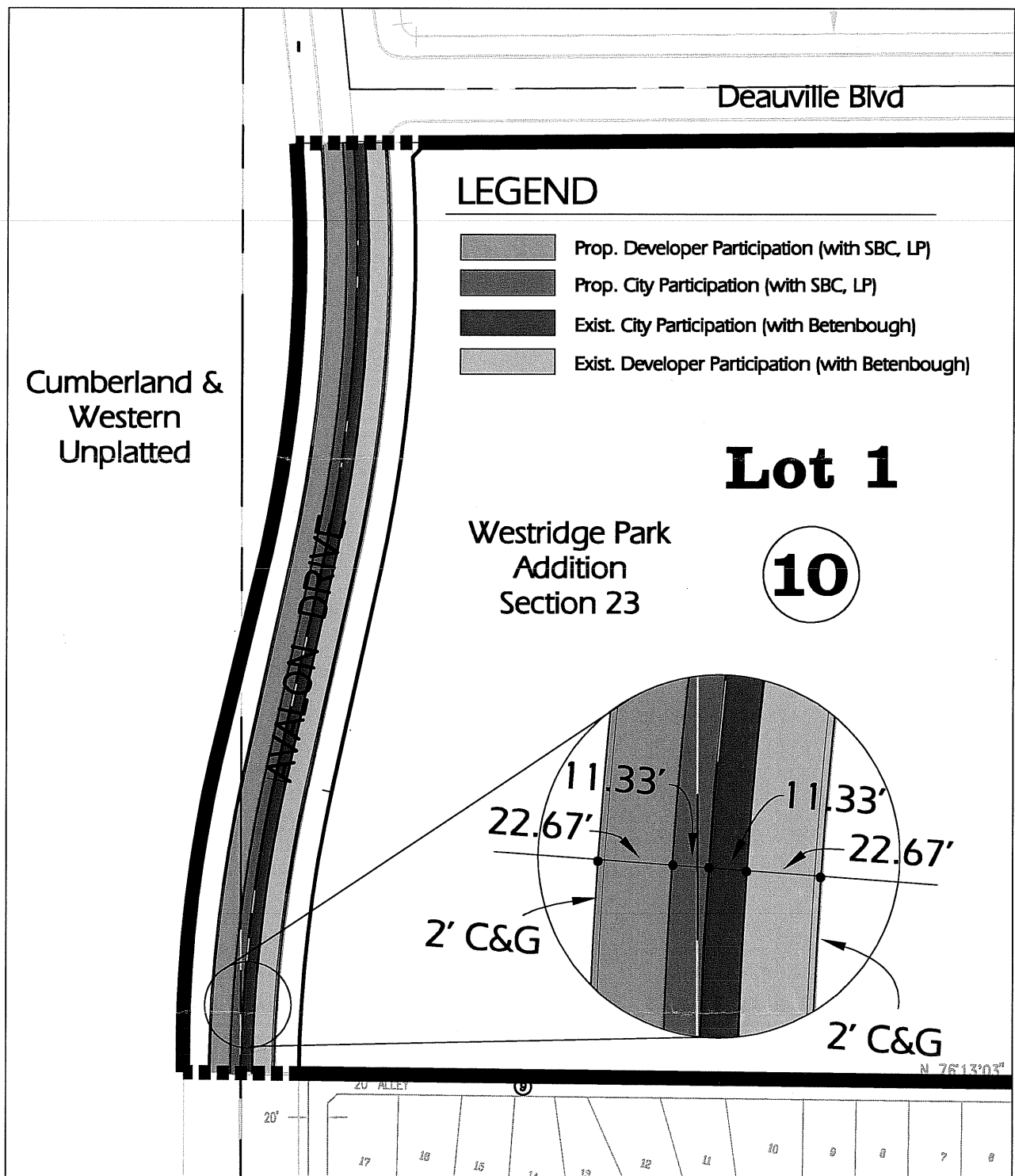
cc: Mr. Jim Nichols, PE – City of Midland
Mr. Doug Henson – SBC, LP

Enclosures

Amarillo
El Paso
Las Cruces
Lubbock
Midland

\\Data1\Projects\2012\3850.12\CIVIL\ENGR\3850.12-ReqDevAgree&ParticipationLetter - 2.DOC

\\data1\projects\2012\3850.12\CADD\01_CIV\LIPlating\WESTRIDGE 23 AVALON EXHIBIT - 11.30.2012.dwg, 85X11, 12/19/2012 10:56:49 AM,
TONY, Bluebeam PDF, Letter, 1:1



Original Scale: 1"=150'

Westridge Park Addition
Section 23
Midland, Texas

**PROPOSED
AVALON EXHIBIT**

**ESTIMATED OPINION OF PROBABLE COST
SBC, LP - AVALON DRIVE - DEVELOPMENT AGREEMENT
ROADWAY IMPROVEMENTS**

December 19, 2012

Item No.	Description	Quantity	Unit	Unit Price	Amount
<i>Paving Improvements (West Side of Avalon), 977 LF</i>					
1	Subgrade Prep.	3,478.5	SY	\$9.43	\$32,802.26
2	12" Base/Prime Coat/3.5" HMA	3,478.5	SY	\$29.65	\$103,137.53
3	24" C&G	977	LF	\$13.65	\$13,336.05
				Sub-Total:	\$149,275.83
4	Construction Staking	977	LF	\$5.43	\$5,305.11
				TOTAL CONSTRUCTION COST	\$154,580.94
 <i>City Participation: Middle 1/3 of Street (1/6 of West Side), 977 LF</i>					
5	Subgrade Prep.	1,229.9	SY	\$9.43	\$11,597.96
6	12" Base/Prime Coat/3.5" HMA	1,229.9	SY	\$29.65	\$36,466.54
				TOTAL OPINION OF PROBABLE COST:	\$48,064.49

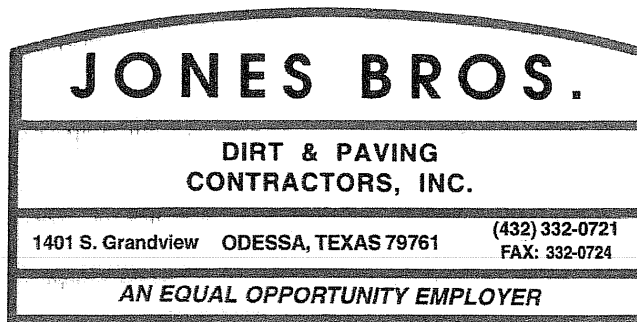
Midland, TX

AS OF DECEMBER 12, 2012

Total (Base Bid)	\$	154,580.94
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68.87%

31.13%



To: SBC, LP
1811 HERITAGE BLVD
MIDLAND, TEXAS 79707
ATTN: DOUG HENSON
OFF: 432-522-2040

Quotation &
 Sales Contract NO. BID
 DATE: 11/28/12

Location: AVALON FULL WIDTH CONSTRUCTION
WE AGREE TO FURNISH LABOR, EQUIPMENT AND MATERIAL TO DO
THE FOLLOWING WORK:

		QUANTITY	UNITS	PRICE	TOTAL
CF- 1	SUBGRADE PREPARATION WORK INCLUDING ALL CUT, FILL AND COMPACTION FOR PAVING OF AVALON	3,478.50	SY	\$9.43	\$32,802.26
P-4	STAND. CITY OF MIDLAND 24" WIDE 7" STAND. CURB & GUTTER IN AVALON, SUBGRADE PREPARATION, REINFORCEMENT FINISHING AND JOINTING, INCLUDING ALL NECESSARY ACCESSORIES, FURNISHED AND INSTALLED, COMPLETED AND IN PLACE	977.00	LF	\$13.65	\$13,336.05
P-5	STAND. CITY OF MIDLAND TYPE "D" ASPHALT PAVING FOR AVALON (FULL WIDTH), INCLUDING 3.5" HMAC AND 12" COMPACTED CALICHE BASE, INCLUDING ALL NECESSARY ACCESSORIES, FURNISHED AND INSTALLED, COMPLETED AND IN PLACE	3,478.50	SY	\$29.65	\$103,137.53
E-1	STREET ENGINEERING AND CURB AND GUTTER STAKING	977.00	LF	\$5.43	\$5,305.11
TOTAL BID					\$154,580.94

PLEASE READ BEFORE YOU SIGN. ~~SALES TAX NOT INCLUDED~~ N/A

Purchaser agrees we are authorized to adjust & repair (at the expense of the purchaser) any utility line or obstruction encountered or damaged. If required by city, customer to pay for city permit, bumper blocks & striping. Seller is not responsible for delays due to conditions beyond its control or for removal or disposal of any hazardous materials. Purchaser is responsible for any grass or weed poisoning. Quoted prices good for 30 days. Progress payments due monthly. If purchaser is a corporation, the individual signing for purchaser agrees this contract shall be personally binding upon him as well as the corporation. This contract shall be payable at Odessa, Ector County, Texas on the 10th day of the month next following the date of the invoice. Maximum legal rate of interest will be charged on past due accounts. If this contract is not paid when due, purchaser agrees to pay attorney's fees if turned over for collection.

ACCEPTED BY PURCHASER _____

Respectfully submitted by: STACEY BRYANT
 JONES BROS. DIRT & PAVING CONTRACTORS, INC.

By: _____

Title: _____

By: [Signature]
 Company Representative

Upon acceptance of QUOTATION, please sign and return one copy to this office.
 Thank you for the opportunity of bidding this job. If further information is needed, please call.



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 1/22/2013

TO: City Council / City Manager

FROM: Robert Isbell, Fire Chief

SUBJECT: Consider a resolution to accept training funds from Midland College and appropriation of the funds

Purpose:

Consider a resolution to accept training funds pursuant to terms of the training agreement dated 2003 in the amount of \$10,893.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$10,893 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Midland College Fire Training Project #9 (9028)

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.

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 #9;

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 #9 (9028).

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Isbell, Fire Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 1/22/2013

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Authorizing the Department of Utilities to cause to be Published, in the Midland Reporter Telegram, all Notices Required Pursuant to Chapter 26 of the Texas Parks and Wildlife Code of a Public Hearing Regarding the City's Intent to Execute a Temporary Right-of-Way License with Oncor Electric Delivery Company, L.L.C., across a Portion of Windlands Park

Purpose:

Consider a Resolution authorizing the Department of Utilities to cause to be published, in the Midland Reporter Telegram, all Notices required pursuant to Chapter 26 of the Texas Parks and Wildlife Code of a Public Hearing regarding the City's intent to execute a temporary Right-of-Way License with Oncor Electric Delivery Company, L.L.C., across a portion of Windlands Park

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No fiscal impact.

Discussion:

The construction of the Windlands Park Water Reclamation Facility will require the installation of buried power across the park site. This temporary Right-of-Way License will grant the ability to temporarily install that line. Oncor will bury this power line and the construction contractor will return the site to its original condition.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE DEPARTMENT OF UTILITIES TO CAUSE TO BE PUBLISHED, IN THE MIDLAND REPORTER TELEGRAM, ALL NOTICES REQUIRED PURSUANT TO CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE OF A PUBLIC HEARING REGARDING THE CITY'S INTENT TO EXECUTE A TEMPORARY RIGHT-OF-WAY LICENSE WITH ONCOR ELECTRIC DELIVERY COMPANY, L.L.C., ACROSS A PORTION OF WINDLANDS PARK; AND DIRECTING THE UTILITIES DIRECTOR TO COMPLY WITH ALL REQUIREMENTS OF CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE

WHEREAS, Oncor Electric Delivery Company, L.L.C., has requested a right-of-way license for the purpose of installing and maintaining certain overhead and/or underground electric supply and communications facilities to be located in Section 22, Block 39, T-1-S, T&P Ry. Company Survey, Midland County, Texas, which is located in Windlands Park; and

WHEREAS, because the proposed right-of-way license is within park property, Chapter 26 of the Texas Parks and Wildlife Code requires a public hearing regarding the matter; and

WHEREAS, the City Council finds it to be in the public interest to authorize the Utilities Department to cause to be published all required public notices of said public hearing;

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

THAT the Director of Utilities, or his designee, is hereby authorized and required to take all steps required pursuant to Chapter 26 of the Texas Parks and Wildlife Code regarding the City's intent to execute a temporary right-of-way license with Oncor Electric Delivery Company, L.L.C., across a portion of Windlands Park.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 01/22/2013

TO: City Council / City Manager

FROM: Sharlett Chowning, Chief Information Officer

SUBJECT: Consider a resolution approving the Westwood Shell Water Tower Lease Agreement with New Cingular Wireless, PCS, LLC.

Purpose:

Approval of an agreement to lease site space on Westwood Shell water tower.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Revenue to the City of Midland is \$150,000 over five years.

Discussion:

The purpose of the lease agreement is to provide suitable site space for cellular telecommunications equipment and operations. The lessor granted the site space provides cellular services to area residents, and is in need of the height of the water tower to reach its customers.

Therefore, please consider the approval of the attached lease agreement and coresponding exhibits.

CITY OF MIDLAND
Communications and Information Services Department
Interoffice Memorandum

Date: January 22, 2013

To: Robert Patrick, Director of General Services

From: Sharlett Chowning, Chief Information Officer

Subject: Westwood Shell Water Tower Lease Agreement

City staff proposes to lease space on the Shell water tower to New Cingular Wireless, PCS, L.L.C. Cingular Wireless has previously leased space on this tower; however, the renovations of the Shell tower required Cingular to remove their equipment and during this time their current lease expired.

Cingular has requested a new lease and one has been drawn up by City Legal department and approved by appropriate personnel at Cingular. This agreement more clearly specifies the terms and conditions of the agreement. The lease is a five year term commencing on January 22, 2013, at a rate of \$2500.00 per month for revenue of \$150,000 over five years.

CISD is recommending the approval of this lease with Cingular.

Attachments

WESTWOOD SHELL WATER TOWER LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made this 23rd day of January, 2013, by and between the CITY OF MIDLAND, TEXAS ("LESSOR"), and NEW CINGULAR WIRELESS, PCS, L.L.C., ("LESSEE");

RECITALS

WHEREAS, the Lessor owns a Water Tower Property, located at 4203 Shell Avenue, Midland, Texas, on which there is space suitable for the installation, maintenance and operation of telecommunications equipment; and

WHEREAS, the Lessee seeks a suitable location for the installation, maintenance and operation of Lessee's telecommunications equipment ("Lessee's Telecommunications Activities"); and

WHEREAS, the Lessor desires to lease to the Lessee, and the Lessee desires to lease from the Lessor, certain space on Lessor's Water Tower Property, hereafter referred to as the "Lease Premises," for the purpose of installing, maintaining, and operating Lessee's telecommunications equipment;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

I. DEFINITIONS

A. Chief Information Officer - Sharlett Chowning, Director of Communication and Information Systems, City of Midland, Texas.

B. Water Tower Property - The City of Midland municipal water tower site as shown on Exhibit "A" attached hereto and incorporated herein for all legal purposes, and within which is the Lease Premises.

C. Lease Premises - the area within Lessor's Water Tower Property shown on **Exhibit "A"** and to which Lessee is granted access pursuant to this Agreement for the purpose of accomplishing Lessee's Telecommunications Activities.

D. Lessee's Access Facility - Fencing and an access gate, which Lessee constructs or has constructed, at Lessee's sole expense. Construction of Lessee's Access Facility shall be subject to the approval of the Lessor. Prior to the construction of Lessee's Access Facility, the plans and specifications therefor shall be approved by the Chief Information Officer or her designee. Lessee's Access Facility shall be constructed and maintained completely at Lessee's expense. Upon the expiration or termination of this Agreement, Lessee's Access Facility shall become the property of

the Lessor and shall remain as part of Lessor's Water Tower Property.

E. Lessee's Telecommunication Activities - see **Exhibit "B"** attached hereto and incorporated herein for all legal purposes.

F. Escort - In the event that Lessee requires access to the Lessor's Water Tower Property outside of the Lease Premises, or requires access to the Lease Premises but cannot use Lessee's Access Facilities, Lessor may, but shall not be required to Escort Lessee onto the Water Tower Property or the Lease Premises under the following conditions:

1. Lessee shall pay to Lessor for Escort onto Lessor's Water Tower Property a fee of \$75.00 per hour or any part of an hour, in advance;
2. Each Escort will be subject to the written consent of the Chief Information Officer; and
3. Lessee shall give the Chief Information Officer at least Three (3) business days written notice prior to each Escort.

II. USE

A. Rights Conveyed to Lessee - At all times during the term of this Agreement, Lessee shall be granted the rights of ingress and egress, via Lessee's Access Facility, to the Lease Premises as specifically enumerated in Exhibit "A" pursuant to this Agreement for the purposes of accomplishing Lessee's Telecommunications Activities as specified in Exhibit "B" and does not confer any ownership rights whatsoever to Lessee. The Water Tower Property, including the Lease Premises specified herein is and shall remain the sole property of the City of Midland, Texas. Lessor's Water Tower Property outside of the Lease Premises is off limits to Lessee and Lessee shall not venture onto Water Tower Property outside of the Lease Premises without escort by Lessor. Lessee understands that Lessee's access to the Lease Premises may not be exclusive. Lessee may access the Lease Premises for the purpose of accomplishing Lessee's Telecommunications Activities as set forth in Exhibit "B" and for no other purposes.

B. Compliance with Federal, State and Local Laws - Lessee shall at all times during the term of this Agreement comply with applicable federal, state, and local laws regarding Lessee's activities pursuant to this Agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this Agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this Agreement. In addition to Lessee's Telecommunications Activities, Lessee may do any work necessary to come into compliance with any new laws applicable to Lessee's activities as such laws may come to exist, with any related expense to be paid by Lessee.

C. Interference - Lessee shall not use the Water Tower Property or the Lease Premises in any way which interferes with the use of the property by Lessor. Such interference by Lessee shall be deemed a material breach by Lessee, who shall, upon written notice, use its best efforts to terminate

said interference. In the event said interference does not cease promptly, as determined by the Lessor, **the Lessor shall have the right to terminate this Agreement after at least thirty (30) days written notice to Lessee.** Lessee shall indemnify and hold harmless, reimburse and defend Lessor in relation to any problems, fines or liability arising from Lessee's use of the Lease Premises or any of its operations within Lessor's Water Tower Property.

Lessee understands that there is other equipment on Lessor's Water Tower Property and agrees not to interfere in any way with the operation or function of such other equipment, and agrees to be solely responsible for damages to any other equipment, arising out of or in any way caused or associated with the occupancy or activities on Lessor's Water Tower Property by Lessee or Lessee's agents, assigns, employees or sub-lessors.

D. Costs - All associated construction costs, along with any costs associated with Lessee's operations on the Lease Premises including supply of related utilities, shall be the responsibility of Lessee. Lessee's use and occupancy of the property shall not be exclusive.

E. Fixtures - No building, poles, antenna systems, tower, equipment or other improvement erected or installed in or upon the Lease Premises or the Water Tower Property by Lessee shall be deemed to be a fixture, and Lessee shall have the right at any time prior to sixty (60) days after the termination of this Agreement for any cause, to remove from the Lease Premises or the Water Tower Property, at the Lessee's expense, any and all buildings, poles, antenna systems, towers, equipment or other improvements belonging to Lessee which may have been placed thereon by Lessee, except for Lessee's Access Facility. If Lessee does not remove its equipment or improvements by the end of the sixty (60) day period, Lessor may remove such at Lessee's expense.

F. AS IS - Lessee agrees to accept the Lease Premises in the condition it is in at the commencement of the term hereof, including all defects therein, whether concealed or otherwise, and which are known or unknown to the Lessor, and does hereby release and forever discharge the Lessor from any and all damages of every kind and nature that may be in any way occasioned thereby.

LESSEE AGREES AND ACKNOWLEDGES THE LESSEE IS LEASING THE LEASED PROPERTY "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE LESSOR THAT THE LEASED PROPERTY IS FIT FOR A PARTICULAR PURPOSE. THE LESSEE ACKNOWLEDGES THAT LESSEE IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE LESSOR WITH RESPECT TO THE CONDITION OF THE LEASED PROPERTY, BUT IS RELYING UPON LESSEE'S EXAMINATION OF THE LEASED PROPERTY. LESSEE ALSO RECOGNIZES THAT THE LESSEE IS AGREEING TO LEASE THE LEASED PROPERTY "AS IS"; THAT LESSEE AGREES TO MAKE LESSEE'S OWN APPRAISAL OF THE LEASED PROPERTY, AND TO ACCEPT THE RISK THAT LESSEE MAY BE WRONG. THE LESSOR GIVES NO ASSURANCES, EXPRESS OR IMPLIED, CONCERNING THE VALUE OR CONDITION OF THE PROPERTY BEING LEASED. IN NO EVENT SHALL THE LESSEE HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE LESSEE WILL TAKE THE LEASED PROPERTY UNDER THE EXPRESS UNDERSTANDING THE LEASED PROPERTY IS ACCEPTED "AS IS" AND WITH ALL FAULTS.

G. Subletting - Lessee may sublet the Lease Premises only upon the written approval of the City Manager with written notice to the Chief Information Officer. A signed return receipt for certified mail does not constitute written approval. In the event Lessee does sublet any portion of the Lease Premises, Lessee agrees to pay to Lessor a subletting fee of \$2,500.00 per month, per sub-lessee, to be due every month for the remainder of this Agreement and payable in advance on the 1st day of each month, in addition to any other rental fees or concessions agreed to herein. Lessee agrees that any party to whom Lessee sublets shall assume the same rights and obligations as Lessee under this Agreement, including rental payments due to Lessor.

III. TERM & TERMINATION

A. Term - Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor, for a period of five (5) years commencing on January 23, 2013, the Lease Premises for the accomplishment of Lessee's Telecommunications Activities. This Agreement shall expire on the fifth anniversary of the commencement date unless terminated sooner as provided herein, and regardless of any rental payments made or accepted after the expiration or termination date. There shall be no renewal of this Agreement. It is further agreed between the parties hereto that, before, or within sixty (60) days following the expiration or termination of this Agreement, Lessee shall remove, or have removed, any and all equipment that Lessee has installed on the Lease Premises, at Lessee's sole expense, except for Lessee's Access Facility, and Lessee shall and will quietly and peacefully surrender and yield up the said Lease Premises unto the Lessor, in as good order and repair as the same now are in, reasonable wear and tear excepted. Lessee agrees that for any period of holdover after the termination or expiration of this Agreement, Lessee's rent, and all other fees associated herewith, shall double.

B. For Cause - This Agreement may be terminated, without any penalty or further liability, upon at least thirty (30) days written notice by Lessor of Lessee's unauthorized entry upon Lessor's Water Tower Property outside of the Lease Premises. This Agreement may be terminated, without any penalty or further liability, upon at least thirty (30) days written notice by either party upon default of any covenant or term hereof by the other which is not cured within thirty (30) days of receipt of written notice of default and termination.

C. For Interference - This Agreement may be terminated, without any penalty or further liability, immediately after delivery of written notice to Lessee, upon Lessee's failure to promptly remedy an event deemed by the Lessor as interference pursuant to Article II herein.

D. By Act of Law - If during the term of this Agreement, Lessee shall be prevented by federal, municipal, county, state or other legal authority from maintaining or operating a communications site on the Lease Premises, Lessee shall have the sole option to terminate the Agreement by giving at least thirty (30) days written notice to Lessor of its intent to terminate this Agreement. Upon termination, all parties hereto shall be relieved of any further obligation hereunder, and Lessor shall not be required to refund any rent which may have been paid in advance.

E. Termination at Will - Notwithstanding any other provision, either party to this Agreement may terminate this Agreement at will for no or any reason upon giving at least one-hundred-eighty

(180) days written notice to the other party, without penalty to the terminating party. Neither party has any expectation nor has received any guarantee that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

IV. FINANCIAL CONSIDERATION

Lessee agrees to pay Lessor as rent for the use and occupancy of the Lease Premises, and for rights and privileges appurtenant thereto during the term of this Agreement, the sum of TWO THOUSAND FIVE HUNDRED and NO/100 DOLLARS (\$2,500.00) per month payable in advance on the 1st day of each month, except that for the first payment due hereunder, said payment shall not be due until this Agreement is executed.

V. STANDARD TERMS & CONDITIONS

A. 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 LESSOR, 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 LESSOR AND THE LESSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

B. Third Party Beneficiary - The Lessor'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.

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

D. INDEMNITY - LESSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND LESSOR AND ALL OF LESSOR'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 LESSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

LESSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LESSOR AND ALL OF LESSOR'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 LESSOR, LESSOR'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 LESSOR OR ANY OF LESSOR'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

E. 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, Lessee or its legal representative, shall give the City Manager, or any other reasonable official of the Lessor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Paper) 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 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 Lessor from any liability whatsoever. The Lessor is under no obligation to provide notice to Lessee that Lessee's notice is insufficient. Lessor 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 Lessor has actual or constructive notice or knowledge of said claim or alleged damages. Lessee agrees that the requirements of this entire Agreement are reasonable.

F. Independent Contractor - 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 Lessor; 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 Lessor and Lessee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Lessor and Lessee. No person performing any of the work and services described hereunder by Lessee shall be considered an officer, agent, servant or employee of the Lessor. 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. Lessee 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 Lessor does not have the power to direct the order in which the work is done. The Lessor shall not have the right to control the means, methods or details of the Lessee's work. Lessee shall assume exclusive responsibility for the work. Lessee is entirely free to do the work in its own way.

G. 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.

H. RELEASE - NOTWITHSTANDING ANY OTHER PROVISIONS, LESSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LESSOR, LESSOR'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 LESSOR'S NEGLIGENCE.

I. Assignment - 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 Lessor. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Lessor.

J. Insurance - Lessee 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 Business Automobile Liability insurance provided by Lessee 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.

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

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

Lessee 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).

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

The Lessee certifies that the certificate of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

K. Notice - All notices must be given in writing by certified mail return receipt requested addressed as shown:

If to LESSOR:
City of Midland, Texas
Attn: Chief Information Officer
P.O. Box 1152
Midland, TX 79702

If to LESSEE:
New Cingular Wireless PCS, L.L.C.
Attn: Network Real Estate Admin.
12555 Cingular Way, Ste. 1300
Alpharetta, GA 30004

This Agreement constitutes the entire agreement between the parties governing the matters addressed herein. This Agreement shall supersede and replace all prior agreements or representations, whether verbal or written between the parties concerning the subject matter hereof. The invalidity of any provision of this Agreement shall not effect the validity or enforceability of any other provision of the Agreement. The waiver of any breach of any term or condition of this Agreement does not waive any other breach of that term or condition or of any other term or condition. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The terms of this Agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by persons duly authorized on the day and year written above.

LESSEE: NEW CINGULAR WIRELESS, PCS, L.L.C.

By: _____
Name: /Title

STATE OF _____ §
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 the same was the act of the said NEW CINGULAR WIRELESS, PCS, L.L.C., and that he executed the same as the act of such company for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2013.

Notary Public, State of

LESSOR: CITY OF MIDLAND

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

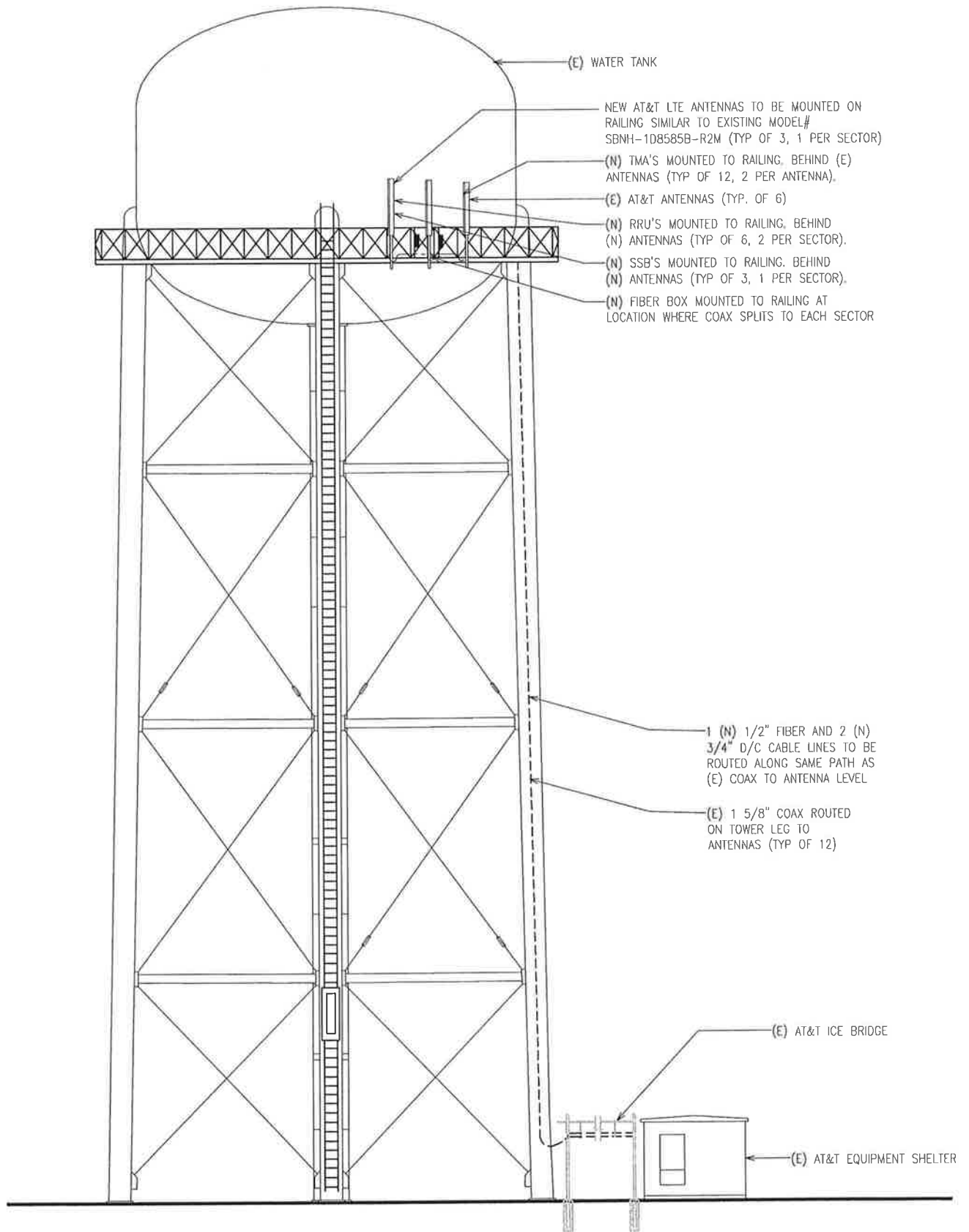


Exhibit "A"

1 BLDG. ELEVATION
N.T.S.

PROJECT INFORMATION

SITE ADDRESS
 4203 SHELL AVE
 MIDLAND, TX 79707
 PROJECT NUMBER
 TX1742

DRIVING DIRECTIONS

FROM I-420 SOUTH
 EXIT 105
 TURN RIGHT ON SHELL AVE
 PROJECT SITE IS ON THE EAST SIDE OF SHELL AVE
 APPROX. 0.5 MILE SOUTH OF THE INTERSECTION WITH I-420

VICINITY MAP



at&t

SITE NAME

AWE - WESTWOOD SHELL

LTE UPGRADE

SITE NUMBER

TX1742

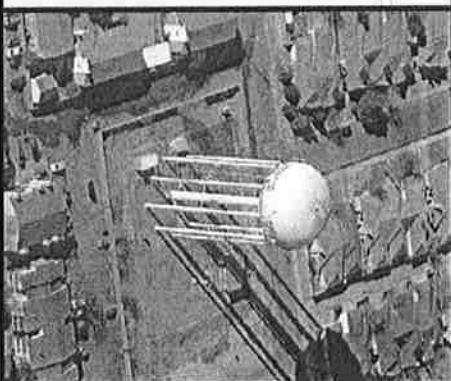
SITE ADDRESS

4203 SHELL AVE.

MIDLAND, TX 79707

(MIDLAND COUNTY)

SITE PHOTO



DESIGN TEAM

PROJECT/CLIENT
 AWE
 PROJECT/CLIENT
 4203 SHELL AVE
 MIDLAND, TX 79707
 817-450-1700

APPROVALS

SHEET INDEX
 SHEET INDEX
 SHEET INDEX

SHEET INDEX

SHEET INDEX
 SHEET INDEX
 SHEET INDEX

BUILDING CODES

ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL AUTHORITIES HAVING JURISDICTION:
 1. INTERNATIONAL BUILDING CODE 2. INTERNATIONAL PLUMBING CODE
 3. NATIONAL ELECTRICAL CODE 4. NFPA 704
 5. LOCAL ORDINANCES



IF YOU DIG IN ANY STATE DIAL 811
 FOR THE LOCAL "ONE CALL CENTER"
 IT'S THE LAW

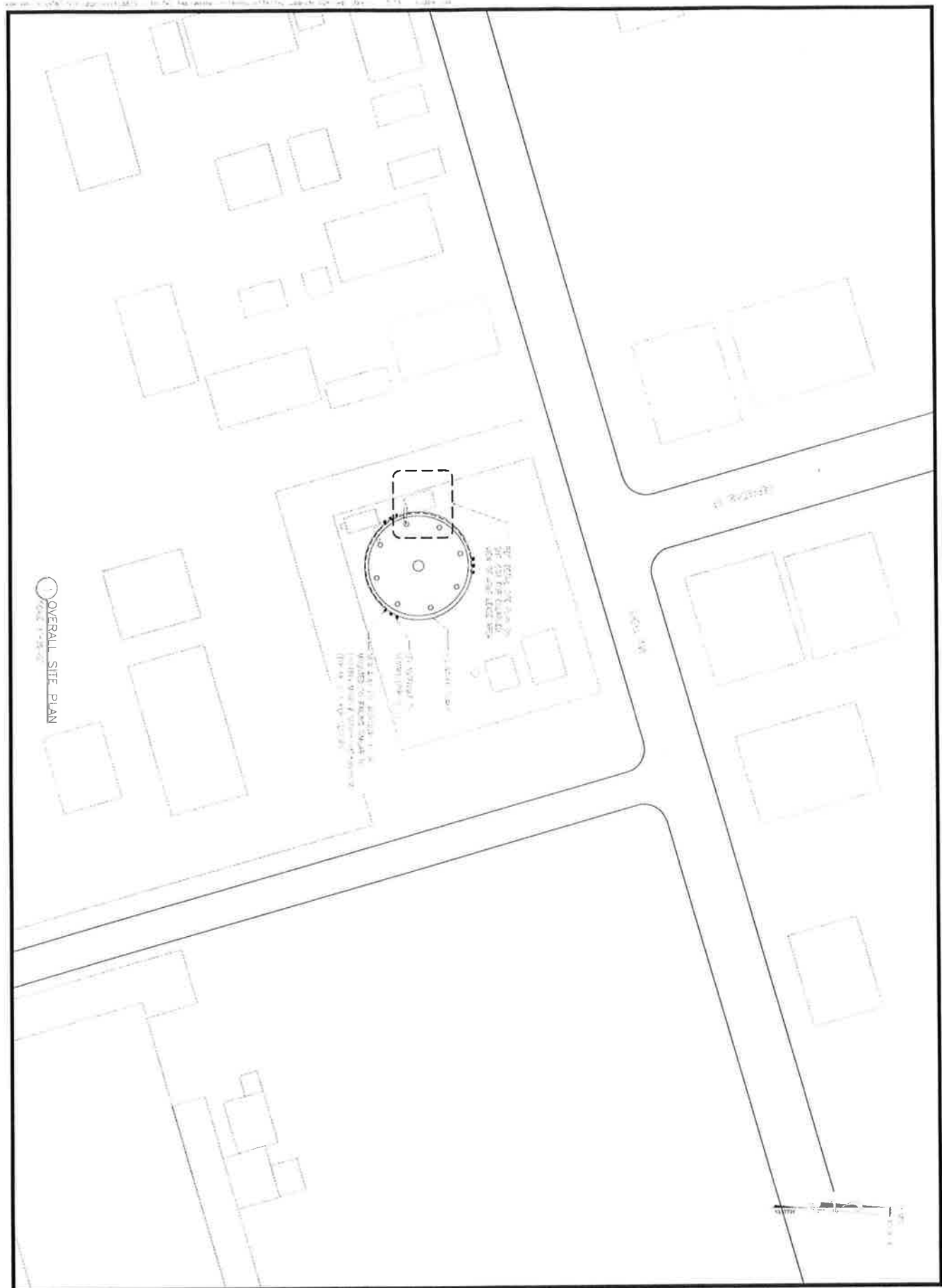


at&t

AWE - WESTWOOD SHELL
 SHEET
 TX1742

TITLE SHEET

TO1



OVERALL SITE PLAN

THIS DRAWING IS THE PROPERTY OF THE OWNER. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY OTHER USE OR REPRODUCTION OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF THE OWNER IS PROHIBITED.

DATE: 11/11/11 DRAWN BY: [Name] CHECKED BY: [Name] SITE PLAN C01	AWC - WESTWOOD SHELL SITE: 10552 TX1742	 1801 WELLS FARGO BLVD FARMERS BRANCH, TX 75440	2201 N. Collins St., Suite 125 Arlington, TX 76011 Office: 817.440.1700 Fax: 817.490.0895 TX Firm Reg. # F-13992 	<table border="1"> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>DATE</th> <th>BY</th> </tr> <tr> <td>1</td> <td>ISSUED FOR PERMIT</td> <td>11/11/11</td> <td>[Name]</td> </tr> <tr> <td>2</td> <td>FOR CONSTRUCTION</td> <td>11/11/11</td> <td>[Name]</td> </tr> <tr> <td>3</td> <td>FOR RECORD</td> <td>11/11/11</td> <td>[Name]</td> </tr> </table>	NO.	DESCRIPTION	DATE	BY	1	ISSUED FOR PERMIT	11/11/11	[Name]	2	FOR CONSTRUCTION	11/11/11	[Name]	3	FOR RECORD	11/11/11	[Name]
NO.	DESCRIPTION	DATE	BY																	
1	ISSUED FOR PERMIT	11/11/11	[Name]																	
2	FOR CONSTRUCTION	11/11/11	[Name]																	
3	FOR RECORD	11/11/11	[Name]																	



THIS DRAWING IS PREPARED BY THE ARCHITECTURAL FIRM OF THE UNITED STATES OF AMERICA, INC., 1100 K STREET, N.W., WASHINGTON, D.C. 20004, AND IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ARCHITECTURAL FIRM OF THE UNITED STATES OF AMERICA, INC.

The eLerys Group
2201 N. Collins St., Suite 125
Arlington, TX 76011
Office: 817.464.1700
Fax: 817.476.0895
TX Firm Reg # F-13992



801 W. 14th Ave. 14th
 SA-MOPS 8942-1 To 15234

AWE - WESTWOOD
SHELL
DIRE. JENSEN
TX1742

PROPOSED DEVELOPMENT

EXISTING DEVELOPMENT

EXISTING DEVELOPMENT

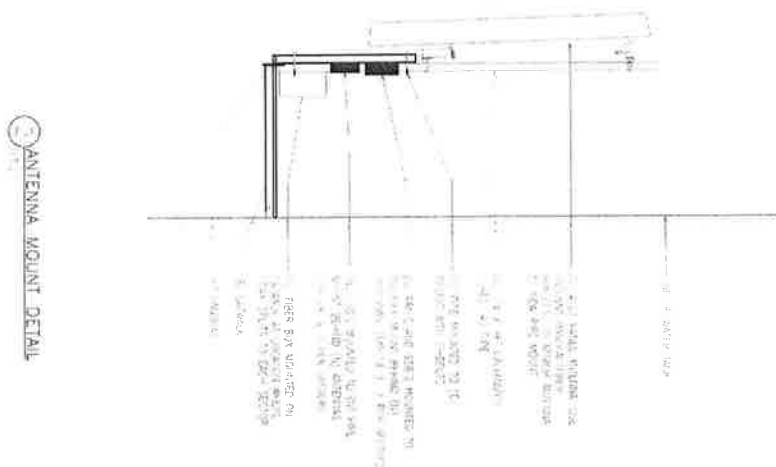
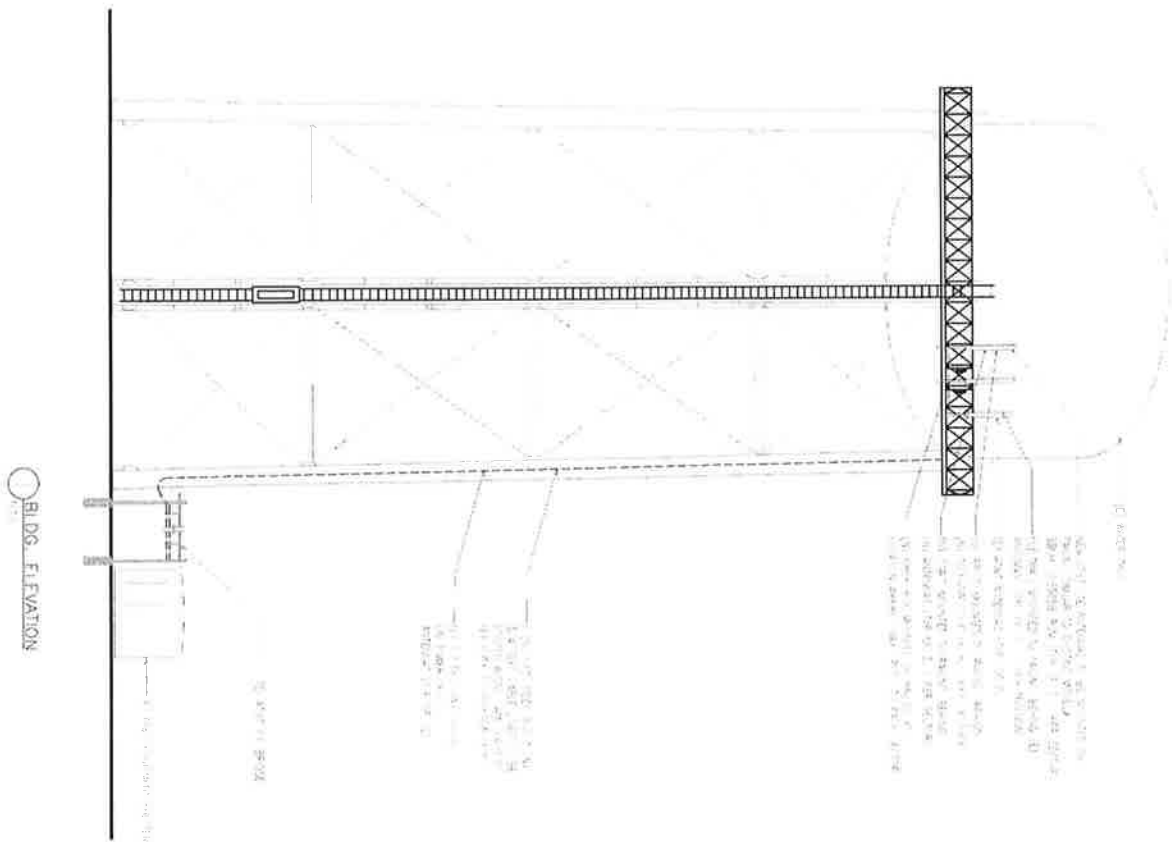
PROPOSED HIGHWAY

RTE 1

RTE 2

DETAIL SITE PLAN

C02



THIS DOCUMENT IS UNCLASSIFIED SINCE SOURCE INFORMATION IS NOT AVAILABLE TO THE PUBLIC. THIS DOCUMENT CONTAINS NEITHER RECOMMENDATIONS NOR CONCLUSIONS OF THE NATIONAL SECURITY AGENCY.

[illegible]

2201 N. Collins St., Suite 125
Arlington, TX 76011
Office: 817.466.1700
Fax: 817.476.0895
TX Firm Reg. # F-13992

Figure 10. The effect of the initial concentration of the monomer on the polymerization rate.

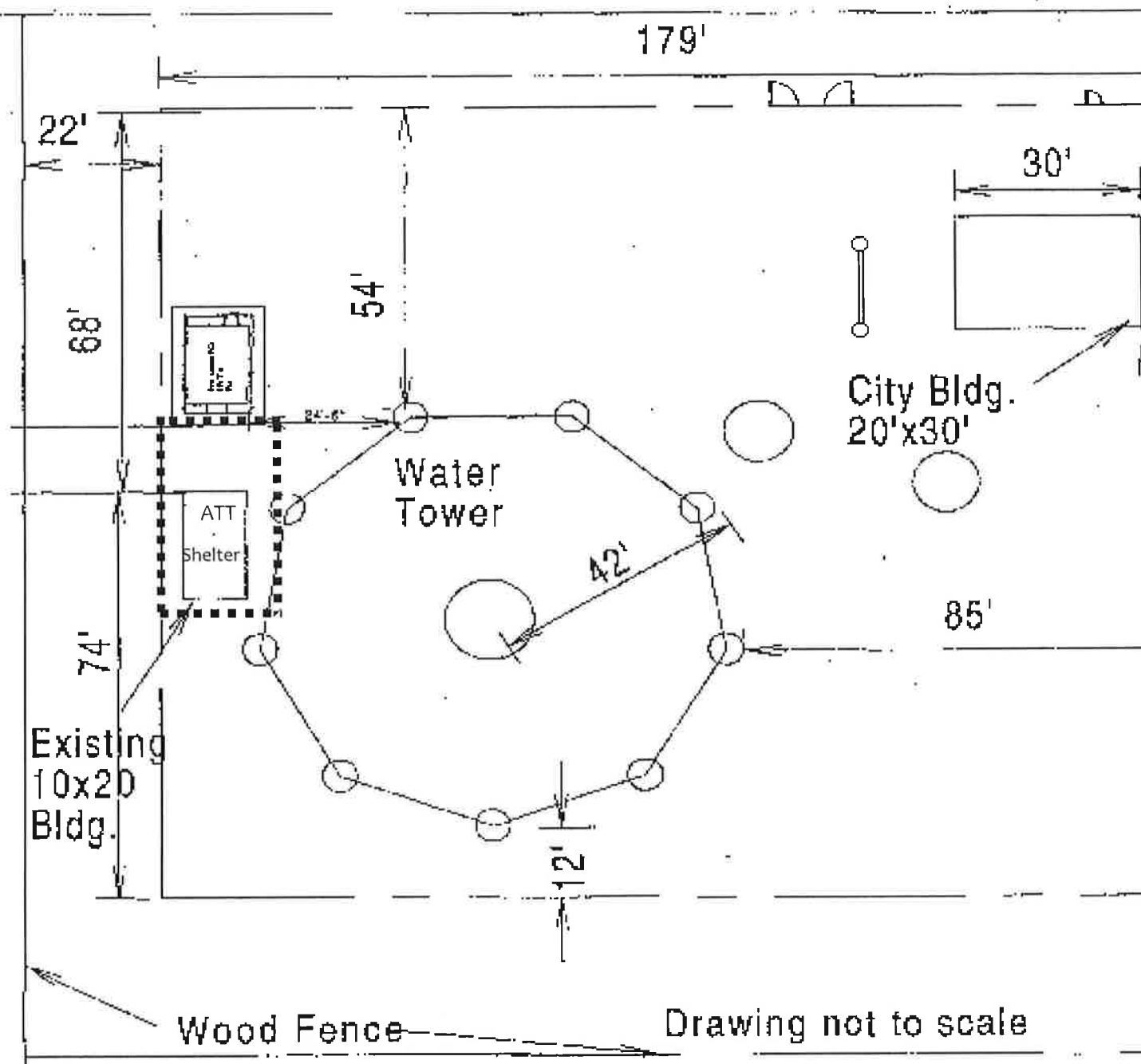


at&t

ARMED, FRAM 1 To 523

5/17/1942
AWE - WESTWOOD
SHELL
TX1742

[illegible]



..... Dotted line represents ATT Exterior access fence

Exhibit B

Lessee's Telecommunications Activities

Lessee may use the Lease Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communications equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, I beams, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Lease Premises and while consistent with Lessor's use of the Water Tower Property (collectively, the "Telecommunications Equipment"), as well as the right to review title on the Water Tower Property; Lessee further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Lessee or Lessor.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 22, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Continue consideration on second reading of an ordinance on a request by Chris Vore for a Zone Change from C-3, Commercial District to PD, Planned District for a Housing Development.

Purpose:

Continue consideration on an ordinance on second reading on a request by Chris Vore for a Zone Change from C-3, Commercial District to PD, Planned District for a Housing Development.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The applicant is proposing to construct apartments on this five-acre tract, in two phases. Three site plans are provided, one showing a plan view, one showing elevation views and one elevation with a planned color scheme. The City Council unanimously approved this request on December 18, 2012, with a site plan showing a brick wainscot five feet above grade. This ordinance was considered on second and final reading on January 8, 2013. During this meeting, a question arose regarding whether the six-foot wooden perimeter fence would be constructed around the entire five acre property, despite the project being constructed in two phases. With the applicant absent, the City Council voted to defer consideration. We have since received an email from John Dunn, a project representative, stating the entire five acre parcel will be fenced during Phase One. If this response is satisfactory, this ordinance is ready for consideration on second and final reading.

ORDINANCE NO.

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

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned C-3, Commercial District, and it shall be used as a Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as

follows:

A 5.00-acre tract out of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas, said tract is more specifically described by metes and bounds in Exhibit “D”, which is attached hereto and incorporated herein.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of this property shall be subject to the regulations of the MF-1, Multiple-Family Dwelling District, except as otherwise stated below.
2. That the development of this property with apartments shall conform to the conditions shown on Exhibits “A”, “B” and “C”, which are attached hereto and incorporated herein. Exhibit “C” represents a general color pallet for building exterior.
3. That the maximum building height shall not exceed three stories or 50 feet.
4. That the maximum density allowed shall not exceed 20 dwelling units per acre.
5. That no R-panel material shall be allowed in the exterior building materials.
6. That a minimum six-foot-tall wooden fence shall be constructed around the perimeter of this property. Said fence may be constructed in two phases, coinciding with the apartment construction.
7. That before the area identified as “Phase 2” on Exhibit “A” is developed, a site plan must be approved in the same manner as a zone change.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of

Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

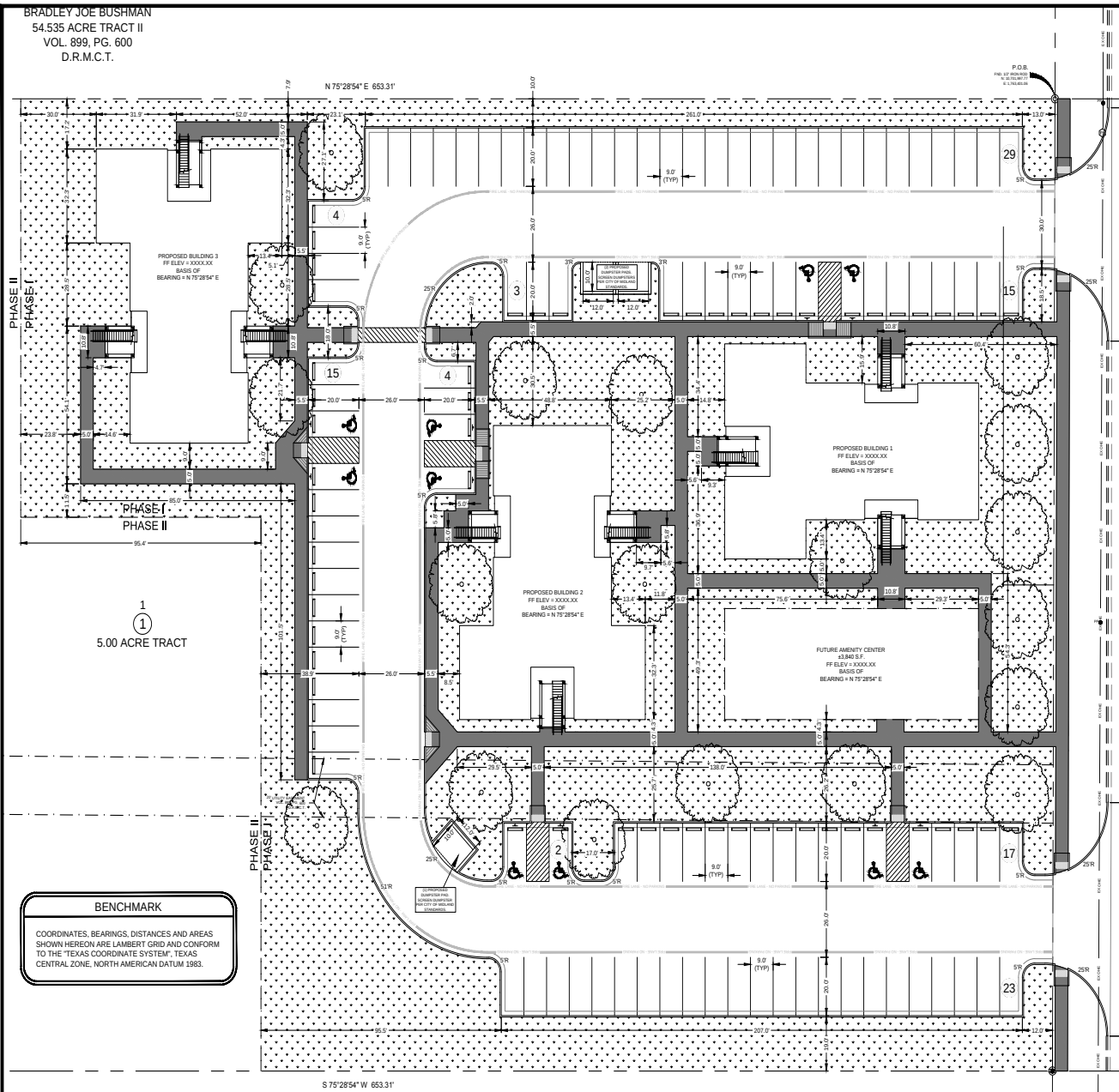
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

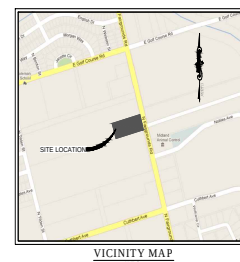
Keith Stretcher, City Attorney



Know what's below.
Call before you dig



FAIRGROUNDS ROAD (VARIABLE R.O.W.)



1. ALL DIMENSIONS SHOWN ARE TO FACE OF CURB UNLESS NOTED OTHERWISE.
2. ALL PROPOSED SIDEWALKS ARE TO BE 5.0' UNLESS NOTED OTHERWISE.

1. ALL DIMENSIONS SHOWN ARE TO FACE OF CURB UNLESS NOTED OTHERWISE.
2. ALL PROPOSED SIDEWALKS ARE TO BE 5.0' UNLESS NOTED OTHERWISE.

TOTAL LAND AREA:	217,768.60 S.F. (5,000 AC)
PHASE 1 LAND AREA:	118,666.59 S.F. (2.725 AC)
PHASE 2 LAND AREA:	99,102.01 S.F. (2.275 AC)
CURRENT ZONING:	C-3 (COMMERCIAL)
	**REZONE TO PD REQUIRED
TOTAL PARKING PROVIDED:	112
HANDICAP PARKING PROVIDED:	10
HANDICAP PARKING REQUIRED:	3
PHASE 1 LANDSCAPE PERCENTAGE:	39.6%
PHASE 1 UNIT DENSITY:	19.8 UNITS / ACRE

TOTAL LAND AREA:	217,768.60 S.F. (5,000 AC)
PHASE 1 LAND AREA:	118,666.59 S.F. (2.725 AC)
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PHASE 1 UNIT DENSITY:	19.8 UNITS / ACRE

PARKING

ACCESSIBLE PARKING SPACES SHALL BE A MIN. 96" WIDE WITH A MAXIMUM OF 96" IN LENGTHS

EACH ACCESSIBLE PARKING SPACE SHALL HAVE A VERTICALLY MOUNTED (OR SUPERIMPOSED SIGN SHOWING THE SYMBOL OF ACCESSIBILITY) AT LEAST ONE SIDE OF THE SPACE. THE SIGN SHALL BE 18" HIGH AND 18" WIDE. THE SYMBOL OF ACCESSIBILITY SHALL BE LOCATED BY (MIN.) ABOVE THE CENTER OF THE SPACE.

ALL SYMBOLS SHALL SERVING H. PARKING SPACES SHALL BE 96" MIN. WIDTH AND 96" MIN. DEPTH MINIMUM FOR VAN DESIGNATED SPACES. ALL BUILDINGS SHALL CONTAIN AT LEAST ONE VAN ACCESSIBLE SPACE.

CURB RAMP

RAMPERS EXCEEDING 12" IN THESE EXCLUDING CURB RAMP SHALL HAVE HANDRAILS ON EACH SIDE AT BETWEEN 36" AND 38" AND EXTENDING 12" BEYOND THE RAMP. RAMPERS EXCEEDING 12" SHALL NOT OVERTURN THE CURB RAMP AREA REQUIRED FOR TOP AND BOTTOM LANDINGS RESPECT THE RAMP.

RAMP SHALL CONTAIN A TRUNCATED DOWD SURFACE ARRANGED SO THAT THE RAMPERS EXCEEDING 12" IN THESE EXCLUDING CURB RAMP SHALL HAVE HANDRAILS ON EACH SIDE AT BETWEEN 36" AND 38" AND EXTENDING 12" BEYOND THE RAMP. RAMPERS EXCEEDING 12" SHALL NOT OVERTURN THE CURB RAMP AREA REQUIRED FOR TOP AND BOTTOM LANDINGS RESPECT THE RAMP.

RAMPERS SHALL HAVE A LEAD AND RESPECTIVE VALUE AND MUST CONTRAST SUFFICIENTLY TO DISTINGUISH IT FROM ADJACENT SURFACES. (FOR STRIPS)

BOTTOM LANDINGS FOR RAMP SERVING REQUIRED EXITS SHALL BE 5' 0" LONG

RAMPERS SHALL NOT EXCEED A 1:12 SLOPE

SHOWERS AND ACCESSIBLE TOILETS

SHOWERS SHALL BE 60" MIN. WIDE, NOT EXCEED 5' 0" DENT

TOILETS SHALL BE 60" MIN. WIDE, NOT EXCEED 5' 0" DENT

LONGITUDINAL, 60" OF ANY SIDEWALK (ACCESSIBLE ROUTE) SHALL NOT EXCEED 1:20 SLOPE

COMMUNITY NUMBER	PANEL NUMBER	SUFFIX	DATE OF FIRM	FIRM ZONE	BASE FLOOD ELEVATION
48329C	93	F	9/16/2005	ZONE X	n/a

ZONE X - AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.

COMMUNITY NUMBER	PANEL NUMBER	SUFFIX	DATE OF FIRM	FIRM ZONE	BASE FLOOD ELEVATION
48329C	93	F	9/16/2005	ZONE X	n/a

ZONE X - AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.

- INGRESS & EGRESS BY TWO DOUBLE DRIVEWAY ALONG FAIRGROUNDS ROAD

NO SCREEN FENCE IS CURRENTLY PROPOSED AROUND THE EXTERIOR BOUNDARY OF THE PROPERTY. TYPICAL SCREENING WILL BE PROVIDED AROUND THE DUMPSTER LOCATIONS PER CITY OF MIDLAND STANDARDS

NECESSARY UTILITIES ARE CURRENTLY IN PLACE. SOME ADDITIONAL IMPROVEMENTS TO EXISTING UTILITY INFRASTRUCTURE MAY BE REQUIRED BY THE CITY OF MIDLAND.

THE CITY OF MIDLAND'S MASTER DRAINAGE PLAN ACCOUNTS FOR DEVELOPED FLOW CONDITIONS AT THIS SITE LOCATION. FLOW CAPACITY OF FAIRGROUNDS ROAD SHOULD BE EVALUATED TO CONFIRM THE STREET CAN PROPERLY CONVEY INCREASED RUN-OFF FROM THE PROPOSED DEVELOPMENT AS WELL AS CONFIRM A DETENTION BASIN IS NOT REQUIRED.

- PER CITY OF MIDLAND ORDINANCE, MINIMUM LANDSCAPE AREA = 20% OF LOT AREA LESS STRUCTURE FOOTPRINTS.

- LOT AREA: 118,667 ft²
- TOTAL STRUCTURE FOOTPRINT: 18,843 ft²
- REQUIRED LANDSCAPE AREA: 19,965 ft²
- PROVIDED LANDSCAPE AREA: 46,992 ft²

TRASH DUMPSTERS TO BE PLACED AS SHOWN.
ENCLOSURES TO BE BUILT OF BRICK, AND WILL MATCH
DESIGN OF SCREENING WALL.

BUILDING SETBACK DISTANCES OF 20 FEET FROM THE
PROPERTY LINE WILL BE OBSERVED ALONG
FAIRGROUNDS ROAD FRONTAGE.

REQUIRED

- PER THE CITY OF MIDLAND'S PARKING REQUIREMENTS: "2 SPACES FOR EACH DWELLING UNIT IN A ONE-FAMILY RESIDENCE AND 2 SPACES FOR EACH TWO-FAMILY OR APARTMENT UNIT."
- 54 UNITS @ 2 SPACES per UNIT = 108 REQUIRED SPACES

- | | |
|----------|------------------|
| PROVIDED | |
| • 102 | REGULAR PARKING |
| • 10 | HANDICAP PARKING |
| • 112 | TOTAL PARKING |

- 1 TREE FOR EVERY 30 LINEAR FOOT STREET
- 1 TREE FOR EVERY 15 PARKING SPACES
- 333 LF FAIRGROUNDS ROAD: 11 TREES (06 SHOWN)
- 112 PARKING SPACES: 08 TREES (13 SHOWN)
- TOTAL REQUIRED: 19 TREES
- TREES SHOWN: 19 TREES
- PAID INTO TREE FUND: 00 TREES

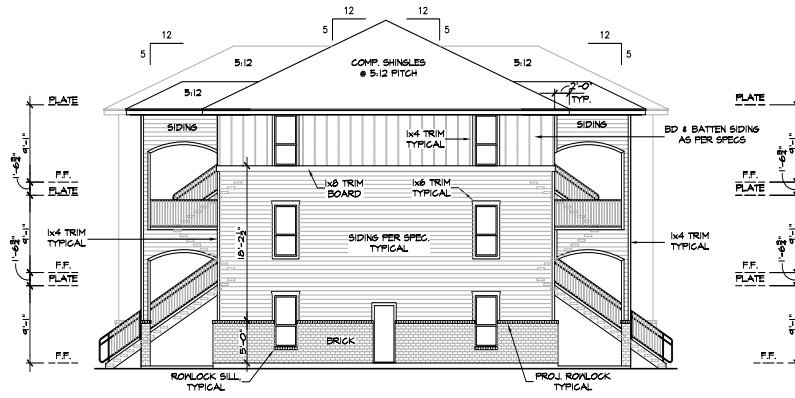
REFER TO ARCHITECT'S BUILDING ELEVATION PLAN

A 26' WIDE FIRE LANE HAS BEEN PROVIDED AT THE FRONT OF ALL BUILDINGS. THE FIRE LANE WILL BE IDENTIFIED BY PAINTED STRIPES AND CURBS PER THE CITY OF MIDLAND'S REQUIREMENTS.

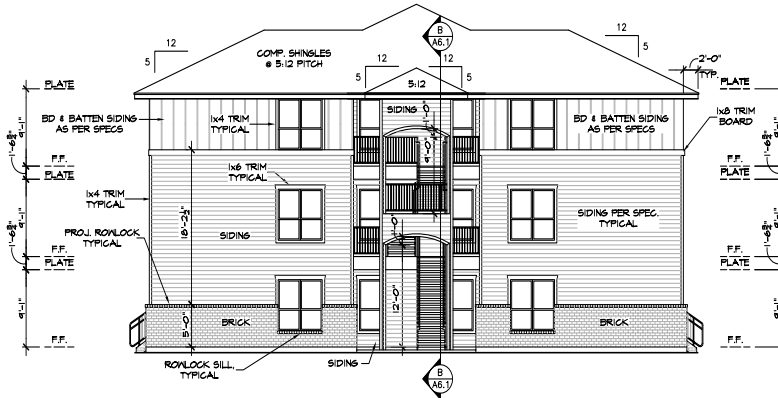
- 5' SIDEWALK TO BE PLACED UP TO THE PROPERTY LINE FOR PEDESTRIAN ACCESS TO AND FROM FAIRGROUNDS ROAD.
- 5' SIDEWALK TO BE PLACED IN THE INTERIOR OF THE PROPERTY.



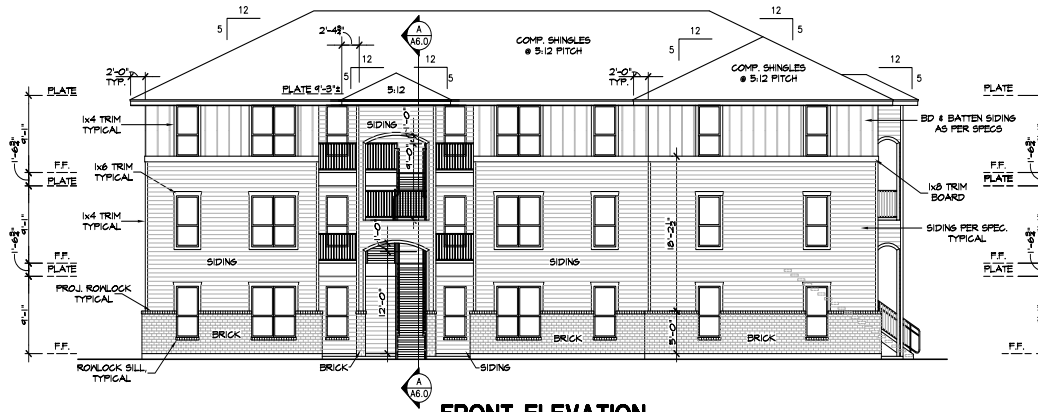
REAR ELEVATION



LEFT ELEVATION



RIGHT ELEVATION



FRONT ELEVATION

BUILDING EXTERIOR ELEVATIONS
Scale: 1/8" = 1'-0"

DANZE & DAVIS
ARCHITECTS, INC.
4701 Spicewood Springs Road, Suite 200 Phone 512.343.0714 Fax 512.343.0718
WWW.DANZE-DAVIS.COM

SUNRISE AT FAIRGROUND
APARTMENTS

NOT FOR
REGULATORY
APPROVAL
PERMITTING OR
CONSTRUCTION
8-20-12

Job No. C2809

DRAWN BY: L&Z
DATE: .
CHKD. BY: .
REVISED: .

A4.0

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Sunrise at Fairgrounds Apartments

FAIRGROUNDS ROAD
MIDLAND, TX



FRONT ELEVATION



FRONT ELEVATION
SUNRISE AT FAIRGROUNDS

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- (c) A detached accessory structure under 200 square feet in area shall adhere to subparagraph (b) or meet all of the following requirements:
 - i. The maximum height shall be nine feet;
 - ii. No signage or label shall be allowed; and
 - iii. The structure must be screened from the public right-of-way by a solid fence with a minimum height of six feet; details on the proposed screening fence shall be submitted for the review and approval of the Planning Division Manager.
- 2. *Exterior materials and color.* The use of metal arch buildings (Quonset hut or similar style) is hereby prohibited. All other buildings constructed of pre-engineered metal (R-Panel or similar style), non-decorative exposed concrete block, or wood-siding shall comply with the following:
 - (a) In the AE through MF-2 Districts, O-1, O-2, NS, LR-1, LR-2, and C-1 Districts, and in the IP-2 and IP-3 Districts located at the Midland International Airport;
 - i. At least 75 percent of the primary and secondary elevations, excluding doors and windows, of all buildings to which these standards apply shall be finished in one or more of the materials listed in subparagraph c;
 - ii. The elevation opposite the primary elevation shall be exempt from the building material restrictions, except when said elevation is adjacent to a public street.
 - (b) In the LR-3, C-2, and BP Districts, and in the IP-2 and IP-3 Districts, except those located at the Midland International Airport:
 - i. At least 75 percent of the primary elevation and at least 30 percent of the secondary elevations, excluding doors and windows, of all buildings to which these standards apply shall be finished in one or more of the materials listed in subparagraph c;
 - ii. The elevation opposite the primary elevation shall be exempt from the building materials restrictions, except when said elevation is adjacent to a public street.
 - (c) Allowed materials:
 - i. Architectural metal panels (i.e. metal composite materials and composite metal cladding);
 - ii. Brick, natural stone, cast stone, rock, marble, granite, glass block or glass curtain walls, tile;
 - iii. Stucco or plaster;
 - iv. Synthetic stucco, i.e. Exterior Insulation Finish System (EIFS) or equivalent product;
 - v. Cellulose fiber-reinforced cement building board products, i.e. Hardi-Board or equivalent product; or

- vi. Split-face concrete block, integrally-colored concrete block, poured-in-place concrete, and pre-cast concrete. Concrete products shall have an integral color or a color coating or be textured;
- vii. The use of metal for roofing.
- (d) Use of color: The use of a single color and use of dark or neon colors, except for accent, should be avoided.
- (e) Compatibility: The site shall be developed in a manner that will not interfere with the property rights of others nor diminish the enjoyment of property in the general neighborhood. Building materials, colors, and design details should be compatible with the character and scale of an area or should contribute to the establishment of a positive character and scale for the area.

C. *Site planning and design.*

1. *Pedestrian scale:*

- (a) Open space should be concentrated at areas of significant activity, rather than dispersed into small areas of low impact or on the periphery of the site.
- (b) Special lighting, distinctive paving materials, landscaping benches and other street furniture should be used to enhance the pedestrian scale.

2. *Screening and buffering:*

- (a) When a commercial structure is adjacent to property that is either zoned for or developed with residential uses, compatibility must be enhanced through the use of additional setbacks and/or buffering. A buffer may consist of solid fencing, landscaping, or berms.
- (b) A screening fence shall have a minimum height of six feet and shall consist of either brick, masonry, wood, or a combination thereof.
- (c) Exterior trash enclosures, storage areas, service yards, and mechanical equipment, both rooftop and ground, must be completely screened using the same materials, color and/or style as the primary building. The use of wooden or vinyl fences or chain link fences with slats for rooftop equipment screening is prohibited.
- (d) Multi-story buildings must be stepped back to preserve the scale of the adjacent low rise structures.
- (e) All buildings should be oriented so that utilitarian areas, such as loading docks and service bays, are located away from highly visible portions of the site or are appropriately screened.

D. *Parking Lots and Access.*

- 1. The site plan shall be designed to provide safe separation of pedestrian and vehicular traffic.



110 West Louisiana Avenue
Suite 110
Midland, Texas 79701
T: 432.687.0865
F: 432.687.0868
www.team-west.com



FIELD NOTES of 5.00 acres, more or less, with a 333.33 foot frontage on the Easterly most portion of this Tract of Land out of the S/2 of Block 84, and the N/2 of Block 85, East Midland Addition, an addition to the City of Midland, Midland County, Texas, according to the map or plat thereof of record in Volume 1, Page 52, Deed Records of Midland County, Texas; said tract being more particularly described by metes and bounds as follows:

BEGINNING at (N:10,701,997.77, E:1,763,401.06) a 1/2" Iron Rod with cap marked "Howell RPLS 280" found in the East line of the Bradley Joe Bushman Tract II as recorded in Volume 899, Page 600 of the Deed Records of Midland County, Texas, and in the Westerly right-of-way line of Fairgrounds Road, having a 107.5' public right-of-way as recorded in Cabinet "B", Page 324 of the Plat Records of Midland County, Texas, for the Northeast corner of this tract;

THENCE S 14°20'39" E with the Westerly line of said Fairgrounds Road and the Easterly line of said Bushman Tract II a distance of 333.33 feet to a 1/2" Iron Rod with red plastic cap marked "West Co Midland" set for the Southeast corner of this tract;

THENCE S 75°28'54" W in and across said Bushman Tract II a distance of 653.31 feet to a 1/2" Iron Rod with red plastic cap marked "West Co Midland" set for the Southwest corner of this tract;

THENCE N 14°20'39" W in and across said Bushman Tract II a distance of 333.33 feet to a 1/2" Iron Rod with cap marked "Howell RPLS 280" found for the Northwest corner of this tract;

THENCE N 75°28'54" E in and across said Bushman Tract II a distance of 653.31 feet to the POINT OF BEGINNING;

Subject tract containing a total of 5.00 acres (217,768.6 ft²).

Note: All Bearings, Distances and Coordinates Shown Hereon are Relative to the Texas State Plane Coordinate System, Texas Central Zone, North American Datum of 1983.



[Handwritten signature and date 12/10/12]

EXHIBIT D

T:\Civil Drawings\2012\2012-1081\EXHIBITS\2012-1081 FIELD NOTES.docx

PLANNING AND ZONING COMMISSION MINUTES

November 05, 2012

3:30 p.m.

Z-12-039 – Hold a public hearing and consider a request by **Chris Vore** for a *zone change* from C-3, Commercial District to PD, Planned District for a Housing Development on a 5.00-acre tract of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas. (Generally located on the west side of N. Fairgrounds Road, approximately 950 feet south of E. Golf Course Road.)

Andrew Mellen, West Company of Midland, 110 W. Louisiana Avenue, representing the applicant. He stated there were two phases to the project with 54 units in the first phase. There is an amenity that you will notice slip up into two phases. There were 54 units in this first phase. There is an amenity and fencing that his clients would like to build during the second phase.

Senior Planner Jim Compton gave an overview of the request for zone change. He stated it was unknown if phase II would be built. Staff requested the addition of Exhibit J stating the word future be removed from exhibit A.

Vice-Chairman Gatten opened the public hearing

With no one wishing to speak in favor or in opposition Vice-Chairman Gatten closed the public hearing.

Mr. Mellen stated they did not have the means to build the amenities in the first phase. He stated that in this market he did not see the second phase not happening.

John Dunn, 701B Technology Circle, Midland, Texas stated they could take the future amenities off the plan as they had no plans to build during phase one. Intentions were to build three buildings and get them leased. He was not planning on advertising the amenity center and was certain the buildings would lease out. Commission Gatten asked Mr. Dunn if he was asking the commission to withdraw that part of the proposal or if he was asking the Commission to consider it? Mr. Dunn stated he would like the Commission to consider it during the second phase, as he had not intention on building it during the first phase. s Or are you asking the Commission we don't see a problem with anyone needing a pool or office right away. Commissioner Gatten asked about the fencing and Mr. Mellon stated he miss spoke and the applicant was willing to build the fence

during the first phase. Concern on density. Willing to build a fence for phase one.

Discussion ensued regarding the amenity center and the wording on the application. Planning Division Manager Walker stated some concern regarding a leasing office but was pleased to hear the fence would be constructed. He stated if the Commission felt comfortable writing in that the amenities building would be during phase two than the staff would not object.

Planning Division Manager Walker stated he would be willing to work with the developer from now until the next City Council Meeting and would be willing to make changes and be flexible. He stated he would e-mail the Commission on what they agreed on.

After further discussion a motion for approval of the proposed request for zone change subject to condition A through H made by Commissioner Wilton; seconded by Commissioner Watkins. The motion carried by the following vote: AYE: Wilton, York, Wolf and Watkins. NAY: Gatten. ABSTAIN: None. ABSENT: Ferguson, Norris, Lanning and Woodruff.

PLANNING AND ZONING COMMISSION

November 5, 2012

CASE: Z-12-039.

REQUEST: Hold a public hearing and consider a request for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development.

APPLICANT/OWNER: Chris Vore.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: A 5.0-acre tract out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas.

LOCATION: West side of Fairgrounds Road, approximately 1,100 feet south of Golf Course Road.

DETAILS OF REQUEST:

1. The subject property is zoned C-3 District and is current vacant. The applicant wishes to construct an apartment complex on a 5.0-acre tract of land. Before this can occur, a zone change is needed, and site plans must be approved before a building permit can be approved. The applicant has provided Exhibits A, B and C to satisfy this requirement. We have already received a Sketch Plan Application, which initiated the platting process. Details of this proposal are as follows:
 - A. The Planned District will be subject to regulations of the MF-1 District, except that the applicant is requesting a density from 16 to 20 dwelling units per acre.
 - B. Access is provided at two separate driveways on Fairgrounds Road. No perimeter screening fence is shown on the exhibits.
 - C. The maximum building height is three stories, not to exceed 50 feet.
 - D. The first of two Phases includes 54 dwelling units. Phase 2 will require a second site plan review process.
 - E. Total parking provided is 112, whereas 108 spaces are required.
 - F. A 26-foot wide fire lane is provided.

SURROUNDING ZONING AND LAND USE:

2. This property is located in a large C-3 District, a portion of which is developed with an oil field pipe yard. A sanitary sewer line runs east/west through this site. We recommend that the location be identified on the site plan. The area to the east is zoned 2F District, which is vacant, and 1F-2 District, which is partially developed with single-family homes. The land to the north is developed with a retirement center and a landscape business. East, across Fairgrounds Road is a vacant mobile home park that has lost its former non-conforming statues.

ANALYSIS:

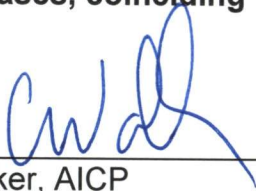
3. The Comprehensive Plan recommends that apartments be located adjacent to arterial streets, such as Fairgrounds Road. Please refer to the attached Exhibit A, which is a plan view of this proposal. Access to the site is provided by two driveways, which is preferred by the Fire Department. The distance between the two driveways exceeds the 170-foot spacing required by the Traffic Code. The 26-foot wide driving aisle, which is U-shaped, meets the Fire Department requirements. The Zoning Code specifies a minimum front yard building setback of 20 feet, a minimum side yard of 15 feet, and a minimum rear yard of 20 feet. The building setbacks shown on Exhibit A meet or exceed these requirements. Exhibit B illustrates front, side and rear elevation views of a typical apartment building. The buildings are three stories tall, with a hip roof covered in composition shingles. Beginning at ground level, exterior building materials include a five-foot tall brick wainscot, non-descript horizontal siding and finally, non-descript board and batten vertical siding. Board and batten siding describes a particular design rather than specific materials. Metal R-panel meets this description. Provided that metal is excluded, the staff has no objection to the list of exterior materials. Exhibit C is a color rendering of the long side of one of the apartment buildings. We are satisfied with the general palette of colors shown on Exhibit C.

We discussed with the applicant the lack of a screening fence. We were advised that although once the apartments are built and producing income, a screening fence is planned. However, the staff recommended that a screening fence be included as a condition of this planned district. The applicant then agreed to construct a six-foot tall solid wooden fence around the perimeter of the property. We are satisfied with this additional condition.

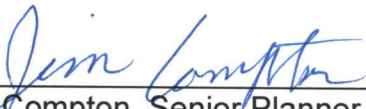
STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from C-3 District to PD, Planned District for a Housing Development on the subject property. Further, we recommend approval of the construction of apartments on this property, subject to the satisfaction of the following conditions:

- A. That the development of apartments on this property shall conform to the conditions shown on Exhibits A, B and C in all respects, except as otherwise stated below.
- B. The maximum building height shall not exceed three standard stories or 50 feet.
- C. The combined maximum density for Phases 1 and 2 shall not exceed 20 dwelling units per acres.
- D. A minimum of 108 parking spaces shall be provided for Phase 1.
- E. The minimum driving aisle width shall be 26 feet.
- F. No R-panel materials shall be included in the description of "board and batten" as it appears on Exhibit B.
- G. The location of the existing east/west sewer line that crosses this property must be identified on Exhibit A.
- H. Exhibit C shall be used only for the purpose of establishing the general color palette for the apartments.
- I. A minimum six-foot tall wooden screening fence shall be constructed around the perimeter of this property. Said fence may be constructed in two phases, coinciding with the apartment construction.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B and C

Case Number: Z-12-039

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

WEST COMPANY OF MIDLAND - ANDREW MELLEN, PE 432-682-0588 andrew@team-west.com

Applicant Name

(Phone/e-mail)

110 W. LOUISIANA, STE. 250

MIDLAND, TEXAS

79701

Address

Zip Code

CHRIS VORE

432-352-9203

Property Owner Name

(Phone/e-mail)

7 WARWICK

ODESSA, TEXAS

79765

Address

Zip Code

WEST COMPANY OF MIDLAND - ANDREW MELLEN, PE

432-682-0588

andrew@team-west.com

Representative Name

(Phone/e-mail)

110 W. LOUISIANA, STE. 250

MIDLAND, TEXAS

79701

Address

Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately.

EAST MIDLAND ADDITION- A 5.0 ACRE TRACT OF LAND OUT OF BLOCKS 83, 84, N/2 OF BLOCK 85, & N/2 OF BLOCK 86. LOCATED IN SECTION 25, BLOCK 39, T-1-S, T&P RR Co. SURVEY, MIDLAND COUNTY, TEXAS

PRESENT ZONE: _____ REQUESTED ZONE: _____

(List by tracts if more than one district is requested)

Reason for Zone Change Request: TO BUILD APARTMENTS

Present Use of Property: RAW LAND

Proposed Use of Property: MULTI-FAMILY

How will zone change affect the public health, safety and welfare? THIS WILL ADD HOUSING TO MIDLAND

Describe how conditions affecting the property have changed since present zoning designation:
N/A

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes x No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: _____

Site Plan in digital format .pdf and .jpg: _____

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

Andrew L. Melton Jr. who, being by me duly sworn, upon oath says: That (s)he is authorized by Chris Vore, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L. Melton Jr.

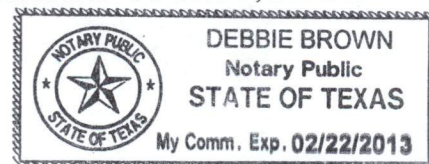
Authorized Agent (signature)

Subscribed and sworn to before me, this 16th day of October, 20 12, to certify which witness my hand and seal of office.

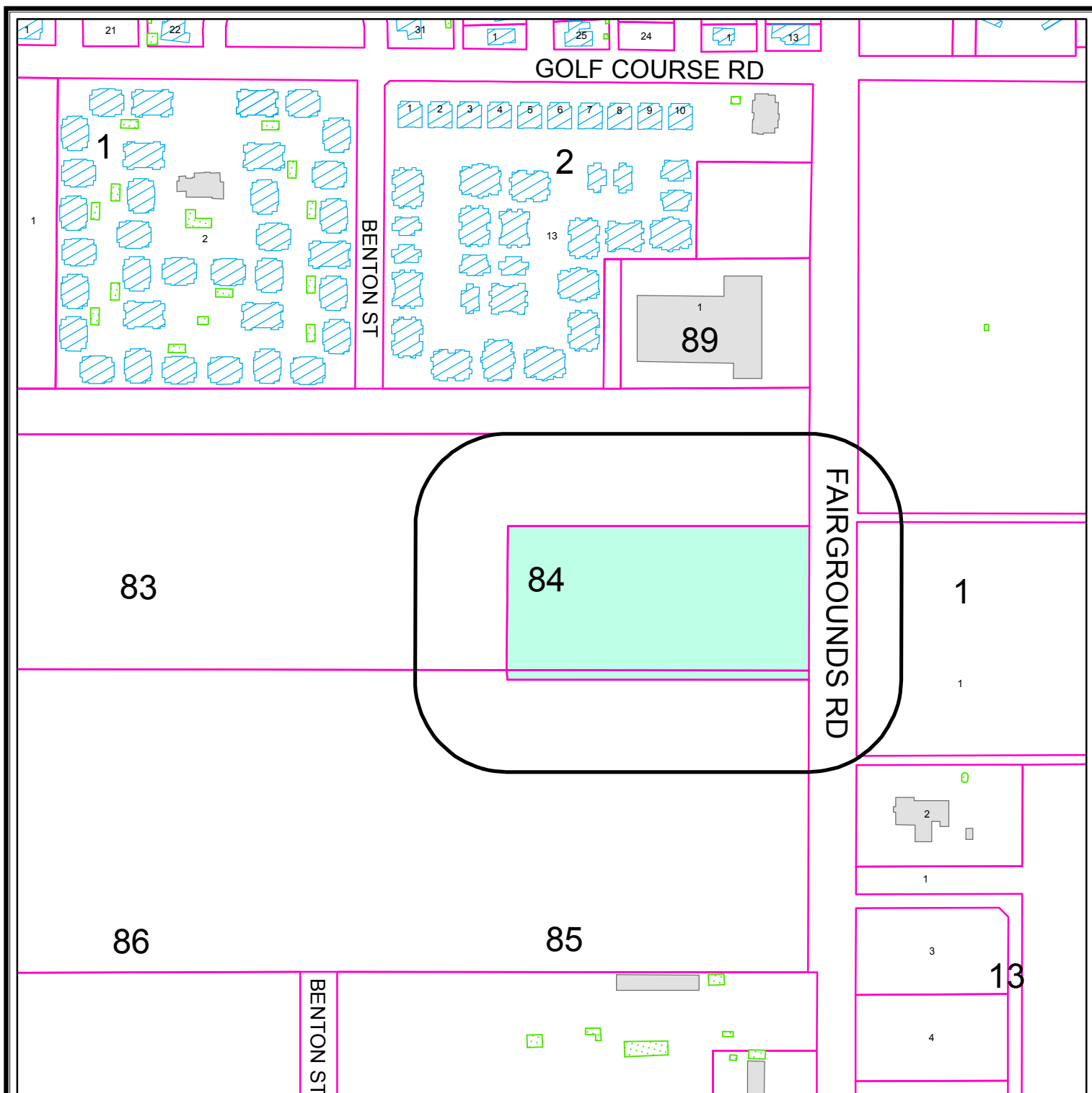
Debbie Brown

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>WJ</u>	Date: <u>10/16/12</u>
Assigned: <u>JC</u>	
For: <u>Pt 2</u>	On: <u>11/5/12</u>



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

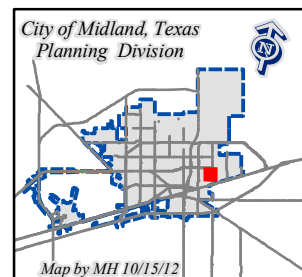
Z - 12 - 039

Scale: 1" = 300'

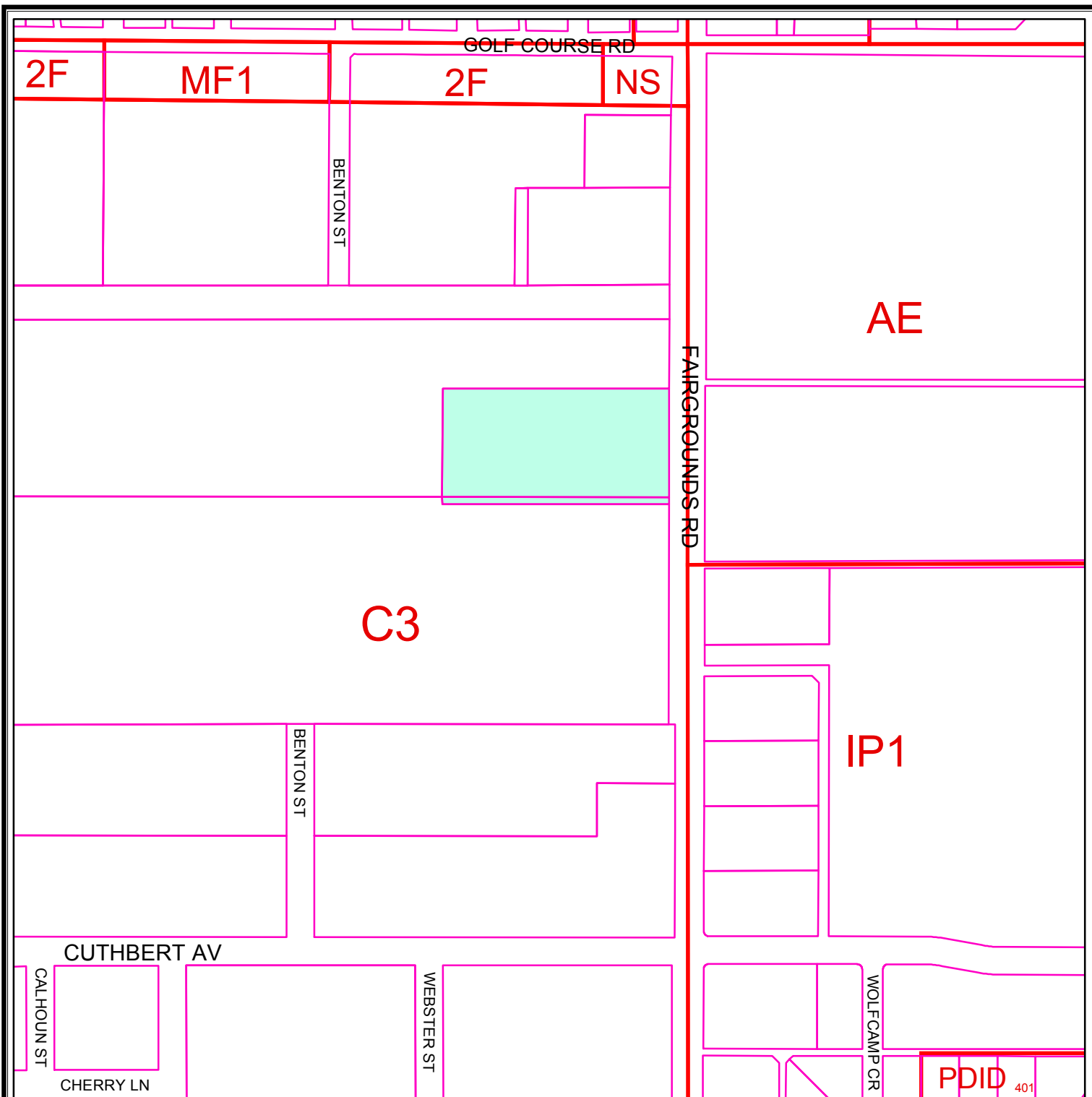
Consider a request for a zone change from C3, Commercial District to PD, Planned District for a Housing Development on a 5.00-acre tract of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 039

Scale: 1" = 400'

Consider a request for a zone change from C3, Commercial District to PD, Planned District for a Housing Development on a 5.00-acre tract of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 22, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by David Miller for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

Purpose:

Consider an ordinance on second reading on a request by David Miller for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The City Council approved a site plan for the construction of apartments on this tract earlier this year. The applicant has submitted a set of revised site plans. The location, layout and height of the buildings are unchanged. Only the exterior building materials and minor architectural changes are proposed. The original site plan called for EIFS as the primary exterior material. The revised plan calls for brick and cement board siding. This proposal was approved by the City Council during a public hearing on January 8, 2013. The ordinance is now reading for consideration on second and final reading.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 14.05-ACRE TRACT OF LAND OUT OF SECTION 19, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED AT THE SOUTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 450 FEET EAST OF SUNBURST DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an Amended Planned District, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development, and it shall be used as an Amended Planned District, subject to the special conditions and restrictions hereinafter set out, said property being described as

follows:

A 14.05-acre tract of land out of Section 19, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “F”, which is attached hereto and incorporated herein.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of apartments on this property shall conform to the conditions shown on Exhibits “A”, “B”, “C”, “D” and “E”, which are attached hereto and incorporated herein.
2. That the maximum number of dwelling units shall not exceed 290, and the maximum density shall not exceed 21 units per acre.
3. That the development of this property shall comply with all applicable City of Midland regulations regarding signs, landscaping, outdoor lighting and the requirement for the screening of solid waste containers.
4. That the maximum building height shall not exceed three stories or 50 feet.
5. That City of Midland Ordinance No. 9062 is hereby repealed.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS ____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

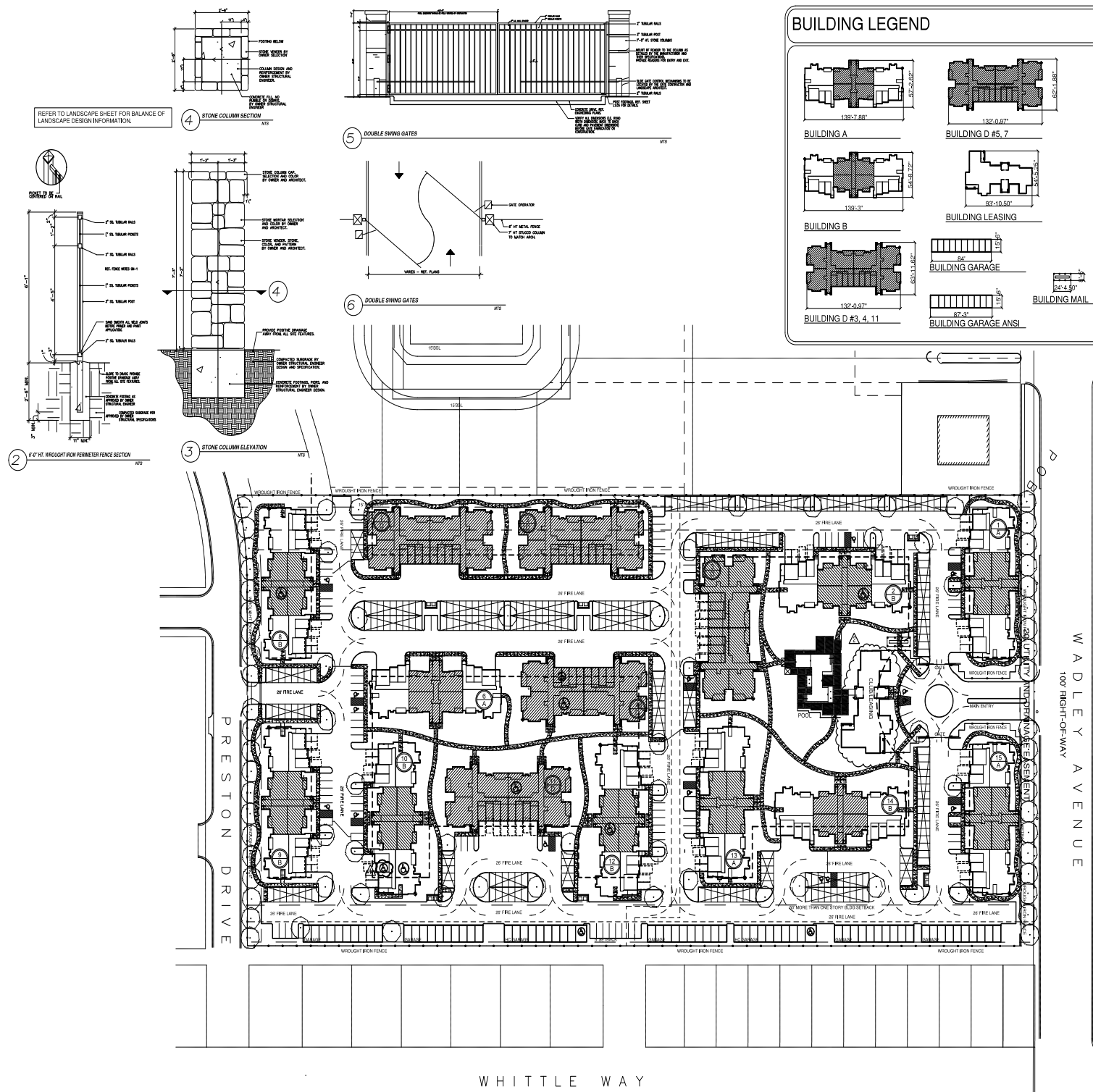
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

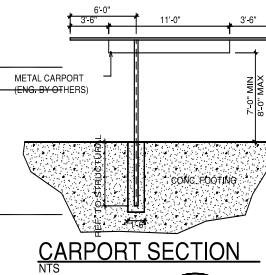
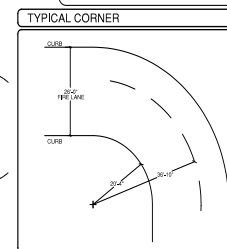
APPROVED AS TO FORM:

Keith Stretcher, City Attorney

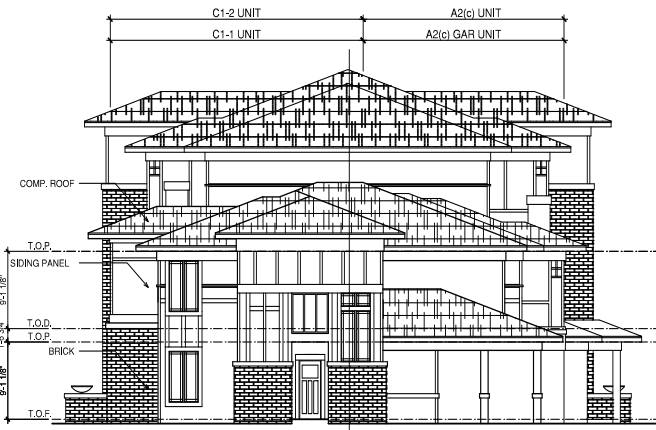
[illegible]

SITE LEGEND

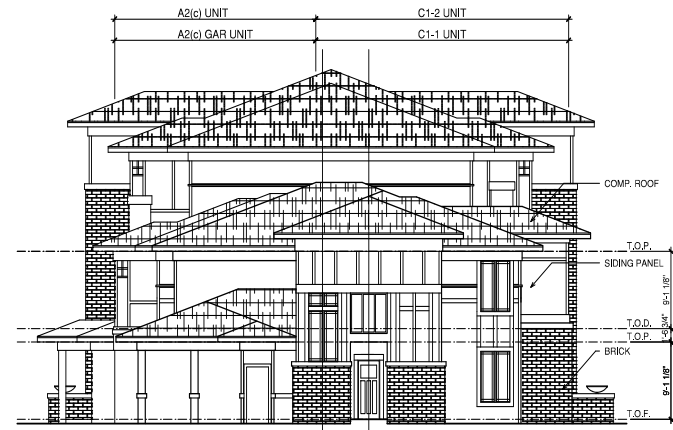
- TYPICAL BUILDING FOOTPRINT
- HANDICAP PARKING SPACE
- 100% ACCESSIBLE BUILDING SPACE
- PLANTING BEDS
- WALKWAY
- FLARED SIDES
- RETURNED CURB
- INDICATES THREE STORY POSITION
- INDICATES TANDERING PARKING SPACE
- INDICATES CARPORT SPACE
- INDICATES SETBACK FROM FIRE LANE
- BUILDING NUMBER
- BUILDING ORIENTATION
- ELECTRIC METER
- FIRE SUPPRESSION
- HANDICAP ACCESSIBLE
- CARPORT



NOTES ADJUSTED
SITE PLAN SCALE ADJUSTED



4 END ELEVATION
SCALE: 1/8"=1'-0"



3 END ELEVATION
SCALE: 1/8"=1'-0"



2 REAR ELEVATION
SCALE: 1/8"=1'-0"



1 FRONT ELEVATION
SCALE: 1/8"=1'-0"



REVISIONS

WADLEY APARTMENTS

in MIDLAND, TX for:
PRESTON WADLEY, LLC



4144 N. Central Expy.,
Suite B55
Dallas, TX 75204
214.520.6878
bgoarchitects.com

DATE

10-03-12

PROJECT

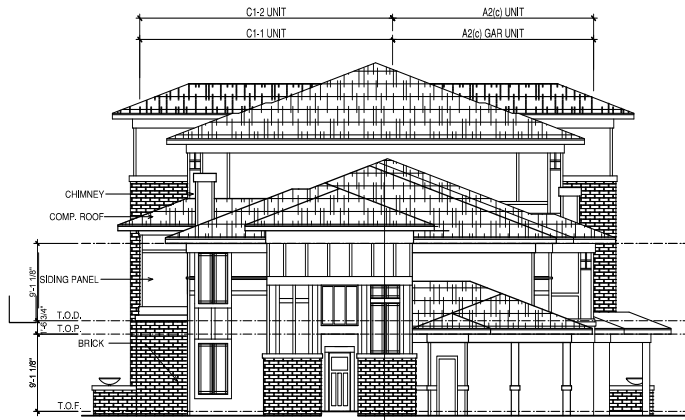
12147

SHEET NUMBER

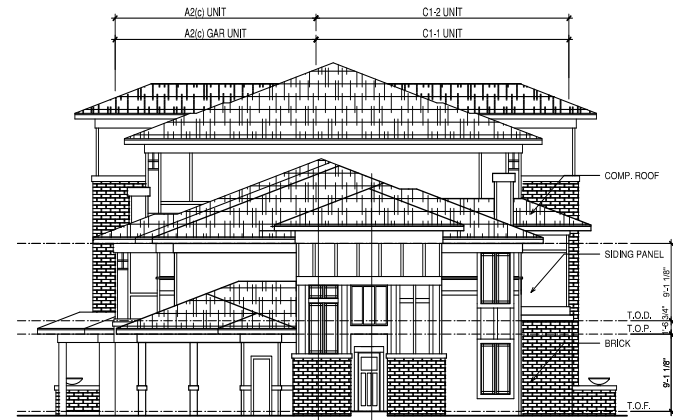
4.3

BUILDING 'B'
ELEVATIONS

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4 END ELEVATION
SCALE: 1/8"=1'-0"



3 END ELEVATION
SCALE: 1/8"=1'-0"



2 REAR ELEVATION
SCALE: 1/8"=1'-0"



1 FRONT ELEVATION
SCALE: 1/8"=1'-0"



REVISIONS

WADLEY APARTMENTS

In MIDLAND, TX for:
PRESTON WADLEY, LLC



4144 N. Central Expy.
Suite 855
Dallas, TX 75204
214.520.8878
bgoarchitects.com

DATE

10-03-12

PROJECT

12147

SHEET NUMBER

3.3

BUILDING 'A'
ELEVATIONS



3 BUILDING 'D' - END ELEVATIONS
SCALE: 1/8"=1'-0"



2 BUILDING 'D' - REAR ELEVATION
SCALE: 1/8"=1'-0"



1 BUILDING 'D' - FRONT ELEVATION
SCALE: 1/8"=1'-0"



REVISIONS

WADLEY APARTMENTS

in MIDLAND, TX for:
PRESTON WADLEY, LLC



4144 N. Central Expy.
Suite B55
Dallas, TX 75204
214.520.8878
bgoarchitects.com

DATE

10-03-12

PROJECT

12147

SHEET NUMBER

5.5

BUILDING 'D'
ELEVATION



REVISIONS

WADLEY APARTMENTS

in MIDLAND, TX for:

PRESTON WADLEY, LLC



4144 N. Central Expy.
Suite 855
Dallas, TX 75204
214.520.8878
bgoarchitects.com

DATE _____

0-03-12

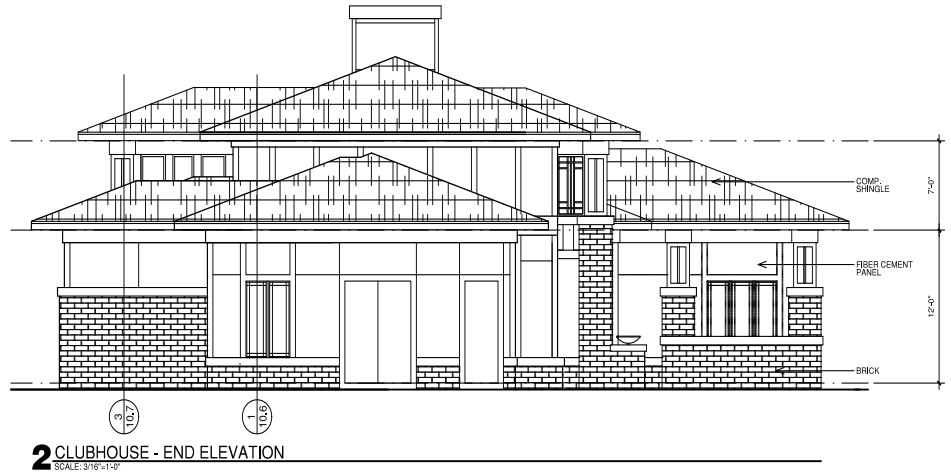
PROJECT

12147

SHEET NUMBER

10.4

CLUB ELEVATIONS



WEST COMPANY


Marcus Postell
of Midland Inc.

110 W. Louisiana Ave. Suite. 110 MIDLAND TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
www.team-west.com

Date: 07/14/2012

Being a 14.05 acre tract of land situated in Section 19, Block 39, T-1-S, T. & P. R.R. Co. Survey, Midland County, Texas out of that called 14.105 acre tract of land as described in that certain deed to Preston Wadley LLC, a Texas limited Liability Company according to the Special Warranty Deed filed of record in Volume 2812, Page 87, Deed Records, Midland County, Texas. Subject tract being more particularly described by metes and bounds as follows:

Note all bearings, distances, coordinates, and area's show in the following legal description are based upon the Texas State Plane Coordinate System, Texas Central Zone (NAD83).

BEGINNING at (N:10700493.59, E: 1732396.48) the Northwest corner of the herein described tract, the Northwest corner of said Preston Wadley tract and the Northeast corner of Wydeewood Estates, Section 14 according to the map or plat thereof filed of record in Cabinet "E", Page 182, Plat Records, Midland County, Texas a ½ inch iron rod with red plastic cap marked "West Company of Midland" set in the South right of way line of West Wadley Avenue from which the Northwest corner of said Section 19 bears N 14°28'18" W a distance of 45.00 feet and S 75°31'42" W a distance of 1450.98 feet according to said Preston Wadley Deed;

THENCE N 75°34'52" E with the South right of way line of said West Wadley Avenue a distance of 549.88 feet to a "X" mark in concrete found in the West line of a 20 foot wide alley for the Northeast corner of the herein described tract the Northeast corner of said Preston Wadley tract the Northwest corner of Wydeewood Estates, Third Section according to the map or plat thereof filed of record in Cabinet "C", Page 36, Plat Records, Midland County, Texas;

THENCE S 14°29'00" E with the East line of said Preston Wadley tract and the West line of said 20' wide alley the west line of said Wydeewood Estates, Third Section at a distance of 551.02 feet pass a found ½ inch iron rod, at a distance of 1110.74 pass a found ½ inch iron rod continuing on a total distance of 1111.02 feet to the southeast corner of the herein described tract the Southeast corner of said Preston Wadley tract and the Southwest corner of Wydeewood Estates according to the map or plat thereof filed of record in Cabinet "B", Page 315, Plat Records, Midland County, Texas a ½ inch iron rod with red plastic cap marked "West Company of

Exhibit "F"

JUL 17 2012

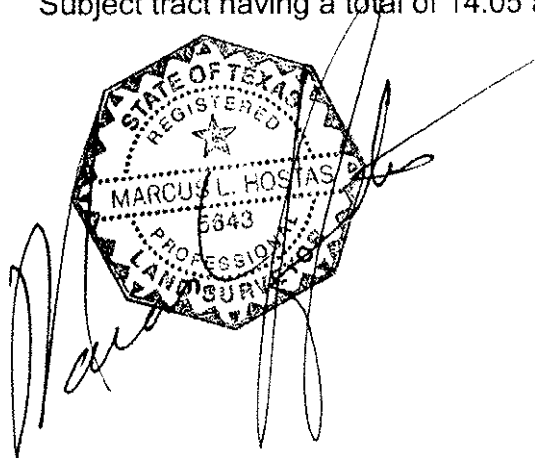
20.11

Midland found at the Intersection of the West line of said 20 foot wide alley and the North right of way line of Preston Drive (60' Wide Right-of-way);
THENCE S 75°29'25" W with the South line of said Preston Wadley tract and the North right of way line of said Preston Drive a distance of 439.98 feet to a ½ inch iron rod with plastic cap marked "West Company of Midland" found at the beginning of a curve to the left having a radius of 436.61 feet;

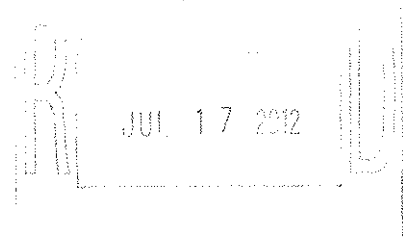
THENCE Southwesterly with the curved North right of way line of said Preston Drive and the South boundary line of said Preston Wadley tract an arc length of 111.3 feet, having a chord bearing of S 68°11'59" W, a chord distance of 111.03 feet and a delta angle of 14°36'36" W to the Southwest corner of the herein described tract a ½ inch iron rod with red plastic cap marked "West Company of Midland" set in the curved North right of way line of said Preston Drive and being common to the Southeast corner of Wydeewood Estates, Section 31 according to the map or plat thereof filed of record in Cabinet "H", Page 127, Plat Records, Midland County, Texas;

THENCE N 14°28'18" W with the west line of said Preston Wadley tract and the East line of said Wydeewood Estates, Section 31 the East line of Wydeewood Estates, Section 21 according to the map or plat thereof filed of record in Cabinet "G", Page 98, Plat Records, Midland County, Texas, Wydeewood Estates, Section 27 according to the map or plat thereof filed of record in Cabinet "G", Page 132, Plat Records, Midland County, Texas and said Wydeewood Estates, Section 14 at a distance of 936.95 feet pass a found ½ inch iron rod in all a distance of 1125.98 feet to the POINT OF BEGINNING.

Subject tract having a total of 14.05 acres.



2012-1166 legal description.doc



PLANNING AND ZONING COMMISSION

December 17, 2012

CASE: Z-12-055.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

APPLICANT: McDougal Construction.

OWNER: Weidner Investment Services.

LEGAL DESCRIPTION: A 14.05-acre tract out of Section 19, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: South side of Wadley Avenue, approximately 450 feet east of Sunburst Drive.

DETAILS OF REQUEST:

1. On August 20, 2012 the Planning and Zoning Commission considered a request to rezone this property from Planned District for a Housing Development to an Amended Planned District. The proposal was to adopt site plans allowing the construction of apartments on this vacant 14-acre tract. The City Council agreed with the Commission's recommendation, and adopted Ordinance 9062 on October 9, 2012. We have since received a request to amend this ordinance by substituting an amended set of building elevations.

SURROUNDING ZONING AND LAND USE:

2. This tract is bounded on the north by Wadley Avenue, an arterial street, and on the south by Preston Drive, a neighborhood collector street. The area to the north, across Wadley Avenue, is zoned for medium density residential development, and is fully developed. The area to the east is zoned Planned District for a Housing Development, MF-1 District and 2F District; it is fully developed in accordance to the respective zoning districts. The area to the south is zoned 1-3 District, and is the location of Bush Elementary School and a City-owned storm water detention basin. The land to the west is comprised of several Planned Districts for Shopping Centers, and is developed with various retail uses.

ANALYSIS:

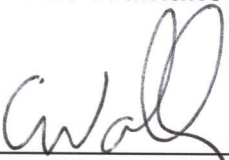
3. Some of the significant details of the approved site plans are as follows:
 - A. The maximum number of dwelling units is 290 dwelling units; the maximum density is 21 dwelling units per acre.
 - B. The maximum building height shall not exceed three stories of 50 feet.
 - C. Development is required to conform to various standing regulations, including the Sign, Landscaping, Outdoor lighting and screening requirements.
 - D. Conformance to a series of four site plans is required.

No changes to the basic elements of the original zoning are proposed, and no changes to access or building placement are planned. It is still a gated community planned for 290 dwelling units. The principle changes are to the architectural style and exterior building materials illustrated in the elevation drawings. The most significant changes are to the exterior building materials and to the roofline. The approved site plan specifies a 100 percent Stucco exterior, except that siding is proposed for exterior hallways and stairwells. The proposed site plans (Exhibits A, B, C and D) have added several face brick elements, but has removed references to Stucco, and replaced it with a higher percentage of an unspecified siding material. Further, while composition roof shingles are still proposed, the angle of the roof line appears to be shallower, although roof slopes are not specified on either set of site plans. Finally, there are subtle changes in the architectural elements, such as the removal of arches, less decorative overhead doors, and removal of dormers. While the impacts of such changes are clearly subjective, the staff finds that the conditions on the amended site plans will result in somewhat less attractive buildings when compared to the original submittal. This is not to suggest that the revised plan is not acceptable, it is possible the staff would have supported the amended site plan had it been the initial submittal. Zoning decisions must not be based on aesthetic principles alone, but on whether the proposal is appropriate for the site. But because of the proposed changes, the staff believes that it is in the public interest to reconsider the changes in a public hearing format, to allow abutting property owners a chance to comment on the changes. We recommend that the Commission give substantial weight to any comments received during the public hearing.

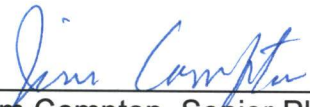
STAFF RECOMMENDATION:

We consider the appropriateness of these amended site plans to be a judgment matter to be determined by the Planning and Zoning Commission. If the Commission finds this request to be reasonable, we would recommend approval of this request for a zone change from PD, Planned District for a Housing Development to an Amended Planned District, subject to the following conditions:

- A. That the development of apartments on this property shall conform to the conditions shown on Exhibits A, B, C, D and E in all respects, except as otherwise stated below.
- B. That the maximum number of dwelling units shall not exceed 290, and the maximum density shall not exceed 21 dwelling units per acre.
- C. That the development of this property for apartments shall conform to all applicable regulations of the Sign, Landscaping, Outdoor Lighting Codes and to the requirement for screening solid waste container sites.
- D. The maximum building height shall not exceed three stories or 50 feet.
- E. That Ordinance 9062 is repealed.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A-E

Case Number: Z-12-055

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

McDougal Construction, LLC
Applicant Name

806-239-5914
(Phone/e-mail)

5001 West Loop 289
Address

79414
Zip Code

Weidner Investment Services
Property Owner Name

425-823-0904
(Phone/e-mail)

9757 NE Juanita Ar. # 300
Address

98034
Zip Code

David Miller
Representative Name

806-239-5914
(Phone/e-mail)

5001 West Loop 289
Address

79414
Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Wadley

Wylewood Estates, Section 29
Section 19, Block 39, T-1-S, T. & P. RR.

14.105 AC

PRESENT ZONE: _____ REQUESTED ZONE: _____
(List by tracts if more than one district is requested)

Reason for Zone Change Request: _____

Present Use of Property: Vacant

Proposed Use of Property: Apartment

How will zone change affect the public health, safety and welfare? N/A

Describe how conditions affecting the property have changed since present zoning designation:

N/A

Is a Specific Use Permit with Term for alcoholic beverages sales needed? _____ Yes X No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: _____ ✓

Site Plan in digital format .pdf and .jpg: _____ ✓

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): David R. Miller Date: 12/7/12

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

David Ray Miller who, being by me duly sworn, upon oath says: That (s)he is authorized by WEIDNER INVESTMENTS, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

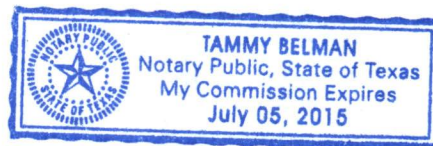
David R. Miller

Authorized Agent (signature)

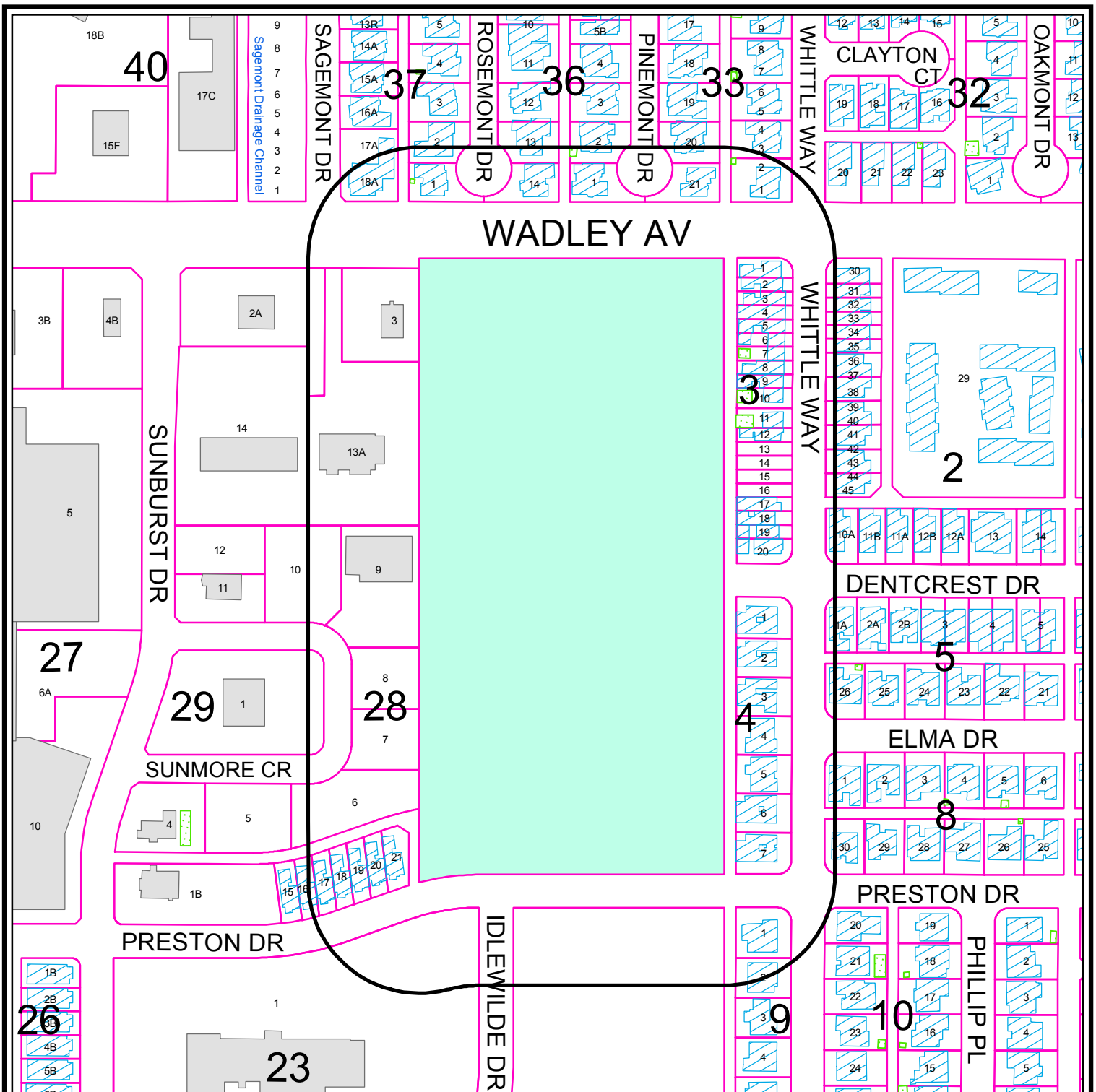
Subscribed and sworn to before me, this 7 day of December, 20 12, to certify which witness my hand and seal of office.

Tammy Belman
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>ang</u>	Date: <u>12/7/12</u>
Assigned: _____	
For: _____	On: _____



****Application will not be considered for scheduling until reviewed by a planner.****







City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 1/22/2013

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider an Ordinance Amending Title III. "Departments", Chapter 1, "Water Department", Section 2, "Rates", Subsection (A), "Customers Inside of City Limits", of the City Code of Midland, Texas, so as to Clarify the Rates Charged for Water and Sewer Services; Containing a Cumulative Clause; Containing a Savings and Severability Clause; and Ordering Publication; and the City Manager Shall Notify All Customers Outside the City Limits as Required by State Law.

Purpose:

Consider an ordinance on second reading for adopting currently charged sewer rates.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No fiscal impact. The rates in the ordinance are same as currently being charged.

Discussion:

Title III. "Departments", Chapter 1, "Water Department", Section 2, "Rates", Subsection (A), "Customers Inside of City Limits", of the City Code of Midland, Texas, shall be clarified to read as follows:

2. Sewer Rates: The monthly rates or charges for services provided to users of the City's sewer system shall be as follows:
 - (a) Residential: \$17.82 per month minimum.
 - (b) Commercial:
 - (1) \$17.82 per month minimum.
 - (2) \$0.71 per 1,000 gallons for water usage between 25,000 gallons and 500,000 gallons.
 - (3) \$0.54 per 1,000 gallons for all water usage over 500,000 gallons used per billing cycle.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE III, “DEPARTMENTS”, CHAPTER 1, “WATER DEPARTMENT”, SECTION 2, “RATES,” SUBSECTION (A), “CUSTOMERS INSIDE OF CITY LIMITS,” SUB-SUBSECTION 2., “SEWER RATES,” OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO CLARIFY THE RATES CHARGED TO CUSTOMERS INSIDE THE CITY LIMITS FOR SEWER SERVICE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION; AND THE CITY MANAGER SHALL NOTIFY ALL CUSTOMERS OUTSIDE THE CITY LIMITS AS REQUIRED BY STATE LAW

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to revise and clarify the charges for sewer services provided by the City of Midland;

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

SECTION ONE. That Title III, “Departments,” Chapter One, “Water Department” Section 2, “Rates,” Subsection (A), “Customers Inside of City Limits,” Sub-subsection 2, “Sewer Rates,” of the City Code of Midland, Texas, shall be clarified to hereafter read as follows:

3-1-2 **RATES:**

(A) Customers Inside of City Limits:

[...]

2. Sewer Rates: The monthly rates or charges for services to users of the City’s sewer system shall be as follows:

(a) Residential: \$17.82 per month minimum.

(b) Commercial:

(1) \$17.82 per month minimum.

(2) \$0.71 per 1,000 gallons for water usage between 25,000 gallons and 500,000 gallons.

- (3) \$0.54 per 1,000 gallons for all water usage over 500,000 gallons used per billing cycle.
- (c) For purposes of the above sewer rates, multiple dwellings will be classified on the basis of each apartment as a separate unit. Commercial rates shall apply to all non-dwelling users. Numbers of apartments shall be calculated pursuant to Subsection (B) of this Section.
- (d) All sewer rates will increase by 2.50% each year on the anniversary of the effective date of this ordinance unless otherwise modified by the City Council.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by law as an alternative method of publication.

SECTION FIVE. The City Manager shall notify all customers outside the City limits of the rate changes as required by state law.

SECTION SIX. The effective date of this Ordinance shall be February 1, 2013.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____

_____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 1/22/2013

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a request by Freedom Influence Group, LLC for a zone change from 2F, Two-Family Dwelling District to C-3, Commercial District on 3.395-acre tract of land out of Blocks 83 and 86, East Midland, City and County of Midland, Texas. (Generally located on the east side of Tilden Street, approximately 780 feet south of E. Golf Course Road. – District 2)

Purpose:

Hold a public hearing and consider an ordinance on a request by Freedom Influence Group, LLC for a zone change from 2F, Two-Family Dwelling District to C-3, Commercial District on 3.395-acre tract of land out of Blocks 83 and 86, East Midland, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

The owner is requesting to rezone the narrow, single-lot depth, Two-Family Dwelling District, 2F, to correspond to the 46 acres (which they also own) of C-3, Commercial District, zoned property to the east for future development. The applicant's intention to rezone may ultimately allow for the ability to develop their nearly 50 acres of property as a single mobile home park with the larger 46-acre tract to the east. A change in zoning is required on this 2F, Two-Family Dwelling District, because code does not allow for establishing a mobile home park development in this district unless it is at least eight (8) acres in size and then only through the Specific Use Permit process, which requires a public notice and hearing. The applicant had originally submitted an SUP application to cover the full 50 acre site, but was never able to make delivery of the required site plan. In the intervening months, a second approach has been offered to site plan the east 46 acres and begin the development process for the mobile home park on that portion and rezone the 2F area to C-3, which is presented now. One of staff's early concerns was with the ambiguity found in the City Code that requires a Specific Use Permit for a mobile home park in any district and in another section allows this use by right in a C-3 District. Legal interpretation has advised to hold in such cases to abide by "the more restrictive/higher standard" provision which is found elsewhere in the City Code when it comes to conflicting statements. Legal interpretation aside, an additional concern staff shared with the developer was the appearance of avoiding the SUP process and public hearings on the true intent of the future use of the property by rezoning the 2F to C-3, based on webpage promotions, media announcements, and draft submittals to our office. The owner also intends to plat this property, which will remove a split-zoned lot between this 3.4-acre land area and the adjacent 46-acre area. Staff concurs with Planning and Zoning Commission with respects to creating a contiguous C-3 zoning, the matter of consideration of this area as a future manufactured home park was not a basis in this decision as that remains a separate zoning as a specific use permit.

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 3.395-ACRE TRACT OF LAND OUT OF BLOCKS 83 AND 86, EAST MIDLAND, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 2F, TWO-FAMILY DWELLING DISTRICT, TO BE USED AS A C-3, COMMERCIAL DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF TILDEN STREET, APPROXIMATELY 780 FEET SOUTH OF EAST GOLF COURSE ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter 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 a C-3, Commercial 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 2F, Two-Family Dwelling District, and it shall be used as a C-3, Commercial District, said property being described as follows:

A 3.395-acre tract of land out of Blocks 83 and 86, East Midland, 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 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., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

John F. Watson & Company

PROFESSIONAL LAND SURVEYORS & PLANNERS

200 N. Loraine, Suite 220, Midland, Texas 79701, (432) 520-2400, Fax (432) 520-2404

www.windearthwater.com

ZONING CHANGE REQUEST-3.395 ACRES-EAST MIDLAND ADDITION-SECTION 18

LEGAL DESCRIPTION: BEING 3.395 ACRES OF LAND LYING IN AND BEING SITUATED OUT OF SECTION 25, BLOCK 39, T-1-S, T & P RR Co. SURVEY, IN MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 49.853 ACRE TRACT CONVEYED TO FREEDOM INFLUENCE GROUP, LLC. BY DEED DATED NOVEMBER 1, 2012 OF THE OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS; SAID 3.395 ACRE TRACT ALSO BEING A PORTION OF BLOCKS 83 AND 86, AND A PORTION OF THE VACATED 80 FOOT WIDE RIGHT-OF-WAY KNOWN AS POPLAR LANE LYING BETWEEN THE EAST RIGHT-OF-WAY LINE OF TILDEN STREET (AVENUE) AND THE WEST RIGHT-OF-WAY LINE OF FAIRGROUNDS ROAD, ALL PART OF THE EAST MIDLAND ADDITION, AN ADDITION TO THE CITY OF MIDLAND RECORDED IN VOLUME 1, PAGE 52 OF SAID DEED RECORDS; SAID 3.395 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JOHN F. WATSON & COMPANY IN JUNE-NOVEMBER, 2012:

BEGINNING at a point at the intersection of the south line of that certain 100 foot wide right of way conveyed to Texas Electric Service Company by deed recorded in Volume 124, Page 95 of the Deed Records of Midland County and said east r-o-w line of Tilden Street for the northwest corner hereof (N(Y) 10701649.18', E(X) 1761258.42') and from which a ½ inch iron rod found bears South 75°28'37" West a distance of 0.8 feet;

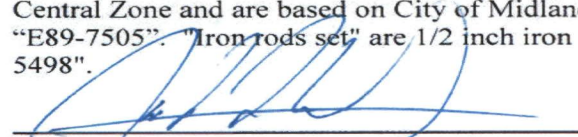
THENCE North 75°28'37" East a distance of 126.67 feet along the south line of said TESCO 100 foot r-o-w line to a point for the northeast corner hereof;

THENCE South 14°42'59" East a distance of 1167.58 feet to a point in the north line of the south-half of said Block 86 of said East Midland Addition for the southeast corner hereof;

THENCE South 75°27'52" West a distance of 126.67 feet along the north line of the south-half of said Block 86 of said East Midland Addition to a point in said east r-o-w line of Tilden Street for the southwest corner hereof (N (Y) 10700519.88', E(X) 1761555.04');

THENCE North 14°42'59" West a distance of 1167.61 feet along said east r-o-w line of Tilden Street to the **POINT OF BEGINNING** and containing 3.395 acres of land, more or less.

Note: Bearings, distances, coordinates and acreage shown hereon are Grid, NAD83, Texas Central Zone and are based on City of Midland published control monuments "WADLAM" and "E89-7505". "Iron rods set" are 1/2 inch iron rebar with blue plastic caps marked "WATSON-5498".


John F. Watson
Texas Registered Professional Land Surveyor
RPLS No. 5498
Job no. 12-0141



November 5, 2012

PLANNING AND ZONING COMMISSION

December 17, 2012

CASE: Z-12-051, Freedom Influence Group, LLC.

REQUEST: Hold a public hearing and consider a request for a zone change from 2F, Two-Family Dwelling District to C-3, Commercial District on 3.395-acre tract of land out of Blocks 83 and 86, East Midland, City and County of Midland, Texas.

APPLICANT/REP: John Watson.

LEGAL DESCRIPTION: A 3.395-acre tract of land out of Blocks 83 and 86, East Midland, City and County of Midland, Texas.

LOCATION: Generally located on the east side of Tilden Street, approximately 780 feet south of E. Golf Course Road.

CURRENT ZONING: 2F, Two-Family Dwelling District.

DETAILS OF REQUEST:

1. The owner is requesting to rezone the narrow, single-lot depth, Two-Family Dwelling District, 2F, to correspond to the 46 acres (which they also own) of C-3, Commercial District, zoned property to the east for future development.

SURROUNDING ZONING AND LAND USE:

2. This property is located midway between Golf Course Road and Cuthbert Avenue on Tilden Street. This property and the owner's property to the east have never been developed. Across Tilden is a developed, 1F-2, One-Family Dwelling District, neighborhood. To the north is Coleman High School at Golf Course Rd. A pipe yard is located to the south along Cuthbert Ave.

ANALYSIS:

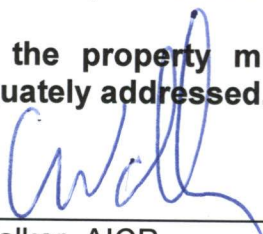
3. The applicant's intention to rezone may ultimately allow for the ability to develop their nearly 50 acres of property as a single mobile home park with the larger 46-acre tract to the east. A change in zoning is required on this 2F, Two-Family Dwelling District, because code does not allow for establishing a mobile home park development in this district unless it is at least eight (8) acres in size and then only

through the Specific Use Permit process, which requires a public notice and hearing. The applicant had originally submitted an SUP application to cover the full 50 acre site, but was never able to make delivery of the required site plan. In the intervening months, a second approach has been offered to site plan the east 46 acres and begin the development process for the mobile home park on that portion and rezone the 2F area to C-3, which is presented now. One of staff's early concerns was with the ambiguity found in the City Code that requires a Specific Use Permit for a mobile home park in any district and in another section allows this use by right in a C-3 District. Legal interpretation has advised to hold in such cases to abide by "the more restrictive/higher standard" provision which is found elsewhere in the City Code when it comes to conflicting statements. Legal interpretation aside, an additional concern staff shared with the developer was *the appearance* of avoiding the SUP process and public hearings on the true intent of the future use of the property by rezoning the 2F to C-3, based on webpage promotions, media announcements, and draft submittals to our office. The owner also intends to plat this property, which will remove a split-zoned lot between this 3.4-acre land area and the adjacent 46-acre area. The preliminary plat will also require City Council approval for the size of the development and its private streets.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from 2F, Two-Family Dwelling District to C-3, Commercial District, subject to the following conditions:

- A. That the property shall be governed by C-3, Commercial District, regulations in all respects;**
- B. That if the request to expand the mobile home park is made that it is bound by the Specific Use Permit process with a new site plan to replace any previous Specific Use Permit site plan;**
- C. That the property must be platted and any public improvements are adequately addressed.**


Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Attachments:

Application
Field Notes


Ken Van Dyne, Senior Planner
Department of Development Services

Case Number: Z-12-051

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

John Watson 432-520-2400 jwatson@windearthwater.com
Applicant Name (Phone/e-mail)

200 N Loraine Ste 220 Midland TX 79701
Address Zip Code

Freedom Influence Group, LLC 432-363-4289 brantgreathouse@gmail.com
Property Owner Name (Phone/e-mail)

3001 W. Loop 250N, Suite 105, Box 343 Midland TX 79705
Address Zip Code

John Watson
Representative Name (Phone/e-mail)

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. 3.395 Acres of land lying in and being
Situated out of Section 25, Block 39, T-1-S, T & P RR Survey
in Midland county.
See metes & Bounds description for full description

PRESENT ZONE: 2F REQUESTED ZONE: C3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Property is two different zone and we
wants the property under one zone

Present Use of Property: Undevelopment land. currently a vacant lot

Proposed Use of Property: Mobile Home Park

How will zone change affect the public health, safety and welfare? Increase housing
for Midland county.

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): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

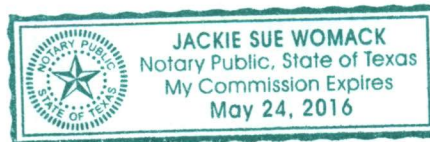
John F. Watson who, being by me duly sworn, upon oath says: That (s)he is authorized by Freedom Influence Group LLC the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (signature)

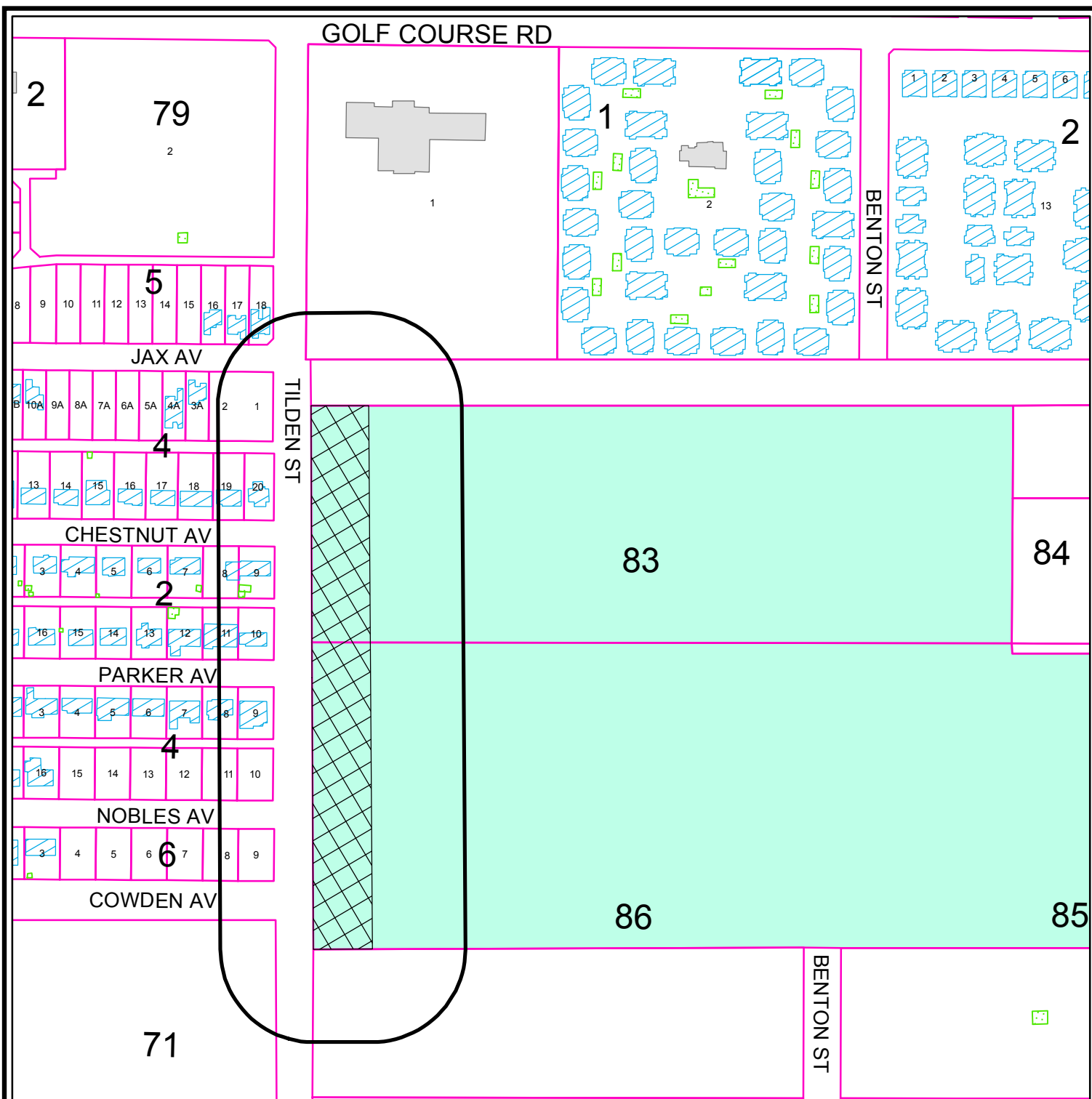
Subscribed and sworn to before me, this 5th day of November, 20 12, to certify which witness my hand and seal of office.

Jackie Sue Womack
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>AW</u>	Date: <u>11/2/12</u>
Assigned: <u>RV</u>	
For: _____	On: _____



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 051

Scale: 1" = 300'

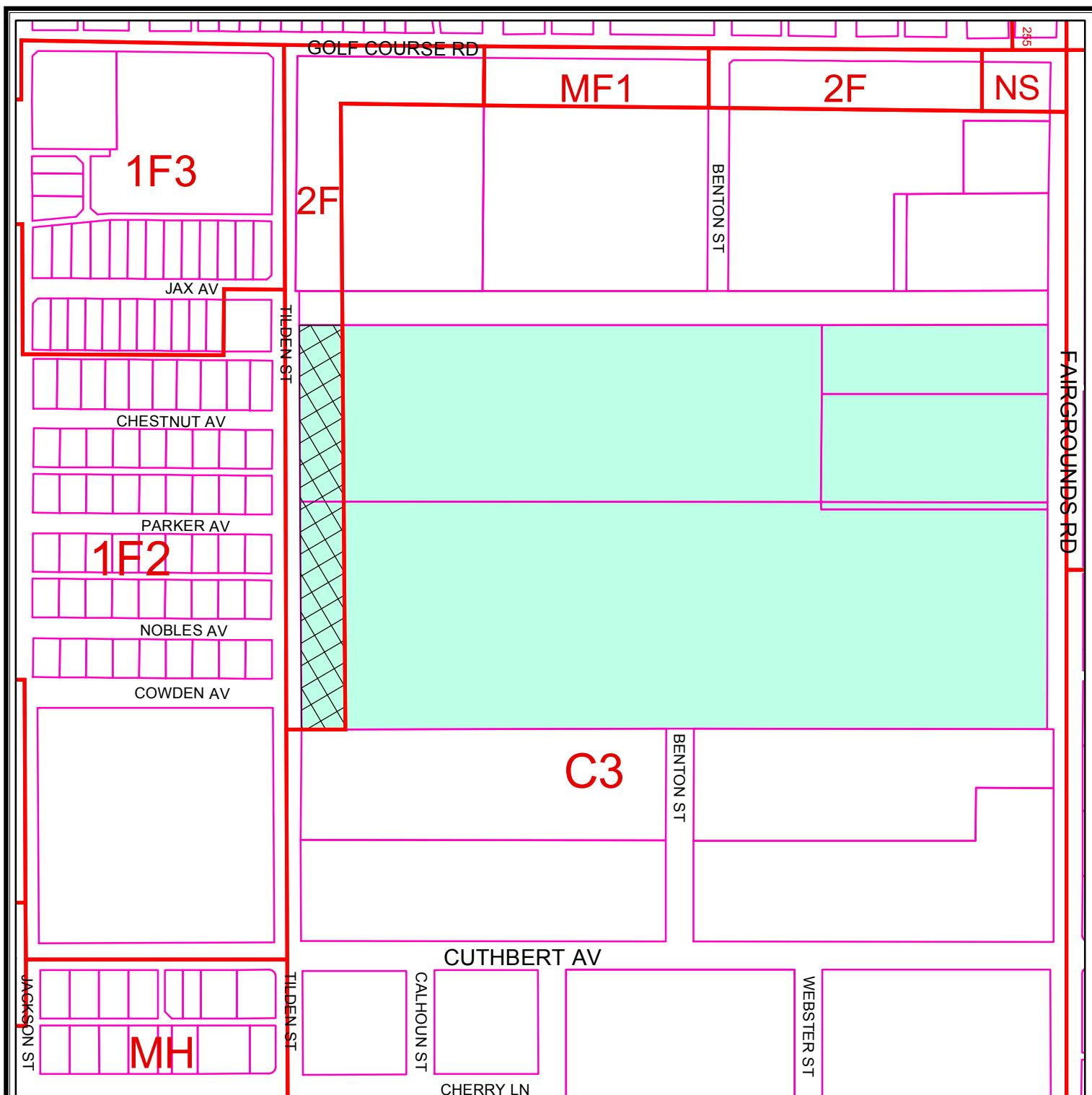
Consider a request for a zone change from 2F, Two-Family Dwelling District, to C-3, Commercial District on 3.395-acre tract of land out of Blocks 83 and 86, East Midland, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 051

Scale: 1" = 400'

Consider a request for a zone change from 2F, Two-Family Dwelling District, to C-3, Commercial District on 3.395-acre tract of land out of Blocks 83 and 86, East Midland, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

© THE CITY OF MIDLAND 2012; THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 1/22/2013

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: At approximately 10:33 A.M. hold a public hearing and consider an ordinance on a request by Chase Gardaphe for a Specific Use Permit without Term for a Manufactured Home Park on Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas. (Generally located on the east side of N. Fairgrounds Road, approximately 900 feet south of E. Golf Course Road. – District 2)

Purpose:

Hold a public hearing and consider an ordinance on a request by Chase Gardaphe for a Specific Use Permit without Term for a Manufactured Home Park on Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas. (Generally located on the east side of N. Fairgrounds Road, approximately 900 feet south of E. Golf Course Road.)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

This is a request by the owner to redevelop a long-time vacant manufactured home park located on the east side of Fairgrounds Road between Golf Course Road and Cuthbert Ave. A requirement for establishing a manufactured home park is obtaining a Specific Use Permit without term in conjunction with an approved site plan. The site plan closely models the former park layout with updates for public safety to include a paved alley system to offer improved circulation and fire truck routing. The developer has renovated and operates other manufactured home parks within the state and has worked with City staff and is aware of the necessary requirements to bring this former park site back to applicable code standards. Water, sewer, electrical, fire hydrants, landscaping, fencing, lighting, and codes specific to manufactured home parks will be addressed prior to operations. Recreation will include onsite basketball court, open space, and a swimming pool. Some specific site constraints due to site layout of the old streets and mature trees have prompted minor variations from certain codes. The internal street system for the manufactured home park also posed some dimensional constraints in the width of the paving. The owner worked with the City's Transportation Engineer to determine acceptable levels of circulation, but there will be a prohibition from on street parking. Adequate off street parking will exist as required by the Specific Use Permit. The placement of the thick, concrete wall at the front of the property has presented a physical constraint that meets only a 10' front setback instead of the requirement of 25' as defined for manufactured home parks with a Specific Use Permit. Also, a row of mature pine trees is in alignment where a sidewalk would typically be required to be constructed. Field inspections to the site have found both the setback and sidewalk requirements are unwarranted over what would be lost. However, while sidewalk placement may be of limited significance now, the City, at its sole discretion, reserves the right to reassess the property frontage at any future time and require the current property owner to install sidewalks at their expense. The solid concrete wall was found to still be in good condition and more substantial than what may be put up as a replacement. Additionally, the construction of a sidewalk on the east side of Fairgrounds Road would be an isolated walkway not leading to neighboring development, but would require the removal of several healthy and mature pine trees. The proposed manufactured home park will have a maximum capacity of 172 homes if all pad sites are occupied. This equates to a density of 7.3 manufactured homes per acre rather than the code's maximum of 7 units per acre. Again, this fractional overage is a function of the existing concrete pad sites and equates to fewer than nine manufactured units for the entire park site's acreage. The park is planned to be a mix of single and double-wide manufactured homes. Depending on the actual housing mix, the density may be reduced with a greater number of double-wide units. The owner offered that double-wide units at the front could offer a more attractive street frontage along with planned façade improvements and lighting around the existing concrete wall. Staff has received a number of inquiries on this property over the years with an equal number of failed attempts at securing the property. Staff concurs with the Planning and Zoning Commission and recommends approval of this development within the context of the constraints the land presents and the opportunity to return 23-plus acres to productive use.

Attachments:

Application

Planning & Zoning Commission Report of December 17, 2012

Site Plan – Exhibit A
Proposed Ordinance
Maps

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1, BLOCK 1, FAIRGROUNDS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH FAIRGROUNDS ROAD, APPROXIMATELY 900 FEET SOUTH OF EAST GOLF COURSE ROAD), WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR A MANUFACTURED HOME PARK; 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 AE, Agriculture Estate District, to-wit:

Lot 1, Block 1, Fairgrounds Addition, 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 manufactured home park, together with the uses permitted in the present AE, Agriculture Estate District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. The this development shall be consistent with the site plan attached hereto and incorporated herein as Exhibit “A”.
- B. That the maximum capacity shall not exceed 172 mobile home units.
- C. That the manufactured home park’s front yard setback shall be 10 feet from the front property line.
- D. That the trash dumpsters shall be appropriately screened and of adequate quantity to handle the refuse generated by the mobile home park occupants.
- E. That a blanket refuse easement to the property is hereby granted to the City of Midland.
- F. That internal sidewalks shall not be required.
- G. That the main paved street may be 36 feet wide with the side spurs to the housing units being a 30 foot paved width, both without curb and gutter, and that the south, east and north sides of the park having a 20 foot alley.
- H. That parking is prohibited within the alleys and the 30 foot paved roadways. Parallel parking is permitted beyond 100 feet of the park entrance, on one side only, of the main 36 foot wide street with appropriate signage indicating the approved side and required distance from each intersection.
- I. That the internal streets, play areas, key pad entry gate, and the park entryway lighting shall be illuminated per code and maintained in a working condition.
- J. That being immediately adjacent to a public park shall relieve the owner from adding additional open space to the currently proposed amenities, as the open space would likely go unutilized.
- K. That tenant storage facilities are optional, but may become mandatory at the discretion of the Building Official if yard clutter, prohibited storage under housing units, or theft of yard items become a nuisance or complaint issue.
- L. That a manager or responsible attendant shall be in charge to keep the manufactured home park, its facilities and equipment in a clean, orderly and sanitary condition and said manager or attendant shall be answerable, with the licensee, for any violation of the provisions of the Midland City Code.
- M. That this manufactured home park is required to maintain a current Type I license and pay the annual license fees associated with such license.
- N. That the development and management of this manufactured home park, unless otherwise stated, shall be consistent with the applicable regulations of Sections 5-5-1 through 5-5-15 of the Midland City Code.

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., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council

member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

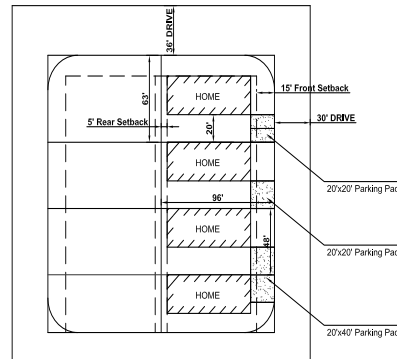
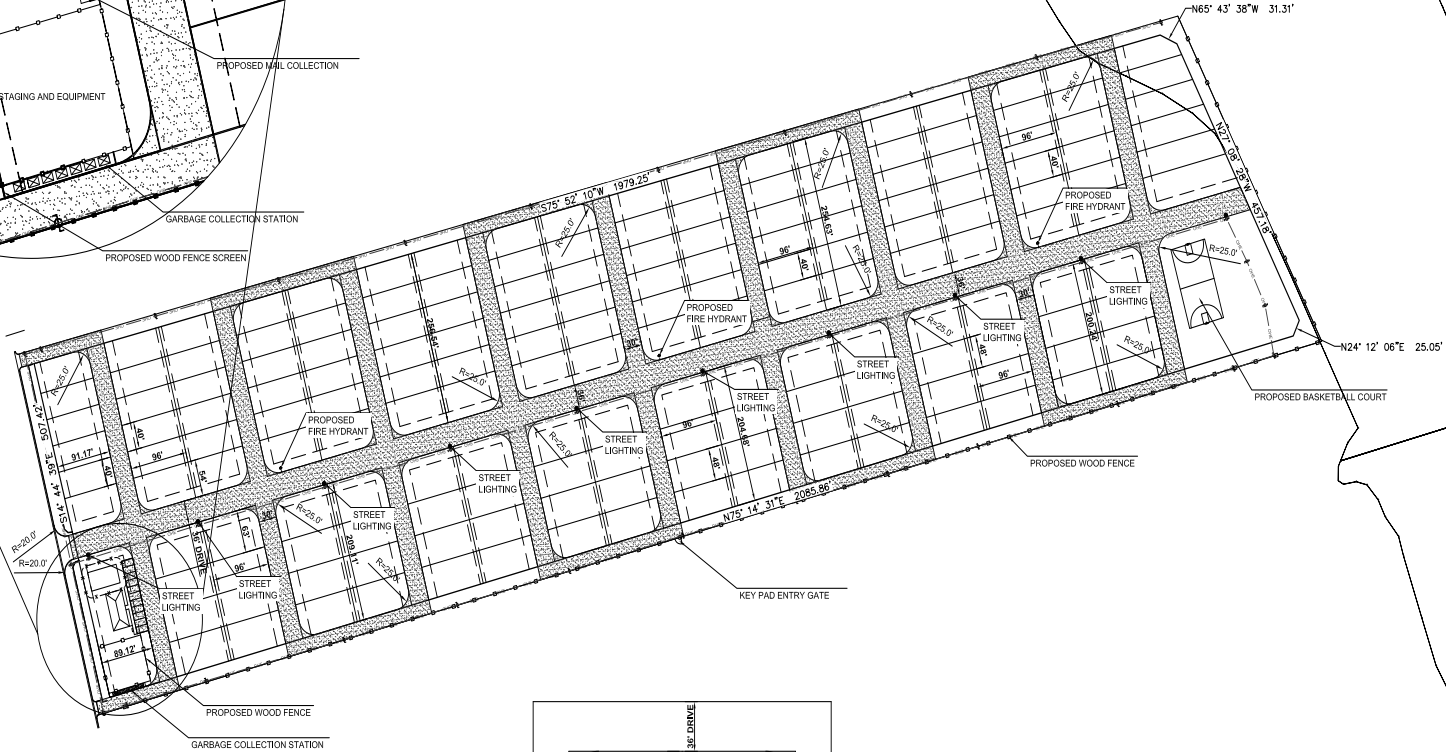
APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Attorney

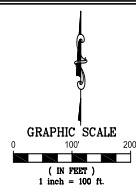
APPROVED AS TO FORM:

Keith Stretcher, City Attorney

FAIRGROUNDS RD.
(115' ROW-65' B-B)



TYPICAL BUILDING LAYOUT



NEWTON ENGINEERING, PC
4000 N. Lamar Rd.
Midland, Texas 79705
(432) 770-0400



STONEGATE MOBILE HOME PARK
23.37 ACRES 172 HOMES

SITE PLAN

OWNER:
CHASE GARDAPHIE
415 W. WALL ST. SUITE 2207
MIDLAND, TEXAS 79701
(432)242-1552

Project No.	12-ME0028	Sheet
Date:	OCT 2012	
Drawn By:	JMN	
Checked By:		
Scale:	1"=100'	1

PLANNING AND ZONING COMMISSION

December 17, 2012

- CASE:** S-12-014, Chase Gardaphe.
- REQUEST:** Hold a public hearing and consider a request for a Specific Use Permit without Term for a Manufactured Home Park on Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas.
- APPLICANT/REP:** Newton Engineering.
- LEGAL DESCRIPTION:** Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas.
- LOCATION:** Generally located on the east side of N. Fairgrounds Road, approximately 900 feet south of E. Golf Course Road.
- CURRENT ZONING:** AE, Agriculture Estate District.
- ASSOCIATED CASES:** None. Previously established as a Mobile Home Park prior to the land's 1982 annexation into the City of Midland.

DETAILS OF REQUEST:

1. This is a request by the owner to redevelop a long-time vacant mobile home park located on the east side of Fairgrounds Road between Golf Course Road and Cuthbert Ave. A requirement for establishing a mobile home park is obtaining a Specific Use Permit without term in conjunction with an approved site plan.

SURROUNDING ZONING AND LAND USE:

2. This property is located midway between Golf Course Road and Cuthbert Avenue on Fairgrounds Road and is zoned AE, Agriculture Estate District, as is the property to the north. The north property is owned by TXU Electric and used for some of their large electrical infrastructure. To the east is the Midland Draw and the south is bordered by both Reyes-Mashburn-Nelms City Park and the City's Animal Shelter. Across Fair Grounds Road to the west is C-3, Commercial District, which is currently undeveloped although a number of projects are in various stages of approval.

ANALYSIS:

3. The request by Mr. Gardaphe, the owner, includes a site plan that provides the most effective use of the former mobile home park's existing infrastructure. Meaning, the proposed new site plan follows the concrete pattern still in existence in the previous park's roads and mobile home pad sites. The owner has worked with city staff and does anticipate that other infrastructure such as water, sewer, and electrical facilities may need replacing and/or upgrading to applicable code requirements. The existence of the thick, concrete wall at the front of the property has presented a physical constraint that meets only a 10' front setback instead of the requirement of 25' as required for mobile home parks with a Specific Use Permit. Also, a row of mature pine trees has grown between this wall and the Fairgrounds Road right-of-way. This stand of trees is in alignment where a sidewalk would typically be required to be constructed. Field inspections to the site have found both the setback and sidewalk requirement appears to be unwarranted over what would be lost if the landscaping and wall were removed. The solid concrete wall was found to still be in good condition and more substantial than what may be put up as a replacement. Additionally, the construction of a sidewalk on the east side of Fairgrounds Road would be an isolated walkway not leading to any neighboring development. The internal street system for the manufactured home park also posed some dimensional constraints in the width of the paving. The owner worked with the City's Transportation Division to determine acceptable levels of circulation, but there will be a prohibition from "on street" parking on the internal roads. Adequate off street parking will be provided for as required by the Specific Use Permit. Fire truck navigation and the placement of fire hydrants for adequate fire protection were also discussed with staff and proposed hydrant locations are included in the site plan. The proposed mobile home park will have a maximum capacity of 172 homes if all pad sites are occupied. This equates to a density of 7.3 mobile homes per acre rather than the code's maximum of 7 units per acre. Again, this fractional overage is a function of the existing concrete pad sites and equates to fewer than nine manufactured units for the entire park site's acreage. The park is planned to be a mix of single and double-wide manufactured homes. Depending on the actual housing mix, the density may be reduced with a greater number of double-wide units. The park and recreation space shown on the site plan includes both a basketball court and swimming pool amenities. There are some mature trees on the park's grounds already, but additional infill landscaping will be placed throughout the park as required. A wood fence is also planned for separating the mobile home park property from the adjacent properties to the south and for safety, from the Midland Draw. Staff has received a number of inquiries on this property over the years with an equal number of

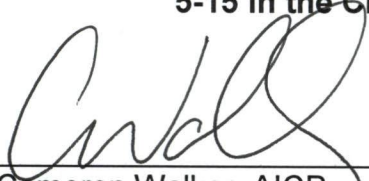
failed attempts at securing ownership of the property. Staff recommends approval of this development within the context of the constraints the land presents and the opportunity to return 23-plus acres to productive use.

STAFF RECOMMENDATION:

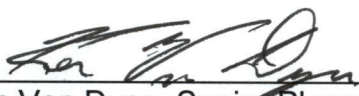
Staff recommends approval of the Specific Use Permit without Term for a Manufactured Home Park, subject to the following conditions:

- A. That the development shall be significantly consistent with the Site Plan (Exhibit – A);**
- B. That the maximum capacity shall not exceed 172 mobile home units;**
- C. The manufactured home park's front yard setback shall be 10' from the front property line;**
- D. That the trash dumpsters shall be appropriately screened and of adequate quantity to handle the refuse generated by the mobile home park occupants;**
- E. That a blanket refuse easement to the property is granted to the City of Midland;**
- F. That internal sidewalks shall not be required;**
- G. That the main paved street may be 36' wide with the side spurs to the housing units being a 30' paved width, both without curb and gutter, and that the south, east and north sides of the park having a 20' alley;**
- H. That parking is prohibited within the alleys and the 30' paved roadways. Parallel parking is permitted beyond 100' of the park entrance, on one side only, of the main 36' wide street with appropriate signage indicating the approved side and required distance from each intersection;**
- I. That the internal streets, play areas, key pad entry gate, and the park entryway lighting shall be illuminated per code and maintained in a working condition;**
- J. That being immediately adjacent to a public park shall relieve the owner from adding additional open space to the currently proposed amenities, as the open space would likely go unutilized;**

- K. That tenant storage facilities are optional, but may become mandatory at the discretion of the Building Inspector if yard clutter, prohibited storage under housing units, or theft of yard items become a nuisance or complaint issue;
- L. That a manager or responsible attendant shall be in charge to keep the manufactured home park, its facilities and equipment in a clean, orderly and sanitary condition and they shall be answerable, with the licensee, for any violation of the provisions of the City Code;
- M. That this manufactured home park is required to maintain a current Type I license and pay the annual license fees associated with such license;
- N. That the development and management of this manufactured home park, unless otherwise stated, shall be significantly consistent with the other regulations deemed applicable in Sections 5-5-1 through 5-5-15 in the City of Midland Code;



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
Maps

Case Number: S-12-014

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

NEWTON ENGINEERING (432) 770-0499
Applicant Name Contact Phone #s
4908 NORTH MIDKIFF ROAD 79705
Address Zip Code
E-Mail address: JOHN@NEWTONCIVIL.COM

CHASE GARDAPHE (432) 242-1552
Property Owner Name Contact Phone #s
415 WEST WALL STREET, SUITE 2207 79701
Address Zip Code
E-Mail address: CHASE.STONEGATE@GMAIL.COM

Operator (if different from Applicant or Property Owner) Contact Phone #s
Address Zip Code

Type of Permit: MANUFACTURED HOUSING COMMUNITY

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.)

LOT ONE (1), BLOCK ONE (1), FAIRGROUNDS ADDITION
1320 NORTH FAIRGROUNDS ROAD

Current Zoning: AGRICULTURE ESTATES

Maximum Floor Area: N/A Max. Occupancy: 172 UNITS

Proposed hours and days of use or operation: N/A

Reason for request: MANUFACTURED HOUSING COMMUNITY

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: _____

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: *John M. N...* Date: 11-15-2012

Property Owner: *[Signature]* Date: 11/15/2012

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

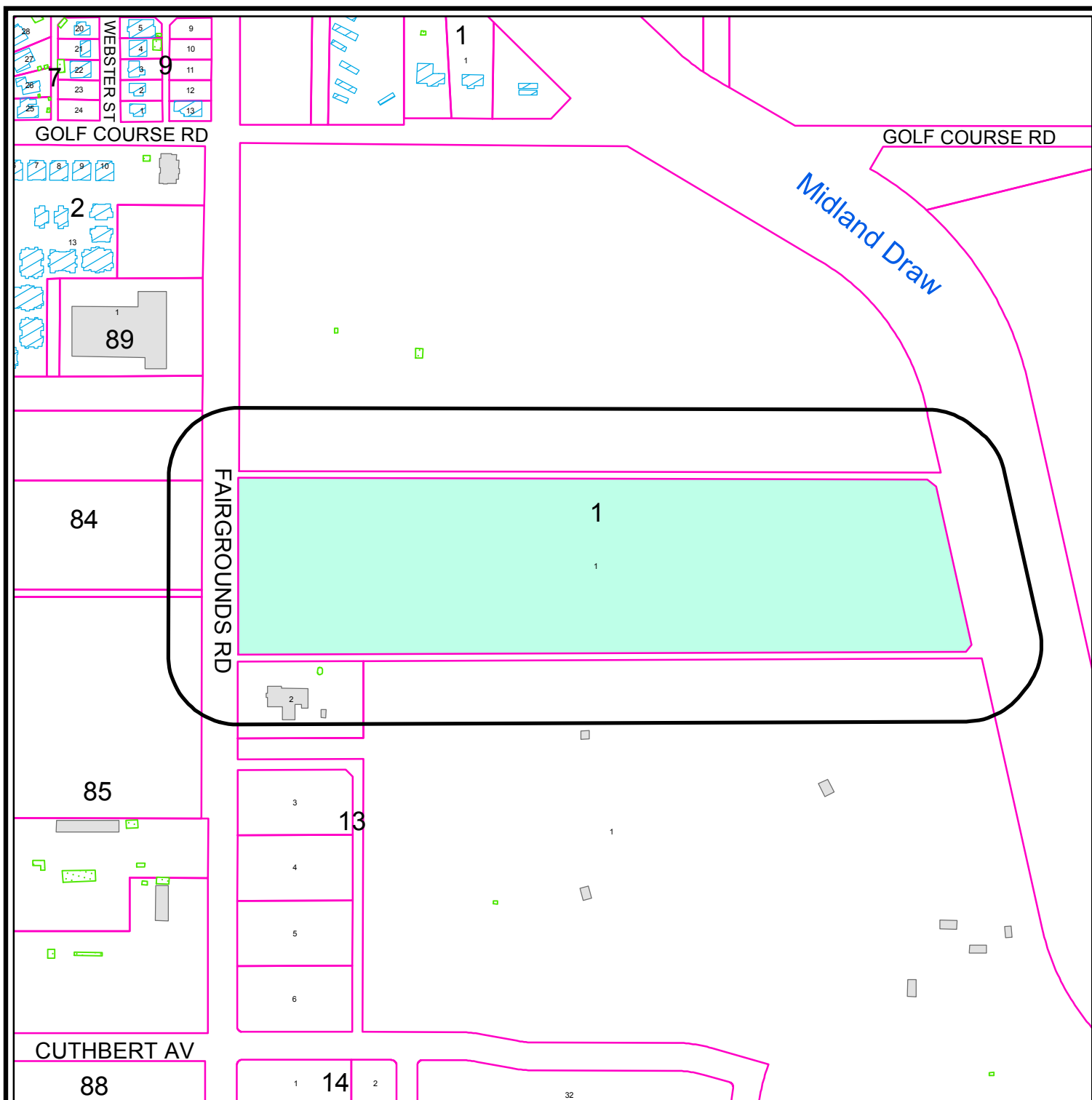
_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

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: <u>RS</u>	Date: <u>11/15/12</u>
Assigned: <u>KV</u>	
For: <u>P&Z</u>	On: <u>12/17/12</u>

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 014

Scale: 1" = 400'

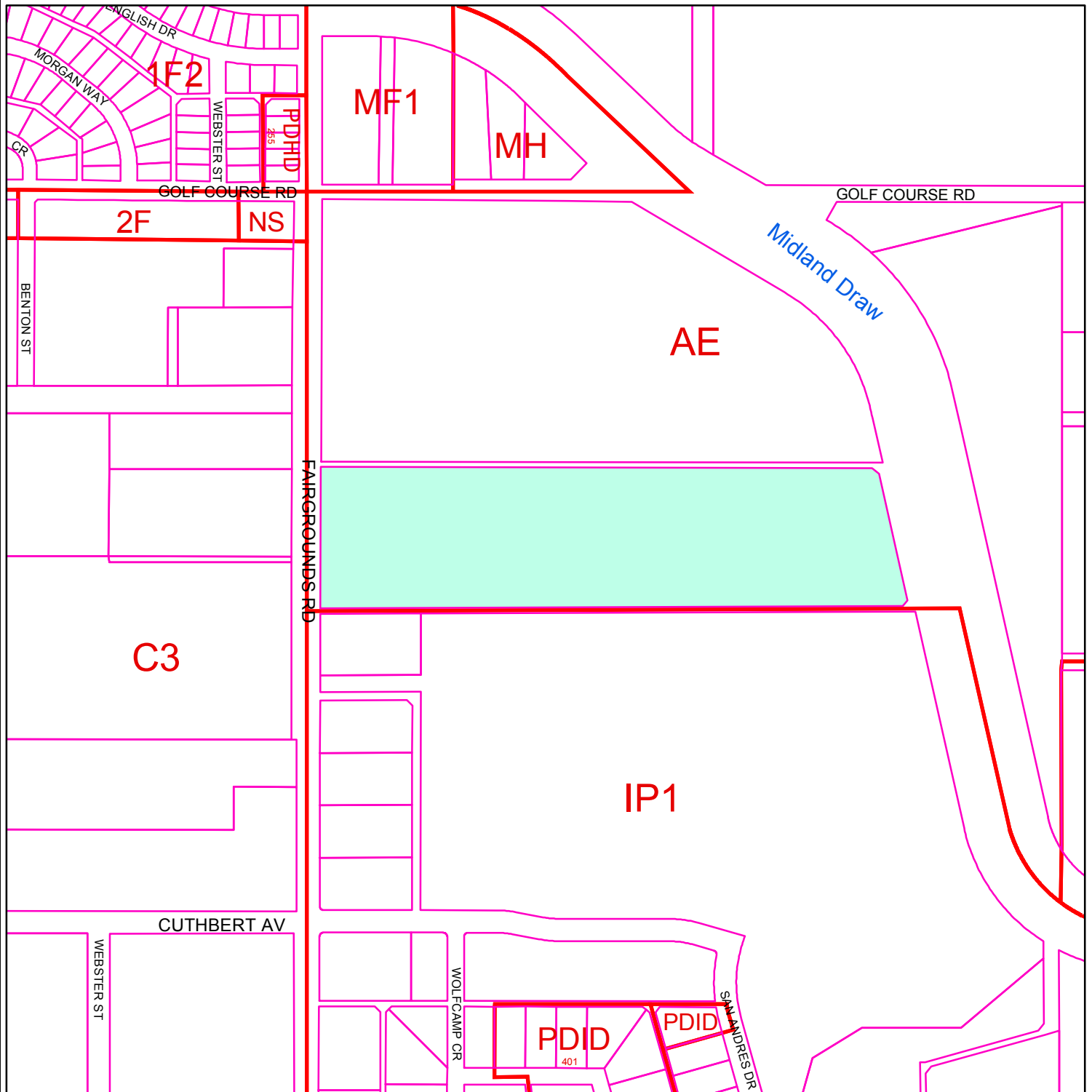
Consider a request for a Specific Use Permit Without Term for a Manufactured Home Park on Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

S - 12 - 014

Scale: 1" = 400'

Consider a request for a Specific Use Permit Without Term for a Manufactured Home Park on Lot 1, Block 1, Fairgrounds Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 1/22/2013

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: At approximately 10:36 A.M. hold a public hearing and consider an ordinance on a request by Basin Burger House for an amended Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas. (Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street. – District 2)

Purpose:

A hold a public hearing and consider an ordinance on a request by Basin Burger House for an amended Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

Duke Edwards requests to amend the previously approved Specific Use Permit for on-premise consumption of all alcoholic beverages in a restaurant. The City Council approved the applicant's original request on August 14, 2012. Since then, the new construction has been completed with internal design and seating changes that can accommodate 250 patrons throughout a 4,100 square foot area. Mr. Edwards would like to amend the Specific Use Permit to reflect this greater capacity rather than the previous estimate of seating for 175 people in 4,000 square feet of serving area as the current ordinance states. Additionally, Mr. Edwards requests 11:00 a.m. to midnight operating hours for all days of the week. This request would extend the approved Sunday through Thursday closing time by one hour (Fridays & Saturdays already being approved for midnight closing). Being a C-1, Central Area District, there are no established off-street parking requirements. With the original site plan remaining consistent, this change is essentially one of recognizing greater seating capacity post-construction with a slightly modified floor layout. Staff concurs with the Planning and Zoning Commission approval based on the assessment that the request for amending preconstruction capacity estimates is reasonable and the operation hours request is minor.

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1A, BLOCK 29, HOMESTEAD ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOUISIANA AVENUE AND NORTH COLORADO STREET), 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 RESTAURANT 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:

Lot 1A, Block 29, Homestead Addition, Section 8, 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 restaurant, 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 alcohol serving area shall be a maximum of 4,100 square feet, and the maximum occupancy shall be 250 persons.
- B. That all applicable provisions of the Building Code and Fire Code shall be complied with.
- C. That the days and hours of alcoholic beverage sales and consumption shall be allowed on every day of the week, not to exceed the hours of 11:00 a.m. until 12:00 a.m. (Midnight), unless otherwise prohibited by law.
- D. That the sale and on-premise consumption of alcoholic beverages shall conform to all applicable laws established by the City of Midland and the State of Texas.
- E. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale and consumption of alcoholic beverages at the restaurant to ensure that the terms of this permit are satisfied.
- F. That the development of a restaurant on this property shall conform to Exhibit "A", which is attached hereto and incorporated herein.
- G. That City of Midland Ordinance No. 9043 is hereby repealed.

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., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

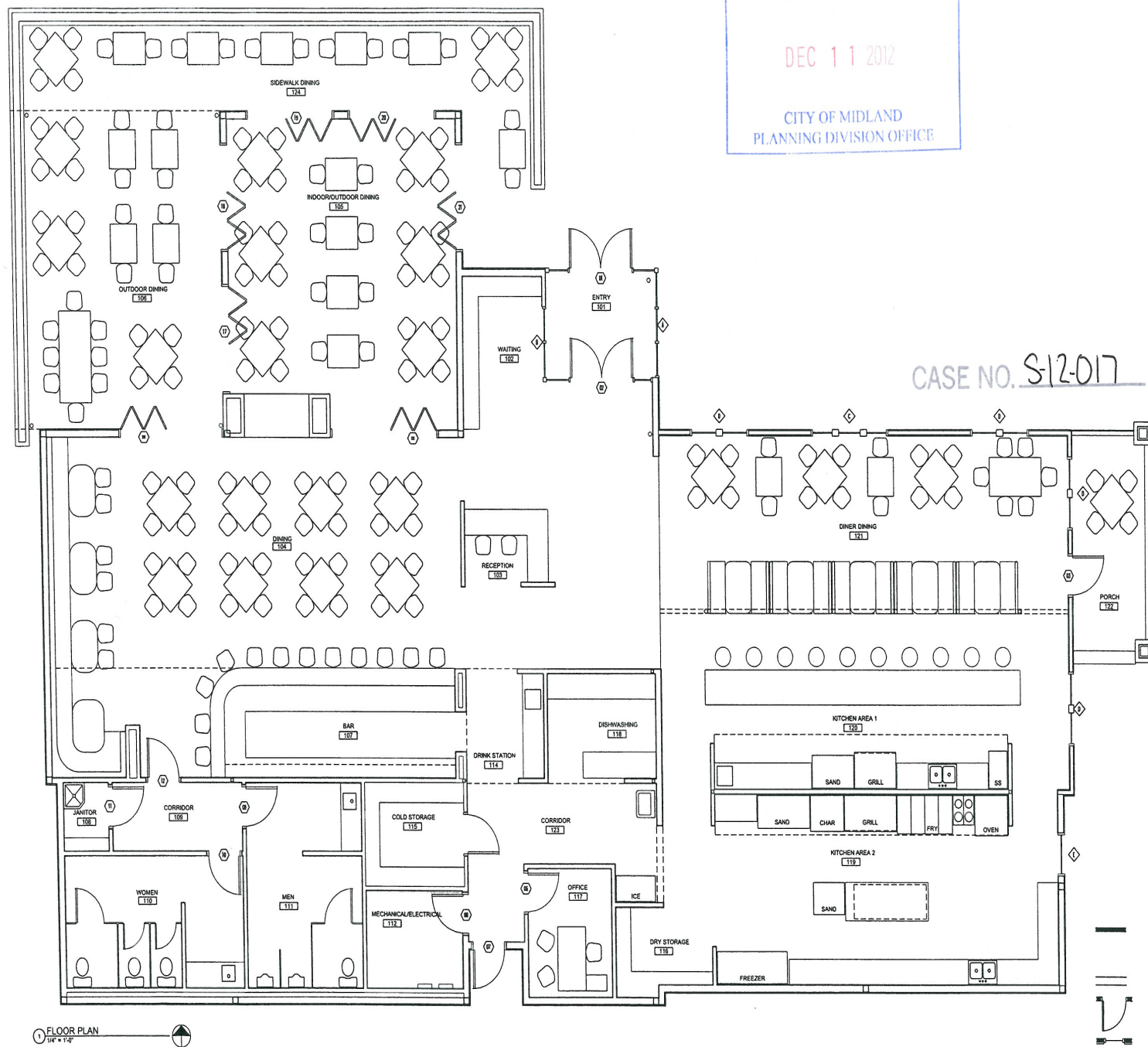
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Attorney

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



SHEET TITLE:

A-2NOT FOR REGULATORY APPROVAL,
PERMITTING, OR CONSTRUCTION.

PROJECT : 1201
 DATE : 5-23-12
 DRAWN BY : ***
 REVISION : ***

BASIN BURGER HOUSE

**607 COLORADO AVE.
 MIDLAND, TEXAS 79701**

TRAVIS DURHAM ARCHITECT
 1300 G West Wall Street
 Midland, Texas 79701
 P 432.685.3997
 F 432.685.0525

PLANNING AND ZONING COMMISSION

January 14, 2013

CASE: S-12-017.

REQUEST: Hold a public hearing and consider a request for an Amended Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a restaurant.

APPLICANT: Basin Burger House, LLC.

OWNER: Duke Edwards.

LEGAL DESCRIPTION: Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas.

LOCATION: Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street.

CURRENT ZONING: C-1, Central Area District.

DETAILS OF REQUEST:

1. The applicant requests to amend the previously approved Specific Use Permit for on-premise consumption of all alcoholic beverages in a restaurant. The City Council approved the applicant's original request on August 14, 2012. Since that date, the construction of the restaurant has been completed with internal design and seating changes that can accommodate 250 patrons in 4,100 square feet of space. Mr. Edwards would like to amend the Specific Use Permit to reflect this greater capacity rather than the previous estimate of seating for 175 people in 4,000 square feet of serving area as the current ordinance states. Additionally, Mr. Edwards requests 11:00 a.m. to midnight operating hours for all days of the week. This request would extend the approved Sunday through Thursday closing time by one hour (Fridays & Saturdays already being approved for midnight closing).

SURROUNDING ZONING AND LAND USE:

2. The restaurant and most of the surrounding area is zoned C-1, Central Area District. Just west of this is the Subway restaurant located on Big Spring Street. To the south is large parking lot, to the east is the police station, and to the north is an office building. To the immediate northeast is a vacant lot in an O-2, Office District.

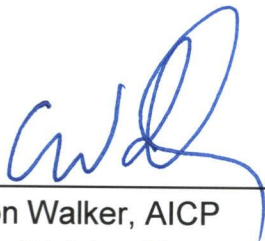
ANALYSIS:

3. This request to amend the Specific Use Permit for on-premise consumption is primarily one of recognizing greater seating capacity post-construction with a slightly modified floor layout. The overall building size has not been discernibly changed and the parking remains the same; however, there are no minimum parking spaces required in the C-1, Central Area District. Staff concurs that the request for amending preconstruction capacity estimates is reasonable and the operation hours request is minor.

STAFF RECOMMENDATION:

Staff recommends approval of this request for an Amended Specific Use Permit with Term for the sale and on-premise consumption of alcoholic beverages in a restaurant, subject to the following conditions:

- A. That the maximum area of the alcohol serving area shall be 4,100 square feet and the occupancy shall be 250 persons;
- B. All applicable Building and Fire Codes must be maintained;
- C. That the days and hours of alcoholic beverage sales and consumption shall not exceed the following: All days of the week 11:00 a.m. to midnight;
- D. That the operation of the Lounge shall conform to all laws established by the City of Midland and the State of Texas;
- E. Ordinance 9043 is repealed by this action.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Exhibit A – Floor Plan
Maps

Case Number: S-12-017

CITY OF MIDLAND
Planning Division

APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM
FOR THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISE CONSUMPTION

Basin Burger House 432-688-2650
Applicant Name Phone/e-mail
607 N Colorado 79701
Address Zip Code
ADD ~~Adding~~ Alliance 432-688-2650
Property Owner Name Phone/e-mail
Box 51108 79710
Address Zip Code

Operator (if different from Applicant or Property Owner) Phone/e-mail
Address Zip Code

Type of Business: Restaurant, Bar
(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.)

607 N Colorado Lot 1A Block 29
Hunstead Addition

Current Zoning: C-1

Max. Floor Area: 5,200 4,100 ^{sq} Seating Capacity: 215 250

Proposed hours and days of alcoholic beverage sales: 11 AM to 12 Midnight
Mon - Sunday - 7 Days

Reason for request: _____

REQUIRED SUBMITTALS

1. Application fee: \$300 ✓.
2. Site plan – 16 copies (FOLDED) ____.
3. On a CD in .pdf and .jpg digital format ____.

SIGNATURES:

Applicant: [Signature] Date: 12-11-12
Property Owner: [Signature] Date: 12-11-12

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

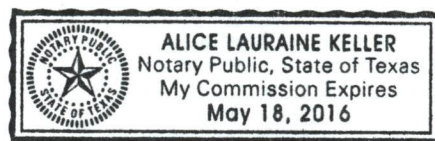
Before me, the undersigned authority, on this day personally appeared

Duke Edwards who, being by me duly sworn, upon oath says: That (s)he is authorized by ADD Alliance, 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.

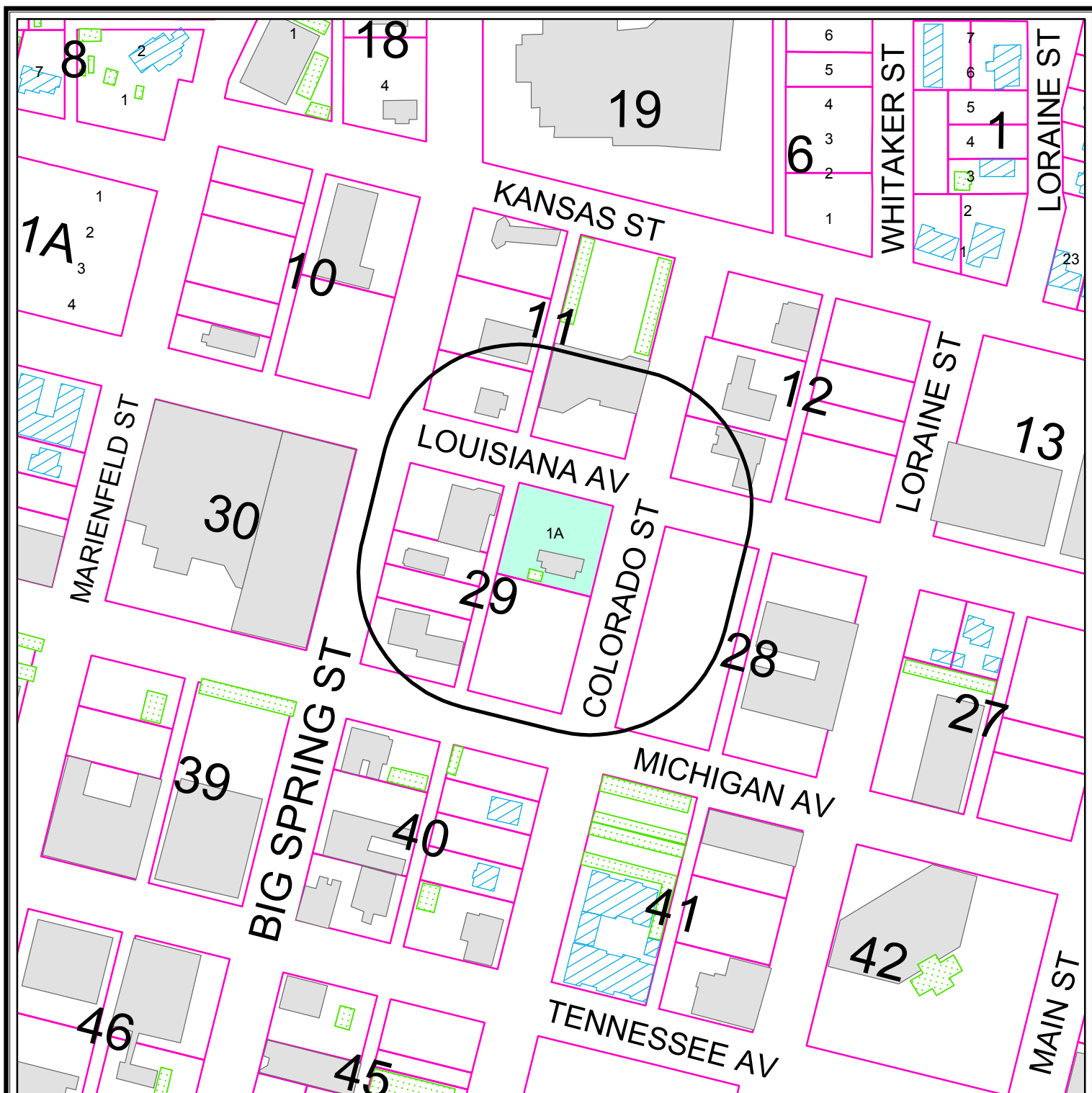
Subscribed and sworn to before me, this 11 day of Dec, 2012, to certify which witness my hand and seal of office.

Alice Lauraine Keller
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>[Signature]</u>	Date: <u>12/11/12</u>
Assigned: _____	
For: _____	On: _____



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 017

Scale: 1" = 200'

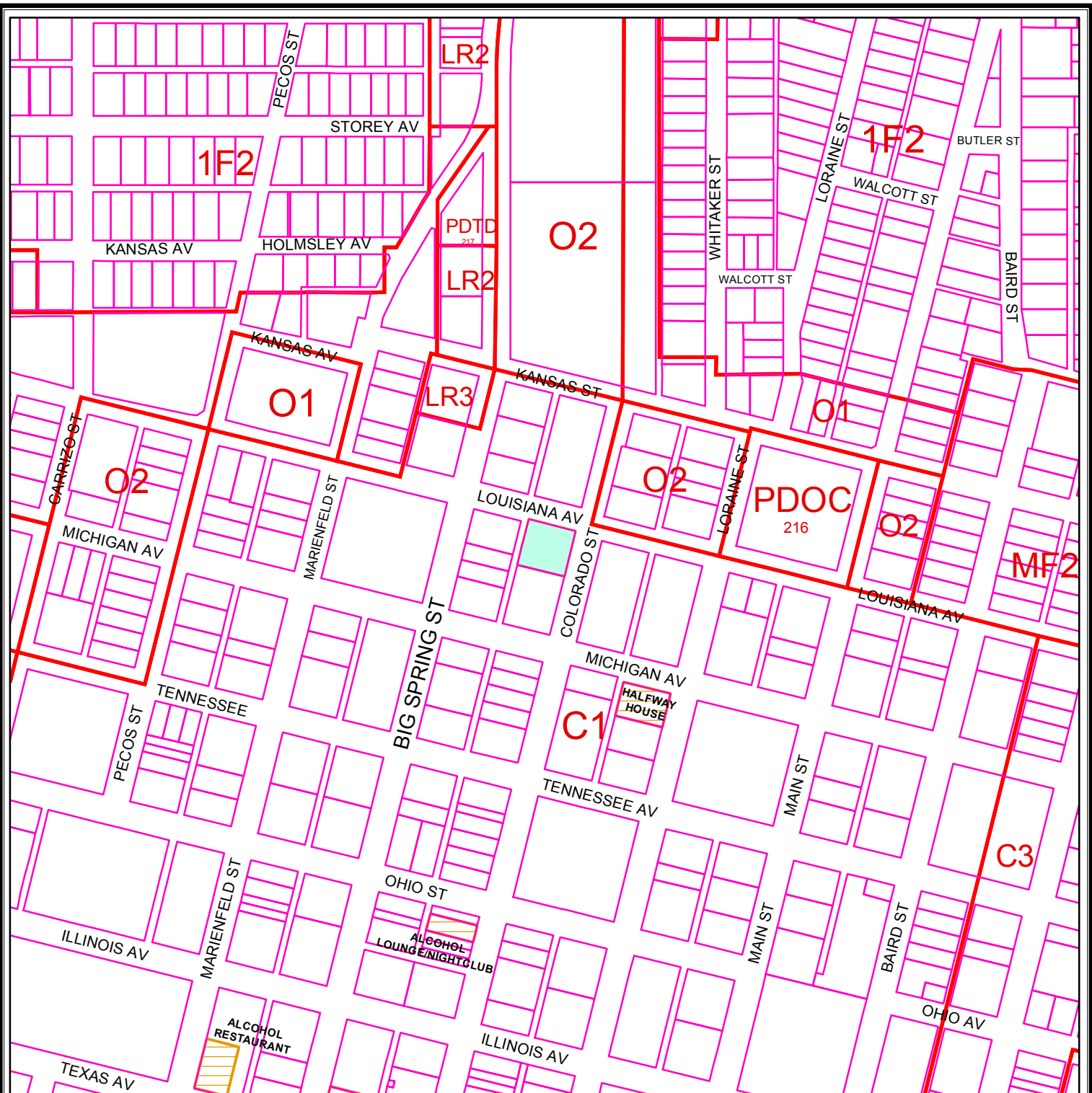
Consider a request for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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ZONING MAP

S - 12 - 017

Scale: 1" = 400'

Consider a request for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 1A, Block 29, Homestead Addition, Section 8, 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, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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DATE: January 15, 2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Special Event Ordinance

The proposed ordinance replaces Section 10-1-2 of the Midland City Code. The existing version of Section 10-1-2 of the Midland City Code is attached to this memorandum for your review. The current version of Section 10-1-2 was adopted in 1953. The intent of the proposed ordinance is to clarify the permitting process and other regulations regarding parades and other special events.

I have also attached a list of parades, special events and races that were permitted in 2010, 2011 and 2012.

If you have any questions or if I may be of any assistance do not hesitate to contact me.

Keith Stretcher

KS/lo

10-1-2. Permit required for parades and processions.

No procession, excepting the forces of the United States Army or Navy, the military forces of this state, and the forces of the police and fire departments, shall occupy, march or proceed along any street except in accordance with a permit issued by the chief of police and such other regulations as are set forth in this Title which may apply. The above does not apply to funeral processions.

(Ord. of 6-23-1953)

10-1-3. Truck routes.

No person shall operate a truck, truck-tractor, trailer, semi-trailer or pole trailer which has three or more axles on any street, roadway or highway within the City except upon the following portions of the following streets, which are hereby designated as "truck routes."

Loop 250: From the intersection of U.S. Interstate 20 to the intersection of Fairgrounds Road.

U.S. Interstate 20: From the west Midland city limits to the east Midland city limits.

Fairgrounds Road: From the south Midland city limits to the intersection of Loop 250.

State Highway 349: From U.S. Interstate 20 to the south Midland city limits.

State Highway 349: From Loop 250 to the north Midland city limits.

State Highway 158: From U.S. Interstate 20 to the east Midland city limits.

Such designated truck routes are shown on the map on file in the city secretary's office, marked Exhibit A, which is made a part hereof for all legal purposes as if set out in full herein, showing in heavy continuous lines the route or routes over which such transport vehicles may be driven or operated while within the corporate limits of the City. Said map is to be executed and attested by the Mayor and city secretary and remain in the office of the city secretary as the official truck route map for the City. An exact duplicate of said official truck route map shall be prepared and kept in the office of the traffic engineer and also signed by the Mayor and attested to by the city secretary under date of this Section as an exact duplicate original of the map attached hereto and marked Exhibit A.

This Section shall apply to every motor vehicle designed, used or maintained primarily for the transportation of property which shall have three or more axles. This Section shall not apply to emergency vehicles.

Trucks, truck-tractors, trailers, semi-trailers, pole trailers and other vehicles restricted to streets designated as "truck routes" herein may depart from such routes where it is necessary to load or unload merchandise at locations situated off of designated routes; provided, however, such vehicles shall follow and use the most direct "local truck route," as hereafter designated, to the point nearest their ultimate destination, and provided further that such vehicles shall not leave designated truck routes until they have reached a turning-off point closest to the "local truck route," as hereinafter described, which would provide the shortest distance

Permits Released to Requestors

- 1 Aleman Productions Alive 2012
- 2 Aphasia Awareness Concert 2012
- 3 Permain Basin Arthritis 2011
- 4 Permain Basin Arthritis 2012
- 5 BBB Shred Day 2012
- 6 Boy Scouts 10 Commanment Hike 2010
- 7 Boy Scouts 10 Commanment Hike 2011
- 8 Boy Scouts 10 Commanment Hike 2012
- 9 Celebration of the Arts 2011
- 10 Celebration of the Arts 2012
- 11 Christmas Parade 2012
- 12 Cody Hollums 2012
- 13 Permain Basin Walk to Defeat ALS- Crestview Baptist Church 2011
- 14 Permain Basin Walk to Defeat ALS- Crestview Baptist Church 2012
- 15 MDFM Birthday Bash 2012
- 16 Firefighters Assoc 2011
- 17 Trunk or Treat- First Christian Church 2012
- 18 God Bless Midland Block Party 2012
- 19 Fit for Life 2011
- 20 Kick of Kenya 2011 - Golf Course Road Church of Christ
- 21 Kick of Kenya 2012 - Golf Course Road Church of Christ
- 22 Greater Ideal Family Life Center 2011
- 23 Habitat for Humanity 2011
- 24 Helping Hands 2011
- 25 Hispanic Cultural Center of Midland Parade 2011
- 26 Hispanic Cultural Center of Midland Parade 2012
- 27 Jesus Christ Fountain of Life 2012
- 28 Jr Achievement 2011
- 29 Juneteenth 2010
- 30 Juneteenth 2011
- 31 Juneteenth 2012
- 32 Make a Wish 5K Run 2011
- 33 Make a Wish 5K Run 2012
- 34 MCS Homecoming Parade 2011
- 35 MCS Homecoming Parade 2012
- 36 MLK March 2010
- 37 Midland Chamber of Commerce 2011
- 38 July 4th Children's Parade 2012
- 39 Star Spanled Salute 2012
- 40 Midland Childrens Rehab 2011
- 41 Midland Childrens Rehab 2012
- 42 Turkey Trot 2012
- 43 Midland County Fair 2012
- 44 MDA Fill the Boot 2011
- 45 MDA Fill the Boot 2012
- 46 Trick or Treat Trot 2012

47 MHS Homecoming Parade 2010
48 MHS Homecoming Parade 2011
49 MHS Homecoming Parade 2012
50 Face the Race 2012
51 LHS Homecoming Parade 2010
52 LHS Homecoming Parade 2011
53 LHS Homecoming Parade 2012
54 Run From the Cops 2012
55 Midland Rock Hounds Victory Run-Walk 2011
56 Midland Sports Inc. Victory Run-Walk 2012
57 MISD SJ 5K Run 2012
58 Bike MS: Cactus & Crude Ride 2011
59 Bike MS: Cactus & Crude Ride 2012
60 Parade of Homes 2011
61 Parade of Homes 2012
62 Project Graduation 2011
63 Project Graduation 2012
64 Bishop Pfeifer Rosary 2012
65 Run for the Future 2012
66 San Miguel Arrangel Catholic Chruch Fair 2011
67 San Miguel Arrangel Catholic Chruch Fair 2012
68 SCT Now Mid Cities 2011
69 September Fest 2011
70 September Fest 2012
71 Show of Support 2009
72 St Luke's Hoe Down 2011
73 St Luke's Hoe Down 2012
74 St. Ann's Run to the Fair 2011
75 St. Ann's Run to the Fair 2012
76 Tall City Blues 2011
77 Tall City Blues 2012
78 Once Upon a Run 2012
79 Wake Up, Stand Up 2012
80 Templo Jerusalem Assembly of God Festival 2011
81 Any Given Sunday 2011
82 United Blood Services BloodGushers 2012
83 YMCA Tall City Triathlon 2011
84 YMCA Tall City Triathlon 2012

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER 1, "GENERAL TRAFFIC REGULATIONS", SECTION 2, "PERMIT REQUIRED FOR PARADES AND PROCESSIONS", OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO CLARIFY THE PERMITTING PROCESS AND OTHER REGULATIONS RELATED TO SPECIAL EVENTS; CONTAINING A PROCESS FOR APPEALING THE DENIAL OF A PERMIT; CONTAINING A CUMULATIVE CLAUSE AND EXPRESSLY REPEALING ANY ORDINANCE OR PORTION THEREOF IN CONFLICT WITH THIS ORDINANCE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00) AND NOT REQUIRING A CULPABLE MENTAL STATE; ESTABLISHING AN EFFECTIVE DATE OF MARCH 1, 2013; AND ORDERING PUBLICATION

WHEREAS, the City Council desires to protect the health and safety of special event participants and spectators;

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

SECTION ONE. That Title X, "Traffic Regulations", Chapter 1, "General Traffic Regulations", Section 2, "Permit required for parades and processions" of the City Code of Midland, Texas, shall hereby be amended to read as follows:

10-1-2 Permit Required for Special Events.

A. Definitions

- (1) **Special Event** - The term Special Event shall hereafter be defined as follows: any Parade, Race, Block Party, Festival or any event requiring the temporary closing or blocking of any public street, alley or sidewalk, or any combination thereof. The term Special Event shall not include funeral processions or City-sponsored special events as evidenced by a resolution approved by the Midland City Council.
- (2) **Parade** - The term Parade means any march, motorcade, or procession consisting of people, animals, vehicles of any type, or a combination thereof, upon any public street, alley or sidewalk or combination thereof, which does not comply with normal and usual traffic regulations or controls or requires the temporary blocking or temporary closing of any street, alley or sidewalk.
- (3) **Race** - The term Race means a competition or series of competitions of speed or endurance between humans, motorized or other vehicles, animals or a

combination thereof over a specified course or distance. The term also includes organizational walks and walks for fundraising or public awareness. The term also includes bicycle races or bicycle events for fundraising or public awareness.

- (4) **Block Party** - The term Block Party means a social or recreational gathering for which any public street, alley or sidewalk, or any combination thereof, is temporarily closed within an area zoned for or predominantly used as residential and in which some of the participants reside within the area of the street closure or are guests of such a resident.
- (5) **Festival** - The term Festival means a social or recreational gathering for which any public street, alley or sidewalk, or any combination thereof, is temporarily closed within an area both zoned and used for commercial or industrial use, or within downtown Midland.

B. Violation

No person shall participate in a Special Event that violates the terms of the permit required under this section or participate in a Special Event without the consent of the permittee or interfere in any manner with its progress or orderly conduct.

C. Permit Required

It is unlawful for any person to conduct or participate in any Special Event upon any public street, alley or sidewalk without a Special Event Permit issued by the City Manager. Applications for the Special Event Permit, as specified in this ordinance, shall be provided by the City Manager. An application for a Special Event shall be made not less than Thirty (30) days before the scheduled time for the Special Event and shall be accompanied by a non-refundable Fifty Dollar (\$50.00) Application Fee and a refundable Two-Hundred Fifty Dollar (\$250.00) Clean-up and Damage Fee.

D. Form of Application

The application for the Special Event permit shall be made in writing, on a form provided by the City Manager, as follows:

CITY OF MIDLAND SPECIAL EVENT APPLICATION

Before any Special Event (The term "Special Event" means any Parade, Race, Block Party, Festival or any event requiring the temporary closing or blocking of any public street, alley or sidewalk, or any combination thereof) may be considered, this Special Event Application must be completed. Before a request can be considered for approval, the City Manager must:

1. Verify with the Planning Division (685-7400) if a Temporary Land Use Permit or other permit is also required. (y)___ (n)___ Planning Division signature: _____
Date: _____
2. Secure clearances and have authorized signatures in all designated areas of this Application prior to executing a Special Event Permit.
3. Complete or require an event map indicating the location or route of the Special Event

and other event logistics, as listed below.

4. The applicant must submit the completed Application and event map to the City Manager's Office **at least 30 DAYS prior to the scheduled time for the Special Event.** The applicant may mail the completed application form to the City Manager, PO Box 1152, Midland, Texas, 79702, or return the Application to Room 310, City Hall, 300 N. Loraine Street, Midland, Texas, 79701.

5. The City Manager shall collect a refundable \$250.00 deposit for damages or the cleaning of any streets, alleys or sidewalks, before processing this Application.

6. The City Manager shall collect a non-refundable \$50.00 application fee before processing this application

Contact the City Manager at 685-7202 with any questions.

EVENT NAME:_____ **Est. # of Participants:**_____

SPONSORING ORGANIZATION:_____

CONTACT PERSON:_____ **ADDRESS:**_____
Phone No.:(h)_____ **(w)**_____ **(m)**_____

Event Date(s):_____ **Hours:**_____

(List approximate times when the event will assemble:_____

start:_____ **and terminate:**_____.)

LOCATION:_____

(Attach map of event area showing parking, dumpsters, tents, booths, stages, fences, barricades, etc. Applicant shall show proposed assembly area, route, disbanding area, the number and type of vehicles and or animals, the number of persons expected to participate, a general description of the organization of the Special Event and any other information the City Manager may deem reasonably necessary for the safety of event participants and the general public.)

Will the event be held on Midland County grounds? (y)___(n)___

If yes, please be aware that the use of Midland County property requires written permission from the County Commissioner's Court, the use of Sheriff Deputies for security on Midland County property, and may require additional clean-up and damage deposit fees.

DESCRIPTION OF ANY TENT, TEMPORARY STRUCTURES OR FENCING:_____

NO. OF RESTROOMS OR PORTABLE TOILETS PROVIDED:_____

CLEAN-UP/DAMAGE DEPOSIT: A \$250.00 clean-up or damage deposit is required for all Special Events; the total amount or a portion of which may be refunded following City inspection of the site of the Special Event. Also see above note regarding use of Midland County property.

SECURITY PLAN (No. Of City and/or County security officers):_____

PARKING PLAN:_____

(Attach written approval from the landowners, as needed)

.....
THE FOLLOWING SECTIONS MUST BE SIGNED BY AUTHORIZED STAFF. NO DEPARTMENT HEAD SHALL SIGN THIS FORM UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE HAS BEEN APPROVED BY THE CITY ATTORNEY'S OFFICE.
.....

I. CITY ATTORNEY'S OFFICE

The City of Midland requires that all Special Event applicants maintain at their sole expense Comprehensive General Liability Insurance covering their Special Event. The Commercial General Liability Insurance policy limits shall not be less than a Combined Single Limit for Bodily Injury, Property Damage, Accidental Death, and Personal Injury Liability of \$2,000,000.00 per occurrence and \$2,000,000.00 aggregate. The Commercial General Liability Insurance policy shall have a deductible that does not exceed \$10,000.00 per occurrence and must name the event sponsor as the insured. The Commercial General Liability Insurance shall be on a claims occurred basis. **The Commercial General Liability Insurance policy shall name the City of Midland as an Additional Insured. The Commercial General Liability Policy shall waive all rights of subrogation against the City of Midland.** The applicant must provide a Certificate of Insurance with this application which clearly indicates that all stated requirements have been met.

ADDITIONAL REQUIREMENTS: _____

COMMENTS: _____

DATE: _____

Authorized Signature

Title

II. DEPT. OF ENGINEERING SERVICES

REQUESTED STREET CLOSING: _____

REQUIRED BARRICADES, CONES, OR OTHER CONTROLS: _____

COMMENTS or RECOMMENDATIONS: _____

DATE: _____

Authorized Signature

Title

III. POLICE DEPARTMENT

ARE OFF-DUTY POLICE OFFICERS NEEDED? (y)__(n)___

If yes, how many? _____ Location? _____

COMMENTS or RECOMMENDATIONS: _____

_____ **DATE:** _____

Authorized Signature

Title

IV. COMMUNITY SERVICES DEPARTMENT (Complete this section if a City Park will be used)

PARK PROPERTY LOCATION: _____

FENCING IS AVAILABLE FOR RENT TO USE IN PUBLIC PARKS.

REQUESTED?(y)__(n)__

COMMENTS or RECOMMENDATIONS: _____

_____ **DATE:** _____

Authorized Signature

Title

V. HEALTH DEPARTMENT

WILL FOOD BE SERVED?(y)__(n)__ WILL PUBLIC RESTROOMS BE AVAILABLE (y)__(n)__ AMOUNT? ____ WILL PORT-A-POTTIES BE PROVIDED? (y)__(n)__

AMOUNT? _____

COMMENTS or RECOMMENDATIONS: _____

_____ **DATE:** _____

Authorized Signature

Title

VI. FIRE DEPARTMENT

IS AN OPEN FLAME, TENT, OR OTHER FLAMMABLE ITEM PLANNED?(y)__(n)__

IS A SITE INSPECTION REQUIRED PRIOR TO EVENT?(y)__(n)__

ARE CROWD MANAGERS/FIRE WATCH PERSONNEL REQUIRED?(y)__(n)__

If yes, How many? _____ Location? _____

ARE PARAMEDICS NEEDED?(y)__(n)__

If yes, how many? _____ Location? _____

COMMENTS or RECOMMENDATIONS: _____

_____ **DATE:** _____

Authorized Signature

Title

VII. SOLID WASTE DEPARTMENT

HAS CITY PICK-UP OF REFUSE BEEN SCHEDULED?(y)__(n)___

COMMENTS or RECOMMENDATIONS:_____

DATE:_____

Authorized Signature

Title

SUMMARY OF THE SPECIAL EVENTS APPLICATION REQUIREMENTS

- () Have you attached a map of the Special Event, particularly relating to closing of streets for a Parade, Race, party or assembly of a crowd in the street?
- () Have you verified with the Planning Division whether or not a Temporary Land Use Permit or other permit is also required?
- () Have you contacted the City of Midland Traffic, Police, and Legal representatives to determine proper barricade, security and insurance requirements? Such representatives of the City must sign this application.
- () Have you contacted a private barricade company to determine when and where the barricades will be set, along with necessary traffic markings?
- () If alcoholic beverages are to be sold, have you acquired a temporary permit as is required from the Texas Alcoholic Beverages Commission (TABC)?
- () Have you received and included Midland County approval as needed if any portion of your event will take place on County property?
- () If you need assistance contacting the State of Texas or the railroad company, please contact the Traffic Engineer.
- () Have you mailed or returned this application - completed and including a map - to the City Manager, PO Box 1152, Midland, Texas, 79702, at least 30 days prior to the Special Event?

E. Form of Permit

The Permit for the Special Event, if granted, shall be made in writing, on a form provided by the City Manager, as follows:

**CITY OF MIDLAND
SPECIAL EVENT PERMIT**

Permittee:_____

sponsoring organization

By: _____
title

Type of special event: _____

Does the Special Event include the consumption of alcoholic beverages? (y)___ (n)___

The City of Midland hereby extends this Permit to the above named Permittee to hold the Special Event described above on City of Midland right of way at the location as shown on the site plan, attached hereto as exhibit "A" and on the following dates and times: _____

Permittee acknowledges that the City of Midland may unilaterally revoke this Permit at any time. In consideration herefor, the Permittee agrees to the following conditions:

1. INDEMNITY - PERMITTEE 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 ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY NEGLIGENT ACT OF PERMITTEE, ITS AGENTS OR EMPLOYEES, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE SPECIAL EVENT DESCRIBED ABOVE, AND PERMITTEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

PERMITTEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, TEXAS, 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 ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY PERSONAL INJURIES, ACCIDENTAL DEATH OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE CITY OF MIDLAND, 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 PERMITTEE OR PERMITTEES EMPLOYEES, OR AGENTS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE SPECIAL EVENT DESCRIBED ABOVE AND PERMITTEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

2. INSURANCE - Permittee agrees to maintain, at Permittee's sole expense, Commercial General Liability Insurance covering the Special Event contemplated herein. Commercial General Liability Insurance policy limits shall not be less than a Combined Single Limit for Bodily Injury, Property Damage, Accidental Death, and Personal Injury Liability of \$2,000,000.00 per occurrence and \$2,000,000.00 aggregate. The Commercial General Liability Insurance policy shall have a deductible that does not exceed \$10,000.00 per occurrence and must name the Special Event sponsor as the insured. The Commercial General Liability Insurance shall be on a claims occurred basis. The Commercial General Liability Insurance policy shall name the City of Midland as an Additional Insured. The Commercial General Liability Policy shall waive all rights of subrogation against

the City of Midland. The Permittee must provide a Certificate of Insurance which clearly indicates that all stated requirements have been met.

3. LIQUOR LIABILITY INSURANCE - In the event that alcoholic beverages will be consumed in the right of way set forth in exhibit "A" during said Special Event, the Permittee shall carry legal liquor liability insurance from an insurance carrier licensed to do business in the State of Texas in the amount of \$500,000.00 which shall be in effect on each day of operation of the Special Event. A certificate of insurance setting forth the amount and type of such insurance shall be submitted to the City Attorney prior to the issuance of this Permit. The certificate of insurance shall name the event sponsor as the insured and shall further name the City of Midland, Texas, as an additional insured. The liquor liability insurance shall be on a claims occurred basis.

4. BARRICADES - To properly barricade the right of way described in exhibit "A" in accordance with the requirements set forth in the Texas Manual on Uniform Traffic Control Devices and any instructions issued by the City's Traffic Engineer.

5. SECURITY - To provide _____ number of certified peace officers at the special event during all hours the special event is being held.

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

7. RELEASE - NOTWITHSTANDING ANY OTHER PROVISIONS, PERMITTEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES THE CITY OF MIDLAND, ITS EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH PERMITTEE 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 THE CITY OF MIDLAND'S NEGLIGENCE.

8. CONSIDERATION - The Permittee and the City of Midland acknowledge that this Permit is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

9. CONTRACT - The Permittee acknowledges and agrees that this Permit shall constitute a written contract between the City and the Permittee.

10. NOT A CONTRACT FOR GOODS OR SERVICES - The Permittee and the City agree that this Special Event Permit is not and shall not be construed as being a written contract for providing goods or services to the City of Midland as defined in Chapter 271 of the Texas Local Government Code.

11. Applicant and all participants shall be subject to the following conditions:

- (A) All materials used in the construction of any floats shall be subject to requirements concerning fire safety as may be determined by the City Manager or his designee;
- (B) The Permittee shall advise all participants in the Special Event, either orally or by written notice, of the terms and conditions of the Permit prior to the

- (C) commencement of the Special Event;
- (C) No participant in the Special Event may deviate from the Special Event route as it is described in the permit application;
- (D) The Parade shall continue to move at a fixed rate of speed not exceeding ten miles per hour and any delay or stopping by any participant in the Parade, except when reasonably required for the safe and orderly conduct of the Parade, shall constitute a violation of the permit; and
- (E) Any other requirements found by the chief of police to be reasonably necessary for the protection of persons or property.

12. OTHER PROVISIONS - _____

This Permit does not relieve the Permittee from the obligation of observing all applicable ordinances of the City of Midland, Texas.

SIGNED AND ISSUED this ____ day of _____, 20____.

CITY OF MIDLAND, TEXAS

By: _____
City Manager

NOTARY AFFIDAVIT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, personally appeared _____, known to me, and on oath stated that he executed the foregoing document for the purpose and considerations therein expressed as an act and deed of the City of Midland, Texas.

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

Notary Public, State of Texas

PERMITTEE:

By:_____

NOTARY AFFIDAVIT

**STATE OF TEXAS §
 §
COUNTY OF MIDLAND §**

BEFORE ME, the undersigned authority, personally appeared _____, known to me, and on oath stated that s/he executed the foregoing document for the purpose and considerations therein expressed as an act and deed of _____.

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

Notary Public, State of Texas

F. Issuance

The City Manager shall issue a Special Event Permit to the Special Event chairman, unless the City Manager notifies the chairman in writing that:

- (1) The date; times when the Special Event will assemble, start or terminate; route; location of the assembly area; location of the disbanding area; or size of the Special Event will disrupt to an unreasonable extent the movement of other traffic;
- (2) The parade is of a size or nature that it requires the diversion of so great a number of police officers to properly police the line of movement and the areas contiguous thereto, that allowing the parade would deny reasonable police protection to the rest of the city;
- (3) The parade will interfere, with regard to proposed route, police supervision or other material factors, with another parade for which a permit has been issued; or
- (4) The information contained in the application is found to be false or incorrect in any material respect.

G. Assistance to Un-permitted Special Event

In the event of any Special Event without a permit as is required by this section, no City of Midland employee, while on duty or acting within the course and scope of his employment, shall participate in, escort, assist or in any way whatsoever aid said un-permitted Special Event. Further, no City of Midland employee, whether or not said employee is on duty or acting within the course and scope of his employment, shall use or allow to be used any equipment owned by the City of Midland, including but not limited to City-owned vehicles, barricades and other traffic control devices, or City-owned uniforms, to assist in the operation of said un-permitted Special Event in any way whatsoever.

H. Copies

Immediately upon the issuance of a Special Event Permit, the City Manager shall send a copy thereof to the following:

- (1) The Police Chief;
- (2) The Fire Chief;
- (3) The Director of Engineering Services; and
- (4) The Traffic Engineer.

I. Parking on Special Event Route

The Chief of Police is hereby authorized, whenever in his judgment it is necessary, to prohibit or restrict the parking of vehicles along a street or that part thereof constituting a part of the route of a Special Event, and to erect temporary traffic signs to that effect. It shall be unlawful to park or leave unattended any vehicle in violation of such signs.

J. Driving through Processions

No driver of a vehicle shall drive between the vehicles comprising a procession (funeral procession, City-sponsored special event or Special Event as defined by this ordinance) while said procession is in motion. This provision shall not apply at intersections where traffic is controlled by traffic control signals or police officers.

K. Railroad Crossing and State Highway Crossing

The City Manager shall not issue any Special Event Permit for any Special Event proposed to cross over any railroad tracks. No Special Event Permit shall be granted wherein the proposed route for said Special Event crosses or uses a Texas State Highway until the applicant shows that they have contacted and received permission from the appropriate state officials to do so. The City Manager may issue Special Event Permits where the proposed route crosses under the railroad tracks on Texas State Highway 349 ("Big Spring Street") only if applicant shows permission from the appropriate state official. Only the City Council may issue Special Event Permits wherein the proposed route crosses through or on a railroad crossing. The City Council shall not consider an appeal regarding the denial of a Special Event Permit where the proposed route crosses through or on a railroad crossing until the applicant shows that they have contacted the appropriate Railroad officials and shows proof that they have received permission to cross through or on a railroad crossing from said officials.

L. Revocation

A Special Event Permit issued under this section may be revoked by the City Manager if a violation of any condition of the permit occurs or if, because of disaster, public calamity, riot or other emergency, the City Manager determines that the safety of the public requires revocation. Notice of the revocation shall be delivered in writing to the permittee by personal service or by certified mail. Upon revocation, a permittee may appeal the decision in the same manner as provided in this section.

M. Appeal

Any applicant wishing to appeal the payment of any fees, or the denial or revocation of any permit, established by this Ordinance may do so. Any applicant may appeal to the City Manager, or his designee, after denial of a permit, prior to paying the fees or after paying the fees. If an applicant wishes to appeal after payment of the fees, the person or operator shall appeal to the City Manager, or his designee, in writing within ten (10) calendar days of paying the fees. The City Manager or his designee, shall provide a full and meaningful review process. The City Manager, or his designee, shall provide a fair opportunity for any applicant to challenge the accuracy and legal validity of their permit denial or fee obligation. The City Manager, or his designee, shall also provide a clear and certain remedy for any erroneous or unlawful fee collection to ensure that the opportunity to contest the fee is a meaningful one. Options that the City Manager, or his designee, shall consider in providing a clear and certain remedy include but are not limited to a refund of any excess fees paid. Any person or operator may appeal to the City Manager, or his designee, if the person or operator believes that he or she cannot afford the fees. The person or operator may seek an exemption from all or part of the fees. The City shall not file criminal charges against any applicant if any fees described in this Ordinance are not paid. The City shall not file criminal charges against an applicant in an attempt to collect the fees.

The City Manager, or his designee, shall make his decision in writing within ten (10) days of receiving the appeal. An applicant shall incur no financial hardship by exercising his or her right to appeal. Said fees shall not be required from a person or operator that cause a loss of livelihood, or damage to a business.

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 five hundred dollars (\$500.00) pursuant to State law. The definition, of all offenses under this Ordinance, does not require a culpable mental state. The definition, of all offenses under this Ordinance, plainly dispenses with any

mental element as authorized by Section 6.02 of the Texas Penal Code. It is hereby declared, that for all offenses under this Ordinance, that the culpable mental state required by Chapter 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

SECTION FIVE. The effective date of this Ordinance shall be March 1, 2013.

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D.,
2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: January 17, 2013

To: The Honorable Mayor Perry and Council

From: Amy M. Turner, City Secretary

Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective January 22, 2013. Remaining expirations and vacancies are listed below:

AIRPORT PLANNING AND DEVELOPMENT BOARD – Two terms expired on September 30, 2012.

CITY DEVELOPMENT ADVISORY COMMITTEE – One vacancy expiring on September 30, 2013 and two terms expired on September 30, 2012.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – Two vacancies for Alternate terms expired on September 30, 2007.

HOUSING AUTHORITY COMMISSION – One vacancy as Alternate term expiring in October 2015

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND DEVELOPMENT CORPORATION – Three terms expired on January 14, 2013.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, and two terms expired on January 1, 2010.

MIDLAND HOUSING FINANCE CORPORATION – One vacancy expired on September 30, 2010, two terms expired on September 30, 2011 and one term expired on September 30, 2012.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD – Two terms expired on September 30, 2012.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico), one term expired on September 30, 2011 and two terms expired on September 30, 2012.

TAX INCREMENT REINVESTMENT ZONE BOARD – One term expired on March 20, 2009 (one College representative), four terms expired on March 20, 2010, one term expired March

20, 2011 and one terms expired on March 20, 2012. (Four City representatives, two Hospital representatives, two County representatives and one College representative.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT-

One term expired on September 30, 2011, one term expired on September 30, 2012 and one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

January 22, 2013

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2015	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
J. Ross Lacy	09/12*	Sept 30 2014	Sept 30 2020
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
(Vacancy)-Lena Margita	10/09	Sept 30 2013	Sept 30 2013
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>	<u>Position</u>
Don Woodward (At Large)	11/11*	Sept 30 2016	Sept 30 2020	5
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013	1
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021	4
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018	3
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018	2

ALTERNATES:

Vacancy	Sept 30 2007	Any
Vacancy	Sept 30 2007	Any

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	09/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Annabell Ramirez	09/12	Sept 30 2014	Sept 30 2016
Brian Smith	09/12	Sept 30 2014	Sept 30 2016
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2015
Dennis Bade	09/12	Oct 2014	Oct 2016
Norma Duran	11/08*	Oct 2014	Oct 2014

ALTERNATES:

Vacancy	Oct 2013	Oct 2015
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JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	11/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Greg Turner	(CC)	12/11	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Michael Trost	02/11*	Jan 14 2013	Jan 14 2019
Cary J. Love	12/09	Jan 14 2013	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2013	Jan 14 2019
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

	<u>Appt Date</u>
Wes Perry	05/12
Gary Harris	05/12
Wayne Merritt	05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014

* Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date

Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015
Rebecca Bell	09/12	Sept 30 2014	Sept 30 2016

* Indicates appointment to an unexpired term.

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Russell Richards (Petroleum Eng.)	09/12	Sept 30 2015	Sept 30 2018
Perry Dan Taylor (Real Estate)	09/12	Sept 30 2015	Sept 30 2018
Lance Friday (Real Estate)	09/12*	Sept 30 2013	Sept 30 2019
Paul Brown (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017
David Rosen (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014
Katey Howard	09/12*	Sept 30 2014	Sept 30 2020
Amanda McCann	11/11*	Sept 30 2015	Sept 30 2018
Edward Mayberry	09/12	Sept 30 2015	Sept 30 2021

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2013
Jim Little (Big Spring)	09/03	Sept 30 2013
Frankie Rolfe (Kermit)	09/12	Sept 30 2013
Don Bethel (Lamesa)	02/91	Sept 30 2013
Willie Taylor (Odessa)	02/00	Sept 30 2013
Gloria Pena (Odessa)	03/03*	Sept 30 2013
Barbara Graff (Odessa)	06/10*	Sept 30 2013
Henry Cutbirth (Monahans)	09/05	Sept 30 2013
Isabelle Blanchard (Pecos)	10/10	Sept 30 2013
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2013
Glenn Wortham (Sweetwater)	10/07	Sept 30 2013
John Rogotzke (Snyder)	01/12	Sept 30 2013
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2013
Larry Fry (Roswell, NM)	09/00	Sept 30 2013

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)

(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2014	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)

(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014
Kevin Wilton	09/08*	Sept 30 2015	Sept 30 2017
Royce Watkins	02/08*	Sept 30 2015	Sept 30 2017
Karen York	10/10*	Sept 30 2015	Sept 30 2018
Sharla Hotchkiss	10/12	Sept 30 2015	Sept 30 2018
Warren Lvey	10/12*	Sept 30 2014	Sept 30 2020

ALTERNATES:

Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017
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TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Neil Florer (College)	07/01	Mar 20 2009	Mar 20 2009
Mark T. Wellen (City), Chairman	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Pete Hulder (Hospital)	03/10	Mar 20 2016	Mar 20 2016
Michael Blonkvist (City)	09/12*	Mar 20 2014	Mar 20 2020
John L. Kennedy (City)	10/09*	Mar 20 2015	Mar 20 2018
Ken Burgess (City)	10/12*	Mar 20 2013	Mar 20 2018
Link Grimes (City)	12/12*	Mar 20 2015	Mar 20 2021
Charlene McBride (College)	12/12	Mar 20 2016	Mar 20 2019
Russell Meyer (Hospital)	12/12	Mar 20 2016	Mar 20 2019

Ex-Officio member is President, Board of Trustees, Midland Independent School District

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015
Scott Young	09/12*	Sept 30 2013	Sept 30 2017
Todd Byars	02/08*	Sept 30 2014	Sept 30 2014

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

* Indicates appointment to an unexpired term.

AIRPORT PLANNING & DEVELOPMENT BOARD
 (Advisory; Membership - 10: Terms - 3 Years Expiring 3-3-4)
 Ex-Officio Members are the City Manager and the City Attorney.
 The Secretary is the Director of Aviation.

SPECIAL COMPOSITION REQUIREMENTS: Resident of Midland County

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 6)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Ronald Schwisow	Yes	100%	6	No		
Herbert Blankinship	Yes	83%	5	No		
Jerry Walton	No 09/15	50%	3	Yes		
Mike Owen	No 09/13	83%	5			
Gregory F. Baiano	No 09/13	67%	4			
John T. Echols	No 09/13	83%	5			
Dallas L. Smith	No 09/13	50%	3			
Earl Erdmann	No 09/14	100%	6			
J. Ross Lacy	No 09/14	N/A	N/A			Appointed September 2012
Don "Woody" Woodward	No 09/14	33%	2			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Ronnie Lynch	One other board	
Shannon Smith (Mr.) NEW APPLICATION	One other board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: _____

Address: _____

(City)

(State)

(Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ____ years.

Professional and/or Community Activities:

What is your personal vision for the City?

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Please tell us why you are interested in serving on this board or commission.

Date: _____

Phone: _____ (Home)

_____ (Business)

Email: _____

Are you a graduate of Midland 101? ____yes ____no

Occupation: _____

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433**



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Shannon Smith
Address: 5506 Hillcrest
Midland Texas 79707
(City) (State) (Zip)

Date: 10/3/2012
Phone: 432-689-9998 (Home)
432-687-9110 (Business)
Email: ssmith@fcbtexas.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁵ years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Commercial Loan Officer

Professional and/or Community Activities:

Previously I volunteered as a Court Appointed Special Advocate (CASA) for CASA of West Texas. I currently serve on the Board of Directors for Midland Habitat for Humanity.

What is your personal vision for the City?

As an oil and gas based economy, I would like to see the city continue to attract a more diversified industrial based as it has done with XCor. In the near tear, affordable and available housing is the most pressing issue. Availability will improve over time due to the continuing construction of housing. Unfortunately, the newer housing appears to be out of reach for lower income individuals.

Please specify any time constraints you may have.

Loan committee on Monday and Thursday mornings until 10:00 a.m. Monthly Habitat Board meetings the third Monday of every month at 5:30 p.m.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Airport Planning and Development Board

Please tell us why you are interested in serving on this board or commission.

One major advantage that Midland has for attracting new industries is the International Airport. Along with the Industrial Park, it serves as a major selling point when attracting diversified industries to the Midland area.

What contribution would you most like to make?

Assist with the planning and future development of both airports to ensure that both facilities are meeting the needs of not only the residents of the area, but to do what is necessary to develop new jobs in the Midland area that are not heavily reliant on the oil and gas industry.

Additional pertinent information or references:

(2) Name of Board/Commission:

Midland Housing Finance Corporation

As a Habitat board member, I am well aware of the need for affordable housing options in Midland. I would explore ways for the corporation to make it easier for families to purchase homes, including down payment assistance for those in need.

What contribution would you most like to make?

I would like to see the commission take a more active role in the community and perhaps partner with other agencies in Midland to assist residents in attaining home ownership. The city has many new people residents that are moving here, and some are obtaining jobs after being out of work for extended periods, which makes it difficult for them to afford down payments on homes.

Additional pertinent information or references:

Alynda Best, Midland Habitat for Humanity

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Shannon Smith

Digitally signed by Shannon Smith
DN: cn=Shannon Smith, o=FirstCapital Bank of
Texas, ou, email=ssmith@fcbtexas.com, c=US
Date: 2012.10.03 18:05:47 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

CITY DEVELOPMENT ADVISORY COMMITTEE
(Advisory)
(Membership - 5; Terms - 2 Years Expiring 2 Even & 3 Odd)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 3)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes			N/A		
Vicky Hailey	Yes	100%	3	Yes		9/6/12 Ms. Hailey called and said she does not want to be reappointed.
Reggie Lawrence	Yes	100%	3	Yes		10/8/12 Mr. Lawrence would like to be reappointed
Alonda Massey	No 09/13	100%	3			
Tim Bryson	No 09/13	100%	3			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Stella Clifton	Only this board	
Eric F. Nordwald Sr.	Five other boards	
W. Roger Beebe NEW APPLICATION	One other board	
Jeremy Bishop NEW APPLICATION	Only this board	

2012-014



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Stella Clifton

Address: 3319 Cimmaron Ave.

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁴⁴ years.

Professional and/or Community Activities:

Leadership Midland 2004

Meals on Wheels

Date: 8/14/2012

Phone: 432-697-3663 (Home)

432-571-4127 (Business)

Email: stella.clifton@dshs.state.tx.us

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Congregate Settings Coordinator for the State of Te

What is your personal vision for the City?

I would love for Midland to thrive with the younger adults. If they would return to Midland after completing College to begin their career.

Please specify any time constraints you may have.

None at this time.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I want to be apart of watching new businesses develop and grow within the community.

What contribution would you most like to make?

I work for the Department of State Health so I have become very familiar with the development of Midland and the various population 

Additional pertinent information or references:

I worked for the Housing Authority of the City of Midland for four years as a property manager.

I worked for Casa de Amigos writing grants for agency funding.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

Stella Clifton

Digitally signed by Stella Clifton
DN: cn=Stella Clifton, o=DSHS, ou,
email=stella.clifton@dshs.state.tx.us, c=US
Date: 2012.08.14 17:08:36 -05'00'

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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

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Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Eric F. F Nordwald Sr.

Address: 4902 Rio Grande Dr

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ³ years.

Professional and/or Community Activities:

NRA, General Contractors of America, Midland's YMCA Youth Soccer, Our Lady of Guadalupe Catholic Church in Midland TX,

Spartan & Tough Mudder Race member, Nuclear Contracting Oppertunities & Nuclear Construction Safety

What is your personal vision for the City?

My vision of Midland- a city that people want to move to because of the leading technology, oppertunity for growth, secure employment, high demand of talent and respectable town to raise a family.

Please specify any time constraints you may have.

My time constraints are Sundays and more then 10 hours a month during normal work hours (such as between 7am and 6pm CT).

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Building Codes Review Committee / City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I have 12 years of Construction experience with residential, commercial and Industrial industries. I am interested in bettering

Midland and becoming a City Council memeber. I have vast knowledge with building codes through out many cities within the US.

Date: 6/18/2012

Phone: 281.770.7532 (Home)

575.394.5763 (Business)

Email: efnordwald@gamil.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Construction Manager

What contribution would you most like to make?

First hand experience and familiarity with building codes and requiremnets

Additional pertinent information or references:

I would like to send me resume as additional information and references.

(2) Name of Board/Commission:

Construction Board of Adjustments and Appeals / Planning and Zoning Commission

What contribution would you most like to make?

Same as above.

Additional pertinent information or references:

Same as above.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



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FAX: (432) 685-7433

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[Print Application](#)

Eric F Nordwald Sr.
4902 Rio Grande Dr. Midland TX 79707
efnordwald@gmail.com
281-770-7532

SUMMARY OR EXPERIENCE

Over twelve years of experience on both commercial and industrial projects. In the capacity of Construction Manager, responsibilities include leading the Construction Team, providing leadership for production and recommendation of profit margin. My construction expertise extends to carry forward to final operational stages of the project, providing construction and maintenance management in both commercial and industrial fields. In the Industrial and Commercial industries, vast experiences and responsibilities were exercised in the coordination of all field activities, as well as commissioning and start up functions. All projects required continuous safety participation. Provide safety instruction and Safety presentation analysis. I have a comprehensive understanding of Plant construction techniques and procedures including use of construction tools for various projects and field safety coordination with Subcontractors and Client Representatives. I have specialized experience in new construction, construction management, large capital projects and maintenance projects. I have managed all fronts of construction management starting with safety management, project controls, field execution and profit / loss responsibility.

PROJECT TYPES

Nuclear Enrichment Facilities
Commercial Buildings
Formwork Tunnels

ACTIVITIES

Construction Management
Construction Planning
Cost Control
Building Planning
Scheduling
Coordination
Safety Training

TRAINING

Plant Safety
QA/QC Weld Track
Request for Information (RFI)
Field Change Order (FCO)
Subcontract Management
P3 Scheduling (Primavera Certificate 5.0)

Eric F. Nordwald Sr.

I am seeking a position in Construction Management. I have the experience, the determination, and can-do attitude that is essential to managing risk on every conceivable project. This includes the timely management of the project's cost, schedule, planning, vendors, subcontractors, technical information and other key elements. From pre-construction through project completion, I will systematically monitor work as it progresses and will manage both variances and trends for elements of scope, cost and timing.

Industry Experience:

URENCO USA Eunice, NM

February 2012 – Current

Commissioning & Acceptance Coordinator - **Project:** National Enrichment Facility

- Current CAA and "L" clearance access, qualified as a Construction Supervisor, Construction Engineer and Building Manager
- Commissioning structural, electrical and mechanical systems from construction and turning them over to engineering, maintenance and plant operations.
- Working directly with Operations and Construction Management on a day to day basis.

Baker Concrete Construction Inc. Eunice, NM

December 2009 – February 2012

Project Manager - **Project:** National Enrichment Facility Separations Building Module Extension

- Responsible Project Manager for coordinating the turnover and acceptance of a \$100M Nuclear Enrichment Building
- Managed from ground breaking through closure process for structural, mechanical & electrical portions
- Performed tasks such as inspections, work plan implementation, coordinating trades, managing schedule, tracking cost, provided guidance for specification and procedure understanding along with building a strong relationship with the client.
- Assisted in planning tie in process for new mechanical systems to existing in use systems without interruptions.
- Directly supervised and trained nuclear-safety

Baker Concrete Construction Inc. Eunice, NM

March 2010 – July 2010

NQA1 Project Manager - **Project:** National Enrichment Facility Uranium Bi-product Cylinder Pad

- Project Manager for coordinating the turnover and acceptance of a \$2.0M Uranium Storage Pad
- Performed scheduling , contractor and financial activities
- Worked directly with URENCO Engineering team

Baker Concrete Construction Inc. Houston, TX

January 2009 – December 2009

Project Manager - **Project:** MD Anderson Administrative Building

- Oversee reporting processes based on Earned Value Management (EVM) concepts
- Develop, implement, reconcile and maintain valuable project control databases and reports
- Effectively communicate accurate and timely information to the Operations Manager and all project participants to bring the project to completion on time and budge.
- Became fluent in creating and tracking schedules, proposed change orders, submittals, subcontracts, RFI's, and LEED material.

Baker Concrete Construction Inc. Houston, TX

September 2008 – February 2009

Estimator

- Estimated turn-key projects for both Commercial and Industrial work ranging from \$5M up to \$65M
- Estimated with the use of On Screen Take-off (OST) and Timberline system spread sheet.

Dee Shoring Inc. Richmond, VA

October 2006 – September 2008

Estimator

- Bid work for turnkey projects (shoring, forming, concrete & excavation)
 - High rises (*Wachovia Bank Headquarters*, Charlotte, N.C., *Rialto Suites*, Daytona, FL.)
 - Stadiums (ASU Kidd Brewer stadium in Tennessee)
 - Hospitals, schools, apartments and condos
 - Department stores, warehouses and parking garages
- Negotiated contracts

Asst. Project Manager – Projects: VCU Health & Engineering Building, VCU Gymnasium, Center Point School

- Performed building control and jobsite managing on multiple projects
- Supervised and trained all field engineers on total Station and related computer programs
- Achieved working relationships with owners engineers while resolving RFI's and change orders
- Gained much knowledge with awarding and working with sub-contractors for scheduling and financial purposes

Yates Construction Daytona Beach, FL

April 2006 – October 2006

Project Coordinator - Projects: Bella Vista Apartment Complex and Palma Bella Condos, Daytona Beach, FL

- Managed general contractor's layout for high rise apartment projects
- Supervised MEP field work along with drawing review for discrepancies
- Quality control and labor foreman

Dick Pacific Construction Co. Waikola, HI

Feb 2005 – March 2006

Carpenter Superintendent / Quality Control – Projects: Hilton Condominiums

- Supervised framing and trim construction crews on Hilton timeshare resorts as the General Contractor which consisted of exposed timber framed building projects
- Performed quality control for the project
- Coordinated mechanical, electrical and plumbing trades
- Trained employee safety and coordinated new hire orientations

St. Louis Carpenters Union St. Louis, MO

Feb 2000 - Feb 2005

Carpenter Superintendent

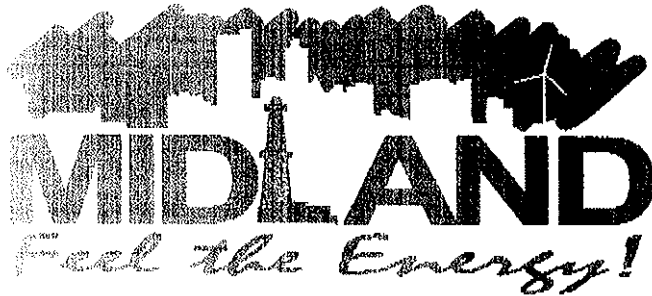
- Projects ranged from residential houses to large commercial and government structures.
- Performed work for the general contractor; framing, trim, welding, concrete, mechanical, electrical, plumbing, roofing, structural steel, flooring, painting & jobsite management

Education and Training:

- Attending the University of Texas Permian Basin for a Bachelors Degree in Industrial Technology
- St. Louis Carpenters Union – Certification in Construction Management
- East Central Community College – General Studies
- CPR and first aid certified
- Completed Supervisory Skills, Incident and Injury Free, and Lean Construction Training
- Trained and well experienced with industrial Work Plan's, procedures and specifications
- Experienced with P3 scheduling

References upon Request

- Trent Bott 208.243.1239 (Company: Intermech Mechanical)
- Val East 337.309.5925 (Company: Shaw Group)
- Mike Lopez 713.377.0015 (Company: Baker Concrete Construction Inc.)
- Jason Marschel 314.581.0205 (Company: Marschel Wrecking)



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: W. Roger Beebe
Address: 902 Interstate 20 West
Midland TX 79701
(City) (State) (Zip)

Date: Oct. 1, 2012

Phone: 817-291-0753 (Home)

432-683-1111 (Business)

Email: rbeebe@rimhospitality.co

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ yes ☒ no

I have lived in Midland 11 years.

Occupation: Hotel Manager

Professional and/or Community Activities:

Past: City of Duncan Hotel Tax Advisory Board Duncan, OK
Hotel/Motel Assoc. of Baton Rouge, Baton Rouge, LA
Bring Cowboys to Arlington, Arlington CVB, Arlington, TX

What is your personal vision for the City?

To enhance a diverse yet unique culture in
a city committed to creating a hometown
where people are unhindered from their personal and
professional goals.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

To help city leaders create an economic plan that
will take Midland to the next level and help

make Midland an All American City.

What contribution would you most like to make?

I want to contribute my diverse perspectives and time to aide Midland leaders with a new and enthusiastic outlook.

Additional pertinent information or references:

Hotel controller for various hotels from across the country.

(2) Name of Board/Commission:

Planning and Zoning Commission

What contribution would you most like to make?

I want to assist city planners in developing a balanced town with affordable housing and profitable industries.

Additional pertinent information or references:

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Signature of Applicant

Roger Brubaker

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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application



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PLEASE TYPE OR PRINT CLEARLY:

Name: Jeremy Bishop

Address: 5311 Widener Strip

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 6 years.

Professional and/or Community Activities:

Rotary Club of Midland (Downtown Club), United Way Volunteer, Habitat for Humanity, 2011 Leadership Midland Graduate

Date: 10/5/2012

Phone: 432-269-8480 (Home)

432-687-9129 (Business)

Email: jbishop@fcbtexas.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Lender / Banking

What is your personal vision for the City?

I would like to see Midland grow in population as well as diversity and culture. We have many advantages to attract other businesses and industries outside of the Petroleum industry. I also want to maintain the positive and family-friendly atmosphere that makes this city great to raise children.

Please specify any time constraints you may have.

8:00AM meetings on Monday and Thursday that last until 9:30AM or 10:00AM every week.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

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(1) Name of Board/Commission:

City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I'm interested in the development and growth of our city, as mentioned in my vision for Midland above. I would hope to add insight and direction to the future of the city.

What contribution would you most like to make?

A positive impact on our future development. We are going to eventually leave this city to our children, and I would like to help keep it an attractive place to live for many more generations.

Additional pertinent information or references:

Former Mayor Mike Canon, City Councilman Dufford, County Commissioner Donnelly, School Board President Jay Isaacs.

(2) Name of Board/Commission:

Hotel/Motel Tax Advisory Board

What contribution would you most like to make?

Again, a positive impact on our future development. Choices we make today are going to have a major effect on the City down the road. I would like to help make positive decisions on the funds we have available, and use them to the best of our ability.

Additional pertinent information or references:

Same as above.

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Signature of Applicant

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Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS
(Decision Making)
Membership - 7; Terms - 4 Years expiring 2-2-2-1)

SPECIAL COMPOSITION REQUIREMENTS: 1 Plumbing/Mechanical Industry, 1 Electrical Contracting, 1 Architect, 1 Engineer/Superintendent of Construction, 3 Any Categories, 2 Alternate members from any category. RESIDENT OF CITY.

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 0)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Don Woodward (At-Large)	No 09/16			Yes		NO MEETINGS
Richard D. Dunham	No 09/13					
Greg Turner	No 09/13					
Chris Repman	No 09/14					
Jay K. Bradford	No 09/14					
<u>ALTERNATES:</u>						
Vacancy						
Vacancy						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Eric F. Nordwald Sr.	Five other boards	
Scott Young	One other board	



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PLEASE TYPE OR PRINT CLEARLY:

Name: Eric F. F Nordwald Sr.

Address: 4902 Rio Grande Dr

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ³ years.

Professional and/or Community Activities:

NRA, General Contractors of America, Midland's YMCA Youth Soccer, Our Lady of Guadalupe Catholic Church in Midland TX,

Spartan & Tough Mudder Race member, Nuclear Contracting Opportunities & Nuclear Construction Safety

What is your personal vision for the City?

My vision of Midland- a city that people want to move to because of the leading technology, opportunity for growth, secure employment, high demand of talent and respectable town to raise a family.

Please specify any time constraints you may have.

My time constraints are Sundays and more then 10 hours a month during normal work hours (such as between 7am and 6pm CT).

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(1) Name of Board/Commission:

Building Codes Review Committee / City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I have 12 years of Construction experience with residential, commercial and Industrial industries. I am interested in bettering

Midland and becoming a City Council member. I have vast knowledge with building codes through out many cities within the US.

Date: 6/18/2012

Phone: 281.770.7532 (Home)

575.394.5763 (Business)

Email: efnordwald@gamil.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Construction Manager

What contribution would you most like to make?

First hand experience and familiarity with building codes and requiremnets

Additional pertinent information or references:

I would like to send me resume as additional information and references.

(2) Name of Board/Commission:

Construction Board of Adjustments and Appeals / Planning and Zoning Commission

What contribution would you most like to make?

Same as above.

Additional pertinent information or references:

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Signature of Applicant



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Eric F Nordwald Sr.
4902 Rio Grande Dr. Midland TX 79707
efnordwald@gmail.com
281-770-7532

SUMMARY OR EXPERIENCE

Over twelve years of experience on both commercial and industrial projects. In the capacity of Construction Manager, responsibilities include leading the Construction Team, providing leadership for production and recommendation of profit margin. My construction expertise extends to carry forward to final operational stages of the project, providing construction and maintenance management in both commercial and industrial fields. In the Industrial and Commercial industries, vast experiences and responsibilities were exercised in the coordination of all field activities, as well as commissioning and start up functions. All projects required continuous safety participation. Provide safety instruction and Safety presentation analysis. I have a comprehensive understanding of Plant construction techniques and procedures including use of construction tools for various projects and field safety coordination with Subcontractors and Client Representatives. I have specialized experience in new construction, construction management, large capital projects and maintenance projects. I have managed all fronts of construction management starting with safety management, project controls, field execution and profit / loss responsibility.

PROJECT TYPES

Nuclear Enrichment Facilities
Commercial Buildings
Formwork Tunnels

ACTIVITIES

Construction Management
Construction Planning
Cost Control
Building Planning
Scheduling
Coordination
Safety Training

TRAINING

Plant Safety
QA/QC Weld Track
Request for Information (RFI)
Field Change Order (FCO)
Subcontract Management
P3 Scheduling (Primavera Certificate 5.0)

Eric F. Nordwald Sr.

I am seeking a position in Construction Management. I have the experience, the determination, and can-do attitude that is essential to managing risk on every conceivable project. This includes the timely management of the project's cost, schedule, planning, vendors, subcontractors, technical information and other key elements. From pre-construction through project completion, I will systematically monitor work as it progresses and will manage both variances and trends for elements of scope, cost and timing.

Industry Experience:

URENCO USA Eunice, NM

February 2012 – Current

Commissioning & Acceptance Coordinator - Project: National Enrichment Facility

- Current CAA and "L" clearance access, qualified as a Construction Supervisor, Construction Engineer and Building Manager
- Commissioning structural, electrical and mechanical systems from construction and turning them over to engineering, maintenance and plant operations.
- Working directly with Operations and Construction Management on a day to day basis.

Baker Concrete Construction Inc. Eunice, NM

December 2009 – February 2012

Project Manager - Project: National Enrichment Facility Separations Building Module Extension

- Responsible Project Manager for coordinating the turnover and acceptance of a \$100M Nuclear Enrichment Building
- Managed from ground breaking through closure process for structural, mechanical & electrical portions
- Performed tasks such as inspections, work plan implementation, coordinating trades, managing schedule, tracking cost, provided guidance for specification and procedure understanding along with building a strong relationship with the client.
- Assisted in planning tie in process for new mechanical systems to existing in use systems without interruptions.
- Directly supervised and trained nuclear-safety

Baker Concrete Construction Inc. Eunice, NM

March 2010 – July 2010

NQA1 Project Manager - Project: National Enrichment Facility Uranium Bi-product Cylinder Pad

- Project Manager for coordinating the turnover and acceptance of a \$2.0M Uranium Storage Pad
- Performed scheduling , contractor and financial activities
- Worked directly with URENCO Engineering team

Baker Concrete Construction Inc. Houston, TX

January 2009 – December 2009

Project Manager - Project: MD Anderson Administrative Building

- Oversee reporting processes based on Earned Value Management (EVM) concepts
- Develop, implement, reconcile and maintain valuable project control databases and reports
- Effectively communicate accurate and timely information to the Operations Manager and all project participants to bring the project to completion on time and budge.
- Became fluent in creating and tracking schedules, proposed change orders, submittals, subcontracts, RFI's, and LEED material.

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September 2008 – February 2009

Estimator

- Estimated turn-key projects for both Commercial and Industrial work ranging from \$5M up to \$65M
- Estimated with the use of On Screen Take-off (OST) and Timberline system spread sheet.

Dee Shoring Inc. Richmond, VA

October 2006 – September 2008

Estimator

- Bid work for turnkey projects (shoring, forming, concrete & excavation)
 - High rises (*Wachovia Bank Headquarters*, Charlotte, N.C., *Rialto Suites*, Daytona, FL.)
 - Stadiums (ASU Kidd Brewer stadium in Tennessee)
 - Hospitals, schools, apartments and condos
 - Department stores, warehouses and parking garages
- Negotiated contracts

Asst. Project Manager – Projects: VCU Health & Engineering Building, VCU Gymnasium, Center Point School

- Performed building control and jobsite managing on multiple projects
- Supervised and trained all field engineers on total Station and related computer programs
- Achieved working relationships with owners engineers while resolving RFI's and change orders
- Gained much knowledge with awarding and working with sub-contractors for scheduling and financial purposes

Yates Construction Daytona Beach, FL

April 2006 – October 2006

Project Coordinator - Projects: Bella Vista Apartment Complex and Palma Bella Condos, Daytona Beach, FL

- Managed general contractor's layout for high rise apartment projects
- Supervised MEP field work along with drawing review for discrepancies
- Quality control and labor foreman

Dick Pacific Construction Co. Waikola, HI

Feb 2005 – March 2006

Carpenter Superintendent / Quality Control – Projects: Hilton Condominiums

- Supervised framing and trim construction crews on Hilton timeshare resorts as the General Contractor which consisted of exposed timber framed building projects
- Performed quality control for the project
- Coordinated mechanical, electrical and plumbing trades
- Trained employee safety and coordinated new hire orientations

St. Louis Carpenters Union St. Louis, MO

Feb 2000 - Feb 2005

Carpenter Superintendent

- Projects ranged from residential houses to large commercial and government structures.
- Performed work for the general contractor; framing, trim, welding, concrete, mechanical, electrical, plumbing, roofing, structural steel, flooring, painting & jobsite management

Education and Training:

- Attending the University of Texas Permian Basin for a Bachelors Degree in Industrial Technology
- St. Louis Carpenters Union – Certification in Construction Management
- East Central Community College – General Studies
- CPR and first aid certified
- Completed Supervisory Skills, Incident and Injury Free, and Lean Construction Training
- Trained and well experienced with industrial Work Plan's, procedures and specifications
- Experienced with P3 scheduling

References upon Request

- Trent Bott 208.243.1239 (Company: Intermech Mechanical)
- Val East 337.309.5925 (Company: Shaw Group)
- Mike Lopez 713.377.0015 (Company: Baker Concrete Construction Inc.)
- Jason Marschel 314.581.0205 (Company: Marschel Wrecking)

2012-015



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Scott Young

Address: 1212 Breckenridge Ct.

Midland, TX 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ²⁴ years.

Professional and/or Community Activities:

Date: 8/9/2012

Phone: 432-978-2372 (Home)

432-520-0820 (Business)

Email: syoung@randcoindustries.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Commercial Construction

What is your personal vision for the City?

I want Midland to continue its positive growth and diversification of different industries.

I think Midland is an excellent place to raise a family and run a business.

I believe Midland is growing and will continue to grow and I would like to be more involved with the city government.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Construction Board of Adjustments and Appeals

Please tell us why you are interested in serving on this board or commission.

I want to get involved with our community and the direction that Midland is growing. I was born here in Midland and plan on staying the rest of my life and would like to help do my part to make our community a better place to work and live.

What contribution would you most like to make?

I am part of a small business in the construction industry and think that my knowledge in the industry would be beneficial for the city.

Additional pertinent information or references:

(2) Name of Board/Commission:

Zoning Board of Adjustments and Airport Zoning Board of Adjustments

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Scott Young

Digitally signed by Scott Young
DN: cn=Scott Young, o=Young's Building Systems,
ou, email=syoung@randcoindustri.com, c=US
Date: 2012.08.09 16:45:33 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

HOUSING AUTHORITY COMMISSION
(Membership - 5; Terms - 2 Years expiring 2 even & 3 odds)

SPECIAL COMPOSITION REQUIREMENTS: No member may be an officer or employee of the City of Midland

MEMBER	TERM EXPIRE OCT 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 11)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Dennis Bade	No 09/14					Council appointed 9/25/2012
Norma Duran	No 09/15					Council reappointed 9/25/2012
Gregory Maes	No 10/13					
Carla Repman	No 10/13					
James A. Blischke	No 10/13					
<u>ALTERNATE:</u>						
Vacancy						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Fran V. Wallace	Only this board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Fran V Wallace

Address: 2605 Whitney Dr

Midland Tx 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 7 1/2 years.

Professional and/or Community Activities:

None of the Above. I married and moved to Midland in 05. My husband was born here in Midland and also went to school here in Midland. His work required traveling to other states and I joined him. He is now retired.

What is your personal vision for the City?

This city has grown so quickly and seems to be bursting at the seams. As the city grows there is a need for teamwork to organize and prepare and help our city to meet its needs within the government and the health and prosperity and needs of our people here in Midland.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Housing Authority Commission

Please tell us why you are interested in serving on this board or commission.

This will give me the opportunity to meet and get acquainted with the people of Midland and help the elderly and those with lower income needs.

Date: 8/24/2012

Phone: 432-699-4271 (Home)

(Business)

Email: dww42@sbcglobal.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Retired

What contribution would you most like to make?

To serve this position to the best of my ability. I have no idea what this position entails but I am sure that I am capable of working together and fulfilling whatever is required.

Additional pertinent information or references:

I am a graduate of Timken Vocational High School in Ohio. Attended many learning Seminars on many of the positions I have held in the past. Completed some courses in Criminal Justice online with the University of Phoenix. Organization and management are my best skills. I type, use computer and different software. Great phone etiquette.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Barbco Inc in Canton Ohio 330-488-9400 (Barbera, Jim, David or Tony) 15 Yrs

Staffing Resources in Midland Tx 432-684-0527 (Fran) 07 and 08

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

James V Wallace

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

MIDLAND DEVELOPMENT CORPORATION
(Membership - 5; Terms -3 Years)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE JAN. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Gary Douglas	Yes			Yes		
Michael Trost	Yes			Yes		
Cary J. Love	Yes			Yes		
Laura Roman	No 01/14					
Robert Rendall, Chairman	No 01/14					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Tom Beckham NEW APPLICATION		



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Tom Beckham

Address: 807 Almont Pl

Midland TX 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ¹⁴ years.

Professional and/or Community Activities:

Midland Downtown Rotary Club (Treasurer)

Certified Public Accountant

Texas Society of CPAs and American Institute of Public Accountants

What is your personal vision for the City?

City with a diversified economy, great public schools and facilities.

Please specify any time constraints you may have.

Availability for evening meetings is limited.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Center Advisory Board

Midland Development Corporation

Please tell us why you are interested in serving on this board or commission.

I have a personal interest in the revitalization of the downtown area as well as diversifying the Midland economy for long term stability.

Date: 10/5/2012

Phone: 432-254-5655 (Home)

432-687-9131 (Business)

Email: tbeckham@fcbtexas.com

Are you a graduate of Midland 101? ☐ yes ☐ no

Occupation: Banker

What contribution would you most like to make?

Revitalizing the downtown area and diversifying the Midland economy.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION

**Decision Making
(Membership - 7; Terms - 2)**

SPECIAL COMPOSITION REQUIREMENTS: Resident of City.

MEMBER	TERM EXPIRE NOV. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Ken Marks, Vice Pres.	Yes	100%	4	No		
James G. Smith	Yes	100%	4	No		
Mike Thompson	No 11/13	75%	3			
Tim Bryson	No 11/13	50%	2			
Wesley D. Bownds	No 11/13	100%	4			
John James	No 11/13	50%	2			
Rick Davis (MISD Resp.)	No 11/13	75%	3			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Eric F. Nordwald Sr.	Five other boards	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Eric F. F Nordwald Sr.
Address: 4902 Rio Grande Dr
 Midland TX 79707
 (City) (State) (Zip)

Date: 6/18/2012
Phone: 281.770.7532 (Home)
 575.394.5763 (Business)
Email: efnordwald@gamil.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ³ years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Construction Manager

Professional and/or Community Activities:

NRA, General Contractors of America, Midland's YMCA Youth Soccer, Our Lady of Guadalupe Catholic Church in Midland TX,
 Spartan & Tough Mudder Race member, Nuclear Contracting Oppertunities & Nuclear Construction Safety

What is your personal vision for the City?

My vision of Midland- a city that people want to move to because of the leading technology, oppertunity for growth, secure
 employeement, high demand of talent and respectable town to raise a family.

Please specify any time constraints you may have.

My time constraints are Sundays and more then 10 hours a month during normal work hours (such as between 7am and 6pm CT).

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Building Codes Review Committee / City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I have 12 years of Construction experience with residential, commercial and Industrial industries. I am interested in bettering
 Midland and becoming a City Council memeber. I have vast knowledge with building codes through out many cities within the US.

What contribution would you most like to make?

First hand experience and familiarity with building codes and requiremnets

Additional pertinent information or references:

I would like to send me resume as additional information and references.

(2) Name of Board/Commission:

Construction Board of Adjustments and Appeals / Planning and Zoning Commission

What contribution would you most like to make?

Same as above.

Additional pertinent information or references:

Same as above.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

Eric F Nordwald Sr.
4902 Rio Grande Dr. Midland TX 79707
efnordwald@gmail.com
281-770-7532

SUMMARY OR EXPERIENCE

Over twelve years of experience on both commercial and industrial projects. In the capacity of Construction Manager, responsibilities include leading the Construction Team, providing leadership for production and recommendation of profit margin. My construction expertise extends to carry forward to final operational stages of the project, providing construction and maintenance management in both commercial and industrial fields. In the Industrial and Commercial industries, vast experiences and responsibilities were exercised in the coordination of all field activities, as well as commissioning and start up functions. All projects required continuous safety participation. Provide safety instruction and Safety presentation analysis. I have a comprehensive understanding of Plant construction techniques and procedures including use of construction tools for various projects and field safety coordination with Subcontractors and Client Representatives. I have specialized experience in new construction, construction management, large capital projects and maintenance projects. I have managed all fronts of construction management starting with safety management, project controls, field execution and profit / loss responsibility.

PROJECT TYPES

Nuclear Enrichment Facilities
Commercial Buildings
Formwork Tunnels

ACTIVITIES

Construction Management
Construction Planning
Cost Control
Building Planning
Scheduling
Coordination
Safety Training

TRAINING

Plant Safety
QA/QC Weld Track
Request for Information (RFI)
Field Change Order (FCO)
Subcontract Management
P3 Scheduling (Primavera Certificate 5.0)

Eric F. Nordwald Sr.

I am seeking a position in Construction Management. I have the experience, the determination, and can-do attitude that is essential to managing risk on every conceivable project. This includes the timely management of the project's cost, schedule, planning, vendors, subcontractors, technical information and other key elements. From pre-construction through project completion, I will systematically monitor work as it progresses and will manage both variances and trends for elements of scope, cost and timing.

Industry Experience:

URENCO USA Eunice, NM

February 2012 – Current

Commissioning & Acceptance Coordinator - **Project:** National Enrichment Facility

- Current CAA and "L" clearance access, qualified as a Construction Supervisor, Construction Engineer and Building Manager
- Commissioning structural, electrical and mechanical systems from construction and turning them over to engineering, maintenance and plant operations.
- Working directly with Operations and Construction Management on a day to day basis.

Baker Concrete Construction Inc. Eunice, NM

December 2009 – February 2012

Project Manager - **Project:** National Enrichment Facility Separations Building Module Extension

- Responsible Project Manager for coordinating the turnover and acceptance of a \$100M Nuclear Enrichment Building
- Managed from ground breaking through closure process for structural, mechanical & electrical portions
- Performed tasks such as inspections, work plan implementation, coordinating trades, managing schedule, tracking cost, provided guidance for specification and procedure understanding along with building a strong relationship with the client.
- Assisted in planning tie in process for new mechanical systems to existing in use systems without interruptions.
- Directly supervised and trained nuclear-safety

Baker Concrete Construction Inc. Eunice, NM

March 2010 – July 2010

NQA1 Project Manager - **Project:** National Enrichment Facility Uranium Bi-product Cylinder Pad

- Project Manager for coordinating the turnover and acceptance of a \$2.0M Uranium Storage Pad
- Performed scheduling , contractor and financial activities
- Worked directly with URENCO Engineering team

Baker Concrete Construction Inc. Houston, TX

January 2009 – December 2009

Project Manager - **Project:** MD Anderson Administrative Building

- Oversee reporting processes based on Earned Value Management (EVM) concepts
- Develop, implement, reconcile and maintain valuable project control databases and reports
- Effectively communicate accurate and timely information to the Operations Manager and all project participants to bring the project to completion on time and budge.
- Became fluent in creating and tracking schedules, proposed change orders, submittals, subcontracts, RFI's, and LEED material.

Baker Concrete Construction Inc. Houston, TX

September 2008 – February 2009

Estimator

- Estimated turn-key projects for both Commercial and Industrial work ranging from \$5M up to \$65M
- Estimated with the use of On Screen Take-off (OST) and Timberline system spread sheet.

Dee Shoring Inc. Richmond, VA

October 2006 – September 2008

Estimator

- Bid work for turnkey projects (shoring, forming, concrete & excavation)
 - High rises (*Wachovia Bank Headquarters*, Charlotte, N.C., *Rialto Suites*, Daytona, FL.)
 - Stadiums (ASU Kidd Brewer stadium in Tennessee)
 - Hospitals, schools, apartments and condos
 - Department stores, warehouses and parking garages
- Negotiated contracts

Asst. Project Manager – Projects: VCU Health & Engineering Building, VCU Gymnasium, Center Point School

- Performed building control and jobsite managing on multiple projects
- Supervised and trained all field engineers on total Station and related computer programs
- Achieved working relationships with owners engineers while resolving RFI's and change orders
- Gained much knowledge with awarding and working with sub-contractors for scheduling and financial purposes

Yates Construction Daytona Beach, FL

April 2006 – October 2006

Project Coordinator - Projects: Bella Vista Apartment Complex and Palma Bella Condos, Daytona Beach, FL

- Managed general contractor's layout for high rise apartment projects
- Supervised MEP field work along with drawing review for discrepancies
- Quality control and labor foreman

Dick Pacific Construction Co. Waikola, HI

Feb 2005 – March 2006

Carpenter Superintendent / Quality Control – Projects: Hilton Condominiums

- Supervised framing and trim construction crews on Hilton timeshare resorts as the General Contractor which consisted of exposed timber framed building projects
- Performed quality control for the project
- Coordinated mechanical, electrical and plumbing trades
- Trained employee safety and coordinated new hire orientations

St. Louis Carpenters Union St. Louis, MO

Feb 2000 - Feb 2005

Carpenter Superintendent

- Projects ranged from residential houses to large commercial and government structures.
- Performed work for the general contractor; framing, trim, welding, concrete, mechanical, electrical, plumbing, roofing, structural steel, flooring, painting & jobsite management

Education and Training:

- Attending the University of Texas Permian Basin for a Bachelors Degree in Industrial Technology
- St. Louis Carpenters Union – Certification in Construction Management
- East Central Community College – General Studies
- CPR and first aid certified
- Completed Supervisory Skills, Incident and Injury Free, and Lean Construction Training
- Trained and well experienced with industrial Work Plan's, procedures and specifications
- Experienced with P3 scheduling

References upon Request

- Trent Bott 208.243.1239 (Company: Intermech Mechanical)
- Val East 337.309.5925 (Company: Shaw Group)
- Mike Lopez 713.377.0015 (Company: Baker Concrete Construction Inc.)
- Jason Marschel 314.581.0205 (Company: Marschel Wrecking)

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE JAN. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 0)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes-2007			No		NO MEETINGS
Vacancy	Yes-2007			No		
Vacancy	Yes-2007			No		
Vacancy	Yes-2009			No		
Steve Jones	Yes			No		
Cathy Oestmann	Yes			No		
Curt Kamradt	No 01/14					Reappointed 9/25/2012

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Katey Howard	One other board	
Eric F. Nordwald Sr.	Five other boards	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Katey Howard

Address: 2500 W Cuthbert

Midland Texas 79701

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 24 years.

Professional and/or Community Activities:

Leadership Midland graduate 2012 - awarded the American Gladiator award for hard work; Aphasia Center Chocolate Decadence

Board Member; Usher, worship choir member and high school volunteer at Stonegate Fellowship; Secretary for the Permian Basin

Bicycle Association; Associate member of the Permian Basin Home Builders Association

What is your personal vision for the City?

To see Midland thrive and maintain an exceptional quality of life in every economic condition.

Please specify any time constraints you may have.

No lunch meeting time constraints.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Parks and Recreation Commission

Please tell us why you are interested in serving on this board or commission.

Being very active in sports and outdoor activities in and around the Permian Basin I believe my experience and love for the outdoors will help bring new ideas and enthusiasm to the board.

Date: 8/20/2012

Phone: 432-638-0826 (Home)

432-694-2595 x 113 (Business)

Email: kateyhoward@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Insurance Agent - Mims & Smith Insurance

What contribution would you most like to make?

New ideas, willingness to work, enthusiasm to see projects through from beginning to end.

Additional pertinent information or references:

Brenda Smith - President and Owner at Mims & Smith Insurance 432-694-2595 ext 102

Stephanie Martin - Events Manager Midland Chamber of Commerce 432-683-3381

Lisa Anderson - President Permian Basin Bicycle Association 432-208-8330

(2) Name of Board/Commission:

Midland Higher Education Facilities Corporation

What contribution would you most like to make?

As a graduate of Midland High, Midland College and UTPB I believe in higher education and its importance to our community.

I want to see our higher education facilities succeed and believe my compassion and ideas will benefit the board.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Kately Howard

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Eric F. F Nordwald Sr.
Address: 4902 Rio Grande Dr
 Midland TX 79707
 (City) (State) (Zip)

Date: 6/18/2012
Phone: 281.770.7532 (Home)
 575.394.5763 (Business)
Email: efnordwald@gamil.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ yes ☒ no

I have lived in Midland ³ **years.**

Occupation: Construction Manager

Professional and/or Community Activities:

NRA, General Contractors of America, Midland's YMCA Youth Soccer, Our Lady of Guadalupe Catholic Church in Midland TX,
 Spartan & Tough Mudder Race member, Nuclear Contracting Oppertunities & Nuclear Construction Safety

What is your personal vision for the City?

My vision of Midland- a city that people want to move to because of the leading technology, oppertunity for growth, secure
 employeement, high demand of talent and respectable town to raise a family.

Please specify any time constraints you may have.

My time constraints are Sundays and more then 10 hours a month during normal work hours (such as between 7am and 6pm CT).

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Building Codes Review Committee / City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I have 12 years of Construction experience with residential, commercial and Industrial industries. I am interested in bettering
 Midland and becoming a City Council memeber. I have vast knowledge with building codes through out many cities within the US.

What contribution would you most like to make?

First hand experience and familiarity with building codes and requiremnets

Additional pertinent information or references:

I would like to send me resume as additional information and references.

(2) Name of Board/Commission:

Construction Board of Adjustments and Appeals / Planning and Zoning Commission

What contribution would you most like to make?

Same as above.

Additional pertinent information or references:

Same as above.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

Eric F Nordwald Sr.
4902 Rio Grande Dr. Midland TX 79707
efnordwald@gmail.com
281-770-7532

SUMMARY OR EXPERIENCE

Over twelve years of experience on both commercial and industrial projects. In the capacity of Construction Manager, responsibilities include leading the Construction Team, providing leadership for production and recommendation of profit margin. My construction expertise extends to carry forward to final operational stages of the project, providing construction and maintenance management in both commercial and industrial fields. In the Industrial and Commercial industries, vast experiences and responsibilities were exercised in the coordination of all field activities, as well as commissioning and start up functions. All projects required continuous safety participation. Provide safety instruction and Safety presentation analysis. I have a comprehensive understanding of Plant construction techniques and procedures including use of construction tools for various projects and field safety coordination with Subcontractors and Client Representatives. I have specialized experience in new construction, construction management, large capital projects and maintenance projects. I have managed all fronts of construction management starting with safety management, project controls, field execution and profit / loss responsibility.

PROJECT TYPES

Nuclear Enrichment Facilities
Commercial Buildings
Formwork Tunnels

ACTIVITIES

Construction Management
Construction Planning
Cost Control
Building Planning
Scheduling
Coordination
Safety Training

TRAINING

Plant Safety
QA/QC Weld Track
Request for Information (RFI)
Field Change Order (FCO)
Subcontract Management
P3 Scheduling (Primavera Certificate 5.0)

Eric F. Nordwald Sr.

I am seeking a position in Construction Management. I have the experience, the determination, and can-do attitude that is essential to managing risk on every conceivable project. This includes the timely management of the project's cost, schedule, planning, vendors, subcontractors, technical information and other key elements. From pre-construction through project completion, I will systematically monitor work as it progresses and will manage both variances and trends for elements of scope, cost and timing.

Industry Experience:

URENCO USA Eunice, NM

February 2012 – Current

Commissioning & Acceptance Coordinator - Project: National Enrichment Facility

- Current CAA and "L" clearance access, qualified as a Construction Supervisor, Construction Engineer and Building Manager
- Commissioning structural, electrical and mechanical systems from construction and turning them over to engineering, maintenance and plant operations.
- Working directly with Operations and Construction Management on a day to day basis.

Baker Concrete Construction Inc. Eunice, NM

December 2009 – February 2012

Project Manager - Project: National Enrichment Facility Separations Building Module Extension

- Responsible Project Manager for coordinating the turnover and acceptance of a \$100M Nuclear Enrichment Building
- Managed from ground breaking through closure process for structural, mechanical & electrical portions
- Performed tasks such as inspections, work plan implementation, coordinating trades, managing schedule, tracking cost, provided guidance for specification and procedure understanding along with building a strong relationship with the client.
- Assisted in planning tie in process for new mechanical systems to existing in use systems without interruptions.
- Directly supervised and trained nuclear-safety

Baker Concrete Construction Inc. Eunice, NM

March 2010 – July 2010

NQA1 Project Manager - Project: National Enrichment Facility Uranium Bi-product Cylinder Pad

- Project Manager for coordinating the turnover and acceptance of a \$2.0M Uranium Storage Pad
- Performed scheduling , contractor and financial activities
- Worked directly with URENCO Engineering team

Baker Concrete Construction Inc. Houston, TX

January 2009 – December 2009

Project Manager - Project: MD Anderson Administrative Building

- Oversee reporting processes based on Earned Value Management (EVM) concepts
- Develop, implement, reconcile and maintain valuable project control databases and reports
- Effectively communicate accurate and timely information to the Operations Manager and all project participants to bring the project to completion on time and budge.
- Became fluent in creating and tracking schedules, proposed change orders, submittals, subcontracts, RFI's, and LEED material.

Baker Concrete Construction Inc. Houston, TX

September 2008 – February 2009

Estimator

- Estimated turn-key projects for both Commercial and Industrial work ranging from \$5M up to \$65M
- Estimated with the use of On Screen Take-off (OST) and Timberline system spread sheet.

Dee Shoring Inc. Richmond, VA

October 2006 – September 2008

Estimator

- Bid work for turnkey projects (shoring, forming, concrete & excavation)
 - High rises (*Wachovia Bank Headquarters*, Charlotte, N.C., *Rialto Suites*, Daytona, FL.)
 - Stadiums (ASU Kidd Brewer stadium in Tennessee)
 - Hospitals, schools, apartments and condos
 - Department stores, warehouses and parking garages
- Negotiated contracts

Asst. Project Manager – Projects: VCU Health & Engineering Building, VCU Gymnasium, Center Point School

- Performed building control and jobsite managing on multiple projects
- Supervised and trained all field engineers on total Station and related computer programs
- Achieved working relationships with owners engineers while resolving RFI's and change orders
- Gained much knowledge with awarding and working with sub-contractors for scheduling and financial purposes

Yates Construction Daytona Beach, FL

April 2006 – October 2006

Project Coordinator - Projects: Bella Vista Apartment Complex and Palma Bella Condos, Daytona Beach, FL

- Managed general contractor's layout for high rise apartment projects
- Supervised MEP field work along with drawing review for discrepancies
- Quality control and labor foreman

Dick Pacific Construction Co. Waikola, HI

Feb 2005 – March 2006

Carpenter Superintendent / Quality Control – Projects: Hilton Condominiums

- Supervised framing and trim construction crews on Hilton timeshare resorts as the General Contractor which consisted of exposed timber framed building projects
- Performed quality control for the project
- Coordinated mechanical, electrical and plumbing trades
- Trained employee safety and coordinated new hire orientations

St. Louis Carpenters Union St. Louis, MO

Feb 2000 - Feb 2005

Carpenter Superintendent

- Projects ranged from residential houses to large commercial and government structures.
- Performed work for the general contractor; framing, trim, welding, concrete, mechanical, electrical, plumbing, roofing, structural steel, flooring, painting & jobsite management

Education and Training:

- Attending the University of Texas Permian Basin for a Bachelors Degree in Industrial Technology
- St. Louis Carpenters Union – Certification in Construction Management
- East Central Community College – General Studies
- CPR and first aid certified
- Completed Supervisory Skills, Incident and Injury Free, and Lean Construction Training
- Trained and well experienced with industrial Work Plan's, procedures and specifications
- Experienced with P3 scheduling

References upon Request

- Trent Bott 208.243.1239 (Company: Intermech Mechanical)
- Val East 337.309.5925 (Company: Shaw Group)
- Mike Lopez 713.377.0015 (Company: Baker Concrete Construction Inc.)
- Jason Marschel 314.581.0205 (Company: Marschel Wrecking)

MIDLAND HOUSING FINANCE CORPORATION
 (Decision Making)
 Membership - 5; Terms - 2 Years expiring 1-2-2)

SPECIAL COMPOSITION REQUIREMENTS: Resident of City.

MEMBER	TERM EXPIRE SEPT 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes			No		DID NOT RECEIVED ATTENDANCE RECORD
Adrienne Valencia	Yes			No		
Melissa Wicker	Yes			No		
Jerry Morales (Liaison Officer)	Yes			No		
Nathan Miller	Yes			Yes		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD
(Ad Hoc)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE SEPT 2012?	ATTEN- DANCE %	MEETINGS ATTENDED	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes			N/A		
Richard Hatchett						
W. L. "Scooter" Brown						
Ken Burgess						
Jim Hightower						
Ted H. Jones						
Mitch Malouf						
Christi Newton						
Dan Rush						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD
(Membership - 6; Terms - 2 Years Staggered)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 9)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Willie Barber	Yes	100%	9	No		
Michael Trost	Yes	78%	7	No		
John James	No 09/13	56%	5			
Karen York	No 09/13	33%	8			
Guy McKenzie	No 09/13	33%	8			
Rebecca Bell	No 09/14	N/A	N/A			Appointed 9/11/2012

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
J. Ross Lacy	One other board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: J. Ross Lacy

Address: P.O. Box 3266

Midland TX 79702

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ²³ years.

Professional and/or Community Activities:

President, Midland Co. Young Republicans

Member, Young Professionals of Midland

Member, UTPB School of Business Advisory Board

What is your personal vision for the City?

With the current economic growth that Midland is experiencing, I would like to see the city continue to embark on new innovated ideas that focus on garnering new industries to the region and continue to support the oil and gas industry. We need to also focus on promoting young professionals in the city to engage and support various projects within the community.

Please specify any time constraints you may have.

I do not have any time constraints that would not allow me to attend meetings regularly.

Date: 8/16/2012

Phone: 432-254-1126 (Home)

432-683-5542 (Business)

Email: j.rosslacy@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Self Employed / Lacy Capital, LLC.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Airport Planning and Development Board

Please tell us why you are interested in serving on this board or commission.

With the recent announcement of XCOR Aerospace moving to the Midland Airport, Midland is in a unique position to use this newfound partnership for economic growth and garner national attention to the region. The next few years are going to be exciting

for the airports and industrial park, which will just be another feather in the hat for Midland.

What contribution would you most like to make?

I would like to work on obtaining the Spaceport License for the airport. Also would like to work on continuing improve our airport system and work to get another hotel around the airport. The Midland Industrial Park can only benefit greatly in the next few years as of companies follow XCOR and move to the region.

Additional pertinent information or references:**(2) Name of Board/Commission:**

Midland-Odessa Urban Transit District Board

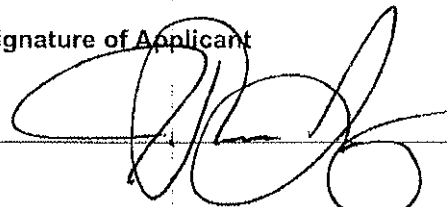
What contribution would you most like to make?

The Board did great in obtaining funding to make 349 a four lane road to Lamesa, however we need to make all entry roads into the region more accessible. Oilfield traffic is at an all time worst in the region causing unprecedented damage to our roads and making traffic accidents horrible. Working to obtain funding to make 349 a four lane road in south Midland Co. would be a major focus.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application

PERMIAN BASIN AIRPORT BOARD
(Advisory)
Membership - 30; Terms - 1 Year)
Ex-Officio Members: City Manager, City Attorney

SPECIAL COMPOSITION REQUIREMENTS: 10 Members of the Airport Planning & Development Board, A Resident of the following Cities: San Angelo, Abilene, Carlsbad, NM, Roswell NM, Artesia, NM, Hobbs NM, Fort Stockton, Seminole, Sweetwater, Pecos, 3 Residents of Odessa, Big Spring, Lamesa, Andrews, Monahans and Snyder.

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Larry Gill (Abilene)	Yes	25%	1			
Elvin Brownlee III (Andrews)	Yes	75%	3			Reappointed 10/9/2012
Isabelle Blanchard (Pecos)	Yes	50%	2			
Lex Hinds (Seminole)	Yes	0%	0			
Bob Forrest (Carlsbad, NM)	Yes	0%	0			
Larry Shed (Hobbs, NM)	Yes	0%	0			
Jim Little (Big Spring)	No 09/13	100%	4			Reappointed 9/25/2012.
David Hardwick (Ft. Stockton)	Yes	0%	0			
Donald R. Bethel (Lamesa)	No 09/13	50%	2			Reappointed 9/25/2012.
Henry Cutbirth (Monahans)	No 09/13	50%	2			Reappointed 9/25/2012.
Willie Taylor (Odessa)	No 09/13	50%	2			Reappointed 9/25/2012.
Gloria Pena (Odessa)	No 09/13	75%	3			Reappointed 9/25/2012.
Barbara Graff (Odessa)	Yes	75%	3			Reappointed 9/25/2012.
Luis E. Elguezabal (San Angelo)	Yes	0%	0			Reappointed 10/9/2012
John Rogotzke (Snyder)	No 09/13	0%	0			Appointed 9/25/2012.
Glenn Wortham (Sweetwater)	No 09/13	0%	0			Reappointed 9/25/2012.
Lance Goodrich (Artesia, NM)	No 09/13	25%	1			Reappointed 9/25/2012.
Larry Fry (Roswell, NM)	No 09/13					Reappointed 9/25/2012.
Frankie Rolfe (Kermit)	No 09/13					Appointed 9/25/2012

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

TAX INCREMENT REINVESTMENT ZONE BOARD
(Decision Making)
Membership - 12; Terms - 3 Years)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE MARCH 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Neil Florer (College)	Yes	75%	3	No		
Mark T. Wellen (City)	Yes	100%	4	No		
Randy Prude (County)	Yes	75%	3	Yes		County has requested reappointed of Randy Prude 10-26-12
Judge Mike Bradford (County)	Yes	25%	1	Yes		County has requested reappointment of Judge Bradford 10/26/12
Bob Lanier (City)	Yes	100%	4	Yes		
Ken Burgess (City)	No 3/13	50%	2	No		Appointed 10/9/2012
Michael Blonkvist (City)	No 09/14	N/A	N/A			Appointed 9/25/2012
John Kennedy (City)	No 03/15	100%	4	Yes		Reappointed 10/9/2012
Pete Hulder (Hospital)	No 03/16	100%	4			
Link Grimes (City)	No 3/15					
Charlene McBride (College)	No 3/16					
Russell Meyer (Hospital)	No 3/16					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

**ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT
(Decision Making)
Membership - 5; Terms - 2 Years expiring 3 odd & 2 even)**

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 2)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Manny Ribera	Yes	100%	2	No		
Ken Morgan	Yes	50%	1	Yes		
Scott Young	No 09/13	N/A				Appointed 9/25/12
Todd Byars	No 09/14	100%	2			Reappointed 9/25/12
Carla Repman	No 09/13	100%	2			
<u>ALTERNATES:</u>						
Vacancy	Yes - 2006					
Vacancy	Yes - 2007					
Annabel Holguin	No 09/13					
Greg Turner	No 09/13					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES