

CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
January 24, 2012 – 9:00 a.m.
Council Chamber - City Hall
300 North Loraine
Midland, Texas

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

1. Receive a presentation from Community Services on various initiatives to reduce park maintenance.
2. Update the City Paving Plan for surfacing the unpaved streets.

AGENDA FOR CITY COUNCIL MEETING

January 24, 2012 – 10:00 AM

Council Chamber - City Hall

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

OPENING ITEMS

1. Invocation
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Presentation of Retirement Commendation for retiring city employees.
 1. Richard Candelaria
 2. Pedro C. Falcon
 3. Michael Turner

PUBLIC COMMENT

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

CONSENT AGENDA

5. Consider a motion approving the following minutes:
 - a. Regular Minutes of January 10, 2012.
6. Consider a resolution approving the purchase of six police package cars and nine police package SUVs for the Garage Division. (General Services)

RESOLUTION NO. 2012 - 001

RESOLUTION APPROVING THE PURCHASE OF FIVE (5) POLICE PACKAGE CARS AND NINE (9) POLICE PACKAGE SPORT UTILITY VEHICLES, FROM ROGERS FORD OF MIDLAND, TEXAS, AND CALDWELL COUNTRY CHEVROLET, OF CALDWELL, TEXAS, RESPECTIVELY, AT A TOTAL COST OF \$362,752.00; AND THE CITY MANAGER HAS DETERMINED THE NEED TO PURCHASE ONE (1) ADDITIONAL POLICE PACKAGE CAR FROM ROGERS FORD INCREASING THE TOTAL PRICE TO \$388,884.00; AND THE PURCHASE OF THE ADDITIONAL POLICE PACKAGE CAR INCREASES THE PRICE PAID TO ROGERS FORD BY APPROXIMATELY TWENTY PERCENT (20%) AND IS AUTHORIZED BY SECTION 252.048 OF THE TEXAS LOCAL GOVERNMENT CODE

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

RESOLUTION NO. 2011 - 334

RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE MIDLAND EMERGENCY COMMUNICATION DISTRICT REGARDING THE PURCHASE AND MAINTENANCE OF 9-1-1 EMERGENCY SYSTEM RECORDING EQUIPMENT TO BE HOUSED AT THE CITY OF MIDLAND COMMUNICATIONS CENTER

8. Consider a motion on a request by Newton Engineering for City View Acres (Section 6), to approve items requested for deferral in the amount of \$53,730.13, and to waive the associated public improvement guarantee. This subdivision is positioned in the ETJ less than ½ mile from the City Limits, generally located at Fairgrounds Ave. approximately 1,800 feet north of Garden City Hwy. (SH 158). (Engineering)
9. Consider a resolution authorizing the City Attorney to represent the City of Midland and the Chief of Police in Jeremiah Alan Owens v. Price Robinson, Chief of Police; 385 Judicial District Court, Midland County, Texas; Cause No. CV48480. (City Attorney)

RESOLUTION NO. 2012 - 003

RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO

FILE ALL DOCUMENTS, EMPLOY ALL NECESSARY EXPERTS AND MAKE ALL NECESSARY APPEARANCES TO REPRESENT THE CITY OF MIDLAND AND THE CHIEF OF POLICE IN A LAWSUIT STYLED JEREMIAH ALAN OWENS V. PRICE ROBINSON, CHIEF OF POLICE, CITY OF MIDLAND, TEXAS; 385th JUDICIAL DISTRICT COURT, MIDLAND COUNTY, TEXAS; CAUSE NO. CV48480; AND AUTHORIZING THE PAYMENT OF ALL COSTS

10. Consider a resolution authorizing the execution of a Right of Way License Agreement with Bluestem Energy Assets, LLC, for placement, operation and maintenance of a six-inch gas pipeline within City of Midland right of way. (Engineering)

RESOLUTION NO. 2012 - 004

RESOLUTION AUTHORIZING A RIGHT OF WAY LICENSE WITH THE CITY OF MIDLAND, TEXAS AND BLUESTEM ENERGY ASSETS, L.L.C., A DELAWARE COMPANY; SAID RIGHT OF WAY LICENSE IS FOR THE PURPOSE OF PLACING, OPERATING, AND MAINTAINING ONE SIX INCH GAS PIPELINE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT OF WAY ABUTTING THE NORTHEAST QUARTER (NE/4) OF SECTION 8, BLOCK X, H.P. HILLIARD SURVEY AND NORTHWEST QUARTER (NW/4) OF SECTION 9, BLOCK X, H.P. HILLIARD SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND MAY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE YEAR TERM UPON 90 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

SECOND READINGS

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

ORDINANCE NO. 8958

ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 19.71-ACRE TRACT OF LAND ("TRACT 1") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 12.97-ACRE TRACT OF LAND ("TRACT 2") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN O-1, OFFICE DISTRICT; BY PERMITTING A 26.33-ACRE TRACT OF LAND ("TRACT 3") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 60.84-ACRE TRACT OF LAND ("TRACT 4") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING A 7.93-ACRE TRACT OF LAND

("TRACT 5") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 6.33-ACRE TRACT OF LAND ("TRACT 6") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 10.64-ACRE TRACT OF LAND ("TRACT 7") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 19.73-ACRE TRACT OF LAND ("TRACT 8") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; ALL OF SAID TRACTS BEING OUT OF SECTION 6, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; ALL OF SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED SOUTH OF MOCKINGBIRD LANE, BETWEEN HOLIDAY HILL ROAD AND ORIOLE DRIVE; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

12. Consider an ordinance on second reading on a request by Hamilton Williams for a Special Use Permit. (Planning)

ORDINANCE NO. 8975

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

PUBLIC HEARINGS

13. At approximately 10:33 AM hold a public hearing and consider an ordinance on a request by Landgraf, Crutcher and Associates for a Site Plan Review on a 8.00-acre tract of land out of Section 2, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland Texas. (Planning)

ORDINANCE NO. 8976

ORDINANCE ADOPTING A SITE PLAN FOR AN 8.00-ACRE TRACT OF LAND OUT OF SECTION 2, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NEAR THE NORTHEAST CORNER OF THE INTERSECTION OF EAST INTERSTATE HIGHWAY 20 AND TERRELL STREET); SUBJECT TO THE FOLLOWING CONDITIONS AND RESTRICTIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

DEVELOPMENT SERVICES

14. Consider an ordinance on a request by Habitat for Humanity to vacate a 10-foot by 150-foot (1500 sq ft) portion S. Adams Street right-of-way. (Planning)

ORDINANCE NO. 8977

AN ORDINANCE VACATING AND ABANDONING A 1,500 SQUARE FOOT PORTION OF ADAMS STREET RIGHT-OF-WAY ADJACENT TO LOTS 4-6, BLOCK 40, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF KENTUCKY AVENUE AND ADAMS STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$150.00; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY

15. Consider an ordinance on a request by Habitat for Humanity to vacate a 10-foot by 150-foot (1500 sq ft) portion of Jefferson Street right-of-way. (Planning)

ORDINANCE NO. 8978

AN ORDINANCE VACATING AND ABANDONING A 1,500 SQUARE FOOT PORTION OF JEFFERSON STREET RIGHT-OF-WAY ADJACENT TO LOTS 4A, 5A AND 5B, BLOCK 193, SOUTHERN ADDITION, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF JEFFERSON STREET AND DAKOTA AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$150.00; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY

MISCELLANEOUS

16. Consider a motion selecting an entity or organization to develop the T Bar Water Field located in Winkler County and Loving County, Texas. The T Bar Water Field consists of approximately 20,229 acres and the water rights underneath the property. The motion may also authorize the Mayor, Council Member Scott Dufford and Council Member Jerry Morales to negotiate a contract with the selected entity or organization and the contract shall not be effective until

approved by a resolution of the Midland City Council. (City Manager)

17. Consider a resolution hiring an outside legal attorney for the T-Bar project. (City Manager)

RESOLUTION NO. 2012 - 00002

RESOLUTION AUTHORIZING THE EMPLOYMENT OF THE LAW FIRM OF LLOYD GOSSELINK OF AUSTIN, TEXAS TO ASSIST THE CITY OF MIDLAND IN ALL MATTERS RELATED TO WATER CONTRACTS; AND THE MAYOR IS AUTHORIZED TO EXECUTE AN ENGAGEMENT LETTER WITH THE LLOYD GOSSELINK LAW FIRM; AND APPROPRIATING FUNDS

18. Consider an ordinance authorizing the issuance, levy ad valorem tax and resolve other matters associated with Tax & Limited Pledge Revenue Certificates of Obligation, Series 2012. (Finance)

ORDINANCE NO. 8979

ORDINANCE AUTHORIZING THE ISSUANCE OF "CITY OF MIDLAND, TEXAS, TAX AND LIMITED PLEDGE REVENUE CERTIFICATES OF OBLIGATION, SERIES 2012"; LEVYING AN AD VALOREM TAX UPON ALL TAXABLE PROPERTY WITHIN THE CITY AND PROVIDING FOR A LIMITED PLEDGE OF THE NET REVENUES OF THE CITY'S WATERWORKS AND SEWER SYSTEM FOR THE PAYMENT OF SAID CERTIFICATES; PRESCRIBING THE TERMS AND DETAILS OF SUCH CERTIFICATES AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE, SECURITY, PAYMENT AND DELIVERY OF SAID CERTIFICATES, INCLUDING THE APPROVAL OF A PAYING AGENT/REGISTRAR AGREEMENT AND THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT PERTAINING THERETO; AND PROVIDING AN EFFECTIVE DATE

19. Consider a resolution allowing the Hispanic Chamber of Commerce to operate a concert, in conjunction with the annual Mex-Tex Family Fiesta, until 1:00 a.m. on Sunday, June 10, 2012. (City Secretary)

RESOLUTION NO. 2012 - 005

RESOLUTION AUTHORIZING THE MIDLAND HISPANIC CHAMBER OF COMMERCE TO EXTEND THE HOURS OF THE MEX-TEX FAMILY FIESTA TO OPERATE A CONCERT UNTIL 1:00 A.M. ON SUNDAY, JUNE 10, 2012

20. Consider resolutions relating to a request from RSP Permian, L.L.C. for a permit to drill an oil and gas well (Bus Barn #2601) located 733' FNL and 1905' FWL, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Development Services)

- a. Consider a resolution for a Permit to Drill an Oil and Gas Well within the

City Limits.

RESOLUTION NO. 2012 - 006

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO RSP PERMIAN, L.L.C. ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 733 FEET FROM THE NORTH LINE AND 1,905 FEET FROM THE WEST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NEAR THE SOUTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 870 FEET EAST OF HEIDELBERG LANE)

- b. Consider a resolution authorizing the execution of a road repair agreement with RSP Permian, LLC. related to the Bus Barn #2601 well.

RESOLUTION NO. 2012 - 007

RESOLUTION AUTHORIZING THE EXECUTION OF A ROAD REPAIR AGREEMENT WITH RSP PERMIAN, L.L.C. REGARDING ITS APPLICATION TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 733 FEET FROM THE NORTH LINE AND 1,905 FEET FROM THE WEST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

- 21. Consider resolutions relating to a request from RSP Permian, L.L.C. for a permit to drill an oil and gas well (Bus Barn #2602) located 600' FNL and 525' FWL, Section 26, Block 40, T-1-S T&P RR Co. Survey, Midland County Texas.
 - a. Consider a resolution for a Permit to Drill an Oil and Gas Well within the City Limits.

RESOLUTION NO. 2012 - 008

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO RSP PERMIAN, L.L.C. ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 600 FEET FROM THE NORTH LINE AND 525 FEET FROM THE WEST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NEAR THE SOUTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 450 FEET EAST OF HEIDELBERG LANE)

- b. Consider a resolution authorizing the execution of a road repair agreement with RSP Permian, LLC. related to the Bus Barn #2602 well.

RESOLUTION NO. 2012 - 009

RESOLUTION AUTHORIZING THE EXECUTION OF A ROAD REPAIR AGREEMENT WITH RSP PERMIAN, L.L.C. REGARDING ITS APPLICATION TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 600 FEET FROM THE NORTH LINE AND 525 FEET FROM THE WEST LINE,

SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND
COUNTY OF MIDLAND, TEXAS

22. Consider resolutions relating to a request from RSP Permian, L.L.C. for a permit to drill an oil and gas well (Bus Barn #2603) located 690' FNL and 1080' FEL, Section 26, Block 40, T-1-S T&P RR Co. Survey, Midland County, Texas.
- a. Consider a resolution for a Permit to Drill an Oil and Gas Well within the City Limits.

RESOLUTION NO. 2012 - 010

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO RSP PERMIAN, L.L.C. ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 690 FEET FROM THE NORTH LINE AND 1,080 FEET FROM THE EAST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 600 FEET WEST OF ROADRUNNER TRAIL)

- b. Consider a resolution authorizing the execution of a road repair agreement with RSP Permian, LLC. related to the Bus Barn #2603 well.

RESOLUTION NO. 2012 - 011

RESOLUTION AUTHORIZING THE EXECUTION OF A ROAD REPAIR AGREEMENT WITH RSP PERMIAN, L.L.C. REGARDING ITS APPLICATION TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 690 FEET FROM THE NORTH LINE AND 1,080 FEET FROM THE EAST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

23. Consider a resolution on a request from Pioneer Natural Resources (Mabee #3) for a Permit to Drill an Oil and Gas Well within the City Limits located 660' FNL and 1980' FEL, Section 12, Block 39, T-1-S T&P RR Co. Survey, Midland County, Texas. (Development Services)

RESOLUTION NO. 2012 - 012

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PIONEER NATURAL RESOURCES USA, INC. ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 660 FEET FROM THE NORTH LINE AND 1,980 FEET FROM THE EAST LINE, SECTION 12, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 349, NORTH OF ARAPAHOE LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

24. Consider a resolution on a request from Pioneer Natural Resources (Mabee E #4) for a Permit to Drill an Oil and Gas Well within the City Limits located 800' FSL and 1980' FEL, Section 12, Block 39, T-1-S T&P RR Co. Survey, Midland County, Texas. (Development Services)

RESOLUTION NO. 2012 - 013

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PIONEER NATURAL RESOURCES USA, INC. ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 800 FEET FROM THE SOUTH LINE AND 1,980 FEET FROM THE EAST LINE, SECTION 12, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 349, NORTH OF ARAPAHOE LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

25. Consider a resolution on a request from Pioneer Natural Resources (Mabee D #5) for a Permit to Drill an Oil and Gas Well within the City Limits located 1880' FNL and 1980' FWL, Section 12, Block 39, T-1-S T&P RR Co. Survey, Midland County, Texas. (Development Services)

RESOLUTION NO. 2012 - 014

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PIONEER NATURAL RESOURCES USA, INC. ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1,880 FEET FROM THE NORTH LINE AND 1,980 FEET FROM THE WEST LINE, SECTION 12, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 349, NORTH OF ARAPAHOE LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

26. Consider a resolution on a request from Pioneer Natural Resources (Mabee D #6) for a Permit to Drill an Oil and Gas Well within the City Limits located 1865' FNL and 660' FEL, Section 12, Block 39, T-1-S T&P RR Co. Survey, Midland County, Texas. (Development Services)

RESOLUTION NO. 2012 - 015

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PIONEER NATURAL RESOURCES USA, INC. ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1,865 FEET FROM THE NORTH LINE AND 660 FEET FROM THE EAST LINE, SECTION 12, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 349, NORTH OF ARAPAHOE LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

27. Consider 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:
- a. Section 551.074 Personnel Matters
 - 4. Deliberate the employment, evaluation, duties, and salary of the Presiding Municipal Court Judge, the Associate Municipal Court Judge, the City Manager, the City Attorney and the City Secretary.

Respectfully Submitted,

Courtney B. Sharp
City Manager

**MIDLAND CITY COUNCIL
MINUTES
January 10, 2012**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:00 a.m. on January 10, 2012.

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

Council Members absent: Council Member John James (District 3).

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, Deputy City Secretary SueAnn Reyes, General Services Director Robert Patrick, Utilities Director Stuart Purvis, Building Official Steve Thorpe, City Engineer David Beard, Public Information Officer Tasa Watts, and Transportation Manager Gary Saunders.

David Beard introduced Jeff Cohen, the new Assistant City Engineer.

1. Receive and discuss an update from Parkhill, Smith and Cooper regarding the State Highway 191 Water and Sewer Route Capacity Study.

Eric West of Parkhill, Smith and Cooper gave an overview of the Highway 191 Water and Sewer Route Capacity Study noting that a location had been identified for a booster pump station that was need for water pressure. He identified the water route line to serve the north side and looping possibilities to the 1788 interchange to prepare for what would come in the future.

Eric also discussed the sewer system and presented three options stating that option one was a \$4.3 million dollar sewer line that was a larger line with pretty significant depth that serviced a small window of service area. He stated option two serviced a larger area that could serve the whole watershed but was not as accessible and had a cost of \$5.5 million. He presented the final option of placing a lift station with smaller lines that were not so deep. He stated this was their preferred option with a \$1.4 million savings.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:57 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:06 a.m., January 10, 2012.

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

Council Members absent: Council Member John James (District 3).

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

The Regular Session Agenda Items were heard in the following order: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 8, 17, 28, 29, 34, 28 (2nd time), 36, 41, 44, 45, 46, 28 (3rd time), 47, 48, 49, 50, 51, 52, 30, 31, 32, 33, 35, 37, 38, 39, 40, 42, 43, 53, 54.

OPENING ITEMS

1. Invocation - Father Frank Chavez, San Miguel Arcángel Catholic Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Recognition of the 2011 Christmas Parade of Lights float winners.

Council Member Hailey presented the 2011 Christmas Parade of Lights float trophies to Heritage Credit Union, Natural Gas Services and Insane Kustomz.
 - b. Receive presentation from Midland Retired Seniors Volunteer Program.

Council Member Trost received a representative check in the amount of \$2,281,717.92 from the Midland Retired Seniors Volunteer Program.
 - c. Receive Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association.

Council Member Dufford presented the Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association to Finance Director Bob McNaughton.
 - d. Presentation to the 2011 Management Award Recipients.

Council Member Dufford presented the 2011 Management Awards to the following winners: Paul O'Neill, Marv Esterly, Morris Williams, Sharlett Chowning, Craig Matthews, Raymond Saddler, and Carolyn Schoolcraft.

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.

There was no one present wishing to speak.

CONSENT AGENDA

Council Member Trost moved to approve Consent Agenda items 5 - 27 excluding 8 and 17; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

5. Approved a motion approving the following minutes:
 - a. Regular Minutes of December 13, 2011.
6. Approved a resolution approving appropriating funds from the Midland Development Corporation Unappropriated Fund Balance to be used for promotional purposes. (Finance)

RESOLUTION NO. 2011 - 323

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

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

RESOLUTION NO. 2011 - 324
RESOLUTION APPROPRIATING \$111,250.00 FROM THE HOTEL/MOTEL FUND TO THE MIDLAND CENTER IMPROVEMENTS PROJECT (8979)

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

RESOLUTION NO. 2011 - 326
RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF A NEW VIDEO BOARD AT GRANDE COMMUNICATIONS STADIUM FROM DAKTRONICS, INCORPORATED, AT A TOTAL COST OF \$293,076.00

10. Approved a resolution approving a contract for control room upgrade at Grande Stadium at the Scharbauer Sports Complex. (General Services)

RESOLUTION NO. 2011 - 327
RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF VIDEO CONTROL ROOM EQUIPMENT AT GRANDE COMMUNICATIONS STADIUM FROM MEDIA SUPPORT GROUP, LTD., AT A TOTAL COST OF \$105,202.00

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

RESOLUTION NO. 2011 - 328
RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF VIDEO CONTROL ROOM EQUIPMENT AT CITIBANK BALL PARK FROM TSE SERVICES, LLC, AT A TOTAL COST OF \$80,754.00

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

RESOLUTION NO. 2011 - 329
RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF FIELD PADS AT CITIBANK BALL PARK FROM UCS, INCORPORATED, AT A TOTAL COST OF \$72,000.00

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

RESOLUTION NO. 2011 - 330
RESOLUTION APPROVING THE PURCHASE OF A JOHN DEERE 6430 CAB TRACTOR AND A JOHN DEERE 550D UTILITY TRACTOR THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (HGAC) FROM JOHN DEERE CONSTRUCTION RETAIL SALES, OF MOLINE, ILLINOIS, AT A TOTAL COST OF \$73,378.00; AND THESE ITEMS WERE NOT BID BUT PURCHASED THROUGH A COUNCIL OF GOVERNMENTS

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

RESOLUTION NO. 2011 - 331
RESOLUTION APPROVING THE PURCHASE OF A LEEBOY MODEL 635 GRADER THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (HGAC) AT A TOTAL COST OF \$141,975.00; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COUNCIL OF GOVERNMENTS

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

RESOLUTION NO. 2011 - 332
RESOLUTION AUTHORIZING THE EXECUTION OF A SERVICE CENTER

AGREEMENT WITH LEWIS TRANSPORTATION GROUP, LLC DBA DOLLAR RENT A CAR/THRIFTY CAR RENTAL AT THE MIDLAND INTERNATIONAL AIRPORT

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

RESOLUTION NO. 2011 - 333
RESOLUTION AUTHORIZING THE EXECUTION OF A COMMERCIAL HANGAR/GROUND LEASE AGREEMENT WITH EMPIRE AIRLINES, FOR THE USE OF CERTAIN LAND AT THE MIDLAND INTERNATIONAL AIRPORT

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

RESOLUTION NO. 2011 - 335
RESOLUTION AUTHORIZING THE APPROPRIATION AND ALLOCATION OF FUNDS FROM THE SCHARBAUER SPORTS COMPLEX SALES TAX FUND TO THE SCHARBAUER SPORTS COMPLEX OPERATING BUDGET IN ORDER TO PURCHASE A TELESCOPIC BOOM LIFT

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

RESOLUTION NO. 2011 - 336
RESOLUTION APPROPRIATING \$19,478 FROM THE GENERAL FUND (001) UNAPPROPRIATED FUND BALANCE (5650) TO THE MOCKINGBIRD PAVING AND DRAINAGE IMPROVEMENTS PROJECT (8977) FOR IMPROVEMENTS TO MOCKINGBIRD LANE FROM MAYFIELD PLACE TO WHITMAN DRIVE

20. Approved a motion of a request by Parkhill, Smith & Cooper for Devon Addition (Section 3), to approve items requested for deferral, and to waive the associated public improvement guarantee. This subdivision is positioned inside the City Limits generally located near the Midland Airport at the northeast corner of the intersection of FM 1788 and Younger Road. The total value of the deferrals is \$30,000.00. (Engineering)
21. Approved a resolution accepting \$10,893 from Midland College and appropriate of funds. (Fire)

RESOLUTION NO. 2011 - 337
RESOLUTION ACCEPTING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$10,893.00 FOR THE MIDLAND COLLEGE FIRE TRAINING PROJECT IN ORDER TO RECOGNIZE AND PROMOTE THE CITY OF MIDLAND FIRE DEPARTMENT AS THE REGIONAL CENTER FOR FIREFIGHTER AND EMS TRAINING

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

RESOLUTION NO. 2011 - 338
RESOLUTION APPROPRIATING PROCEEDS FROM THE SALE OF OLD SERVICE WEAPONS AND COURT AWARDED WEAPONS IN THE AMOUNT OF \$25,920.00 TO THE MIDLAND POLICE DEPARTMENT; THE PROCEEDS WILL BE USED TO PURCHASE EQUIPMENT AND TECHNOLOGY ESSENTIAL TO THE LAW ENFORCEMENT FUNCTION FOR THE MIDLAND POLICE DEPARTMENT

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

RESOLUTION NO. 2011 - 339
RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT TASK ORDER WITH ARCADIS U.S., INCORPORATED, FOR PROFESSIONAL GROUNDWATER EVALUATION SERVICES, AT AN ESTIMATED TOTAL COST OF \$287,600.00; AND APPROPRIATING FUNDS

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

RESOLUTION NO. 2011 - 340

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

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

RESOLUTION NO. 2011 - 341

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

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

RESOLUTION NO. 2011 - 342

RESOLUTION APPROPRIATING FUNDS FROM THE GENERAL LIABILITY SELF-INSURANCE FUND TO THE ATMOS RATE REVIEW MECHANISM PROJECT (8923) IN THE AMOUNT OF \$25,000.00; SAID FUNDS REPRESENT REIMBURSEMENT FROM ATMOS FOR CONSULTING/LEGAL FEES ASSOCIATED WITH THE STEERING COMMITTEE'S ANALYSIS OF THEIR RATE REVIEW MECHANISM COSTS; THERE IS NO IMPACT TO THE GENERAL FUND

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

RESOLUTION NO. 2011 - 343

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

The following items were pulled from consent calendar and considered individually.

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

RESOLUTION NO. 2011 - 325

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

Following brief discussion regarding local preference laws, Council Member Morales moved to adopt Resolution No. 2011-325; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

RESOLUTION NO. 2011 - 334

RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE MIDLAND EMERGENCY COMMUNICATION DISTRICT REGARDING THE PURCHASE AND MAINTENANCE OF 9-1-1 EMERGENCY SYSTEM RECORDING EQUIPMENT TO BE HOUSED AT THE CITY OF MIDLAND COMMUNICATIONS CENTER

It was noted that the item was posted with the wrong Resolution caption. City Attorney Stretcher recommended deferring the item to the next meeting when it could be posted correctly.

Council Member Dufford moved to defer until next meeting; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

SECOND READINGS

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

ORDINANCE NO. 8959

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 2, GREEN HILL TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTHEAST CORNER OF HOLIDAY HILL ROAD AND MOCKINGBIRDLANE) ; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8959 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

At the request of a member of the audience, Mayor Perry opened Agenda Item number 28 back up for reconsideration.

John Sullivan, 4707 Tattenham, reported that when they met with the developer they asked that their original plan be amended with a fence to separate their properties. He did have issue with the new design noting that the buildings have access to Pimlico which is not a street designed to come out of commercial development. He asked that the whole site be shifted 90 degrees so the only openings would be onto Mockingbird.

Discussion ensued noting this was not a planned district but a zone change. It was noted that the developer had previously left the meeting because this item had been approved.

Junior Urias, 5017 Pimlico, noted same concerns.

Council Member Dufford moved to defer the item to next meeting; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

Council Member Dufford moved to reconsider Agenda Item number 28; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

Mayor Perry noted that the developer had returned to the meeting and reported that the neighbors were requesting restricted access on Pimlico.

Rodney Roberts, 4515 Bent Tree Trail, noted he had met with John Sullivan the previous week. He stated that he had no objection to turning the project as long as Pimlico could run behind his project.

Discussion ensued about whether Pimlico should be closed. City Engineer David Beard noted he would like Pimlico to remain open for emergency vehicle access.

John Sullivan, 4707 Tattenham, noted that the closest firehouse to the north and that opening Pimlico would not allow quicker access for emergency vehicles. He requested that Pimlico be closed to sequester their properties.

City Manager Sharp noted that staff recommends not close road for public safety reasons.

Alan Bennett noted he was a former firefighter/paramedic and stated that was no reason to keep Pimlico open.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8959 in accordance with the Charter of the City of Midland with the amendment to approve the modification of the fence on the east side of Pimlico with no curb cuts on Pimlico with the exception of alley access on the north end of the development for utility access; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8960

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 4, MAYFIELD PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF WHITMAN DRIVE, APPROXIMATELY ½ MILE NORTH OF MOCKINGBIRD LANE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8960 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8961

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 1, BLOCK 1, CAMELOT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ELKINS ROAD, APPROXIMATELY ONE MILE NORTH OF BUSINESS INTERSTATE 20), WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8961 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8962

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

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

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8962 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8963

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

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

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8963 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8964

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

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

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8964 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8965

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

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8965 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8966

AN ORDINANCE ADOPTING A SITE PLAN FOR LOT 1, BLOCK 83, WEST END, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF WEST WALL STREET AND "J" STREET); SUBJECT TO THE FOLLOWING CONDITIONS AND RESTRICTIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8966 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8967

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 4.68-ACRE PORTION OF THE REMAINDER OF LOT 1, BLOCK 6, WESTRIDGE PARK ADDITION, SECTION 6, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF CHAMPIONS DRIVE AND TRADEWINDS BOULEVARD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8967 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8968

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

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

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8968 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8969

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

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8969 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8970

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

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8970 in accordance with the Charter of the City of Midland; seconded by Council Member Trost.

Building Official Steve Thorpe noted that the acreage had changed.

Council Member Sparks moved to amend the motion to allow for the additional acreage; seconded by Council Member Hailey. The motion to amend carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

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

ORDINANCE NO. 8971

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

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8971 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8972

AN ORDINANCE AMENDING ORDINANCE NO. 8925 OF THE CITY OF MIDLAND BY ATTACHING AN AGREEMENT EXECUTED BY THE CITY MANAGER OF THE CITY OF MIDLAND AND OWNERS OF APPROXIMATELY 309 ACRES OUT OF SECTION 37, BLOCK 41, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, PURSUANT TO SECTION 43.035 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING THAT THE PROPERTY SUBJECT TO SUCH AGREEMENT SHALL REMAIN IN THE CITY'S EXTRATERRITORIAL JURISDICTION; PROVIDING THAT, EXCEPT AS AMENDED, ORDINANCE NO. 8925 SHALL REMAIN IN FULL FORCE AND EFFECT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ORDERING PUBLICATION; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO FILE A COPY OF THIS ORDINANCE IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND THE CITY MANAGER IS HEREBY AUTHORIZED AND DIRECTED TO EXECUTE THE AGREEMENT

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

Council Member Sparks moved to approve the second and final reading of Ordinance No. 8972 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8973

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

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8973 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

ORDINANCE NO. 8974

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

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

Council Member Sparks moved to approve the second and final reading of Ordinance No. 8974 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

PUBLIC HEARINGS

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

ORDINANCE NO. 8975

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

Planner, Brandon Melland gave an overview of the item noting that there would be no outdoor storage and no cars would be stored outside overnight. He reported they would be closed on Sundays. Staff recommended approval of the request and no letters of opposition had been received.

Mayor Perry opened the public hearing at 11:04 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8975.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 8975 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

DEVELOPMENT SERVICES

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

ORDINANCE NO. 8958

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING

CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 19.71-ACRE TRACT OF LAND ("TRACT 1") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 12.97-ACRE TRACT OF LAND ("TRACT 2") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN O-1, OFFICE DISTRICT; BY PERMITTING A 26.33-ACRE TRACT OF LAND ("TRACT 3") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 60.84-ACRE TRACT OF LAND ("TRACT 4") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING A 7.93-ACRE TRACT OF LAND ("TRACT 5") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 6.33-ACRE TRACT OF LAND ("TRACT 6") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 10.64-ACRE TRACT OF LAND ("TRACT 7") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 19.73-ACRE TRACT OF LAND ("TRACT 8") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; ALL OF SAID TRACTS BEING OUT OF SECTION 6, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; ALL OF SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED SOUTH OF MOCKINGBIRD LANE, BETWEEN HOLIDAY HILL ROAD AND ORIOLE DRIVE; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Senior Planner, Jim Compton, noted this item had been deferred from the last meeting. He reported that a second meeting had been held with the developer. He reaffirmed that over 20 percent opposition had been received and that the item would require six affirmative votes to pass.

Eric West, of Parkhill Smith and Cooper, on behalf of the developer, reported on their meeting with the surrounding residents and gave an overview of changes made to the plan.

Georgia Corwin, 4516 Robin Lane, thanked the developer for their work with the neighborhood and asked questions about where the alleys would open.

Alan Bennett, 5001 Pimlico, noted he was appreciative of the developer and the concessions that have been given. He requested that the tract on the north end be switched with the tract on Holiday Hill. He noted his opposition to offices looking in their back yards.

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

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8958 in accordance with the Charter of the City of Midland with the following two amendments: change Tract 7 from a Townhome District to a Planned District and require a 40-foot setback on Tracts 1 and 2; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

Senior Planner Compton gave an overview of the item noting that the plat is associated with the previous item. He noted this will establish the location of streets, alleys, lot sizes and orientations. He noted an amendment would be needed for the common area screening fence that was just approved with part of the zone change. Staff found that the preliminary plat meets all of the requirements.

Council Member Dufford moved to approve a motion approving a proposed preliminary plat of Greathouse Addition, Section 7, being a 155.99-acre tract of land out of Section 6, Block X, H.P. Hilliard Survey, City and County of Midland, Texas with the amendment to approve the two changes including turning Bolton Court and Robin Lane into cul-de-sac streets as well as the screening fence matching the fence adjacent to Holiday Hill Road. A dedication of Oriole Drive right-of-way shall be provided by separate instrument prior to approval of a final plat; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

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

Council Member Dufford moved to approve a request from Bluestem Energy (Evan C #1) amending a Permit to drill an Oil and Gas Well within the City Limits located 1021' FNL and 2310' FWL, Section 8, Block "X" H.P. Hilliard Survey, Midland County Texas; seconded by Council Member Hailey.

Discussion ensued about overhead wires versus underground wires.

John Anderson of Blue Stem Energy reported that the electrical wires are now underground. He noted that they wish to move them above ground because the land developer is extending to the north and once all of the roads are in place, all electrical will be placed underground again.

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

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

Council Member Dufford moved to approve the request from Bluestem Energy (Evans G #1) amending a Permit to drill an Oil and Gas Well within the City Limits located 1650' FNL and 2310' FEL, Section 8, Block "X", H.P. Hilliard Survey, Midland Count, Texas. ; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

Council Member Dufford moved to approve a request from Bluestem Energy (Evans H #1) amending a Permit to drill and Oil and Gas Well within the City Limits located 1650' FNL and 990' FEL, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas.; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

Council Member Dufford moved to approve a request from Bluestem Energy (Evans I #1) amending a Permit to drill and Oil and Gas Well within the City Limits located 2310' FSL and 990' FEL, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas.; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

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

Council Member Dufford moved to approve a request from Bluestem Energy (Evans J #1) amending a Permit to drill and Oil and Gas Well within the City Limits located 2322' FSL and 2310' FEL, Section 8, Block "X" H.P. Hilliard Survey, Midland County, Texas.; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Perry, Dufford, Hailey. NAY: None. ABSTAIN: None. ABSENT: James.

MISCELLANEOUS

52. Consider a motion appointing a Mayor Pro Tempore.

Council Member Dufford moved to appoint Council Member Jerry Morales as Mayor Pro Tem; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, Sparks. NAY: None. ABSENT: None. ABSTAIN: None.

53. Consider making appointments to various Boards and Commissions.

No appointments were made.

EXECUTIVE SESSION

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

Mayor Perry noted that there were no executive items to consider.

There being no other business to come before the City Council, the meeting was adjourned at 12:36 p.m.

PASSED AND APPROVED the 24th 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: January 24, 2012

TO: CITY COUNCIL, CITY MANAGER

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: 4490-12 Police package Automobiles and SUVs

Purpose:

Approval of a resolution authorizing the purchase of 6 - police package automobiles and 9 - police package sport utility vehicles for the Garage Division.

Recommended City Council Action:

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

\$388,884 Garage Fund

Discussion:

Rogers Ford of Midland, Texas was the lowest most responsive bidder meeting specifications for Items 1 and 2 for Ford Police Interceptors, for a cost of \$130,660. We are also recommending purchasing 1 additional Ford Police Interceptor from Rogers Ford to replace a wrecked vehicle for an additional cost of \$26,132. Caldwell Country Chevrolet of Caldwell, Texas was the lowest most responsive bidder meeting specifications for Item 3 for Chevrolet Tahoes for a cost of \$232,092.

Therefore, please consider approval of a resolution authorizing the purchase of Items 1 and 2 and 1 additional automobile from Rogers Ford of Midland, Texas and Item 3 from Caldwell Country Chevrolet of Caldwell, Texas. The total cost for all vehicles is \$388,884.

RESOLUTION NO.

RESOLUTION APPROVING THE PURCHASE OF FIVE (5) POLICE PACKAGE CARS AND NINE (9) POLICE PACKAGE SPORT UTILITY VEHICLES, FROM ROGERS FORD OF MIDLAND, TEXAS, AND CALDWELL COUNTRY CHEVROLET, OF CALDWELL, TEXAS, RESPECTIVELY, AT A TOTAL COST OF \$362,752.00; AND THE CITY MANAGER HAS DETERMINED THE NEED TO PURCHASE ONE (1) ADDITIONAL POLICE PACKAGE CAR FROM ROGERS FORD INCREASING THE TOTAL PRICE TO \$388,884.00; AND THE PURCHASE OF THE ADDITIONAL POLICE PACKAGE CAR INCREASES THE PRICE PAID TO ROGERS FORD BY APPROXIMATELY TWENTY PERCENT (20%) AND IS AUTHORIZED BY SECTION 252.048 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for five (5) police package cars and nine (9) police package sport utility vehicles as submitted below; and

WHEREAS, Bid No. 4490-12 was opened on January 4, 2012, with the lowest and most responsive bids being submitted as follows and as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes:

<u>Item#</u>	<u>Qty.</u>	<u>Description</u>	<u>Supplier</u>	<u>Cost</u>
1	4	Police Package Car (Color: white)	Rogers Ford Midland, TX	\$104,528.00
2	1	Police Package Car (Color: non-white)	Rogers Ford Midland, TX	\$26,132.00
3	9	Police Package SUV 2-wheel drive	Caldwell Country Chevrolet Caldwell, TX	\$232,092.00
Total Costs to City According to Bid				\$362,752.00

WHEREAS, along with the police package cars and sport utility vehicles referenced above, the City Manager has determined the need to purchase one (1) additional police package car from Rogers Ford at the bid price referenced above; and

WHEREAS, Section 252.048 of the Texas Local Government Code authorizes Change Orders for up to Twenty Five Percent (25%); and

WHEREAS, the purchase of one (1) additional police package car represents a Twenty Percent (20%) increase over the price to be paid to Rogers Ford according to the attached bid tabulation; and

WHEREAS, the City Council finds it to be in the public interest to purchase the five (5) police package cars, and the nine (9) police package sport utility vehicles shown on the attached bid tabulation from the respective low bidders, plus one (1) additional police package car from Rogers Ford, for a total price of \$388,884.00;

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 above-referenced police package vehicles from the suppliers indicated above and at the prices indicated at an estimated total price not to exceed \$388,884.00.

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

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID NO.: 4490-12 FOR: Police Package Cars CLOSES: 1/4/2012		DESCRIPTION		Rogers Ford Sales 4200 W. Wall Midland, TX 79703 Gary Seay (432)894-8801		Soggin-Dickey Chevrolet 5901 Spur 327 Lubbock, TX 79424 Mike North (806)798-4000		Sam Parks Five Star Ford 1635 S Interstate 35E Carrollton, TX 75006 Bill Dutton (888)835-3389		Sewell Chevrolet 1011 S Main Street Andrew, TX 79714 Johnny Almsworth (432)559-8931		Caldwell County Chevrolet PO Box 27 Caldwell, TX 77836 Avery Knapp (979)567-6116	
ITEM	QTY	COST EA. TOTAL		COST EA. TOTAL		COST EA. TOTAL		COST EA. TOTAL		COST EA. TOTAL		COST EA. TOTAL	
1	4	\$26,132.00000 \$104,528.00		\$27,951.00000 \$111,804.00		\$29,034.00000 \$116,136.00		\$26,950.00000 \$107,800.00		\$27,836.00000 \$111,344.00			
		Ford Sedan Police Interceptor - EPA not specified		Chevrolet Caprice PPV "9C7" - Not applicable		2013 Ford Police Interceptor - 1726		Chevrolet Caprice - 2023		Chevrolet Caprice PPV - 15C24H			
		90-120 Days - 3yr 36000 miles		180-240 Days - 36mo/36000 basic/60mo/100,000powertrain		120-140 Days - 3yr/36000 miles 5yr/60000 powertrain		75 Days - 3yr/36000, 5yr/100,000 powertrain		120 Days - 3yr 36000 miles			
		None Specified		General Motors Protection Plans - Various Terms		Extended warranty offered at additional cost		None Specified		Extended Warranty 5yr - 100,000 powertrain no charge			
2	1	\$26,132.00000 \$26,132.00		\$28,995.00000 \$28,995.00		\$30,040.00000 \$30,040.00		\$26,750.00000 \$26,750.00		\$29,242.00000 \$29,242.00			
		Ford Sedan Police Interceptor - EPA not specified		Chevrolet Caprice PPV "9C7" - Not Applicable		Sedan Police Interceptor - 1726		Chevrolet Caprice		Chevrolet Caprice PPV - 15C24H			
		90-120 Days - 3yr 36000 miles		180-240 Days - 36mo/36000 basic/60mo/100,000powertrain		120-140 Days - 3yr/36000 miles 5yr/60000 powertrain		75 Days - 3yr/36000, 5yr/100,000 powertrain		120 Days - 3yr 36000 miles			
		None Specified		Mileage limits and deductibles available		Extended warranty offered at additional cost		None Specified		Extended Warranty 5yr - 100,000 powertrain no charge			
3	9	\$27,299.00000 \$245,691.00		\$27,229.00000 \$245,061.00		\$26,208.00000 \$235,872.00		\$27,500.00000 \$247,500.00		\$25,788.00000 \$232,092.00			
		Ford L100 Police Interceptor - EPA not specified		Chevrolet Tahoe PPV "200" - 1521		2013 Ford Police Interceptor S1		Chevrolet Tahoe		Chevrolet Tahoe PPV CC10706 - 15C24H			
		90-120 Days - 3yr 36000 miles		180-240 Days - 36mo/36000 basic/60mo/100,000powertrain		120-140 Days - 3yr/36000 miles 5yr/60000 powertrain		75 Days - 3yr/36000, 5yr/100,000 powertrain		120 Days - 3 yr 36000 miles			
		None Specified		2-yr price any - please contact for details		Extended warranty offered at additional cost		None Specified		Extended Warranty 5yr - 100,000 powertrain no charge			
		ALTERNATE											
		\$28,877.00000 \$28,877.00											
		Sedan w/Eco Boost - EPA not specified											
		Delivery not specified - warranty not specified											
TOTALS:				\$376,351.00		\$385,860.00		\$382,048.00		\$382,050.00		\$372,678.00	
Discount if all awarded to your company... Discounted Total:				\$ 376,351.00		\$ 385,860.00		\$ 382,048.00		\$ 382,050.00		\$ 372,678.00	

Bidding Summary:

7 Bid requests were issued.

5 Bids listed above

0 NO BIDS were received.

2 Bidders did not respond.

Lithia Motors, Planet Ford



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL / CITY MANAGER

FROM: Sharlett Chowning, CIO

SUBJECT: Midland Emergency Communication District

Purpose:

To approve an Interlocal Agreement with the Midland Emergency Communication District (MECD).

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

None

Discussion:

Midland Emergency Communication District (MECD), through its Board of Managers, has committed to provide the citizens of Midland County with state-of-the-art emergency communications equipment.

MECD will purchase a DSS 3U Recording System to be located in the Primary Public Safety Answering Point (PSAP), the City of Midland Communications Center, located at 601 N Lorraine. The equipment will be used to record all 9-1-1 trunk activity, including several (7) digit emergency lines, within the PSAP.

Maximum cost to be expended by MECD for purchase and installation of the recorder is \$150,000. After the first year, the City will be responsible for an increased maintenance cost of approximately \$10,000.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE MAYOR TO
ENTER INTO AN INTERLOCAL AGREEMENT WITH
THE MIDLAND EMERGENCY COMMUNICATION
DISTRICT REGARDING THE PURCHASE AND
MAINTENANCE OF 9-1-1 EMERGENCY SYSTEM
RECORDING EQUIPMENT TO BE HOUSED AT THE
CITY OF MIDLAND COMMUNICATIONS CENTER**

WHEREAS, the City of Midland and the Midland Emergency Communication District desire to enter into an interlocal agreement regarding the purchase and maintenance of 9-1-1 Emergency System recording equipment to be housed at the City of Midland Communications Center; and

WHEREAS, the Midland City Council finds that the agreement serves a beneficial public purpose;

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

THAT the Mayor is hereby authorized and directed to execute, on behalf of the City of Midland, an interlocal agreement with the Midland Emergency Communication District regarding the purchase and maintenance of 9-1-1 Emergency System recording equipment to be housed at the City of Midland Communications Center, said agreement being attached hereto as Exhibit “A” and incorporated herein for all legal purposes.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

INTERLOCAL AGREEMENT

This Interlocal Agreement (this "Agreement") is made and entered into by and between the Midland Emergency Communication District, hereinafter referred to as "MECD," acting herein by and through its Board of Managers, and the City of Midland, hereinafter referred to as "City," effective the 18th day of November, 2011.

WITNESSETH

WHEREAS, it is the desire of both the MECD and the City to provide the most effective Enhanced 9-1-1 emergency communications system for the citizens of Midland County, including maintaining state-of-the-art equipment.

NOW THEREFOR, the parties agree as follows:

I.

MECD will purchase a DSS 3U recording System to be located in the Primary Public Safety Answering Point (PSAP), City of Midland Communications Center, located at 601 N. Loraine basement (the "Recorder"). The Recorder will be used to record all 9-1-1 trunk activity, including seven (7) digit emergency lines, within the PSAP in addition to activity deemed necessary by the City of Midland. Maximum cost to be expended by MECD for purchase and installation of the Recorder is \$150,000.00. The Recorder is necessary to facilitate legal requirements of both the MECD and the City of Midland Communications Center. Installation and labor charges will be included in the above figure paid by MECD. Except as provided in Section I, MECD will have no further obligation with respect to the Recorder or any other matter under this Agreement.

II.

Ownership of the Recorder is the sole property of MECD. However, any recordings, replacement, repair, maintenance and upgrades to the Recorder remain the sole obligation/property of the City. The City shall not be obligated to pay MECD for services related to this Agreement.

III.

This Agreement shall continue until terminated by either party with at least one hundred and eighty (180) days written notice. At the termination of this Agreement, the Recorder will be returned to MECD.

IV.

This Agreement represents the entire agreement of the parties as it pertains to the subject matter of this Agreement and no changes or modifications of this Agreement will be valid unless evidenced by an instrument in writing signed by the parties.

V.

All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. This Agreement shall be governed by the laws of the State of Texas.

VI.

This Agreement shall be subject to the applicable provisions of the Health and Safety Code, the Interlocal Cooperation Act, and any other applicable statute or regulation.

VII.

By executing this Agreement, the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action. THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

WITNESS OUR HANDS this ____ day of _____, 20____.

CITY OF MIDLAND, TEXAS

MIDLAND EMERGENCY
COMMUNICATIONS DISTRICT

By: _____
W. Wesley Perry, Mayor

By: _____
Pat Moore, Chairman
MECD Board of Managers

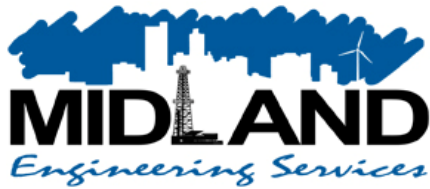
ATTEST:

Amy M. Turner, City Secretary

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

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

SUBJECT: Consider a motion on a request by Newton Engineering for City View Acres (Section 6), to approve items requested for deferral in the amount of \$53,730.13, and to waive the associated public improvement guarantee. This subdivision is positioned in the ETJ less than ½ mile from the City Limits, generally located at Fairgrounds Ave. approximately 1,800 feet north of Garden City Hwy. (SH 158). (District #2 - Hailey)

Purpose:

To recommend approval for deferral of the following items:

Wastewater Main Improvements	\$19,182.00
Sidewalk (5' width)	\$9,401.25

Accept compensation (cash escrow) for the following items:

Paving - 24" Curb & Gutter	\$25,146.88
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Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Total value of deferral (recommended items)	\$53,730.13
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Staff will be working with council, in the near future, to develop a policy to trigger when the deferred improvements will be required to be constructed.

Discussion:

The City View Acres (Section 6) is located on the west side of Fairgrounds Rd. approximately 1800' north of Garden City Hwy (SH 158).

Newton Engineering is proposing to plat the property and defer the construction of wastewater main improvements, construction of Fairgrounds Rd to arterial standard including curb and gutter, and sidewalks along the Fairground Rd frontage. Below is a summary of the deferral request along with a discussion of public improvements related to the development of land associated with this plat:

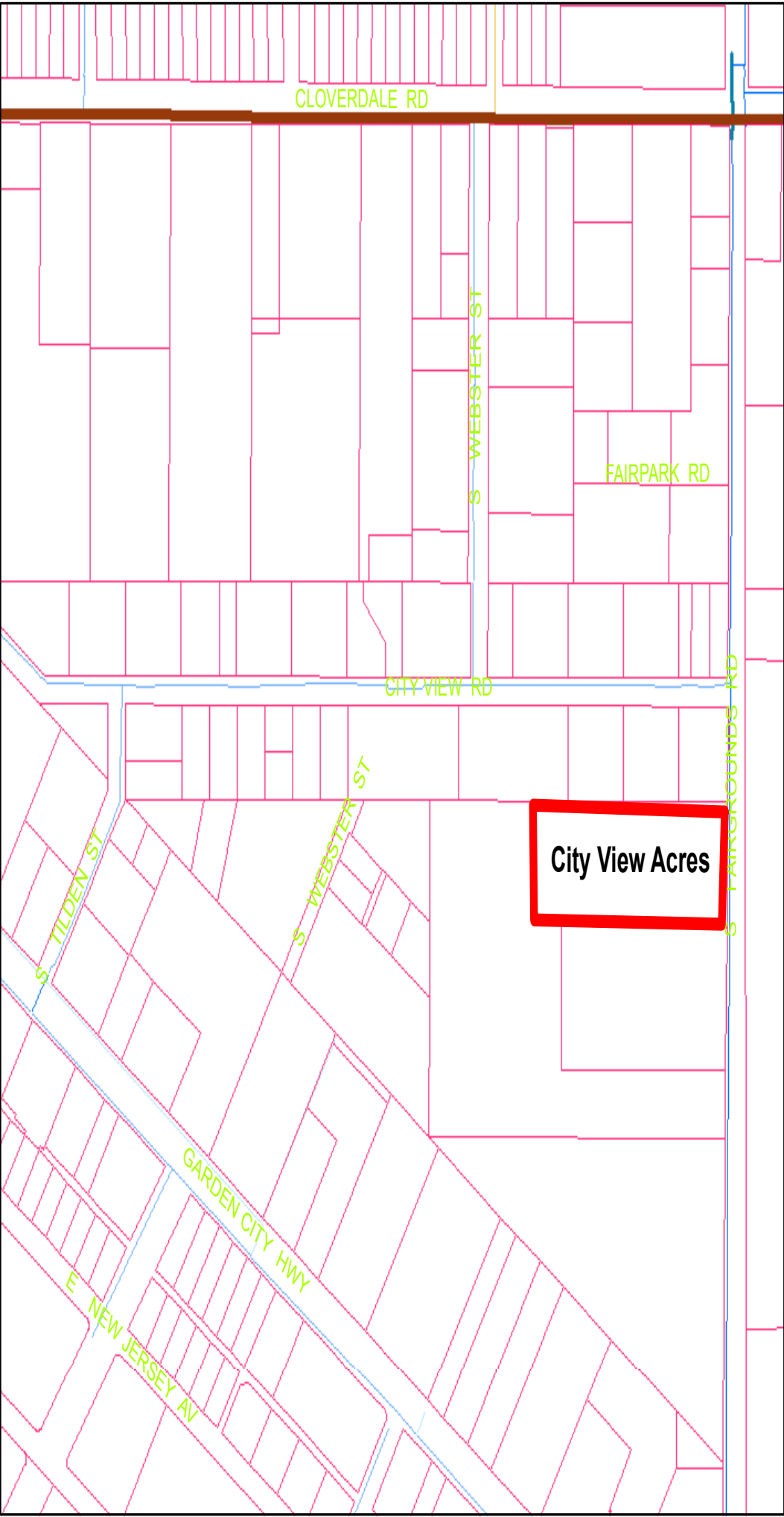
Deferral Request

1. Wastewater Collection: The applicant is requesting deferral of wastewater main improvements along Fairgrounds Rd. Staff supports this deferral due to the following:
 - Owner agrees to voluntarily annex.
 - The nearest gravity connection to the collection system is at I-20, approximately 2800 LF to the south;
 - Owner agrees to pay his share of the cost to provide wastewater service to his property through a Public Improvement District or other method at the time wastewater main improvements are constructed.
2. Paving: Fairgrounds Rd is currently paved with an open section (no curb & gutter). The developer has agreed to enter into a development agreement and make a financial contribution in the amount of \$25,146.88 for his share of the arterial street construction.
3. Sidewalk: The applicant is requesting deferral of sidewalks. Sidewalk construction is typically accomplished during the building permit phase (builder constructs the sidewalk). It is not anticipated that sidewalks will be required in this development; this is consistent with adjacent properties.

Public Improvements

1. Water Distribution: City of Midland water service is available and accessible. Owner is agreeing to voluntary annex.
2. Drainage: Newton Engineering has prepared a Drainage Study for this site. The study has been approved.

Attached is a location map, along with a deferral justification, and cost estimate from Newton Engineering.



ENGINEERING DIVISION

City View Acres
Deferral Request





NEWTON ENGINEERING, PC

4910 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499

F-13856

January 12, 2012

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

RE: City View Acres Section 6

Mr. Beard:

On behalf of my client, Pecos Gathering and Marketing, Chris Jensen, we respectfully request that the required public improvements and accompanying improvement guarantee be considered for deferral for the following:

1. Section XI Chapter 2 11-2-5(A)3.(b)(2)and(3) *Non-accessible public water supply and wastewater facilities*. We ask for deferral of extension of the wastewater system since this is not readily accessible. We will install a septic system in accordance with health and building code.
2. Section XI Chapter 2 11-2-5(C) *Streets and Alleys*. In conformity with FM 1788, we are asking for a deferral sidewalks along all property frontages. A ditch along the west side of Fairgrounds Rd. will be utilized to convey the runoff. This will coincide with the current use of ditches along Fairgrounds Rd.

I have enclosed an engineering cost estimate for the public improvements which we are requesting deferral.

Upon acceptance of the deferrals listed above, we will agree to appropriate funds for the future construction of Fairgrounds Road to a 68' Arterial in the amount of \$25,146.88. I have enclosed an engineering cost justification based upon similar roadway installation on a current project for this improvement



NEWTON ENGINEERING, PC

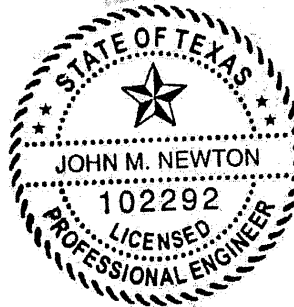
4910 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499

F-13856

We request that this item be place 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.



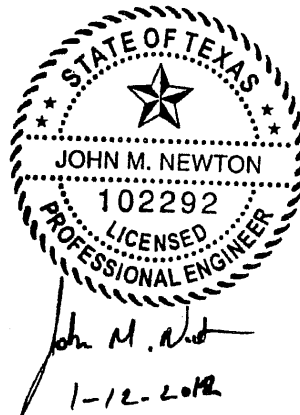
City View Acres Section 6
Deferral Cost Estimate

Description	Qty.	Unit	Unit Price	Est. Price
Sewer				
8" SDR-35 PVC	267	LF	\$40.00	\$10,680.00
Manholes	2	EA	\$3,000.00	\$6,000.00
Construction Cost of Sewer				\$16,680.00
15 % Contingency				\$2,502.00
Total Sewer				\$19,182.00
Sidewalk				
5' Sidewalk	267	LF	\$25.00	\$6,675.00
ADA Ramps	1	EA	\$1,500.00	\$1,500.00
Construction Cost of Sidewalk				\$8,175.00
15% Contingency				\$1,226.25
Total Sidewalk				\$9,401.25
Project Total Deferral				\$28,583.25


 John M. Newton
 1-19-2012

Construction Cost Justification for City View Acres Section 6 Fairgrounds Road Improvements

Description	Qty.	Unit	Unit Price	Est. Price
Paving				
3-1/2" HMAC	1899	SY	\$15.85	\$30,099.15
12" Base Material	1899	SY	\$16.75	\$31,808.25
24" Curb and Gutter	534	LF	\$12.50	\$6,675.00
Total Paving				\$68,582.40
10% Contingency				\$6,858.24
Total Construction Cost				\$75,440.64
Developer 1/3 Share				\$25,146.88



City of Midland
CITY ATTORNEY'S OFFICE
Office Memorandum

DATE: January 12, 2012

TO: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, First Assistant City Attorney

SUBJECT: Jeremiah Alan Owens v. Price Robinson, Chief of Police; 385th Judicial District Court, Midland County, Texas; Cause No. CV48480

Plaintiff Jeremiah Owens has sued Police Chief Price Robinson in the 385th Judicial District Court in Midland County, Texas. The suit arises from the seizure and impoundment of the plaintiff's vehicle subsequent to an evading arrest investigation. The plaintiff's suit requests the release of his vehicle from impoundment.

The proposed resolution authorizes the City Attorney's office to file all necessary documents, employ experts and make all appearances necessary for the defense of this lawsuit.

If you have any questions about this matter, please do not hesitate to contact me or City Attorney Keith Stretcher at 685-7254.

JO/lo

RESOLUTION NO.

RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO FILE ALL DOCUMENTS, EMPLOY ALL NECESSARY EXPERTS AND MAKE ALL NECESSARY APPEARANCES TO REPRESENT THE CITY OF MIDLAND AND THE CHIEF OF POLICE IN A LAWSUIT STYLED JEREMIAH ALAN OWENS V. PRICE ROBINSON, CHIEF OF POLICE, CITY OF MIDLAND, TEXAS; 385th JUDICIAL DISTRICT COURT, MIDLAND COUNTY, TEXAS; CAUSE NO. CV48480; AND AUTHORIZING THE PAYMENT OF ALL COSTS

WHEREAS, Jeremiah Alan Owens has filed a cause of action against Police Chief Price Robinson in the 385th Judicial District Court, Midland County, Texas; and

WHEREAS, the City Council of the City of Midland finds it to be in the public interest to authorize the City Attorney to execute all documents, employ all necessary experts and make all appearances in representing the City of Midland and Chief Robinson in said lawsuit;

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

SECTION ONE. That the City Attorney is hereby authorized to file all motions and other documents, and to make all appearances necessary to provide a defense in the litigation styled Jeremiah Alan Owens v. City of Midland; 385th Judicial District Court, Midland County, Texas; Cause No. CV48480. Any such actions taken by the City Attorney prior to the adoption of this resolution are hereby ratified and approved.

SECTION TWO. That the City Attorney is hereby authorized to employ all experts which may be necessary in the defense of said lawsuit.

SECTION THREE. That the City Attorney is hereby authorized to respond to all settlement offers from the Plaintiff in said lawsuit.

SECTION FOUR. That the City Treasurer is hereby authorized, upon receipt of proper invoice or statement, approved by the City Manager or the City Attorney, to pay court

costs and any experts employed by the City Attorney out of funds available in the General Liability Self-Insurance Fund.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Gary Saunders, Transportation Manager

SUBJECT: Resolution–Right of Way License Agreement

Purpose:

To approve a resolution authorizing a Right of Way License Agreement between the City of Midland and Bluestem Energy Assets, LLC.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

The City of Midland shall receive Payment of \$713.93 annually for the duration of the Right of Way License Agreement.

Discussion:

The Legal Department has prepared a resolution authorizing the execution of a Right of Way License Agreement between the City of Midland and Bluestem Energy Assets, LLC, a Delaware Company for the purpose of placement, operation and maintenance of a six (6") inch gas pipeline within the City of Midland. This six (6") inch gas pipe line is abutting the Northwest Quarter (NW/4) of Section 8, Block X, H. P. Hilliard Survey and the Northeast Quarter (NE/4) of Section 9, Block X, H. P. Hilliard Survey, Midland County, Texas at the north most Midkiff Road and Greentree Boulevard right of way intersection.

This Agreement shall be for a term of five (5) years and may be renewed at the end of the initial Agreement term for one (1) additional five (5) year term, upon written request of Bluestem Energy Assets, LLC on or before ninety (90) days prior to the expiration of the Agreement term in effect and with written consent of the City of Midland.

Attached is a map indicating location of the gas pipeline.

Staff recommends approval of this resolution.

RESOLUTION NO.

RESOLUTION AUTHORIZING A RIGHT OF WAY LICENSE WITH THE CITY OF MIDLAND, TEXAS AND BLUESTEM ENERGY ASSETS, L.L.C., A DELAWARE COMPANY; SAID RIGHT OF WAY LICENSE IS FOR THE PURPOSE OF PLACING, OPERATING, AND MAINTAINING ONE SIX INCH GAS PIPELINE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT OF WAY ABUTTING THE NORTHEAST QUARTER (NE/4) OF SECTION 8, BLOCK X, H.P. HILLIARD SURVEY AND NORTHWEST QUARTER (NW/4) OF SECTION 9, BLOCK X, H.P. HILLIARD SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND MAY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE YEAR TERM UPON 90 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right of way license with Bluestem Energy Assets, L.L.C., located within the City of Midland Right of Way abutting the Northeast Quarter (NE/4) of Section 8, Block X, H.P. Hilliard Survey and Northwest Quarter (NW/4) of Section 9, Block X, H.P. Hilliard Survey, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right of way license with Bluestem Energy Assets, L.L.C., said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

RIGHT-OF-WAY LICENSE

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

THIS RIGHT-OF-WAY LICENSE (“AGREEMENT”), effective this 25th day of January, 2012 by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called “Licensor”, and BLUESTEM ENERGY ASSETS, LLC, a DELAWARE COMPANY, hereinafter called “Licensee”.

Licensee desires use of property owned by the Licensor in Midland County, Texas WITHIN the City of Midland, Texas, for the purposes set forth below.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands.

W I T N E S S E T H:

For and in consideration of the execution of this Agreement and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows, to wit:

I. Term

This Agreement shall be for a term of five (5) years, commencing with the date of this Agreement, the “Commencement Date,” unless terminated earlier as provided hereafter. This Agreement may be renewed at the end of the initial Agreement term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before ninety (90) days prior to the expiration of the Agreement term then in effect and subject to the express written consent of the governing body of the Licensor.

The granting of consent for renewal of this Agreement is in the sole and absolute discretion of Licensors. Licensors shall have the option to terminate this license at any time, for any or no reason, without penalty, upon giving the other party written notice at least ninety (90) days in advance of such termination. The parties to this license understand and agree that it is in the Licensors's sole discretion to cancel this license during the term of the license without penalty to the Licensors. The Licensee has no expectation and has received no assurance that this license will not be terminated before the end of the term of this license. The parties have bargained for the flexibility of terminating this license upon tender of the requisite notice at any time during the term of this license. All work under this license shall be suspended immediately upon termination of the license becoming effective.

Upon termination of this license, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. Any wells shall be plugged in accordance with Texas Commission on Environmental Quality guidelines and a report certifying the same shall be submitted to the Licensors's Director of Development Services. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licensors upon inspection by Licensors's Director of Development Services, which approval shall not be unreasonably withheld. All of said

work shall be completed within ninety (90) days after termination of this license.

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensor the sum of SEVEN HUNDRED THIRTEEN dollars and NINETY-THREE cents (\$713.93) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year's license fee of \$713.93 shall be due and payable in advance on the commencement date of this license.
2. Licensee's failure to make the license fee payment within thirty (30) days after the fee is due shall constitute a late payment and Licensee shall pay the Licensor a late charge of five (5) percent.
3. At the same time the first year license fee is due, Licensee shall deposit \$500.00 with the Licensor's Director of Development Services. Said deposit shall be held until Licensee completely complies with the requirements set forth in this right-of-way license. Said deposit shall revert to the Licensor and Licensee shall have no claim to said deposit, in the event Licensee fails to comply with each requirement set forth in this right-of-way license.
4. The license fee payment shall be made to the Licensor at the office of the Director of Development Services, P.O. Box 1152, Midland, Texas, 79702. The license fee payment shall be exclusive of and in addition to all general municipal taxes of whatever

nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licensors does hereby grant unto Licensee, the right to enter upon certain right-of-way of the Licensors as shown on "Exhibit A" attached hereto and incorporated herein, for the sole purpose of installing and repairing one six (6) inch Gas Pipeline.
2. Licensee covenants and agrees that it will repair any of Licensors's roads that Licensee damages on Licensors's property so that such roads will comply with Licensors's Standard Specifications.
3. Licensee covenants and agrees that Licensee shall, at its own expense, repair all streets, alleys, water lines, sewer lines, service lines and water meters owned by the Licensors that Licensee, its employees, its agents or assigns, damage so that such streets, alleys, water lines, sewer lines and water meters shall comply with the requirements of the Licensors's Standard Specifications.
4. Licensee covenants and agrees that it will bury any pipelines to be constructed hereunder at least thirty-six inches (36") in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of the Licensors's right of way where such backfill shall be compacted to a density of ninety-five percent (95%). The Licensors shall be afforded the opportunity to test the density on all backfill.

5. Before the Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by the Licensor's Director of Development Services.

6. Licensor expressly reserves the right to install, repair, or reconstruct within the rights of way used and occupied by the Licensee any streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and structures.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's system, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINE, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform its facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other underground or aboveground structure owned by the Licensor, the Licensee shall make

the alterations or changes as soon as practicable, and in no event longer than ninety (90) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

7. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

8. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, without the necessity of any notice to Licensee or any re-entry by the Licensor.

9. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to the Licensor's Director of Development Services for his or her approval. In the event of emergency repairs

necessary to restore service, the Licensee shall notify Licensor's Director of Development Services before making any repairs if on a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's Director of Development Services on the first work day after repairs have begun.

10. The Licensor reserves the right to use the surface or subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee; and whenever by reason of said work in connection with said public purposes it shall be deemed necessary by the Licensor to alter, change, adapt, conform or relocate any pipeline of Licensee, such alteration or change or relocation shall be commenced by the Licensee within ninety (90) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licensor provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

1. **Insurance** - Licensee shall at all times during the term of this Agreement maintain

and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

- Personal Injury: \$1,000,000.00 per person
 \$1,000,000.00 per occurrence
- Property Damage: \$500,000.00 per occurrence

Contractor's Pollution Liability

- Property Damage: \$1,000,000.00 per occurrence, including
 remediation and clean-up expenses

- 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 and Contractor's Pollution Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

The Contractor's Pollution Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis. Further, regarding the Contractor's Pollution Liability policy, Licensee and Licensor agree that the definition of "Property Damage" shall include remediative and clean-up measures as

determined necessary by the Licensor, and Licensee shall obtain and maintain insurance coverage to that effect. Licensor and Licensee agree that Time-Element Pollution Liability Insurance does not satisfy the requirements herein.

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

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement.

All insurance required pursuant to this License, except for Worker's Compensation Insurance, shall name the Licensor as an additional insured on a claims occurred basis. All insurance required pursuant to this License, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Licensor.

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

"The City of Midland is included as an additional insured, on a

claims occurred basis, on all policies except for Worker's Compensation. The Licensee and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

Licensors shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensors shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts 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).

2. **INDEMNITY** - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY

DRAFT

INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipeline system in the Licensors' rights of way. The Licensee will be required to pay any judgment with costs which may be obtained against the Licensor or any of its officers, agents, or employees including attorney's fees.

THE LICENSEE AGREES THAT LICENSEE WILL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE SYSTEM DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES,

PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINE SYSTEM IN THE LICENSOR'S RIGHTS OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the

Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of the governing body of the Licensor. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensor that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor.

4. **Independent Contractor** - It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the Licensor. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. Licensee shall be an independent contractor under this Agreement and shall assume all of the rights,

obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

5. **WAIVER OF ATTORNEY'S FEES - BY EXECUTING THIS AGREEMENT, LICENSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE LICENSOR, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE LICENSEE SPECIFICALLY AGREES THAT IF THE LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE LICENSEE AGREES**

TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. LICENSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE LICENSOR AND THE LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

6. **Governing Law & Venue** - All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be

deemed to have been performed in Midland County, Texas.

7. **RELEASE** - NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

8. **Sovereign Immunity** - By executing this Agreement the Licensor is not waiving its right of sovereign immunity. The Licensor is retaining its immunity from suit. The Licensor is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

9. **Third Party Beneficiary** - The Licensor's approval of this Agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

10. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as

follows: Director of Development Services, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensee as follows: BLUESTEM ENERGY ASSETS, LLC, a DELAWARE COMPANY, JAMES C. GRESHAM, JR. CPL, VICE PRESIDENT LAND, 421 WEST 3rd STREET, SUITE 700, MIDLAND, TEXAS 76102.

11. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-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 Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager

within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire Agreement are reasonable.

12. **Consideration** - The terms of this Agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

LICENSOR:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT AND
COMPLETENESS:

Gary Saunders, Transportation Manager

LICENSEE:

BLUESTEM ENERGY ASSETS, LLC,
a DELAWARE COMPANY

By: _____

Title: _____

THE STATE OF _____ §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared an officer of BLUESTEM ENERGY ASSETS, LLC, a DELAWARE COMPANY, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas

TRANSPORTATION
DIVISION

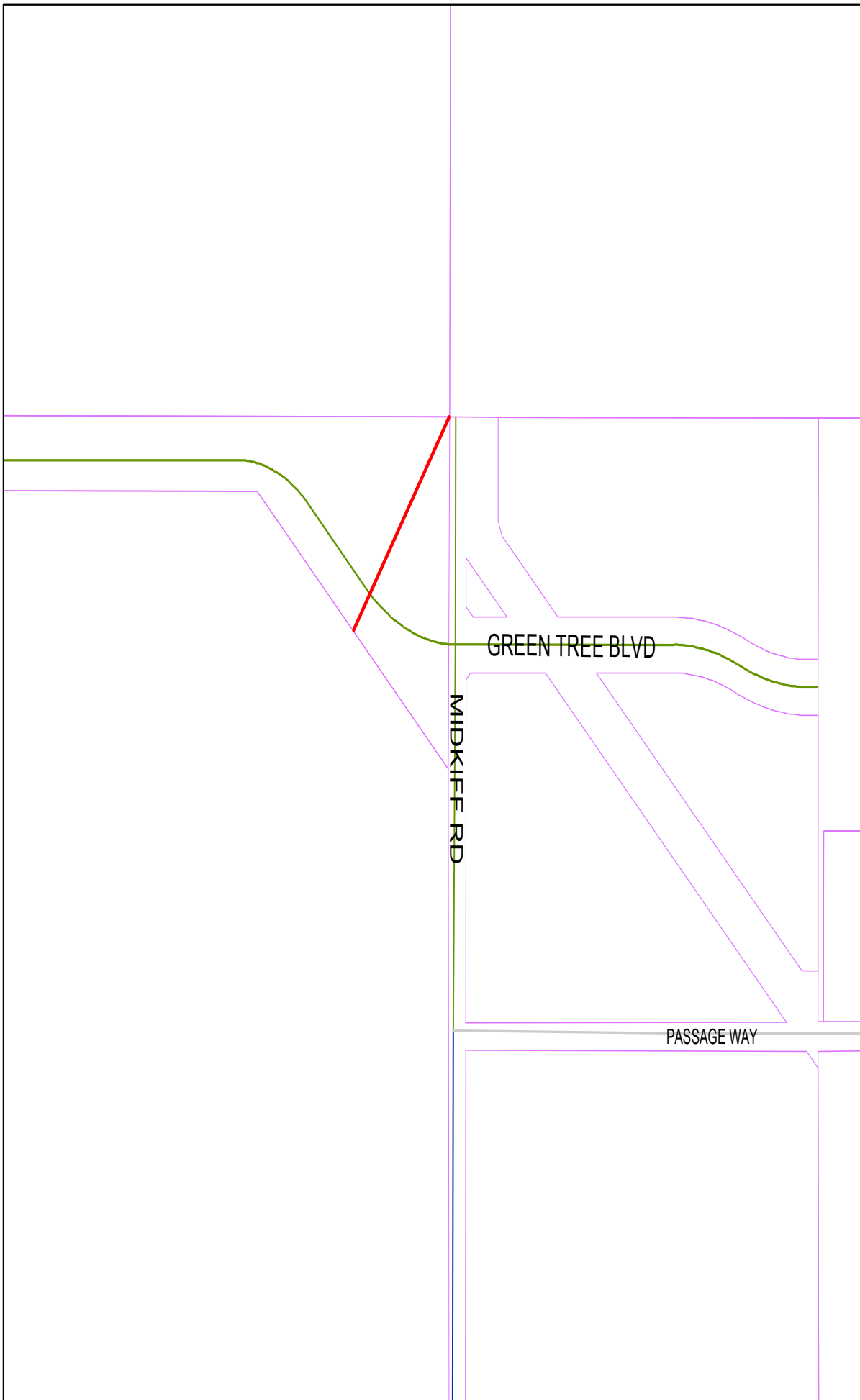
Bluestem Energy
Holdings, LLC

Proposed pipeline
easement



Map by TC 1/17/12

10.24





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 24, 2012
TO: CITY COUNCIL/CITY MANAGER
FROM: Cameron Walker, Planning Division Manager
SUBJECT: Z-11-036, Los Conchos Zone Change

Purpose:

Consider an ordinance on second reading on a request by Los Conchos Ventures for a zone change from AE, Agriculture Estate District and PD, Planned Districts for Housing Developments to 1F-2, One-Family District; PD, Planned Districts for Housing Developments; TH, Townhouse Districts; O-1, Office District; and LR-2, Local Retail District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this zone change application.

Discussion:

The City Council voted 6-0 on January 10, 2012 to approve this application, with amendments. These amendments include increasing the front yard setback on the retail and office districts from 20 to 40 feet, and a requirement to construct a screening fence between Tract 7 and Oriole Drive. The attached ordinance has been amended accordingly, and is now reading for second and final reading consideration. The staff has also received an amended preliminary plat with the changes in street alignment proposed by the applicant. Staff continues to recommend approval of this request.

Attachments:

Location Map
Amended Ordinance



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 10, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Z-11-036, Los Conchos Ventures Zone Change

Purpose:

Continue consideration of an ordinance on a request by Los Conchos Ventures, LLC for a zone change from AE, Agriculture Estate District and PD, Planned Districts for Housing Developments to 1F-2, One-Family Dwelling District; PD, Planned District for a Housing District, TH, Townhouse Districts, O-1, Office District and LR-2, Local Retail District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this request.

Discussion:

Los Conchos Ventures wishes to develop a vacant quarter-section of land bounded on the west by Holiday Hill Road, on the north by Mockingbird Lane and on the east by Oriole Drive. This land was annexed in 1980, at which time it was zoned AE District. At that time it was standard practice to adopt this zoning classification because this was the most restrictive district in the Zoning Code. It was considered a "holding zone" until the land was ripe for development and a plan was proposed. (Today, the FD, Future Development District is used, since no building permits can be issued until a rezoning occurs.) The southern portion of this land was rezoned in 2007 for conventional residential development, based upon a preliminary plat. However, no final plat was submitted.

The applicant is proposing five different zoning categories. Three are for single-family development, one is for office development and one is for retail development. This zoning plan is a virtual replica of the Model Neighborhood Plan contained in the Comprehensive Plan. A 12-acre retail tract is proposed at the intersection of Mockingbird Lane and Holiday Hill Road, which are both arterial streets. The office zoning is proposed along the south side of Mockingbird Lane, which again meets the recommended location for office zoning. The residential lots on the north side of Mockingbird Lane are oriented with the rear of the lots facing this arterial street. The single-family zoning will be subject to the 1F-2 District regulations, including those lots adjacent to Holiday Hill Road that must be zoned Planned District for a Housing Development. This is to allow the adoption of a site plan showing the fencing and landscaping required to screen the alley adjacent to Holiday Hill Road. This site plan is attached as Exhibit A. There are also three tracts proposed for townhouse development. The maximum potential density, based on the proposed zoning districts, is approximately 4.5 dwelling units per acre, well below the maximum recommendation of the Comprehensive Plan of 5 to 5.4 dwelling units per acre. Since the associated plat contains common areas, the City Council must approve the plat as well, and it is also on the December 13th agenda.

Several persons spoke in opposition to this request during the Planning and Zoning Commission meeting. Staff has also received several opposition letters, and the percent of written opposition stands at 46.44percent at this writing. Therefore, six affirmative Council votes are needed for approval. The staff received a letter from the Greathouse Home Owners Association supporting this proposal. The Planning and Zoning Commission voted 6-1 to approve this request. Staff concurs with this recommendation

Attachments:

November 14, 2011 P&Z Staff Report
Proposed Ordinance and Exhibit A

**Planning and Zoning Commission
Minutes
November 14, 2011**

Z-11-036 - Hold a public hearing and consider a request by **Los Conchos Ventures, LLC**, for a *zone change* from AE, Agriculture Estate District to LR-2, Local Retail District on a 19.71-acre tract of land (Tract 1); to O-1, Office District on a 12.97-acre tract of land (Tract 2); to TH, Townhouse Dwelling District on a 10.64-acre tract of land (Tract 7); and to 1F-2, One-Family Dwelling District on a 19.73-acre tract of land (Tract 8); and from Planned Districts for Housing Developments to PD, Planned District for Housing Development on a 26.33-acre tract of land (Tract 3); to 1F-2, One-Family Dwelling District on a 60.84-acre tract of land (Tract 4); to TH, Townhouse Dwelling District on a 7.93-acre tract of land (Tract 5); to TH, Townhouse Dwelling District on a 6.33-acre tract of land (Tract 6) all out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the south side of Mockingbird Lane, between Oriole Drive and Holiday Hill Road.)

Mr. West with Parkhill, Smith and Cooper, representing the applicant, Los Conchos Ventures, LLC, presented an overview of the request for several zone changes on various tracts of land and outlining the history of the land which had been included in the 1980 annexation, the largest ever done by the City. He said the proposed zone changes would include townhomes, single family homes, office, retail and Planned District to the areas that is basically now AE (Agricultural) zoning. With the use of a Power Point presentation, he demonstrated the exact areas for the zone changes. Mr. West answered questions from the Commissioners.

Mr. Compton stated that this is a 164-acre tract of land, which was divided into eight tracts for consideration because of overlapping zoning uses.

Chairman Carney opened the public hearing.

Larry Adams, 4508 Meadowlark Lane, expressed concern over environmental issues with regard to the location of a tank battery in the area and asked that this be reviewed. He also expressed opposition to the location of retail or office buildings.

Mr. Compton responded that the four oil well sites are located in common areas and no applications to drill have been received.

Georgia Corwin, 4516 Robin Lane, spoke in opposition to the zone changes, stating that adequate notification was not given to the homeowners. She also spoke regarding the increase in traffic in her area.

Tim McNealy, 4515 Meadowlark Lane, expressed opposition to the zone changes and suggested that the City of Midland Master Plan 2025 should be used as a guide.

Alan Bennett, 5001 Pimlico Dr., stated that he did not want to back of his house looking into an office building, that he has animals to think about and doesn't want retail in that area.

Heath Hardwick, 5109 King Richards Row, president of the Greenhill Terrace Pool Association, stated that the pool area has always been peaceful and quiet and does not want that destroyed by additional traffic that would result from the zone change. He said there are 50 families who are members.

Joyce McKelvey, 4511 Meadowlark Lane, stated that she lives on four acres and has seven horses and wondered what will happen to her horses should neighbors complain about them being there. She expressed concern over riding her horses on streets that have an increase in traffic.

She was told by the Planning staff that she is grandfathered in.

Joan Cox, 4607 Tattenham, expressed opposition to retail in the area.

John Sullivan, 4707 Tattenham, stated that alley access would be needed since Mockingbird is his alley at the present, that he has one horse stall and that this is a grave issue.

Stacey Humphrey, 4611 Tattenham, asked if the school is big enough to handle additional children that will move in should additional houses be built.

Mark Smith, 4420 Tanforan Avenue, stated that he is a Scoutmaster and members of his Scout Troop were present. Mr. Smith stated that he would like to see more of a transition, no retail, and the pool, livestock and neighborhood be protected.

Richard Pharr, 4613 Tattenham, asked that Mockingbird Lane be reconsidered as a major arterial street.

Greg Boler, 4510 Meadowlark Lane, expressed concern over traffic issues that would be generated by the development.

Craig Smith, 4701 Tattenham, stated that office space on Mockingbird was not appropriate and asked for reconsideration.

There being no one else to speak in opposition, Chairman Carney asked for those wishing to speak in favor of the request.

Rooney King Mestes, 5004 Apple Creek Road, representing the Greathouse Homeowners Association, voiced support of the development and asked that the Commission plan accordingly regarding the increase in traffic.

Walter Pate of Pate and Associates Architects, 4500 W. Illinois, expressed a sincere interest in what happens in Midland, stating that this would be a low density development. He stated that he was impressed with the development plan and in favor of the zone changes.

Rodney Roberts, 4515 Bent Tree Trail, an architect, spoke in favor of the development.

Scott Bowden, 4901 Weidner Strip, stated that he was in the Real Estate business and felt that property values would be enhanced by the development.

Mr. West offered clarification of questions asked during the opposition's presentations and answered questions from the Commissioners concerning the types of businesses that the zones would allow.

There being no one else wishing to speak in favor or in opposition to the item, closed the public hearing.

Discussion followed regarding the possible drilling areas to which Mr. West replied that in talking with the drillers, they had verbally agreed to change the four locations to the common areas.

A motion for approval was made by Commissioner Ferguson; seconded by Commissioner Wolf. The motion carried by the following vote: AYE: Wolf, Lanning, Gatten, Ferguson, Wilton and Watkins. NAY: Carney. ABSTAIN: None. ABSENT: York and Woodruff

PLANNING AND ZONING COMMISSION

November 14, 2011

CASE: Z-11-036.

REQUEST: Consider a request for a zone change from AE, Agriculture Estate District and PD, Planned Districts for Housing Developments to PD, Planned District for a Housing Development, 1F-2, One-Family Dwelling District, TH, Townhouse District, O-1, Office District and LR-2, Local Retail District.

APPLICANT/OWNER: Los Conchos Ventures, LLC.

REPRESENTATIVE: Parkhill, Smith and Cooper.

LEGAL DESCRIPTION: A 164-acre tract out of Section 6, Block "X", H. P. Hilliard Survey, Midland County, Texas.

LOCATION: South side of Mockingbird Lane, between Holiday Hill Road and Oriole Drive.

ASSOCIATED CASE: P-11-027, Greathouse Addition, Section 7.

DETAILS OF REQUEST:

1. Staff has received a development proposal on this 164-acre tract located in northwest Midland that consists of a proposed preliminary plat and this zone change application. The land is currently zoned AE District and three separate Planned Districts for Housing Developments that are based on a preliminary plat approved in 2008. However, while the platting process on the earlier plan stalled, the zoning was approved. This revised development plan adds additional land that was zoned AE District upon annexation in 1980. The development plan includes mostly single-family development, but it also includes proposals for an O-1 District and an LR-2 District. The associated preliminary plat, Greathouse Addition, Section 7 is also scheduled on the November 14th meeting. For logistical purposes, the staff has divided this large tract into eight different parcels, but there are only five different zoning districts. This was necessary because of the overlapping of districts due to the current zoning pattern.

SURROUNDING ZONING AND LAND USE:

2. This property is bounded on the west by Holiday Hill Road and on the north by Mockingbird Lane, both of which are arterial streets. The east side is bounded by Oriole Drive, a collector street. The land to the west is outside the City limit. The area to the north is the Green Hill Terrace Subdivision which is zoned AE District. The land to the east is the Melody Acres neighborhood, which is also zoned AE District. The land to the south is developed with the Greathouse neighborhood, which is zoned for single-family development on lots similar in size to this proposal.

ANALYSIS:

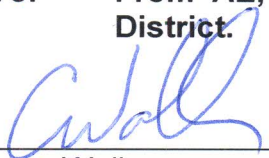
3. Our analysis will separate the single-family districts from the other districts. The largest area is planned to be zoned 1F-2 District (Tracts 4 and 8, 80.57 acres). This district allows single-family detached homes on lots at least 7,000 square feet in area, and can yield a maximum density of around 3.75 dwelling units per acre. Also proposed is a Planned District for a Housing Development (Tract 3, 26.33 acres). This planned district will also be subject to the 1F-2 District regulations. However, a planned district is required due to the lotting pattern on the associated plat. An alley is planned adjacent and parallel to Holiday Hill Road, a pattern prohibited by the Subdivision Code unless a common area, developed with a screening fence and landscaping, is placed between the street and the alley. Such a plan is shown on the associated plat. The attached Exhibit A illustrates the screening fence design. It would consist of a six-foot tall solid wood fence with seven-foot tall brick pilasters placed on 12- to 18-foot centers. The area outside the fence will be landscaped with grass and trees planted on 50-foot centers. The staff is satisfied that these elements will provide an effective and attractive visual screen of the neighborhood. The applicant is also proposing three tracts to be zoned TH District (Tracts 5, 6 and 7, 24.9 acres). These districts surround three of the common areas. The TH District provides for attached single-family homes, and can be developed at a maximum density of eight dwelling units per acre. The combined maximum density of all residential districts is approximately 4.5 units per acre, well below the 5.0 to 5.5 units per acre recommended by the Comprehensive Plan. The preliminary plat has 354 single-family lots, which results in a density of only 2.64 units per acre.
4. The remaining zoning districts include an O-1 District (Tract 2, 12.97 acres) and an LR-2 District (Tract 1, 19.71 acres). These acreages are measured to the center of the abutting roadways, therefore; the developable tracts are significantly smaller. The O-1 District will contain eight acres. The land on the north side of Mockingbird Lane is developed with single-family homes, with the rear of the lots oriented toward Mockingbird Lane. This condition significantly reduces the marketability of residential lots on the applicants land. This condition

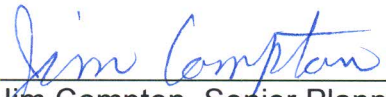
acres. The size and location of both districts fit within the Comprehensive Plan guidelines for these respective districts. Therefore, we see no objection to the proposed office and retail districts.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from AE, Agriculture Estate District and PD, Planned Districts for a Housing Developments to PD, Planned District for a Housing Development, 1F-2, One-Family Development District, TH, Townhouse District, O1, Office District and LR-2, Local Retail District, as detailed below:

- Tract 1: From AE, Agriculture Estate District to LR-2, Local Retail District;
- Tract 2: From AE, Agriculture Estate District to O-1, Office District;
- Tract 3: From Planned Districts for Housing Developments to Amended Planned District for a Housing Development.
- Tract 4: From Planned District for a Housing Development 1F-2, One-Family Dwelling District;
- Tract 5: From Planned Districts for Housing Developments to TH, Townhouse District;
- Tract 6: From Planned Districts for Housing Developments to TH, Townhouse District;
- Tract 7: From AE, Agriculture Estate District to TH, Townhouse District;
- Tract 8: From AE, Agriculture Estate District to 1F-2, One-Family Dwelling District.


Cameron Walker,
Planning Division Manager
Department of Development Services


Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A, Fence Site Plan

Case Number: Z-11-036

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Los Conchos Ventures, LLC (432) 413-9888
Applicant Name **Contact #s**
P.O. Box 52587, Midland, Texas 79710
Address **Zip Code**

Same
Property Owner Name **Contact #s**

Address **Zip Code**

Parkhill, Smith & Cooper, Inc. (432) 697-1447
Representative Name **Contact #s**
1700 W. Wall, Ste 100, Midland, Texas 79701
Address **Zip Code**

Street address and Legal Description of property (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal). Describe by tracts if more than one zoning district is requested: See attached.

PRESENT ZONE: PD-HD & AE REQUESTED ZONE: Varies (see exhibit)
(List by tracts if more than one district is requested)

Reason for Zone Change or PD Amendment: To develop the property into a residential subdivision with retail, office and multi-family tracts.

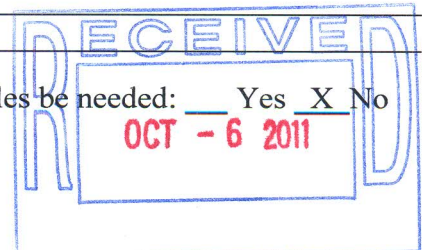
Present Use of Property: Pasture

Proposed Use of Property: Mixed use subdivision

How will zone change affect the public health, safety and welfare? It will have no effect.

Describe how conditions affecting the property have changed since present zoning designation:
Property is ready for development

Will a Specific Use Permit with Term for alcoholic beverages sales be needed: Yes X No



APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies of the PD site plan: N/A
Site Plan on a CD in .pdf and .jpg format: N/A

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Eric L. West, P.E. who, being by me duly sworn, upon oath says: That (s)he is authorized by Los Conchos Ventures, LLC the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

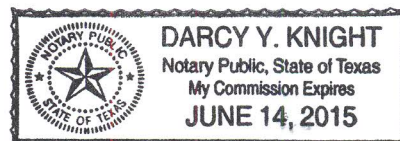
Eric L. West

Authorized Agent (signature)

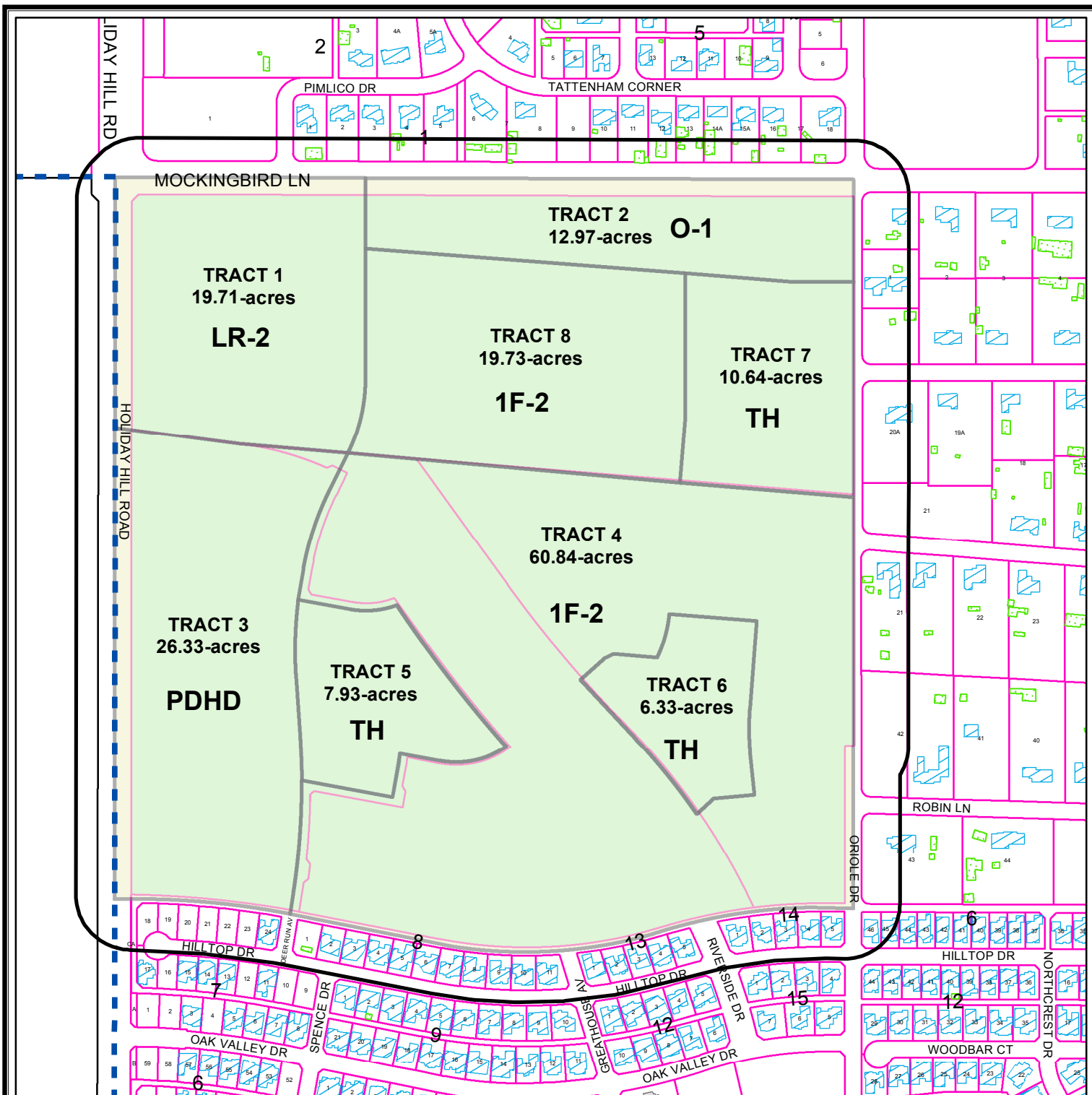
Subscribed and sworn to before me, this 5^h day of October, 20 11, to certify which witness my hand and seal of office.

Darcy Y. Knight
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>JC</u>	Date: <u>10-6-11</u>
Assigned: <u>JC</u>	
For: <u>P&Z</u>	On: <u>10-17-11</u>



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

Consider a request for a zone change from AE, Agriculture Estate District to LR-2, Local Retail District on a 19.71-acre tract of land (Tract 1); to O-1, Office District on a 12.97-acre tract of land (Tract 2); to TH, Townhouse Dwelling District on a 10.64-acre tract of land (Tract 7); and to 1F-2, One-Family Dwelling District on a 19.73-acre tract of land (Tract 8); and from Planned Districts for Housing Developments to PD, Planned District for Housing Development on a 26.33-acre tract of land (Tract 3); to 1F-2, One-Family Dwelling District on a 60.84-acre tract of land (Tract 4); to TH, Townhouse Dwelling District on a 7.93-acre tract of land (Tract 5); to TH, Townhouse Dwelling District on a 6.33-acre tract of land (Tract 6) all out of Section 6, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas.

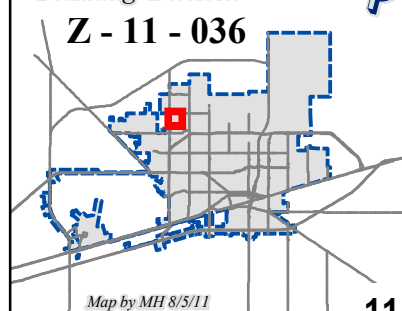
LEGEND

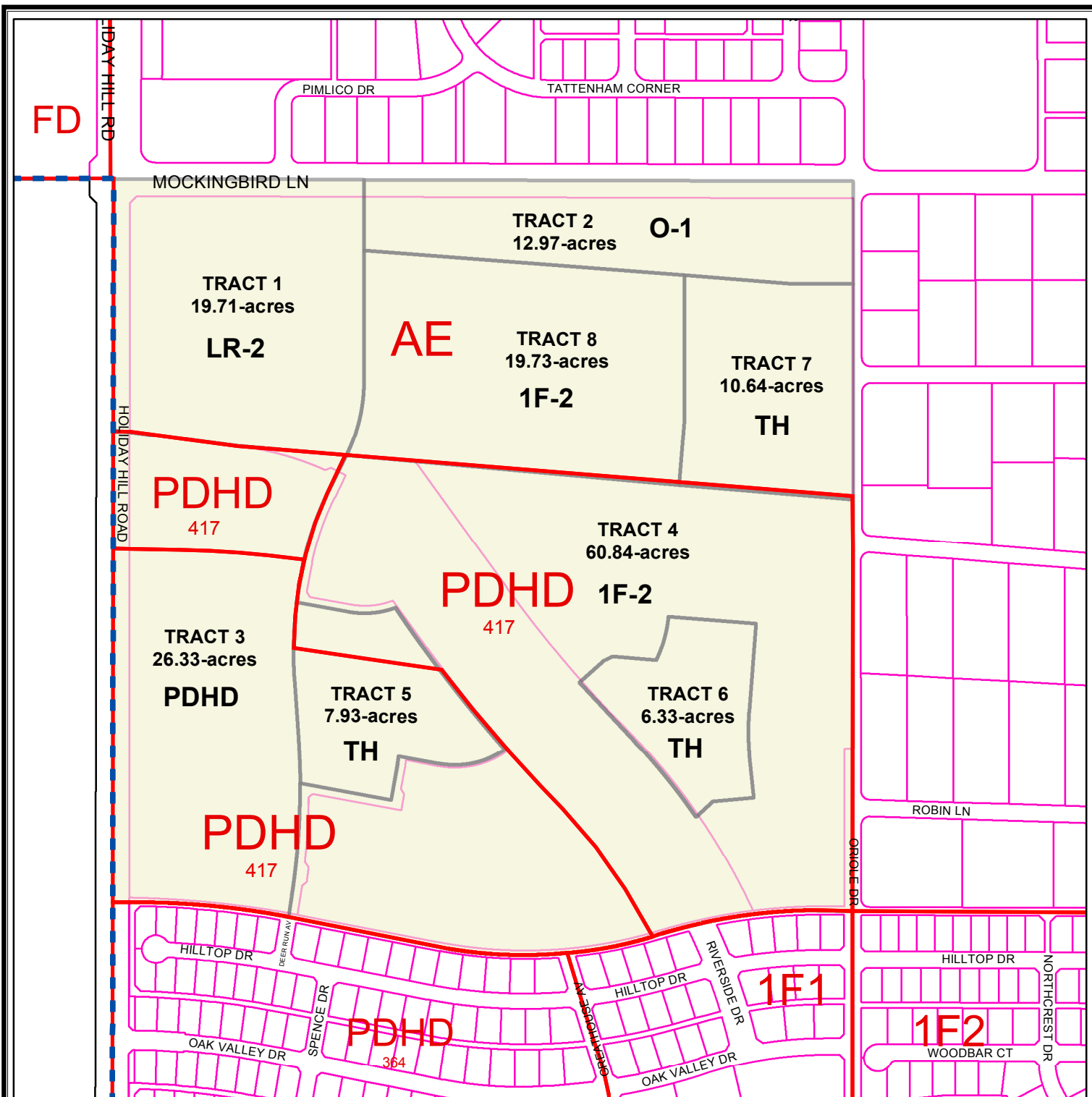
- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS

Scale: 1" = 500'

City of Midland, Texas
Planning Division

Z - 11 - 036





ZONING MAP

Consider a request for a zone change from AE, Agriculture Estate District to LR-2, Local Retail District on a 19.71-acre tract of land (Tract 1); to O-1, Office District on a 12.97-acre tract of land (Tract 2); to TH, Townhouse Dwelling District on a 10.64-acre tract of land (Tract 7); and to 1F-2, One-Family Dwelling District on a 19.73-acre tract of land (Tract 8); and from Planned Districts for Housing Developments to PD, Planned District for Housing Development on a 26.33-acre tract of land (Tract 3); to 1F-2, One-Family Dwelling District on a 60.84-acre tract of land (Tract 4); to TH, Townhouse Dwelling District on a 7.93-acre tract of land (Tract 5); to TH, Townhouse Dwelling District on a 6.33-acre tract of land (Tract 6) all out of Section 6, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas.

Z - 11 - 036

LEGEND

Scale: 1" = 500'



ZONING



CITY LIMITS



CITY PARCELS



COUNTY PARCELS

ZONING DISTRICTS:

FD FUTURE DEVELOPMENT
PD PLANNED DISTRICT
AE AGRICULTURE ESTATE
CE COUNTRY ESTATE
IF1, IF2, IF3 ONE-FAMILY DWELLING
MH MOBILE HOME DWELLING
TH TOWNHOUSE DWELLING
2F TWO-FAMILY DWELLING
MF1, MF2 MULTIPLE FAMILY DWELLING

BP BUSINESS PARK
P PARKING
01, 02 OFFICE
NS NEIGHBORHOOD SERVICE
LR1, LR2, LR3 LOCAL RETAIL
C1, C2, C3 COMMERCIAL
IP, IP1, IP2, IP3 INDUSTRIAL PARK
LI LIGHT INDUSTRY
HI HEAVY INDUSTRY



ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 19.71-ACRE TRACT OF LAND ("TRACT 1") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 12.97-ACRE TRACT OF LAND ("TRACT 2") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN O-1, OFFICE DISTRICT; BY PERMITTING A 26.33-ACRE TRACT OF LAND ("TRACT 3") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 60.84-ACRE TRACT OF LAND ("TRACT 4") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING A 7.93-ACRE TRACT OF LAND ("TRACT 5") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 6.33-ACRE TRACT OF LAND ("TRACT 6") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 10.64-ACRE TRACT OF LAND ("TRACT 7") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 19.73-ACRE TRACT OF LAND ("TRACT 8") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; ALL OF SAID TRACTS BEING OUT OF SECTION 6, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; ALL OF SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED SOUTH OF MOCKINGBIRD LANE, BETWEEN HOLIDAY HILL ROAD AND ORIOLE DRIVE; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of

the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an LR-2, Local Retail District, an O-1, Office District, an Amended Planned District for a Housing Development, a Planned District for a Housing Development, two 1F-2, One-Family Dwelling Districts, and two TH, Townhouse Districts, as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned AE, Agriculture Estate District, and it shall be used as an LR-2, Local Retail District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 19.71-acre tract of land ("Tract 1"), being out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein.

Special Conditions and Restrictions:

1. That a 40-foot building setback shall be observed from the north property line.

SECTION TWO. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned AE, Agriculture Estate District, and it shall be used as an O-1, Office District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 12.97-acre tract of land ("Tract 2"), being out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "B", which is attached hereto and incorporated herein.

Special Conditions and Restrictions:

1. That a 40-foot building setback shall be observed from the north property line.

SECTION THREE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development, and it shall be used as an Amended Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 26.33-acre tract of land ("Tract 3"), being out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "C", which is attached hereto and incorporated herein.

Special Conditions and Restrictions:

1. That this property shall conform to the regulations of the 1F-2, One-Family Dwelling District.
2. That no residence shall be constructed adjacent to Holiday Hill Road and no building permit or certificate of occupancy shall be issued for such a residence until a screening fence, conforming to the conditions shown on Exhibit "I", together with the landscaping indicated on Exhibit "I", is constructed within a common area to be located between lot lines and Holiday Hill Road. Exhibit "I" is attached hereto and incorporated herein for all purposes.

SECTION FOUR. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development, and it shall be used as a 1F-2, One-Family Dwelling District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 60.84-acre tract of land ("Tract 4"), being out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically

described by metes and bounds in Exhibit “D”, which is attached hereto and incorporated herein.

SECTION FIVE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development, and it shall be used as a TH, Townhouse District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 7.93-acre tract of land (“Tract 5”), being out of Section 6, Block “X”, H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “E”, which is attached hereto and incorporated herein.

SECTION SIX. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development, and it shall be used as a TH, Townhouse District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 6.33-acre tract of land (“Tract 6”), being out of Section 6, Block “X”, H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “F”, which is attached hereto and incorporated herein.

SECTION SEVEN. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned AE, Agriculture Estate District, and it shall be used as a PD, Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 10.64-acre tract of land (“Tract 7”), being out of Section 6, Block “X”, H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “G”, which is attached hereto and

incorporated herein.

Special Conditions and Restrictions:

1. That this property shall conform to the regulations of the TH, Townhouse District, except as otherwise stated below.
2. That no residence shall be constructed adjacent to Holiday Hill Road and no building permit or certificate of occupancy shall be issued for such a residence until a screening fence, conforming to the conditions shown on Exhibit "I", together with the landscaping indicated on Exhibit "I", is constructed within a common area to be located between lot lines and the Oriole Drive right-of-way.

SECTION EIGHT. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned AE, Agriculture Estate District, and it shall be used as a 1F-2, One-Family Dwelling District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 19.73-acre tract of land ("Tract 8"), being out of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "H", which is attached hereto and incorporated herein.

SECTION NINE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION TEN. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION ELEVEN. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section,

subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION TWELVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION THIRTEEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**TRACT 1: LR-2 ZONING
GREATHOUSE ADDITION, SECTION 7**

**LEGAL DESCRIPTION FOR A 19.71 ACRE TRACT
LOCATED IN THE WEST HALF OF SECTION 6,
BLOCK X, H. P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS**

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,710,430.71' and E= 1,728,338.49') a 5/8" iron rod with plastic cap marked "PLS 1974" found at the Northwest corner of said Section 6 and this tract;

THENCE N75°40'44"E with the North line of said Section 6 and this tract, a distance of 902.91 feet to the Northwest corner of Tract 2 being a 12.97 Acre Tract described this day and the Northeast corner of this tract;

THENCE S14°27'26"E with the centerline of a proposed street, a distance of 724.28 feet to a point of curvature;

THENCE around a curve to the right in a Southerly direction, with a radius of 603.58 feet, delta angle of 26°24'42", an arc length of 278.23 feet, and a chord distance of 275.78 feet, which bears S1°15'02"E to the Northeast corner of Tract 3 being a 26.33 Acre Tract described this day and the Southeast corner of this tract;

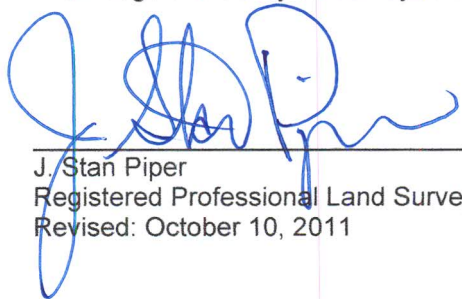
THENCE S80°09'15"W with a North line of said Tract 3, a distance of 393.93 feet to an exterior corner of this tract;

THENCE S83°04'57"W with a North line of said Tract 3, a distance of 451.67 feet to the Northwest corner of said Tract 3 and the Southwest corner of this tract;

THENCE N14°25'28"W with a West line of said Section 6 and this tract, a distance of 903.97 feet to the Place of Beginning. Tract contains 858,446 square feet or 19.71 Acres

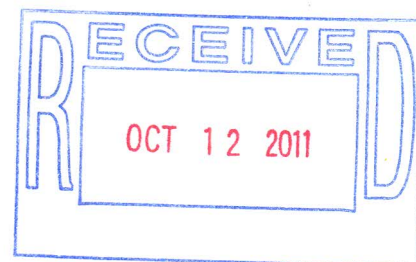
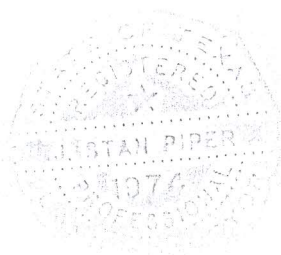
Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combine grid factor of 0.9999173, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. 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 August 26, 2011.



J. Stan Piper
Registered Professional Land Surveyor #1974
Revised: October 10, 2011

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



PIPER SURVEYING BOX 60432; MIDLAND, TX 79711; (432) 550-7810

**TRACT 2: O-1 ZONING
GREATHOUSE ADDITION, SECTION 7**

**LEGAL DESCRIPTION FOR A 12.97 ACRE TRACT
LOCATED IN THE WEST HALF OF SECTION 6,
BLOCK X, H. P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS**

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,710,654.06' and E= 1,729,213.35') the Northeast corner of Tract 1 being a 19.71 Acre Tract described this day and the Northwest corner of this tract, from whence a 5/8" iron rod with plastic cap marked "PLS 1974" found at the Northwest corner of said Section 6 bears S75°40'44"W, a distance of 902.91 feet;

THENCE N75°40'44"E with the North line of said Section 6 and this tract, a distance of 1758.23 feet to a 3/8" spike with 2" aluminum washer marked "PLS 1974" found at the Northeast corner of the West Half of said Section 6 and this tract, from whence the Northeast corner of said Section 6 bears N75°40'44"E, a distance of 2661.13 feet;

THENCE S14°28'01"E with the centerline of Oriole Drive and East line of said West Half of Section 6, a distance of 370.50 feet to the Northeast corner of Tract 7 being a 10.64 Acre Tract described this day and the Southeast corner of this tract;

THENCE S75°31'56"W with the North line of said Tract 7, a distance of 215.37 feet to an exterior corner of this tract;

THENCE S80°00'26"W with the North line of said Tract 7, a distance of 362.72 feet to an interior corner of this tract;

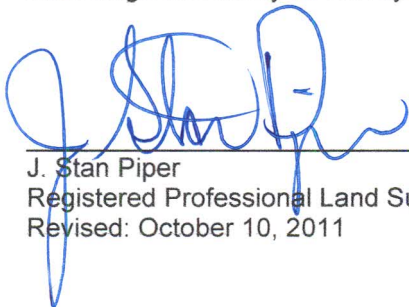
THENCE N78°14'52"W with the North line of Tract 8 being a 19.73 Acre Tract described this day and said Tract 7, a distance of 81.20 feet to exterior corner of this tract;

THENCE N80°00'43"W with the North line of said Tract 8, a distance of 1103.54 feet to the Northwest corner of said Tract 5 and the Southwest corner this tract;

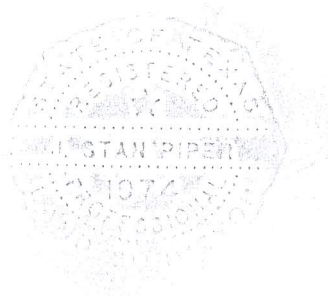
THENCE N14°27'32"W with the East line of said Tract 1, a distance of 256.65 feet to the Place of Beginning. Tract contains 565,029 square feet or 12.97 Acres

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combine grid factor of 0.9999173, 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.

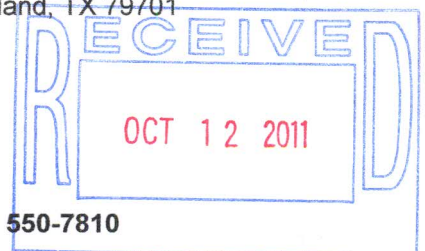
I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground on various dates to August 26, 2011.



J. Stan Piper
Registered Professional Land Surveyor #1974
Revised: October 10, 2011



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



PIPER SURVEYING BOX 60432; MIDLAND, TX 79711; (432) 550-7810

**TRACT 3: PDHD ZONING
GREATHOUSE ADDITION, SECTION 7**

**LEGAL DESCRIPTION FOR A 26.33 ACRE TRACT
LOCATED IN THE WEST HALF OF SECTION 6,
BLOCK X, H. P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS**

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,709,555.24' and E= 1,728,563.67') the Southwest corner of Tract 1 being a 19.71 Acre Tract described this day and the Northwest corner of this tract, from whence a 5/8" iron rod with plastic cap marked "PLS 1974" found at the Northwest corner of said Section 6 bears N14°25'28"W, a distance of 903.97 feet;

THENCE N83°04'57"E with the South line of said Tract 1, a distance of 451.67 feet to an interior corner of this tract;

THENCE N80°09'15"E with the South line of said Tract 1, a distance of 393.93 feet to the Southeast corner of said Tract 1 and the Northeast corner of this tract;

THENCE S11°59'30"W with the centerline of a proposed street and West line of Tract 4 being a 60.84 Acre Tract described this day, a distance of 155.46 feet to a point of curvature;

THENCE around a curve to the left in a Southerly direction, with a radius of 1000.00 feet, delta angle of 14°41'19", an arc length of 256.36 feet, and a chord distance of 255.66 feet, which bears S4°38'51"W to a point of tangency;

THENCE S02°41'48"E with the centerline of said proposed street and said West line of Tract 4, a distance of 32.94 feet to a point of curvature;

THENCE around a curve to the left in a Southerly direction, with a radius of 1459.18 feet, delta angle of 15°46'16", an arc length of 401.65 feet, and a chord distance of 400.38 feet, which bears S10°34'56"E to a point of tangency;

THENCE S18°28'04"E with the centerline of said proposed street, a distance of 217.75 feet to a point of curvature;

THENCE around a curve to the right in a Southerly direction, with a radius of 2470.00 feet, delta angle of 12°52'40", an arc length of 555.16 feet, and a chord distance of 553.99 feet, which bears S12°01'44"E to a point of tangency;

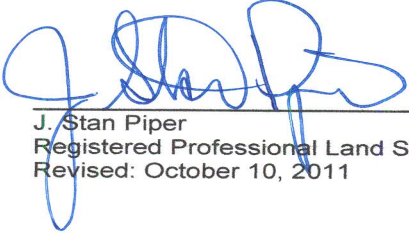
THENCE S5°35'24"E with the centerline of a proposed street, a distance of a distance of 80.88 feet to Southeast corner this tract;

THENCE around a curve to the left in a Westerly direction, with a radius of 3495.48 feet, delta angle of 10°26'46", an arc length of 637.30 feet, and a chord distance of 363.42 feet, which bears S80°32'55"W to the Southwest corner of this tract;

THENCE N14°25'28"W with the West line of said Section 6 and this tract, a distance of 1698.52 feet to the Place of Beginning. Tract contains 1,146,933 square feet or 26.33 Acres

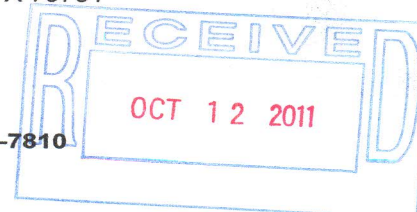
Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combine grid factor of 0.9999173, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. 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 August 26, 2011.


J. Stan Piper
Registered Professional Land Surveyor #1974
Revised: October 10, 2011

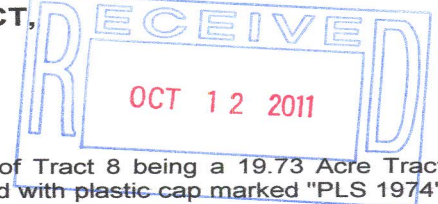
Prepared for:
Parkhill, Smith, and Cooper, Inc.
1700 W. Wall Street, Suite 100
Midland, TX 79701

PIPER SURVEYING BOX 60432; MIDLAND, TX 79711; (432) 550-7810



**TRACT 4: 1F-2 ZONING
GREATHOUSE ADDITION, SECTION 7**

**LEGAL DESCRIPTION FOR A 60.84 ACRE TRACT
LOCATED IN THE WEST HALF OF SECTION 6,
BLOCK X, H. P. HILLIARD SURVEY, BEING A 67.17 ACRE TRACT
SAVE AND EXCEPT A 6.33 ACRE TRACT,
MIDLAND COUNTY, TEXAS**



Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,709,677.00' and E= 1,729,400.19') the Southwest corner of Tract 8 being a 19.73 Acre Tract described this day and the Northwest corner of this tract, from whence a 5/8" iron rod with plastic cap marked "PLS 1974" found at the Northwest corner of said Section 6 bears S75°40'44"W, a distance of 840.48 feet and N14°25'28"W, a distance of 992.92 feet;

THENCE N80°09'15"E with the South line of said Tract 8, a distance of 1200.62 feet to an exterior corner of this tract;

THENCE S9°50'50"E with the centerline of said proposed street and said West line of Tract 7 being a 10.64 Acre Tract described this day, a distance of 10.00 feet to the Southwest corner of said Tract 7 and an interior corner of this tract;

THENCE N80°09'15"E with the South line of said Tract 7, a distance of 627.53 feet to an exterior corner of this tract from whence a 3/8" spike with 2" aluminum washer marked "PLS 1974" found at the Northeast corner of said West Half of Section 6 bears N14°28'01"W, a distance of 1145.54 feet;

THENCE S14°28'01"E with the East line of said West Half of Section 6 and this tract and centerline of Oriole Drive, a distance of 1482.21 feet to the Southeast corner of this tract;

THENCE S75°41'12"W with the centerline of a 30 foot wide utility easement and alley right-of-way as described in Volume 1057, Page 65, Deed Records of Midland County, Texas, a distance of 110.04 feet to point of curvature;

THENCE around a curve to the left in a Westerly direction, with a radius of 1975.00 feet, delta angle of 17°08'46", an arc length of 591.03 feet, and a chord distance of 588.83 feet, which bears S67°06'49"W to a point of curvature;

THENCE around a reverse curve to the right in a Southwesterly direction, with a radius of 1655.00 feet, delta angle of 28°00'00", an arc length of 808.79 feet, and a chord distance of 800.76 feet, which bears S72°32'26"W to a point of tangency;

THENCE S86°32'26"W with said centerline of said 30 foot wide utility easement and alley right-of-way, a distance of 500.00 feet to a point of curvature;

THENCE around a curve to the left in a Westerly direction, with a radius of 3495.48 feet, delta angle of 0°46'08", an arc length of 46.90 feet, and a chord distance of 46.90 feet, which bears S86°09'22"W to the Southeast corner of Tract 3 being a 26.33 Acre Tract described this day and the Southwest corner of this tract;

THENCE N5°35'24"W with the centerline of a proposed street and East line of said Tract 3, a distance of 80.88 feet to a point of curvature;

THENCE around a curve to the left in a Northerly direction, with a radius of 2470.00 feet, delta angle of 9°22'42", an arc length of 404.30 feet, and a chord distance of 403.85 feet, which bears N10°16'45"W to an exterior corner of this tract;

THENCE N86°02'58"E with the centerline of a proposed street and South line of Tract 5 being a 7.93 Acre Tract described this day, a distance of 331.94 feet to an interior corner of this tract;

THENCE N3°57'02"W with the centerline of a proposed street and East line of said Tract 5, a distance of 124.41 feet to a point of curvature;

THENCE around a curve to the left in a Northerly direction, with a radius of 300.00 feet, delta angle of 6°48'50", an arc length of 35.68 feet, and a chord distance of 35.66 feet, which bears N7°21'27"W to the interior corner of said Tract 5 and an exterior corner of this tract;

THENCE N86°02'58"E with the centerline of a proposed alley and a South line of said Tract 5, a distance of 148.62 feet to a point of curvature;

THENCE around a curve to the left in a Northeasterly direction, with a radius of 310.00 feet, delta angle of 45°56'52", an arc length of 248.60 feet, and a chord distance of 241.99 feet, which bears N63°04'32"E to the Southeast corner of said Tract 5 and an interior corner of this tract;

THENCE around a curve to the right in a Northwesterly direction, with a radius of 4875.28 feet, delta angle of 7°34'13", an arc length of 644.15 feet, and a chord distance of 643.68 feet, which bears N52°10'31"W to the Northeast corner of said Tract 5 and an interior corner of this tract;

THENCE around a curve to the right in a Westerly direction, with a radius of 300.00 feet, delta angle of 32°04'09", an arc length of 167.91 feet, and a chord distance of 165.73 feet, which bears S70°00'54"W to a point of tangency;

THENCE S86°02'58"W with the centerline of a proposed street and North line of said Tract 5, a distance of 193.89 feet to the Northwest corner of said Tract 6 and an exterior corner of this tract;

THENCE around a curve to the right in a Northerly direction, with a radius of 1459.18 feet, delta angle of $4^{\circ}38'22''$, an arc length of 118.16 feet, and a chord distance of 118.12 feet, which bears $N5^{\circ}00'59''W$ to a point of tangency;

THENCE $N2^{\circ}41'48''W$ with the centerline of a proposed street and East line of said Tract 4, a distance of 32.94 feet to a point of curvature;

THENCE around a curve to the right in a Northerly direction, with a radius of 1000.00 feet, delta angle of $14^{\circ}41'19''$, an arc length of 256.36 feet, and a chord distance of 255.66 feet, which bears $N4^{\circ}38'51''E$ to a point of tangency;

THENCE $N11^{\circ}59'30''E$ with the centerline of a proposed street and East line of said Tract 3, a distance of 155.08 feet to a point of curvature;

THENCE around a curve to the left in a Northerly direction, with a radius of 603.58 feet, delta angle of $26^{\circ}26'54''$, an arc length of 278.62 feet, and a chord distance of 276.15 feet, which bears $N1^{\circ}13'56''W$ to the Place of Beginning. Tract contains 2,925,930 square feet or 67.17 Acres.

Save and except Tract 6, being a 6.33 Acre Tract with boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,709,094.72' and E= 1,730,415.78') an intersection of two proposed alleys at the most Westerly corner of this tract, from whence a 5/8" iron rod with plastic cap marked "PLS 1974" found at the Northwest corner of said Section 6 bears $S75^{\circ}40'44''W$, a distance of 1679.01 feet and $N14^{\circ}25'28''W$, a distance of 1808.31 feet;

THENCE $N33^{\circ}13'27''E$ with the centerline of a proposed alley, a distance of 117.93 feet to an exterior corner of this tract;

THENCE $N53^{\circ}05'12''E$ with the centerline of a proposed alley, a distance of 35.57 feet to an exterior corner of this tract;

THENCE $N80^{\circ}09'15''E$ with the centerline of a proposed alley, a distance of 155.80 feet to an interior corner of this tract;

THENCE around a curve to the left in a Northerly direction, with a radius of 470.00 feet, delta angle of $19^{\circ}58'46''$, an arc length of 163.89 feet, and a chord distance of 163.06 feet, which bears $N1^{\circ}16'33''E$ to an exterior corner of this tract;

THENCE $N80^{\circ}09'16''E$ with the centerline of a proposed street, a distance of 316.61 feet to the Northeast corner of this tract;

THENCE $S9^{\circ}50'45''E$ with the centerline of a proposed street, a distance of 306.57 feet to point of curvature;

THENCE around a curve to the left in a Southerly direction, with a radius of 1000.00 feet, delta angle of $10^{\circ}15'24''$, an arc length of 179.01 feet, and a chord distance of 178.77 feet, which bears $S14^{\circ}58'27''E$ to a point of tangency;

THENCE $S20^{\circ}06'09''E$ with the centerline of a proposed street, a distance of 142.25 feet to the Southeast corner of this tract;

THENCE $S69^{\circ}53'51''W$ with the centerline of a proposed alley, a distance of 146.71 feet to an interior corner of this tract;

THENCE $S33^{\circ}13'27''W$ with the centerline of a proposed alley, a distance of 81.92 feet to the most Southerly corner of this tract;

THENCE around a curve to the left in a Northwesterly direction, with a radius of 2282.02 feet, delta angle of $8^{\circ}59'10''$, an arc length of 357.90 feet, and a chord distance of 357.53 feet, which bears $N53^{\circ}45'10''W$ to a point of tangency;

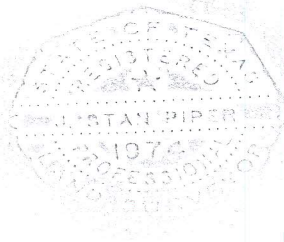
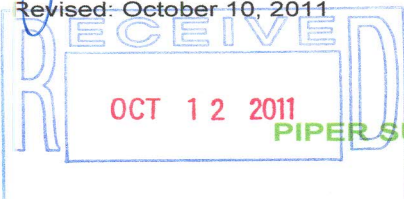
THENCE $N58^{\circ}14'45''W$ with the centerline of a proposed alley, a distance of 100.00 feet to a point of curvature;

THENCE around a curve to the left in a Northwesterly direction, with a radius of 4515.28 feet, delta angle of $2^{\circ}19'20''$, an arc length of 183.01 feet, and a chord distance of 183.00 feet, which bears $N57^{\circ}05'05''W$ to the Place of Beginning. Tract contains 275,758 square feet or 6.33 Acres. Net of Tract 5 contains 2,650,071 square feet or 60.84 Acres.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combine grid factor of 0.9999173, and a theta angle equal to $-0^{\circ}54'48.39''$ 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 August 26, 2011.

J. Stan Piper
Registered Professional Land Surveyor #1974
Revised: October 10, 2011



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

PIPER SURVEYING BOX 60432; MIDLAND, TX 79711; (432) 550-7810

**TRACT 5: TH ZONING
GREATHOUSE ADDITION, SECTION 7**

**LEGAL DESCRIPTION FOR A 7.93 ACRE TRACT
LOCATED IN THE WEST HALF OF SECTION 6,
BLOCK X, H. P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS**

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,709,119.52' and E= 1,729,359.05') the exterior corner of Tract 4 being a 60.84 Acre Tract described this day and the Northwest corner of this tract, from whence a 5/8" iron rod with plastic cap marked "PLS 1974" found at the Northwest corner of said Section 6 bears S75°40'44"W, a distance of 661.77 feet and N14°25'28"W, a distance of 1522.89 feet;

THENCE N86°02'58"E with the centerline of a proposed street, a distance of 193.89 feet to a point of curvature;

THENCE around a curve to the left in an Easterly direction, with a radius of 300.00 feet, delta angle of 32°04'09", an arc length of 167.91 feet, and a chord distance of 165.73 feet, which bears N70°00'54"E to an interior points of said Tract 4 and the Northeast corner of this tract;

THENCE around a curve to the left in a Southeasterly direction, with a radius of 4875.28 feet, delta angle of 7°34'13", an arc length of 644.15 feet, and a chord distance of 643.68 feet, which bears S52°10'31"E to an interior corner of said Tract 4 and the most Easterly corner of this tract;

THENCE around a curve to the right in a Westerly direction, with a radius of 310.00 feet, delta angle of 45°56'52", an arc length of 248.60 feet, and a chord distance of 241.99 feet, which bears S63°04'32"W to a point of tangency;

THENCE S86°02'58"W with the centerline of a proposed alley , a distance of 148.62 feet to an exterior point of said Tract 4 and an interior corner of this tract;

THENCE around a curve to the right in a Southerly direction, with a radius of 300.00 feet, delta angle of 6°48'50", an arc length of 35.68 feet, and a chord distance of 35.66 feet, which bears S7°21'27"E to a point of tangency;

THENCE S3°57'02"W with the centerline of a proposed street, a distance of 124.41 feet to an interior corner of said Tract 4 and an exterior corner of this tract;

THENCE S86°02'58"W with the centerline of a proposed street, a distance of 331.94 feet to an exterior corner of said Tract 4 and the Southwest corner this tract;

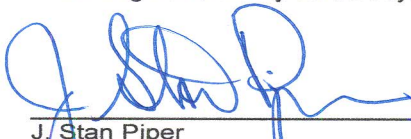
THENCE around a curve to the left in a Northerly direction, with a radius of 2470.00 feet, delta angle of 3°29'58", an arc length of 150.86 feet, and a chord distance of 150.83 feet, which bears N16°43'05"W to a point of tangency;

THENCE N18°28'04"W with the centerline of a proposed street and East line of Tract 3 being a 26.33 Acre Tract described this day, a distance of 217.75 feet to a point of tangency;

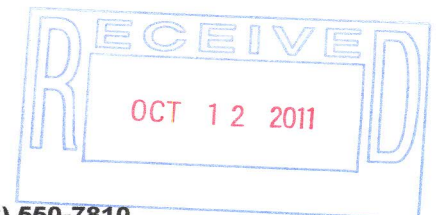
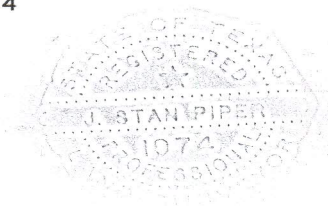
THENCE around a curve to the right in a Northerly direction, with a radius of 1459.18 feet, delta angle of 11°07'53", an arc length of 283.49 feet, and a chord distance of 283.05 feet, which bears N12°54'07"W to the Place of Beginning. Tract contains 345,396 square feet or 7.93 Acres

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combine grid factor of 0.9999173, 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 August 26, 2011.


J. Stan Piper
Registered Professional Land Surveyor #1974
Revised: October 10, 2011

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



PIPER SURVEYING BOX 60432; MIDLAND, TX 79711; (432) 550-7810

**TRACT 6: TH ZONING
GREATHOUSE ADDITION, SECTION 7**

**LEGAL DESCRIPTION FOR A 6.33 ACRE TRACT
LOCATED IN THE WEST HALF OF SECTION 6,
BLOCK X, H. P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS**

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,709,094.72' and E= 1,730,415.78') an intersection of two proposed alleys at the most Westerly corner of this tract, from whence a 5/8" iron rod with plastic cap marked "PLS 1974" found at the Northwest corner of said Section 6 bears S75°40'44"W, a distance of 1679.01 feet and N14°25'28"W, a distance of 1808.31 feet;

THENCE N33°13'27"E with the centerline of a proposed alley, a distance of 117.93 feet to an exterior corner of this tract;

THENCE N53°05'12"E with the centerline of a proposed alley, a distance of 35.57 feet to an exterior corner of this tract;

THENCE N80°09'15"E with the centerline of a proposed alley, a distance of 155.80 feet to an interior corner of this tract;

THENCE around a curve to the left in a Northerly direction, with a radius of 470.00 feet, delta angle of 19°58'46", an arc length of 163.89 feet, and a chord distance of 163.06 feet, which bears N1°16'33"E to an exterior corner of this tract;

THENCE N80°09'16"E with the centerline of a proposed street, a distance of 316.61 feet to the Northeast corner of this tract;

THENCE S9°50'45"E with the centerline of a proposed street, a distance of 306.57 feet to point of curvature;

THENCE around a curve to the left in a Southerly direction, with a radius of 1000.00 feet, delta angle of 10°15'24", an arc length of 179.01 feet, and a chord distance of 178.77 feet, which bears S14°58'27"E to a point of tangency;

THENCE S20°06'09"E with the centerline of a proposed street, a distance of 142.25 feet to the Southeast corner of this tract;

THENCE S69°53'51"W with the centerline of a proposed alley, a distance of 146.71 feet to an interior corner of this tract;

THENCE S33°13'27"W with the centerline of a proposed alley, a distance of 81.92 feet to the most Southerly corner of this tract;

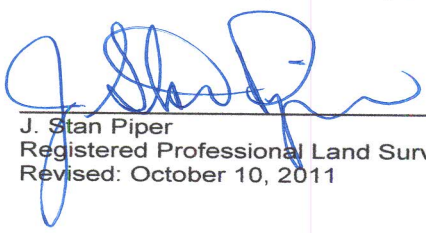
THENCE around a curve to the left in a Northwesterly direction, with a radius of 2282.02 feet, delta angle of 8°59'10", an arc length of 357.90 feet, and a chord distance of 357.53 feet, which bears N53°45'10"W to a point of tangency;

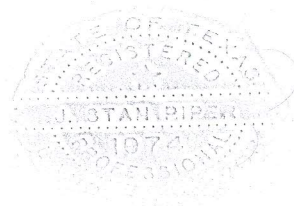
THENCE N58°14'45"W with the centerline of a proposed alley, a distance of 100.00 feet to a point of curvature;

THENCE around a curve to the left in a Northwesterly direction, with a radius of 4515.28 feet, delta angle of 2°19'20", an arc length of 183.01 feet, and a chord distance of 183.00 feet, which bears N57°05'05"W to the Place of Beginning. Tract contains 275,758 square feet or 6.33 Acres.

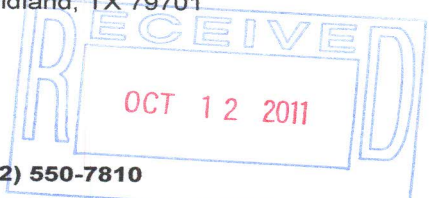
Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combine grid factor of 0.9999173, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. 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 August 26, 2011.


J. Stan Piper
Registered Professional Land Surveyor #1974
Revised: October 10, 2011



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



**TRACT 7: PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT
GREATHOUSE ADDITION, SECTION 7**

**LEGAL DESCRIPTION FOR A 10.64 ACRE TRACT
LOCATED IN THE WEST HALF OF SECTION 6,
BLOCK X, H. P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS**

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,710,730.22' and E= 1,731,009.50') the Southeast corner of Tract 2 being a 12.97 Acre Tract described this day and the Northeast corner of this tract, from whence a 5/8" iron rod with plastic cap marked "PLS 1974" found at the Northwest corner of said Section 6 bears N14°28'01"W, a distance of 370.50 feet and S75°40'44"W, a distance of 2661.15 feet;

THENCE S14°28'01"E with the East line of said West Half of Section 6, a distance of 775.04 feet to the Northeast corner of Tract 4 being a 60.84 Acre Tract described this day and the Southeast corner of this tract;

THENCE S80°09'15"W with the North line of said Tract 4 and centerline of a proposed alley, a distance of 627.53 feet to the Southwest corner of this tract;

THENCE N9°50'50"W with the centerline of a proposed street and East line of a Tract 8 being a 19.73 Acre Tract described this day, a distance of 220.61 feet to a point of curvature;

THENCE around a curve to the left in a Northerly direction, with a radius of 470.00 feet, delta angle of 04°37'14", an arc length of 37.90 feet, and a chord distance of 37.89 feet, which bears N12°09'27"W to a point of tangency;

THENCE N14°28'04"W with the centerline of said proposed street and said East line of said Tract 8, a distance of 496.41 feet to the Northwest corner of this tract;

THENCE N78°14'52"E with the South line of said Tract 2 and centerline of a proposed alley, a distance of 29.25 feet to an exterior corner of this tract;

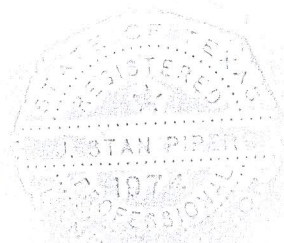
THENCE N80°00'26"E with the South line of said Tract 2 and centerline of a proposed alley, a distance of 362.72 feet to an interior corner of this tract;

THENCE N75°31'56"W with the centerline of a proposed alley, a distance of 215.37 feet to the Place of Beginning. Tract contains 463,264 square feet or 10.64 Acres.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combine grid factor of 0.9999173, 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.

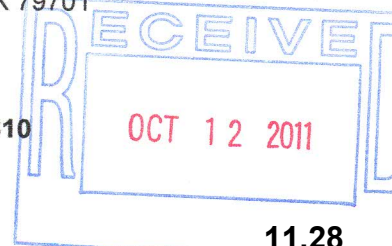
I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground on various dates to August 26, 2011.



J. Stan Piper
Registered Professional Land Surveyor #1974
Revised: October 10, 2011

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

PIPER SURVEYING BOX 60432; MIDLAND, TX 79711; (432) 550-7810



**TRACT 8: 1F-2 ZONING
GREATHOUSE ADDITION, SECTION 7**

**LEGAL DESCRIPTION FOR A 19.73 ACRE TRACT
LOCATED IN THE WEST HALF OF SECTION 6,
BLOCK X, H. P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS**

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,710,405.53' and E= 1,729,277.43') the Southwest corner of Tract 2 being a 12.97 Acre Tract described this day and the Northwest corner of this tract, from whence a 5/8" iron rod with plastic cap marked "PLS 1974" found at the Northwest corner of said Section 6 bears N14°27'32"W, a distance of 256.65 feet and S75°40'44"W, a distance of 902.91 feet;

THENCE N80°00'43"E with the South line of said Tract 2, a distance of 1103.54 feet to an interior corner of this tract;

THENCE N78°14'52"E with the South line of said Tract 2, a distance of 51.95 feet to the Northeast corner of this tract;

THENCE S14°28'04"E with the centerline of a proposed street and West line of Tract 7 being a 10.649 Acre Tract described this day, a distance of 496.41 feet to a point of curvature;

THENCE around a curve to the right in a Southerly direction, with a radius of 470.00 feet, delta angle of 04°37'14", an arc length of 37.90 feet, and a chord distance of 37.89 feet, which bears S12°09'27"E to a point of tangency;

THENCE S9°50'50"E with the centerline of said proposed street and said West line of Tract 7, a distance of 220.61 feet to the Southwest corner of said Tract 8 and an interior corner of this tract;

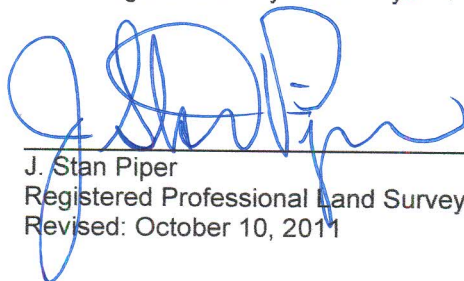
THENCE S80°09'15"W with the North line of Tract 4 being a 60.84 Acre Tract described this day, a distance of 1200.62 feet to an Southwest corner of this tract;

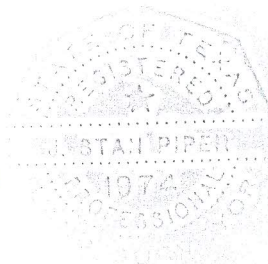
THENCE around a curve to the left in a Northerly direction, with a radius of 603.58 feet, delta angle of 26°26'54", an arc length of 278.62 feet, and a chord distance of 276.15 feet, which bears N1°15'02"W to a point of tangency;

THENCE N14°27'23"W with the centerline of a proposed street and East line of said Tract 1, a distance of 467.63 feet to the Place of Beginning. Tract contains 859,212 square feet or 19.73 Acres

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combine grid factor of 0.9999173, 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.

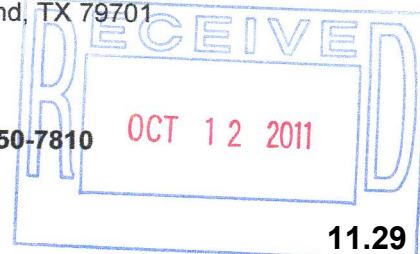
I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground on various dates to August 26, 2011.


J. Stan Piper
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Revised: October 10, 2011

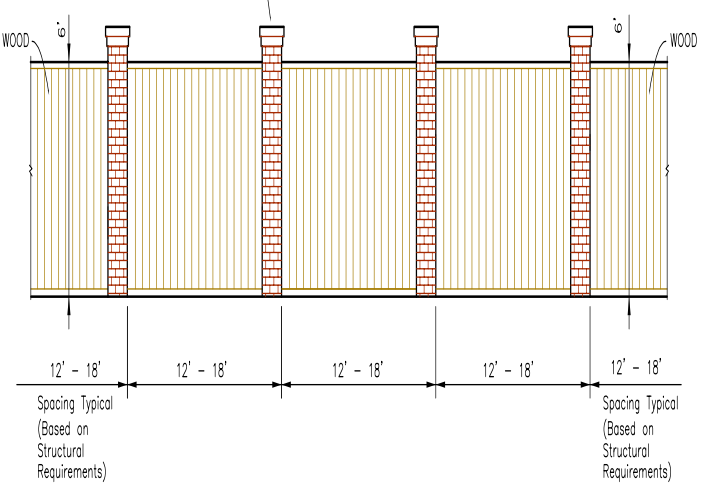
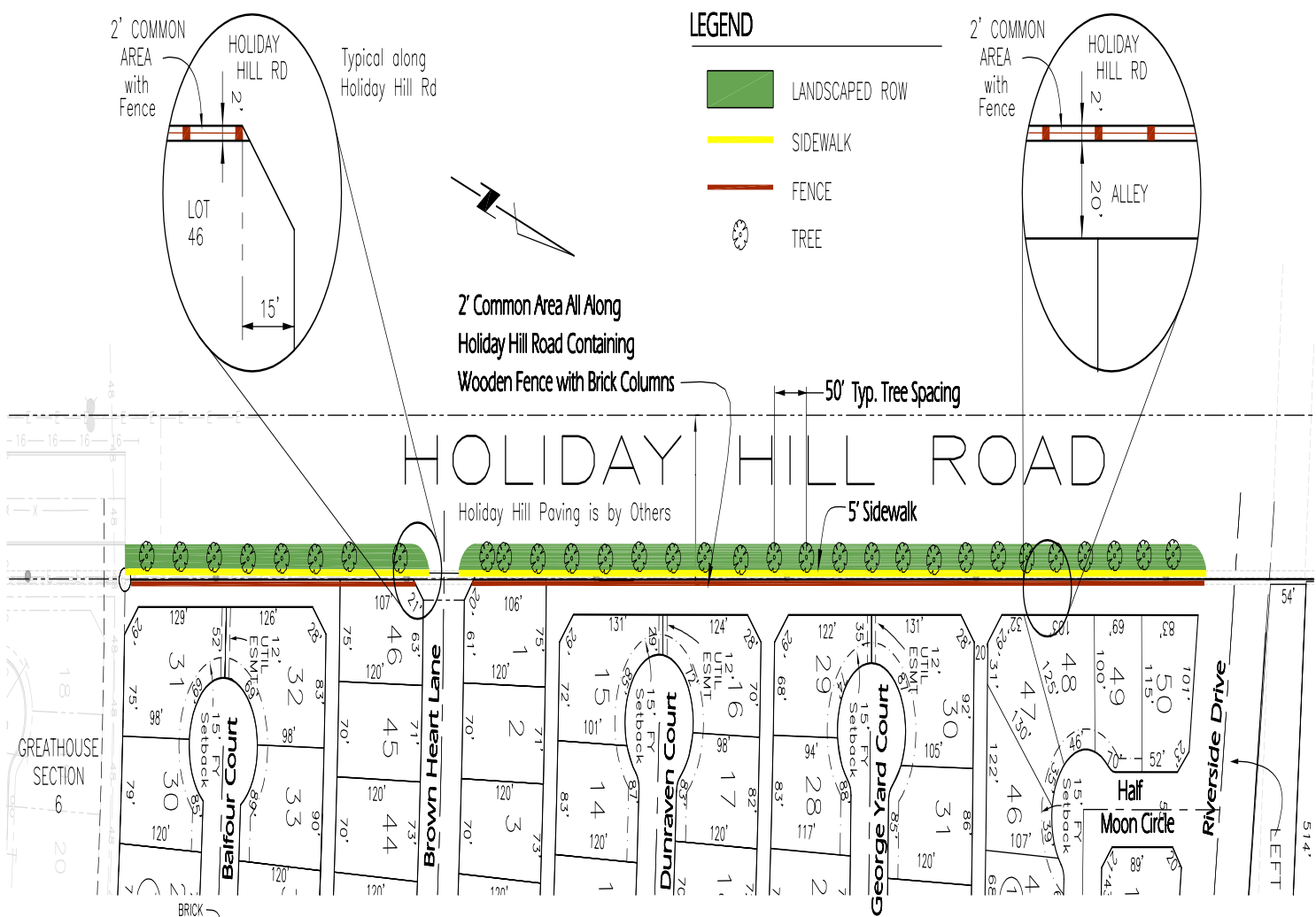


Prepared for:
Parkhill, Smith, and Cooper, Inc.
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Midland, TX 79701

PIPER SURVEYING BOX 60432; MIDLAND, TX 79711; (432) 550-7810



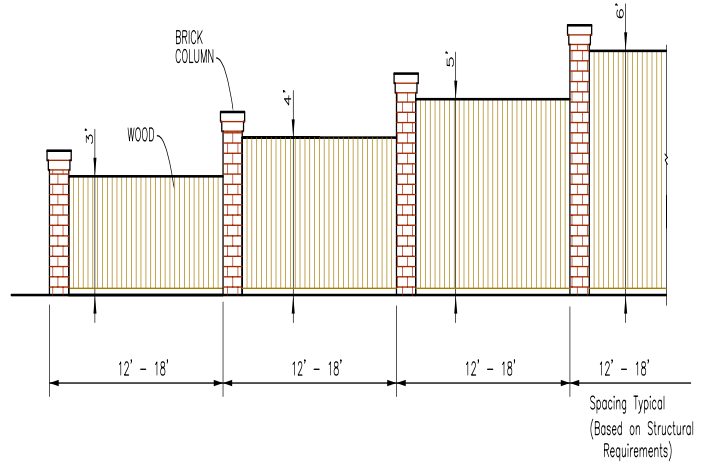
\\data1\projects\2011\9707.11\CADD\01_CIVIL\updating\greathouse 7 preliminary plat - 7.5.2011.dwg, pldsp, 7/14/2011 9:23:39 AM, TONY, Bluebeam PDF, 1:1



ELEVATION along HOLIDAY HILL ROAD
at CUL-DE-SACS

NOT TO SCALE

NOTE:
THIS ARRANGEMENT TYPICAL
FOR WALL SHOWN ALONG HOLIDAY HILL ROAD.
REFER TO PLAN FOR LOCATION.
WALL HEIGHT IS 6' TYPICAL, EXCEPT AS NOTED.
COLUMN SPACING IS 12' - 18'
TYPICAL, EXCEPT WHERE NOTED.
ALL DIMENSIONS ARE NOMINAL.



ELEVATION along HOLIDAY HILL ROAD
at STREET ENTRANCES

NOT TO SCALE

NOTE:
THIS ARRANGEMENT TYPICAL ON BOTH SIDES OF BROWN
HEART LANE ENTRANCE AND THE SOUTH SIDE OF THE
RIVERSIDE DRIVE ENTRANCE. REFER TO PLAN FOR
LOCATION. WALL HEIGHT IS 6' TYPICAL EXCEPT AS NOTED.
COLUMN SPACING IS 12' - 18' TYPICAL, EXCEPT WHERE
NOTED. ALL DIMENSIONS ARE NOMINAL.

**GREATHOUSE
SECTION 7
PLANNED DISTRICT
SITE PLAN**



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 24, 2012
TO: CITY COUNCIL/CITY MANAGER
FROM: Cameron Walker, AICP
SUBJECT: S-11-020; Hamilton Williams

Purpose:

This is a second reading to consider an ordinance on a request by Hamilton Williams for approval of a Specific Use Permit without term for tire, battery, and automotive accessory use. No changes have been made to this item since its first reading on January 10th, 2012.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

Aaron's Inc. is planning to construct an addition to the existing *HomeSmart* facility located at 2014 N. Big Spring Street. This addition will be a future *Rimco* location, which specializes in wheel and tire sales, rental, and installation. As wheel and tire installation is not a permitted use in the LR-2, Local Retail District, Aaron's is requesting approval of a Specific Use Permit to allow for tire, battery, and automotive accessory use.

Tire sales and installation with minor repair, is an allowed use in the LR-3, Local Retail District but may be allowed in the LR-2 District with approval of a Specific Use Permit. The applicants are planning to construct a 5,200 square foot addition to the north side of the existing *HomeSmart* facility, as indicated in the attached site plan. Approximately 2,300 square feet of this addition will be used for wheel and tire storage and installation. The remaining 2,900 square feet will be used as a showroom and for offices. Parking conditions will remain satisfactory and all installations will occur indoors with no vehicles or merchandise being stored outdoors. Staff finds that this additional requested use is compatible with surrounding uses and recommends approval.

Proposed hours of operation are Monday through Thursday from 10:00 a.m. to 7:00 p.m., Fridays from 10:00 a.m. to 8:00 p.m., and Saturdays from 9:00 a.m. to 5:00 p.m. *Rimco* will be closed on Sundays.

Attachments:

Application, Maps, Exhibit A – Site Plan



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 10, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: S-11-020; Hamilton Williams

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Hamilton Williams for approval of a Specific Use Permit without term for tire, battery, and automotive accessory use. (Generally located on the east side of N. Big Spring Street, approximately 880 feet south of Scharbauer Drive.)

Recommended City Council Action:

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

Aaron's Inc. is planning to construct an addition to the existing *HomeSmart* facility located at 2014 N. Big Spring Street. This addition will be a future *Rimco* location, which specializes in wheel and tire sales, rental, and installation. As wheel and tire installation is not a permitted use in the LR-2, Local Retail District, Aaron's is requesting approval of a Specific Use Permit to allow for tire, battery, and automotive accessory use.

Tire sales and installation with minor repair, is an allowed use in the LR-3, Local Retail District but may be allowed in the LR-2 District with approval of a Specific Use Permit. The applicants are planning to construct a 5,200 square foot addition to the north side of the existing *HomeSmart* facility, as indicated in the attached site plan. Approximately 2,300 square feet of this addition will be used for wheel and tire storage and installation. The remaining 2,900 square feet will be used as a showroom and for offices. Parking conditions will remain satisfactory and all installations will occur indoors with no vehicles or merchandise being stored outdoors. Staff finds that this additional requested use is compatible with surrounding uses and recommends approval.

Proposed hours of operation are Monday through Thursday from 10:00 a.m. to 7:00 p.m., Fridays from 10:00 a.m. to 8:00 p.m., and Saturdays from 9:00 a.m. to 5:00 p.m. *Rimco* will be closed on Sundays.

Attachments:

Application, Maps, Exhibit A – Site Plan

Planning and Zoning Commission
Minutes
December 5, 2011

S-11 020 - Hold a public hearing and consider a request by Hamilton Williams for a Special Use Permit without Term for tire, battery and automotive accessory on the south 120 feet of Tract 4, Morningside, City and County of Midland, Texas. (Generally located on the east side of N. Big Spring Street, approximately 880 feet south of Scharbauer Drive.)

Bill Chandler, Director of Construction for Aaron's, Inc. 2625 FM 1960 W, Houston, stated that this company is planning to construction an addition to the existing HomeSmart facility at 2014 N. Big Spring Street and will be the future Rimco location.

Mr. Melland stated that this is a Specific Use Permit without Term and no letters of opposition were received.

Chairman Carney opened the public hearing and there being no one wishing to speak in favor or in opposition to the item, closed the public hearing.

A motion for approval, subject to Conditions A-D, was made by Commissioner Watkins; seconded by Commissioner Wilton. The motion carried by the following vote: AYE: Lanning, Ferguson, Woodruff, Carney, Wilton, Watkins and Wolf. NAY: None. ABSTAIN: None. ABSENT: Gatten and York

PLANNING AND ZONING COMMISSION

December 5, 2011

CASE: S-11-020; Hamilton Williams

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit without Term for tire, battery, and automotive accessory use.

APPLICANT: Hamilton Williams

OWNER: Aaron's Inc.

LEGAL DESCRIPTION: The south 120 feet of Tract 4, Morningside, City and County of Midland, Texas.

LOCATION: Generally located on the east side of N. Big Spring Street, approximately 880 feet south of Scharbauer Drive.

CURRENT ZONING: LR-2, Local Retail District

DETAILS OF REQUEST:

1. Aaron's Inc. is planning to construct an addition to the existing *HomeSmart* facility located at 2014 N. Big Spring Street. This addition will be a future *Rimco* location, which specializes in wheel and tire sales, rental, and installation. As wheel and tire installation is not a permitted use in the LR-2, Local Retail District, Aaron's is requesting approval of a Specific Use Permit to allow for tire, battery, and automotive accessory use. Proposed hours of operation are Monday through Thursday from 10:00 a.m. to 7:00 p.m., Fridays from 10:00 a.m. to 8:00 p.m., and Saturdays from 9:00 a.m. to 5:00 p.m. *Rimco* will be closed on Sundays.

SURROUNDING ZONING AND LAND USE:

2. This property and surrounding properties to the north, south, and west, adjacent to N. Big Spring Street are zoned LR-2, Local Retail. Properties to the east are zoned 2-F, Two Family Dwelling District.

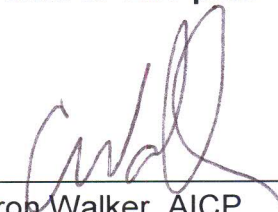
ANALYSIS:

3. Tire sales and installation with minor repair, is an allowed use in the LR-3, Local Retail District but may be allowed in the LR-2 District with approval of a Specific Use Permit. The applicants are planning to construct a 5,200 square foot addition to north side of the existing *HomeSmart* facility, as indicated in the attached site plan. Approximately 2,300 square feet of this addition will be used for wheel and tire storage and installation. The remaining 2,900 square feet will be used as for a showroom and for offices. Parking conditions will remain satisfactory and all installations will occur indoors with no vehicles or merchandise being stored outdoors. Staff finds that this additional requested use is compatible with surrounding uses and recommends approval.

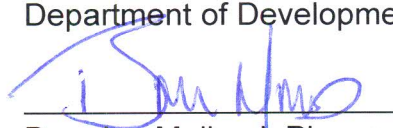
STAFF RECOMMENDATION:

Staff recommends approval of this request for a Specific Use Permit without Term for tire, battery, and automotive accessory use, subject to the following conditions:

- A. That the development of said property shall conform to the attached site plan and elevations labeled Exhibits A and B in all respects;
- B. That the maximum area of tire, battery, and automotive accessory use shall be limited to 5,200 square feet;
- C. All applicable Building and Fire Codes must be met prior to business operations;
- D. That the days and hours of tire, battery, and automotive accessory use shall not exceed the following: Monday through Thursday from 10:00 a.m. to 7:00 p.m., Fridays from 10:00 a.m. to 8:00 p.m., and Saturdays from 9:00 a.m. to 5:00 p.m.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Brandon Melland, Planner
Department of Development Services

Attachments:

Application
Site Plan – Exhibit A
Maps

Case Number: S-11-020

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

Hamilton Williams 404-601-4283
Applicant Name Contact Phone #s
1430 West Peachtree St., Ste. 200 Atlanta, GA 30309
Address Zip Code
E-Mail address: hwilliams@greenbergfarrow.com

Aaron's Inc. (Bill Chandler) 281-631-0983
Property Owner Name Contact Phone #s
2625 FM 1960 West Houston, TX 77068
Address Zip Code
E-Mail address: bill.chandler@aarons.com

Operator (if different from Applicant or Property Owner) Contact Phone #s
Address Zip Code

Type of Permit: Tire, Battery & Auto Accessory SUP with Term: Yes XX No
(For Office Use)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)
2014 N. Big Springs Street (See attached Survey)

Current Zoning: LR-2

Maximum Floor Area: 4,951 sf Max. Occupancy: 98

Proposed hours and days of use or operation: _____

Reason for request: To allow 2,272 square feet of Tire and Auto Accessory use within the retail building.

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: The requested use will be fully contained within the building and not be visible from the public ROW. The use aligns with the current land uses in the adjacent area.

REQUIRED SUBMITTALS

1. Application fee: **\$300**. (80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.)
2. Site plan – 16 copies (FOLDED)
3. On a CD in .pdf and .jpg format.

SIGNATURES:

Applicant: [Signature] Date: 10.19.11

Property Owner: [Signature] Date: 10/17/11

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

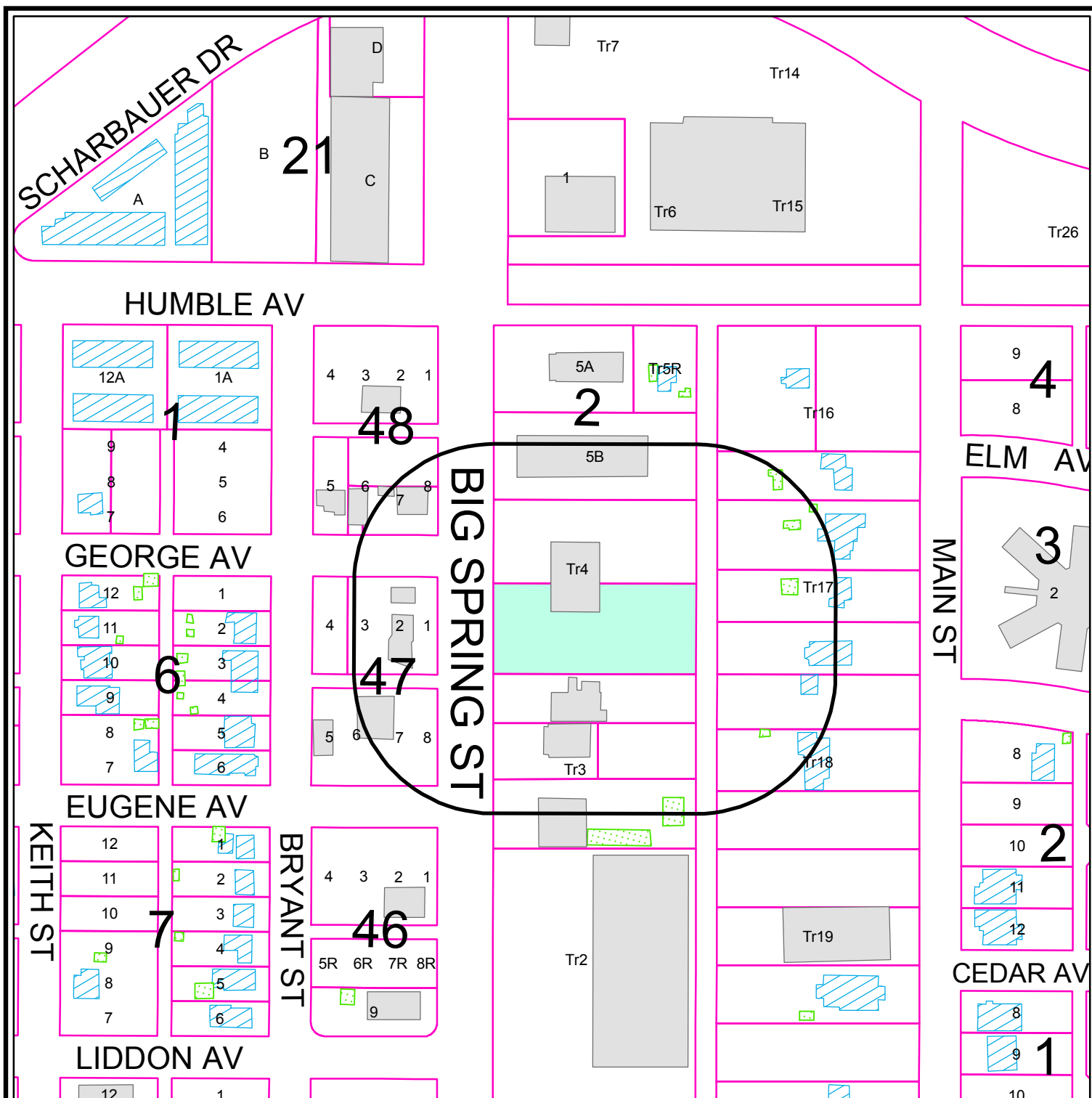
_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Subscribed and sworn to before me, this _____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>Ben</u>	Date: <u>10/24/11</u>
Assigned: _____	
For: <u>P&Z</u>	On: <u>12/5/11</u>

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

S - 11 - 020

Scale: 1" = 200'

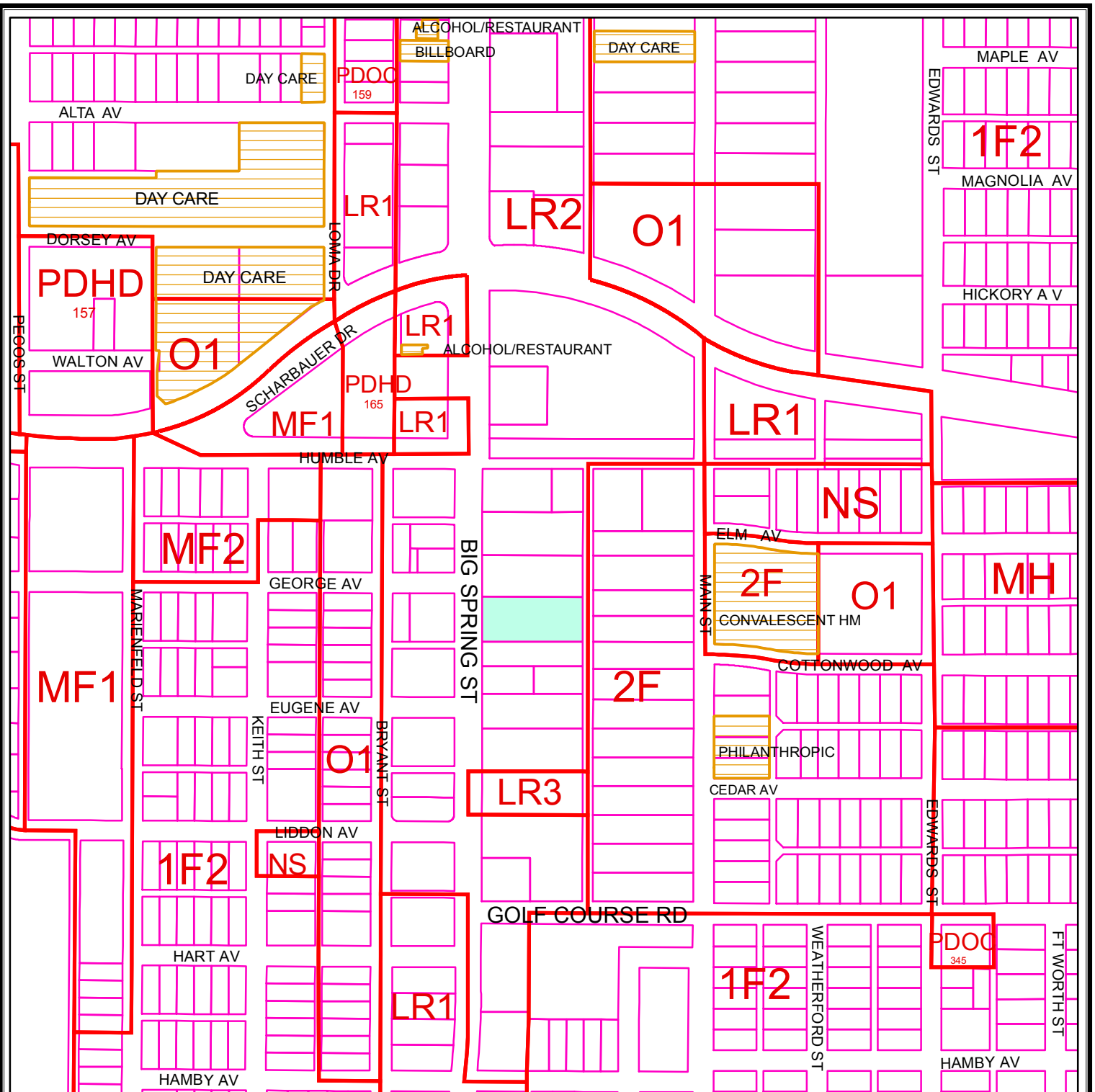
Consider a request for a Specific Use Permit Without Term for tire, battery and automotive accessory on the south 120 feet of Tract 4, Morningside, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

S - 11 - 020

Scale: 1" = 400'

Consider a request for a Specific Use Permit Without Term for tire, battery and automotive accessory on the south 120 feet of Tract 4, Morningside, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 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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GRAPHIC SCALE



COPYRIGHT NOTICE

This drawing is the property of the above referenced Professional and is not to be used for any purpose other than the specific project and site named herein, and cannot be reproduced in any manner without the express written permission from the Professional.

ISSUE/REVISION RECORD

DATE	DESCRIPTION
12-25-11	S.U.P. SUBMITTAL
11-11-11	CITY SUBMITTAL
11-26-11	CITY SUBMITTAL #2

PROFESSIONAL SEAL

PROFESSIONAL IN CHARGE
JOHN NOURZAD
PROFESSIONAL ENGINEER
LICENSE NO. 85192

PROJECT MANAGER
S. HAMILTON WILLIAMS
QUALITY CONTROL
LARRY DEHL
DRAWN BY
VJU

PROJECT NAME

RIMCO

MIDLAND

TEXAS

2014 N. BIG SPRINGS STREET



PROJECT NUMBER

20110514.0

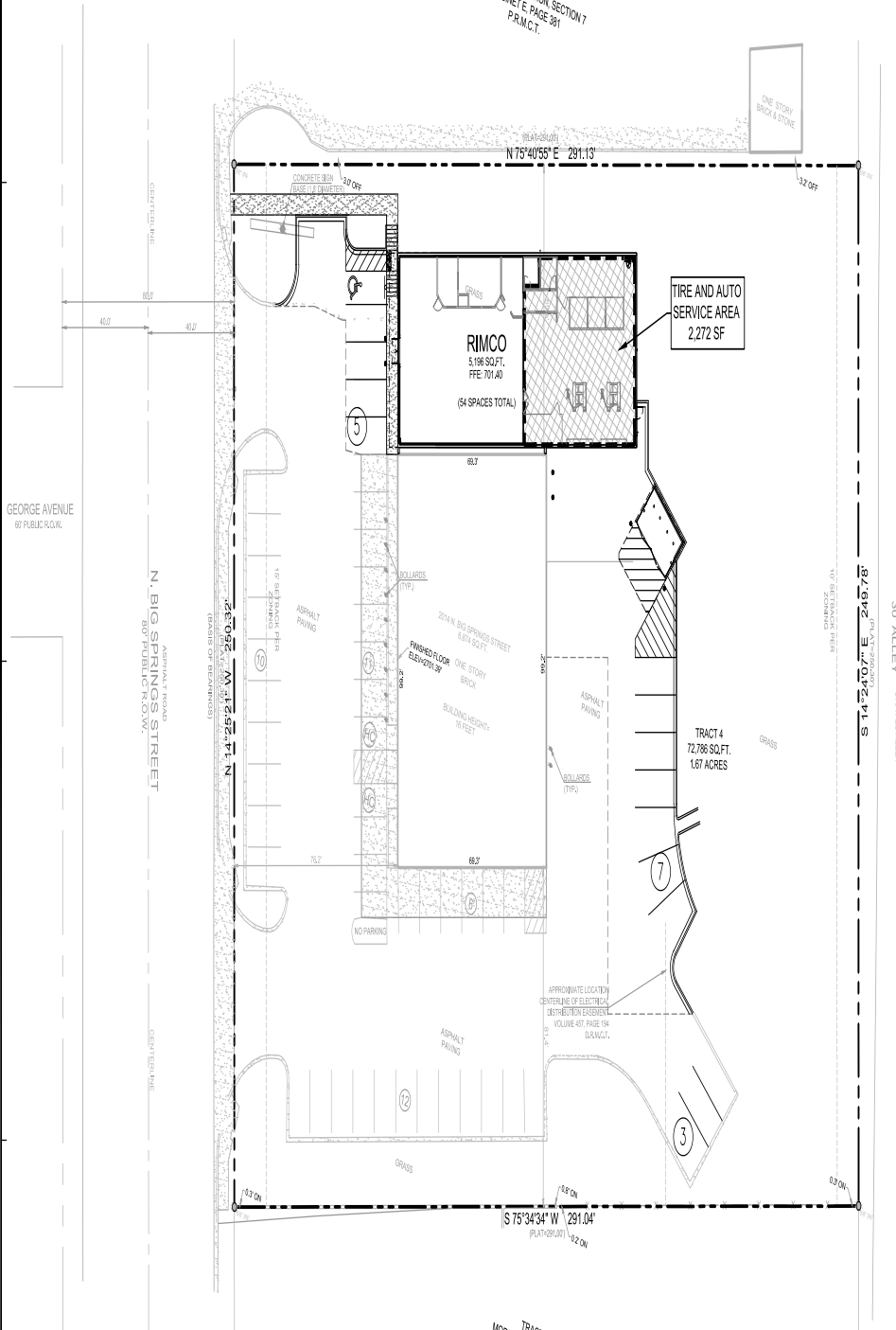
SHEET TITLE

S.U.P. SITE PLAN

SHEET NUMBER

11.10
12.10

LOT 58, BLOCK 2
MORNINGSIDE ADDITION, SECTION 7
CABINET E, PAGE 381
P.R.M.C.T.



EXISTING LEGEND

- HANDICAPPED SPACE
- PARKING SPACE
- IRON ROD FOUND
- IRON ROD SET
- IRON PIPE FOUND
- FENCE POST CORNER
- "X" FOUND / SET
- SANITARY SEWER MANHOLE COVER
- LIGHT POLE
- POWER POLE
- BRICK COLUMN
- AIR CONDITIONING
- FIRE HYDRANT
- ELECTRIC METER
- /// ASPHALT PAVING
- CHAIN LINK FENCE
- WOOD FENCE
- WIRE FENCE
- IRON FENCE
- PIPE FENCE
- COVERED PORCH, DECK OR CARPORT
- CONCRETE PAVING
- GRAVEL/ROCK ROAD OR DRIVE
- OES OVERHEAD ELECTRIC SERVICE
- OWP OVERHEAD POWER LINE
- SS SANITARY SEWER LINE

PROPOSED LEGEND:

- PROPERTY LINE
- PROPOSED CURB
- PROPOSED PARKING SPACES

PARKING INFORMATION

	REQUIRED	PROVIDED
RETAIL		
1 SPACE PER 200 SQUARE FEET		
6,874 SF (HOMESMART) + 2,955 SF (RIMCO)	50	51
STORAGE / SERVICE AREA		
1 SPACE PER 1,000 SQUARE FEET		
2,241 SF (RIMCO)	3	3
TOTAL PARKING	53	54*

*INCLUDES 3 ADA SPACES

TRACT 3
MORNING SIDE ADDITION
VOLUME 84, PAGE 387
D.R.M.C.T.

ORDINANCE NO.

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

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings and affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the health, safety and general welfare will be best served by the granting of a Specific Use Permit Without Term, set out hereinafter, subject to the special conditions and restrictions set out hereinafter on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned LR-2, Local Retail District, to wit:

The south 120 feet of Tract 4, Morningside, City and County of Midland, Texas;

is hereby changed to permit same to be used under a Specific Use Permit Without Term for

an accessory building to be used for living or sleeping quarters, together with the uses permitted in an LR-2, Local Retail District, subject to the following conditions:

1. That the development of said property shall conform to the site plan attached hereto and incorporated herein as Exhibit “A”.
2. That the maximum area of tire, battery and automotive accessory use shall be limited to 5,200 contiguous square feet in area.
3. That all applicable Building Code and Fire Code provisions shall be met prior to business operations.
4. That the days and hours of said accessory use shall not exceed the following: Monday through Thursday, 10:00 a.m. to 7:00 p.m.; Friday, 10:00 a.m. to 8:00 p.m.; and Saturday, 9:00 a.m. to 5:00 p.m.

SECTION TWO. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on

first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: Z-11-057; LCA Engineering

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by LCA Engineering for approval of a Site Plan. (Generally located near the northeast corner of the intersection of E. Interstate Hwy 20 and Terrell Street.).

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this request.

Discussion:

This 8-acre tract of land is located on the north side of IH-20 just east of Terrell Street. The applicant plans to construct 96 apartment units, along with a clubhouse/community center, pool, and play area. This property is zoned BP, Business Park, which allows for apartments, however, a site plan must be approved prior to the development of any apartments within the City of Midland. Exhibit A is a plan view of the apartment complex. Access will occur from two driveways off of the IH-20 frontage road. Five apartment buildings are shown along with a clubhouse, a pool, and a play area. There are a total of 96 units and this quantity complies with the City's requirement of no more than 16 units per acre. A total of 192 parking spaces are required and 207 are shown. The site plan submitted indicates that a drought tolerant sod will be the primary variety of turf grass, however, the area planned to be landscaped with turf grass exceeds that which is required. The use of more drought tolerant landscaping is encouraged and revised landscaping plans may be accepted for review and approval prior to permitting. With 96 units, a minimum of seven refuse containers is required. Exhibit A indicates 4 containers. Therefore, an additional 3 containers will be required. The city code requires a six-foot tall solid fence between an apartment property line and any adjacent residentially zoned property. The site plan submitted indicates such a fence around the entire perimeter of this development. Heights indicated for the proposed apartment buildings are approximately 44-feet which is satisfactory for the BP District which allows a maximum of 60-feet and building materials indicated on Exhibits B, C, & D satisfy zoning code requirements.

Attachments:

Application, Maps, Exhibit A – Site Plan, Exhibits B – D Building Elevations

ORDINANCE NO.

AN ORDINANCE ADOPTING A SITE PLAN FOR AN 8.00-ACRE TRACT OF LAND OUT OF SECTION 2, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NEAR THE NORTHEAST CORNER OF THE INTERSECTION OF EAST INTERSTATE HIGHWAY 20 AND TERRELL STREET); SUBJECT TO THE FOLLOWING CONDITIONS AND RESTRICTIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, Section 11-1-6(A)(9)(b)(1) of the Midland City Code provides that prior to any development of an apartment project/complex, an applicant must obtain site plan approval under said section; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to adopt a site plan pursuant to Section 11-1-6(A)(9)(b)(1), subject to special conditions and restrictions;

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

SECTION ONE. That a site plan, which is attached hereto as Exhibits “A”, “B”, “C” and “D” and incorporated herein for all purposes, is hereby adopted for the following property:

An 8.00-acre tract of land out of Section 2, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “E”, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the use and development of the property shall be subject to the following conditions and restrictions:

1. That the new construction shall be consistent with Exhibits “A”, “B”, “C” and “D”.
2. That the site landscaping on Exhibit “A” shall be considered illustrative and

all future landscaping on this site shall conform to City of Midland regulations in place at the time of development.

3. That all mechanical equipment and refuse containers shall be appropriately screened.
4. That a total of seven refuse containers shall be required for this apartment development.
5. That the development of this property shall comply with the outdoor lighting requirements and outdoor sign regulations 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., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____.

_____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Case Number:

Z-11-057

**CITY OF MIDLAND
PLANNING DIVISION
APPLICATION FOR SITE PLAN REVIEW**

Applicant:

Name: LCA

Address: 521 N. Texas, Odessa, Texas

Zip Code: 79761

Phone Number(s): 432-332-5058

Fax: 4362-580-8812

Property Owner:

Name: Playa del Pueblo Ltd.

Address: 208 S. Marienfeld, Midland, Texas

Zip Code: 79701

Phone Number(s): 432-682-2520

Fax: _____

Legal Description of Property: (Complete Lot and Block or metes and bounds description)

Lot 1, Block 1, Playa del Pueblo

Staff only: This request qualifies for ☐ Planned District Process ☐ Administrative Review

~~Planned District~~ **Site Plan Review**

Items Required from Applicant:

✓
\$300.00 application fee

16 copies of the site plan

Site Plan on a CD in .pdf and .jpg format

Received date: _____

Received date: _____

Received date: _____

Ordinance number and date approved: _____

Administrative Site Plan Review

Items required from Applicant:

\$200.00 application fee

5 copies of the site plan

Received date: _____

Received date: _____

Date approved: _____ By: _____

Property Owner: _____ Date: _____

By: (Representative) J.M. Tucker Date: 18 Nov 2011
(If Representative signs for the Property Owner, then signature must be notarized below)

State of Texas §
County of Midland §

Before me, the undersigned authority, on this day personally appeared Joe M. Tucker who, being by me duly sworn, upon oath says: That he is authorized by Playa del Pueblo, Ltd., the owner of the above described property, to fully represent him in this application and that he has the legal right, power and authority to sign said owner's name hereto as his attorney in fact.

J.M. Tucker
(Signature of Affiant)

Subscribed and sworn to before me, by the said Joe M. Tucker, this 18th day of November, 2011, to certify which witness my hand and seal of office.

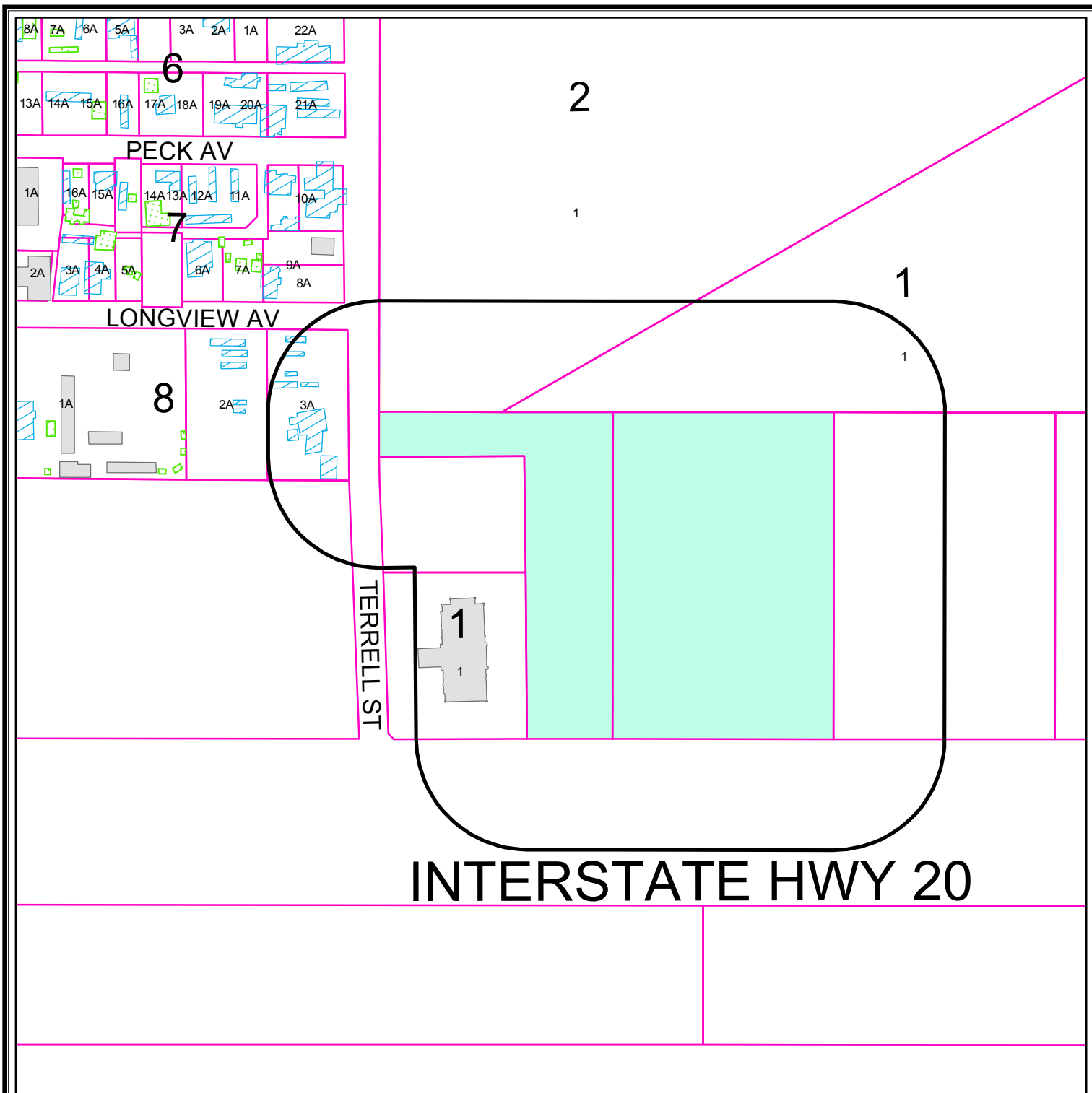
Shari Dawson

Notary Public, Midland County, Texas

FOR OFFICE USE ONLY	
Rec'd BY: <u>CW</u>	DATE: <u>11/18/11</u>
ASSIGNED: <u>BM</u>	
FOR: <u>P+2</u>	ON: _____



***Application will not be scheduled for hearing until reviewed by a planner.**



PROPERTY OWNER NOTIFICATION MAP

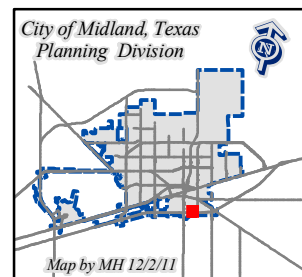
Z - 11 - 057

Scale: 1" = 250'

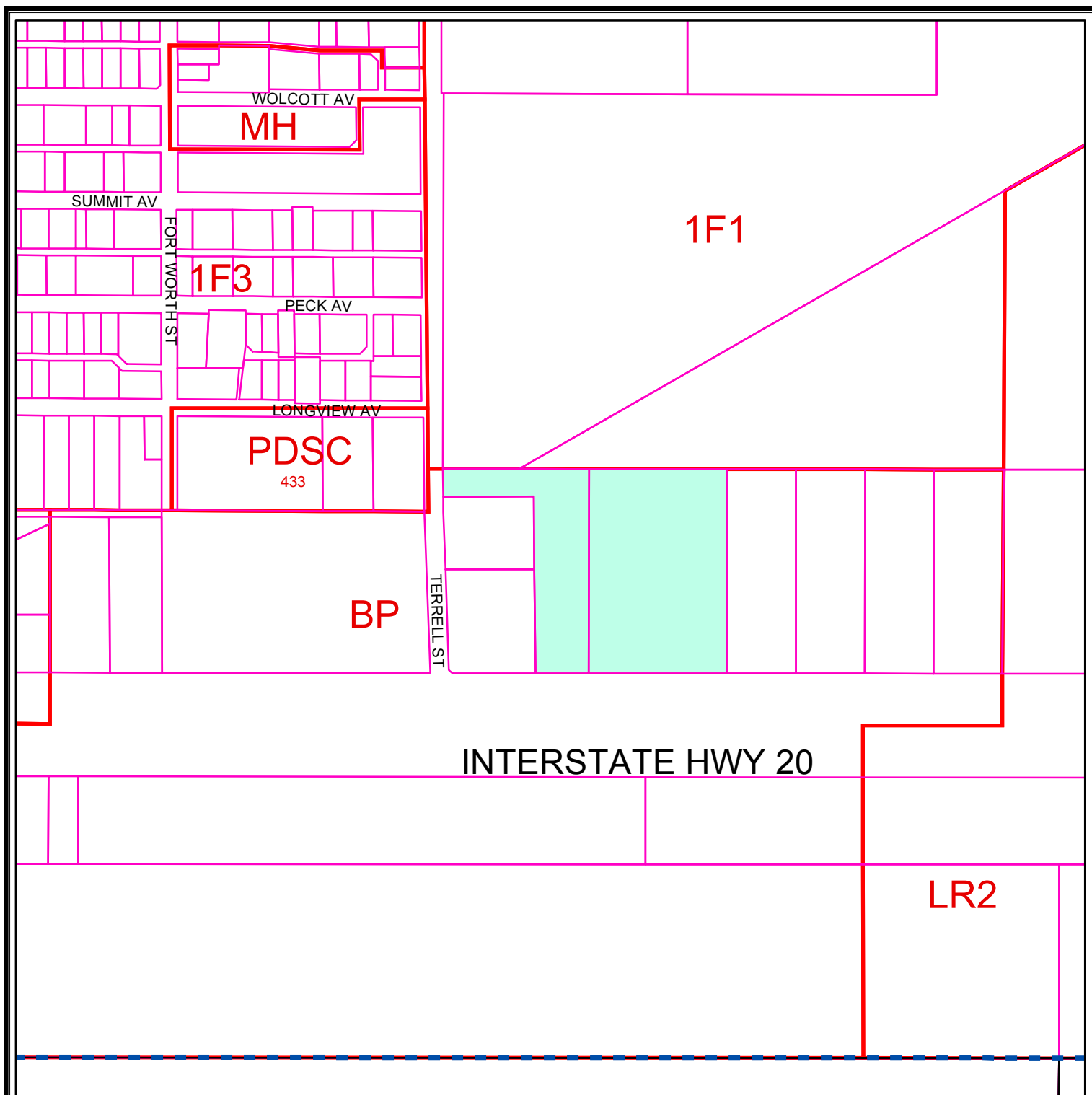
Consider a request for a Site Plan Review on a 8.00-acre tract of land out of Section 2, Block 39, T-2-S, T & P R R Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 11 - 057

Scale: 1" = 400'

Consider a request for a Site Plan Review on a 8.00-acre tract of land out of Section 2, Block 39, T-2-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

- - - CITY LIMITS 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

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- Landscape Ordinance Requirement Schedule**
1. Total Lot Area - 948,496sf
 2. Total area of building footprint - 42,260sf
 3. Total area required to be landscaped with plant material - 30,616sf
 4. Total area that will be landscaped with plant material - 148,250sf
 5. Total length of street frontage - 595ft (Interstate 20)
 6. Total number of trees required per street frontage - 14
 7. Total number of trees provided per street frontage - 14
 8. Total number of parking spaces - 201
 9. Total number of trees required per parking spaces - 13
 10. Total number of trees provided per parking spaces - 13

- Landscape Point System Compliance Schedule**
1. Tree quantity exceeds required quantity - 2 points x 10 trees
 2. Drought tolerant sod is primary variety of turf grass - 5 points
 3. More than 20% of the required areas to be landscaped with plant material, is proposed to be turf grass - minus 5 points

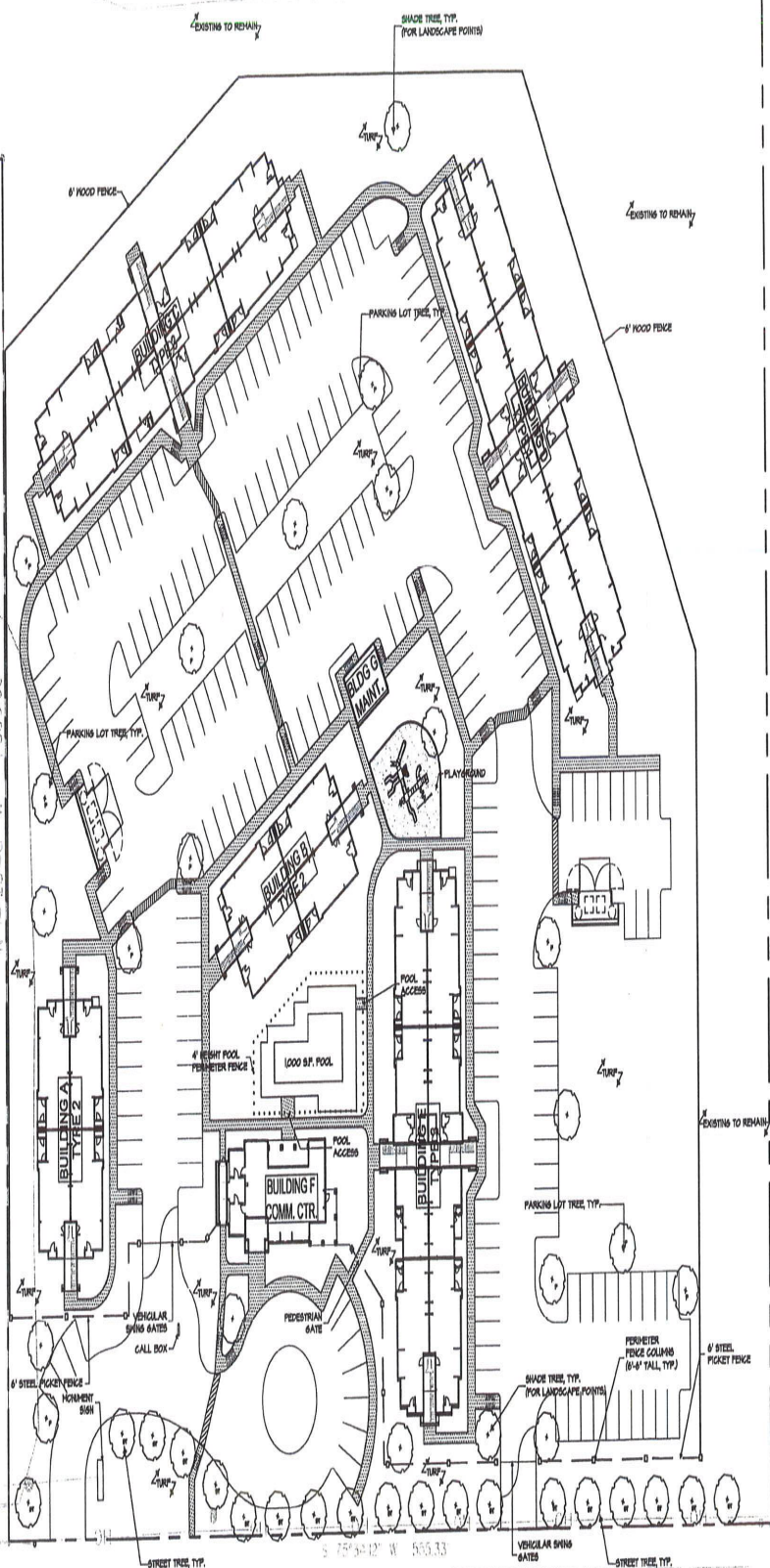
Total points required - 20 points
Total points provided - 20 points

PLANT LIST

QUANTITY	SYMBOL	DESCRIPTION
41	(Symbol: Circle with a dot)	8" caliper, 12' H/L, 4' spread, DBH, specimen

Note
All new landscape to be watered by a permanent, in-ground irrigation system.

EXHIBIT A



Bury+Partners
LANDSCAPE ARCHITECTS
10000 N. MCKINNEY
SUITE 1000
DALLAS, TEXAS 75243-1000
PHONE: 214.343.8800
FAX: 214.343.8801
WWW.BURY+PARTNERS.COM



LANDSCAPE PLAN

PLAYA DEL PUEBLO
MIDLAND, TEXAS

DESIGNED BY: JLL
DESIGNED BY: CM
REVIEWED BY: DMB
PROJECT NO.: P100103-00012



SCALE:
0 30 45

**PRELIMINARY
NOT FOR CONSTRUCTION**

SHEET
L100
OF

U.S. INTERSTATE HIGHWAY 20
(200' R.L.S.)

RECEIVED

NOV 18 2011

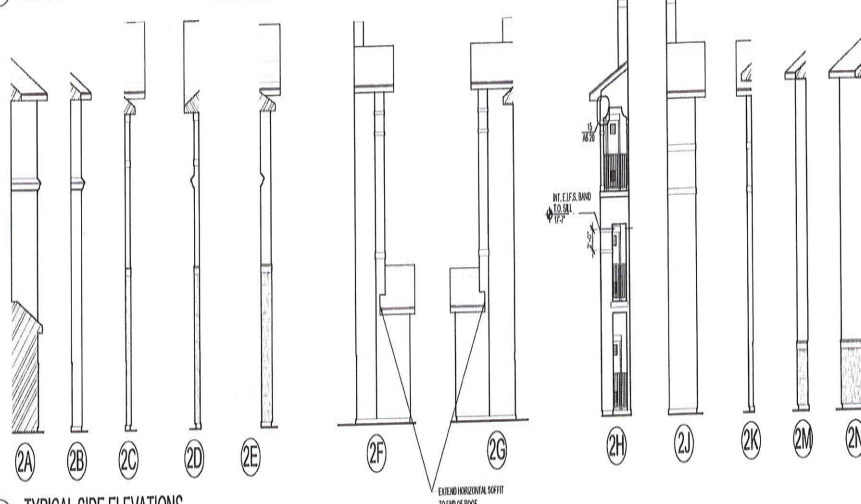
CITY OF MIDLAND
PLANNING DIVISION OFFICE

SITE PLAN

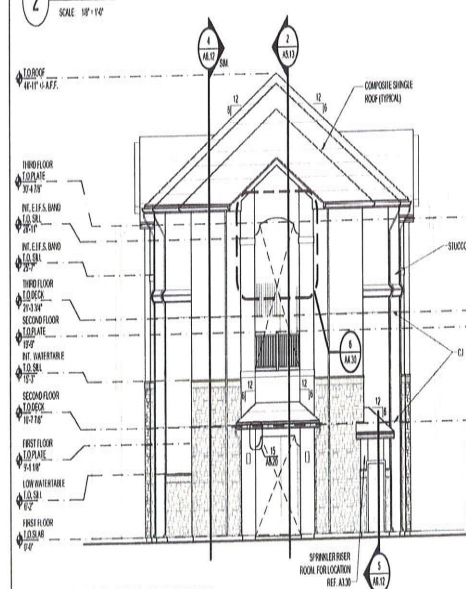
CASE NO. 21 13.9



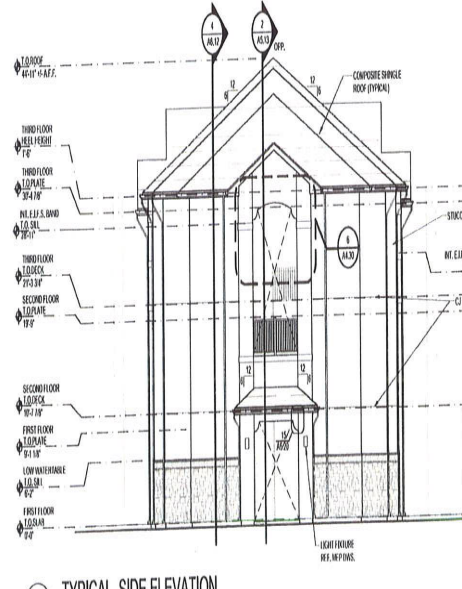
1 TYPICAL BUILDING ELEVATION
SCALE: 1/8" = 1'-0"



2 TYPICAL SIDE ELEVATIONS
SCALE: 1/8" = 1'-0"



3 TYPICAL SIDE ELEVATION
SCALE: 1/8" = 1'-0"



4 TYPICAL SIDE ELEVATION
SCALE: 1/8" = 1'-0"

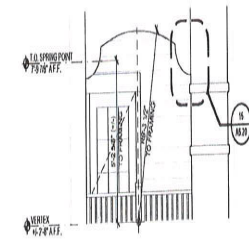
CASE NO. 2-11-057

EXHIBIT B

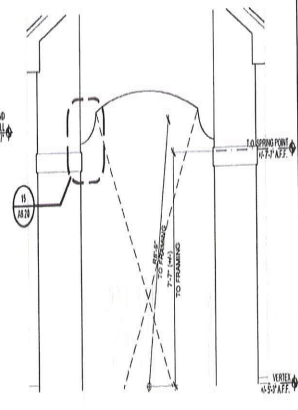
RECEIVED

DEC 12 2011

CITY OF MIDLAND
PLANNING DIVISION OFFICE



5 DETAIL @ STAIR-END
SCALE: 1/8" = 1'-0"



6 DETAIL @ STAIR-END
SCALE: 1/8" = 1'-0"



OWNER
MGP Group
111 S. Main St., Suite 1200
San Antonio, TX 78205
Tel: 210-487-8888 Fax: 210-207-7888

ARCHITECT
Alamo Architects
1517 South Flores
San Antonio, TX 78204
Tel: 210-207-7888 Fax: 210-207-7888

CIVIL ENGINEER
Bay + Partners
500 South Main, Suite 100
San Antonio, TX 78205
Tel: 210-525-8888

LANDSCAPE ARCHITECT
Lund Design Partners
922 South Main, Suite 100
San Antonio, TX 78205
Tel: 210-525-8888 Fax: 210-525-8888

STRUCTURAL ENGINEER
Shelton Engineers
1255 Village Center Dr.
Houston, TX 77060
Tel: 281-583-7888

MECHANICAL ENGINEER
Planned Engineering
3208 Farnham Rd., Suite 101
Midland, TX 79701
Tel: 204-440-7211 Fax: 204-768-1877

Playa del Pueblo
Multi-Family Housing
Midland, Texas
SITE PLAN SUBMITTAL
DECEMBER 9, 2011

No.	Description	Date

FOR REVIEW PURPOSES ONLY
SEAL NOT FOR CONSTRUCTION



TYPICAL
BUILDING
ELEVATIONS

SHEET TITLE

A4.30

SHEET NUMBER

Project Number 2011-40

Date DEC 9, 2011

Drawn By AA

Checked By BA

MEP ENGINEER
Raymond Engineering
32200 Tamira Rd. Suite 101
Meadell, TX 77354
Tel: 281-443-7211 Fax: 281-758-1877

Checked By	SH
------------	----

1 FRONT ELEVATION
SCALE: 3/16" = 1'-0"

2 LEFT ELEVATION
SCALE: 3/8" = 1'-0"

3 RIGHT ELEVATION
SCALE: 3/16"=1'-0"

4 REAR ELEVATION

REFERENCE PLAN

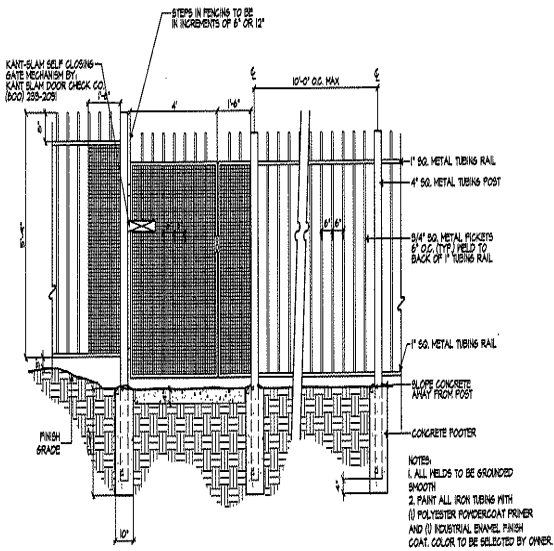
SCALE: NTS

EXHIBIT C

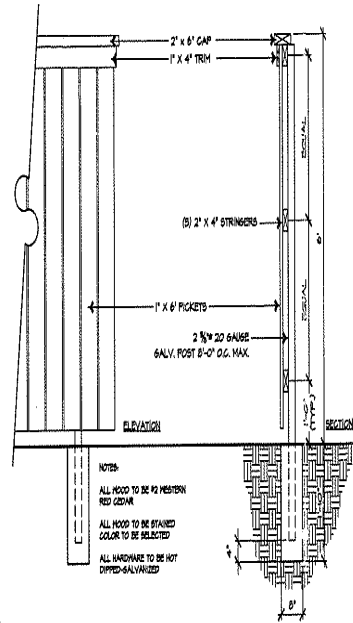
1. What is the purpose of the study?
 2. What are the research objectives?
 3. What is the research methodology?
 4. What are the results of the study?
 5. What are the conclusions of the study?
 6. What are the limitations of the study?
 7. What are the implications of the study?
 8. What are the future research directions?
 9. What are the contributions of the study?
 10. What are the key findings of the study?

1. NAME OF VENDOR
 THE UNITED STATES GOVERNMENT

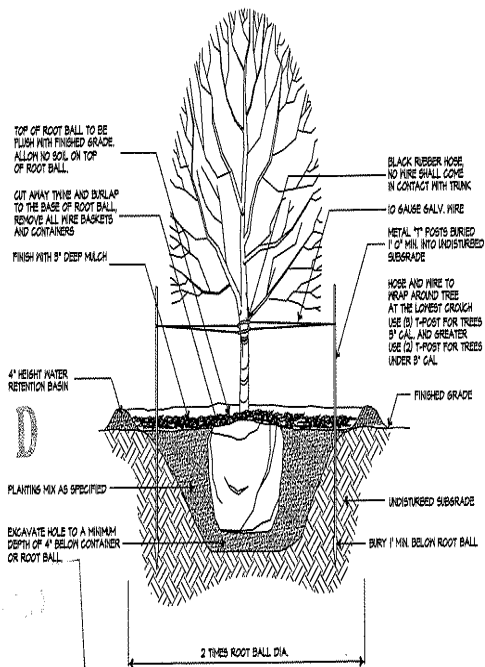
SEE PLAN



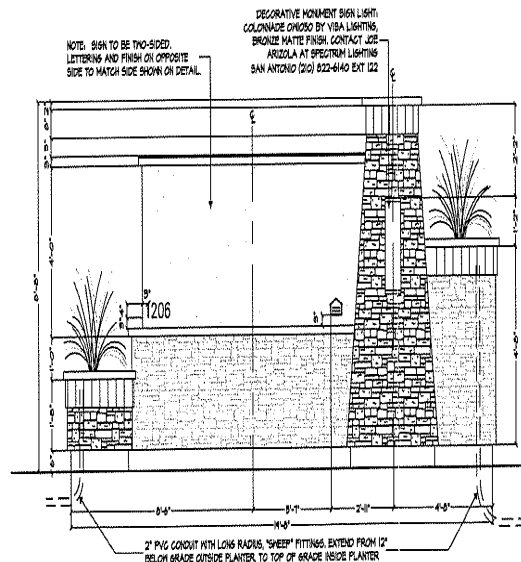
6'-0" METAL PERIMETER FENCE WITH PEDESTRIAN GATE
ELEVATION SCALE: 1/2" = 1'-0"



6'-0" TALL WOOD FENCE
ELEVATION SCALE: 3/4" = 1'-0"



TREE STAKING DETAIL
N.T.S.



MONUMENT SIGN
ELEVATION SCALE: 1/2" = 1'-0"

PLAYA DEL PUEBLO
MIDLAND, TEXAS

DRAWN BY: LL
DESIGNED BY: CM
REVIEWED BY: DMB
PROJECT NO.: R100103-00012

SHEET
L101

PRELIMINARY
NOT FOR CONSTRUCTION



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: V-11-004, Habitat for Humanity ROW vacation

Purpose:

Consider an ordinance on a request by Habitat for Humanity to vacate a 10-foot by 150-foot (1500 sq ft) portion S. Adams Street right-of-way.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Habitat for Humanity is requesting the vacation of 10-feet of right-of-way from the west side of S. Adams Street at its intersection with E. Kentucky Avenue. This request is made to reduce construction costs for affordable housing. This vacation will allow the new homes to be 10 feet closer to the street paving, thereby reducing the driveway length and, consequently, construction costs. The existing right-of-way width for S. Adams Street is 80 feet, whereas the Subdivision Code requires only 60 feet. As compensation, the applicant proposes to dedicate 10 additional feet for the alley located west of the three affected lots. The right-of-way value is \$150; however, with the additional alley dedication, no compensation is required.

Attachments:

Survey Plat

Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 1,500 SQUARE FOOT PORTION OF ADAMS STREET RIGHT-OF-WAY ADJACENT TO LOTS 4-6, BLOCK 40, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF KENTUCKY AVENUE AND ADAMS STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$150.00; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 1,500 square foot portion of Adams Street right-of-way adjacent to Lots 4-6, Block 40, Moody Addition, City and County of Midland, Texas, is no longer needed for public use; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, an application for vacating the right-of-way has been received by the City from the abutting property owner; and

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$150.00, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to waive the fee for the cost of the right-of-way in light of the abutting property owner's status as a nonprofit organization and the abutting property owner's dedication of right-of-way to the City; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the right-of-way described herein;

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

SECTION ONE. That the 1,500 square foot portion of Adams Street right-of-way

adjacent to Lots 4-6, Block 40, Moody Addition, City and County of Midland, Texas, as described in Exhibit "A" attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way affects any private easement or access easement which abutting property owners may have in said right-of-way.

SECTION TWO. That the fee for the cost of the right-of-way vacated and abandoned herein to the adjoining property owner is hereby waived.

SECTION THREE. That the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS ____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Case Number: V-11-004

CITY OF MIDLAND
Planning Division

APPLICATION TO VACATE RIGHT-OF-WAY

- I. Application is hereby made to the City Council to vacate the following public right-of-way or easement:
1500 SQUARE FEET S ADAMS STREET ADJACENT TO
LOTS 4, 5 & 6, BLOCK 40, NOODY ADDITION
- II. Reason for Request: GET 10 ADDITIONAL FEET FOR DRIVEWAYS
- III. Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:
DOES NOT CHANGE THE BACK OF CURB OR ANYTHING

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)

Name: HABITAT FOR HUMANITY ALYNDA POEST EXEC DIR

Address: 305 E TEXAS Phone: 432-686-8877

MIDLAND TX 79701 19701
City State Zip Code

2. Metes and bounds description of property to be vacated.
3. Map showing property to be vacated and its relationship to the applicant's property.
4. Right-of-way Release Letter(s) signed by adjacent property owner(s). (See attached)
5. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)
6. Application Fee: **\$300.00**

Required items Attached? Date Received: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____ 6. _____

- V. Clearance is needed from the following utility companies: City of Midland / Atmos Energy
Caprock Energy / TXU Electric / AT&T / Suddenlink Cable TV Co. / Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained and to work out any issues that may arise.

VI. Policies:

1. The applicant(s) shall be responsible for obtaining written concurrence from the owner(s) of any property adjacent to the affected right-of-way and for submitting said concurrence with the application. Following receipt of a complete application, the request shall proceed according to either (A) or (B) as follows:

- A. If the portion of right-of-way under consideration may be vacated without affecting the traveling public, then the request shall be scheduled for deliberation by the City Council. No public hearing shall be required.
- B. If the portion of right-of-way under consideration has been or is being used by the public, then the City shall send written notification of the request to all property owners within 1,000 feet a public hearing before City Council will be held. Any opposition to the requested closure must be in writing. Approval of a request with 20% or more opposition from notified landowners shall require a three-fourths vote of the City Council.

Signature of applicant: *[Handwritten Signature]*

Date: 11/25/11

****Application will not be considered for scheduling until reviewed by a planner.****

To be completed by City of Midland staff:

According to the policy guidelines outlined above, a public hearing will ____ will not ____ be required.

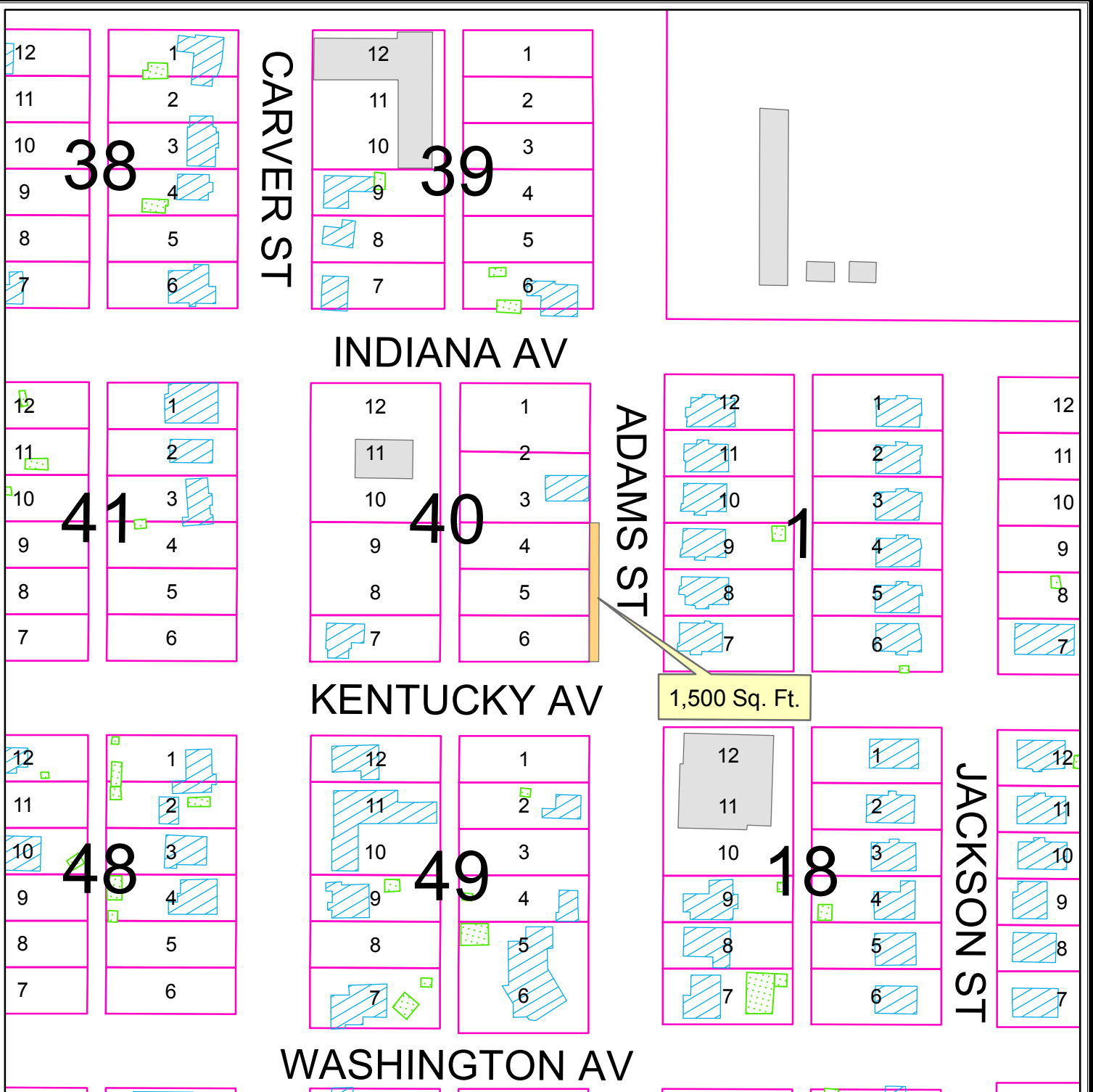
FOR OFFICE USE ONLY

Rec'd. By: JC Date: 11-29-11
Assigned: JC
For: CC On: _____

Revised 9/1/06

Vacation Application

Page 2



LOCATION MAP

V - 11 - 004

Scale: 1" = 150'

Consider a request for the vacation of a 1,500 square foot portion of the right-of-way of S. Adams Street, adjacent to Lots 4 thru 6, Block 40, Moody Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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Office of
City Manager

300 N. Loraine
P.O. Box 1152
Midland, TX 79702-1152

432.685.7203
Fax 432.686.1600

January 13, 2012

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 1,500 square foot portion of Adams Street right-of-way adjacent to Lots 4-6, Block 40, Moody Addition, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is \$150.00.

Very truly yours,

Courtney Sharp
City Manager

Exhibit "B"



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: V-11-005, Habitat for Humanity ROW vacation

Purpose:

Consider an ordinance on a request by Habitat for Humanity to vacate a 10-foot by 150-foot (1500 sq ft) portion of Jefferson Street right-of-way.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Habitat for Humanity is requesting the vacation of 10-feet of right-of-way from the west side of Jefferson Street at its intersection with Dakota Avenue. This request is made to reduce construction costs for affordable housing. This vacation will allow the new homes to be 10 feet closer to the street paving, thereby reducing the driveway length and, consequently, construction costs. The existing right-of-way width for Jefferson Street is 80 feet, whereas the Subdivision Code requires only 60 feet. As compensation, the applicant proposes to dedicate 10 additional feet for the alley located west of the three affected lots. The right-of-way value is \$150; however, with the additional alley dedication, no compensation is required.

Attachments:

Survey Plat
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 1,500 SQUARE FOOT PORTION OF JEFFERSON STREET RIGHT-OF-WAY ADJACENT TO LOTS 4A, 5A AND 5B, BLOCK 193, SOUTHERN ADDITION, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHWEST CORNER OF JEFFERSON STREET AND DAKOTA AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$150.00; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 1,500 square foot portion of Jefferson Street right-of-way adjacent to Lots 4A, 5A and 5B, Block 193, Southern Addition, Section 7, City and County of Midland, Texas, is no longer needed for public use; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, an application for vacating the right-of-way has been received by the City from the abutting property owner; and

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$150.00, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to waive the fee for the cost of the right-of-way in light of the abutting property owner's status as a nonprofit organization and the abutting property owner's dedication of right-of-way to the City; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the right-of-way described herein;

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

SECTION ONE. That the 1,500 square foot portion of Jefferson Street right-of-way adjacent to Lots 4A, 5A and 5B, Block 193, Southern Addition, Section 7, City and County of Midland, Texas, as described in Exhibit “A” attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way affects any private easement or access easement which abutting property owners may have in said right-of-way.

SECTION TWO. That the fee for the cost of the right-of-way vacated and abandoned herein to the adjoining property owner is hereby waived.

SECTION THREE. That the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS ____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CITY OF MIDLAND
Planning Division

APPLICATION TO VACATE RIGHT-OF-WAY

- I.** Application is hereby made to the City Council to vacate the following public right-of-way or easement:
1500 SQUARE FEET JEFFERSON STREET ADJACENT TO
LOTS 4A, 5A & 5B BLK 193 SOUTHERN ADD. SECTION 7
- II.** Reason for Request: GET 10 ADDITIONAL FEET FOR DRIVE WAYS
- III.** Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:
DOES NOT CHANGE THE BACK OF CURB OR ANYTHING

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)

Name: HABITAT FOR HUMANITY/ ALYNDA BEST, EXECUTIVE DIRECTOR

Address: 305 E TEAS Phone: 432-686-8877

Street

MIDLAND

City

TX

State

71701

Zip Code

2. Metes and bounds description of property to be vacated.
3. Map showing property to be vacated and its relationship to the applicant's property.
4. Right-of-way Release Letter(s) signed by adjacent property owner(s). (See attached)
5. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)
6. Application Fee: **\$300.00**

Required items Attached? Date Received: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____ 6. _____

- V.** Clearance is needed from the following utility companies: City of Midland / Atmos Energy
 Caprock Energy / TXU Electric / AT&T / Suddenlink Cable TV Co. / Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained and to work out any issues that may arise.

VI. Policies:

1. The applicant(s) shall be responsible for obtaining written concurrence from the owner(s) of any property adjacent to the affected right-of-way and for submitting said concurrence with the application. Following receipt of a complete application, the request shall proceed according to either (A) or (B) as follows:
 - A. If the portion of right-of-way under consideration may be vacated without affecting the traveling public, then the request shall be scheduled for deliberation by the City Council. No public hearing shall be required.
 - B. If the portion of right-of-way under consideration has been or is being used by the public, then the City shall send written notification of the request to all property owners within 1,000 feet a public hearing before City Council will be held. Any opposition to the requested closure must be in writing. Approval of a request with 20% or more opposition from notified landowners shall require a three-fourths vote of the City Council.

Signature of applicant: *M. A. Best*

Date: 11/25/11

****Application will not be considered for scheduling until reviewed by a planner.****

To be completed by City of Midland staff:

According to the policy guidelines outlined above, a public hearing will ____ will not ____ be required.

FOR OFFICE USE ONLY

Rec'd. By: JC

Date: 11-29-11

Assigned: JC

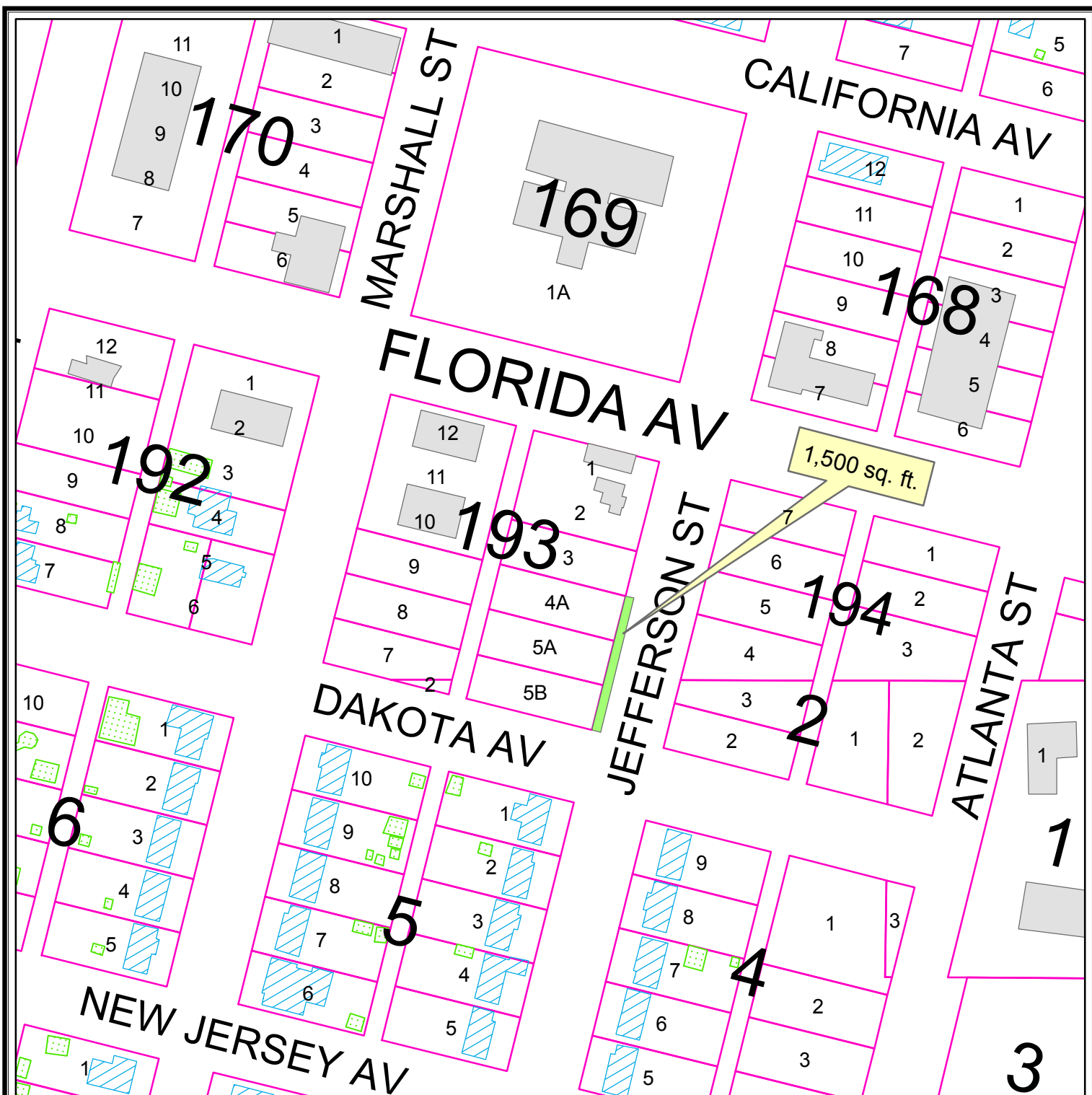
For: CC

On: _____

Revised 9/1/06

Vacation Application

Page 2



LOCATION MAP

V - 11 - 005

Scale: 1" = 150'

Consider a request for the vacation of a 1,500 square foot portion of the right-of-way of S. Jefferson Street adjacent to Lots 4A, 5A and 5B, Block 193, Southern Addition, Section 7, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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Office of
City Manager

300 N. Loraine
P.O. Box 1152
Midland, TX 79702-1152

432.685.7203
Fax 432.686.1600

January 13, 2012

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 1,500 square foot portion of Jefferson Street right-of-way adjacent to Lots 4A, 5A and 5B, Block 193, Southern Addition, Section 7, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is \$150.00.

Very truly yours,

A handwritten signature in black ink that reads "Courtney Sharp". The signature is written in a cursive, flowing style.

Courtney Sharp
City Manager

Exhibit "B"

MIDLAND
City Attorney's Office
City of Midland
Office Memorandum

DATE: January 17, 2012

To: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Employment of the Lloyd Gosselink law firm

The proposed resolution employs the law firm of Lloyd Gosselink of Austin, Texas to assist the City regarding water contracts. Mr. Martin Rochelle will be the contact attorney with the firm. It is my understanding that Mr. Rochelle has had numerous conversations with the Mayor, the City Manager and the Director of Utilities regarding the water issues facing the City.

In my conversation with Mr. Rochelle today, he stated that Ms. Cathleen C. Slack, Ms. Cristina Ramage and Mr. Alex McCready may assist him in any work he does for the City.

The following items are attached to this memorandum for your review:

1. An overview of Lloyd Gosselink submitted by the firm;
2. Resume' of Martin Rochelle;
3. Hourly billing statement for Mr. Rochelle, Ms. Slack, Ms. Ramage and Mr. McCready.

KS/lo
Attachments

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EMPLOYMENT OF
THE LAW FIRM OF LLOYD GOSSELINK OF AUSTIN,
TEXAS TO ASSIST THE CITY OF MIDLAND IN ALL
MATTERS RELATED TO WATER CONTRACTS; AND
THE MAYOR IS AUTHORIZED TO EXECUTE AN
ENGAGEMENT LETTER WITH THE LLOYD
GOSSELINK LAW FIRM; AND APPROPRIATING
FUNDS**

WHEREAS, the City of Midland finds it to be in the public interest to employ the law firm of Lloyd Gosselink on matters related to water contracts;

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

SECTION ONE. THAT the Mayor is hereby authorized and directed to execute an engagement letter or similar contract with the law firm of Lloyd Gosselink of Austin, Texas on all matters related to water contracts.

SECTION TWO. THAT the City Treasurer is hereby authorized and directed to pay the law firm of Lloyd Gosselink from funds available in the Fiscal Year 2011 - 2012 Water and Sewer Fund (300) Utilities (300) NonDepartmental (0325) Legal Fees (3410) budget account upon receipt of proper invoices or statements approved by the City Manager and City Attorney.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



THE FIRM PRACTICE AREAS ATTORNEYS PUBLICATIONS CALENDAR CONTACT US LINKS

Overview | Experience | Mission Statement | Memberships

OVERVIEW

Since being founded as one of the first environmental law firms in Texas, **Lloyd Gosselink** has evolved to develop new areas of expertise to meet our clients' changing and growing demands. The Firm was founded on the principle that teamwork should prevail by drawing on the talents of all levels of professional and support staff to meet our clients' needs. The result is a team-oriented culture that sets **Lloyd Gosselink** apart in the legal community and has resulted in the Firm being selected in 2009 and 2010 as one of the Best Places to Work in Austin.

From our original core practice groups in environmental and utility law, the Firm has grown practices in governmental relations, carbon management and climate change, business transactions, commercial litigation, and employment law. The Firm's growing practice continues to attract top quality lawyers with real world experience. Our lawyers are highly recognized in their fields and are widely sought-after speakers. Despite its growth, the Firm has never strayed from its founding mission--to deliver top-quality, cost-effective legal representation and to work with our clients in finding innovative solutions to legal problems, while maintaining the highest professional standards.

Lloyd Gosselink is committed to our clients and their success. We work to gain an in-depth understanding of our clients and their business so we can provide practical counsel while offering creative solutions to their challenges. We have the depth of knowledge and talent necessary to provide clients with the kind of responsiveness and long-term continuity that earns their trust and loyalty.

Lloyd Gosselink attorneys have a wide range of backgrounds, and include former employees of the very entities with which our clients interface. With a commanding view of the Texas Capitol, the Firm maintains a strong presence there and throughout Texas.

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EXPERIENCE

The Firm's attorneys have extensive experience in representing clients before the Texas Legislature, state and federal agencies and courts, and municipal governments. Prior to joining **Lloyd Gosselink**, members of the Firm were employed in staff and management positions with municipal governments, the Texas Attorney General's Office, the Texas Legislature, the Texas Commission on Environmental Quality (TCEQ) and several of its predecessor agencies, the Public Utility Commission of Texas (PUC), the Office of Public Utility Counsel, and engineering and consulting companies. Our attorneys interact daily with agency commissioners and their staff, as well as with clients and their technical consultants, and actively participate on behalf of our clients in the legislative and agency rulemaking processes to ensure their interests are represented.



The Statesman
statesman.com



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MISSION STATEMENT

Lloyd Gosselink is a team of people dedicated to providing exceptional service and maximum value to our clients and to the Firm. We will at all times provide our advice and assistance, conduct the business of the Firm and comport ourselves maintaining the highest standards of ethical and professional integrity. We will commit to exceeding our clients' expectations for quality, responsiveness and professional excellence. We will employ people of exceptional quality, creativity, expertise and determination who work closely with one another and with our clients and prospective clients. We will motivate and reward outstanding team performance on behalf of clients and the Firm.

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MEMBERSHIPS

Lloyd Gosselink and our attorneys are members of numerous law and industry organizations including:

- [American Arbitration Association](#) (associate member)
- [American Bar Association](#) (Section on Environment, Energy, and Resources)
- [American Health Lawyers Association](#)
- [American Water Works Association](#)
- [Association of Water Board Directors](#)
- [Austin Chamber of Commerce](#)
- [Capital Area Suburban Exchange](#)
- [Industry Council on the Environment](#)
- [National Association of Clean Water Agencies](#)
- Real Estate Council of Austin
- [State Bar of Texas Section on Administrative & Public Law](#)
- [State Bar of Texas Section on Construction Law](#)
- [State Bar of Texas Section on Environmental & Natural Resources Law](#)
- [State Bar of Texas Section on Oil, Gas, & Mineral Law](#)
- State Bar of Texas Section on Public Utility Law
- [Texas Aq Industries Association](#)
- [Texas Aggregates & Concrete Association](#)
- [Texas Alliance of Groundwater Districts](#)
- [Texas and National Association of Telecommunications Officers and Advisors](#)
- [Texas Chapter of the Solid Waste Association of North America](#)
- [Texas City Attorneys Association](#)
- [Texas Grain & Feed Association](#)
- [Texas Public Power Association](#)
- [Texas Rural Water Association](#)
- [Texas Water Conservation Association](#)
- [Water Environment Association of Texas](#)
- [Water Environment Federation](#)

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MARTIN C. ROCHELLE

Water Practice Group - Chair

(512) 322-5810

mrochelle@lglawfirm.com

Martin Rochelle is the Chair of the Firm's Water Practice Group and he is a member of the Government Relations Practice Group. His practice is focused on the development and implementation of sound water policy by the Texas Legislature and in representing clients in water quality, water supply, and water reuse matters before local, state and federal agencies.

Martin represents a broad array of water interests across the state, including cities, river authorities, regional water districts, and other political subdivisions of the state, as well as industrial and commercial interests, at the Texas Capitol and before the Texas Commission on Environmental Quality and U.S. Environmental Protection Agency. Prior to joining the Firm in 1984, he served as Committee Counsel to the Texas Senate, 1978-79, and as Staff Attorney at the Texas Department of Water Resources (a predecessor agency of the Texas Commission on Environmental Quality), 1979-1984. Martin has been a Principal of the Firm since 1990 and he currently serves on the Firm's Executive Committee.

Martin is a member of the Board of Directors of the Texas Water Conservation Association and he is the Chair of TWCA's Water Laws Committee. In 2008, TWCA awarded Martin the President's Award for outstanding service to the Association. Martin is also the current Chair of the Texas WaterReuse Association's Legislative Committee.

AREAS OF PRACTICE

- Water
- Government Relations

REPRESENTATIVE EXPERIENCE

- Martin practices administrative law with an emphasis in the fields of environmental, water, and natural resources law.
- Specific areas of Martin's practice are water rights permitting, including the permitting of large reservoirs and water reuse projects, and water quality permitting, including the permitting of regional wastewater treatment facilities and stormwater permitting, Clean Water Act § 404 permitting, including NEPA compliance, as well as environmental counseling and compliance.
- Martin also represents his clients in formulating and pursuing sound water policies and other water-related initiatives before the Texas Legislature.

PROFESSIONAL LICENSES AND EDUCATION

- Admitted to State Bar of Texas (1977)
- J.D., University of Houston (1977)
- B.S., East Texas State University (1974)



PREEMINENTTM AV LexisNexis[®] Martindale-Hubbell[®]
PeerReviewRated
FOR ETHICAL STANDARDS AND LEGAL ABILITY[™] 2011
Martin C. Rochelle

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

- State Bar of Texas
- Environmental and Natural Resources Law Section
- Administrative and Public Law Section
- Austin Bar Association
- Texas Water Conservation Association (Board Member and former Water Laws Committee Chair)
- Texas WaterReuse Association (current Legislative Committee Chair)
- Water Environment Association of Texas
- Texas Association of Clean Water Agencies
- Texas Municipal Utilities Association

PUBLICATIONS AND PRESENTATIONS

- Author and Speaker, "Legislative Update," 10th Annual North Texas Central Texas Chapter of Texas AWWA Drinking Water Seminar, 2011;
 - Co-Author and Speaker, "Future Municipal Water Supplies: From Planning to Implementation," Texas City Attorneys Association Fall Meeting, 2010;
 - Co-Author and Speaker, "Meeting Water Supply Needs - Planning, Permitting, and Implementation," Chapter 19, *Texas Practice Guide*, Texas Law of Water Resources, 2008;
 - Author and Speaker, "From the Capitol: The 80th Texas Legislature," Presented at the CLE International's 8th Annual SuperConference, Law of the Rio Grande, 2008;
 - Speaker, "Water Supply Options and Challenges," Presented at the Association of Water Board Directors Annual Meeting, 2008;
 - Speaker, "Legislative Update," Presented at the 6th Annual North Central Texas Chapter of Texas American Water Works Association, Drinking Water Seminar Program, 2007;
 - Speaker, "Water Reuse Projects in Texas," Presented at the Fort Bend Water Reuse Conference, 2006;
 - Co-Author, "Texas Agency Structure," Chapter 2, Vol. 45 *Texas Practice*, Environmental Law, 1997-2008 Supplements;
 - Author and Speaker, "Water Law Update," Presented at the Texas City Attorneys Association, 2005;
 - Author and Speaker, "Wastewater Wars: Implications of Reuse Projects in Texas," Presented at the Association of Water Board Directors Annual Conference, 2005;
 - Author, "Environmental Flows: Competing for Limited Resources," Texas Bar Journal, 2004;
 - Author and Speaker, "Environmental Flows and Water Reuse," Presented at the Texas Water Conservation Association/Texas Rural Water Association Water Law Conference, 2004;
 - Author and Speaker, "Environmental Flow Considerations in Surface Water Rights Permitting," Presented at the Texas Water Conservation Association Annual Conference, 2004;
 - Author and Speaker, "Legislative Update," Presented at the 15th Annual Environmental Superconference, 2003;
 - Co-Author, "Watershed Management in Texas: A Survey of Local Government Authority to Regulate," State Bar of Texas' Environmental Law Journal, 1998;
 - Author and Speaker, "Return Flows -- Permitting and Planning Implications," Presented at the Water for Texas Conference, 1998;
 - Author and Speaker, "Water Quality Update," Presented at the Advanced Environmental Law Conference, State Bar of Texas Professional Development Program, 1994;
 - Author and Speaker, "Water Quality Update," Presented at the State Bar of Texas Professional Development Program, 1993;
 - Author and Speaker, "Water for the 21st Century - Extending a Finite Supply," Presented at the State Bar of Texas Professional Development Program, 1988;
 - Speaker, "Advising Officers, Directors and Partners of Troubled Businesses," Presented at the State Bar of Texas Professional Development Program, 1987;
-

**LLOYD GOSSELINK ROCHELLE & TOWNSEND, P.C.
2012 MASTER FEE SCHEDULE**

<u>Principals</u>		City of Midland <u>Preferred Rates</u>
Robert H. Lloyd	375	
Paul G. Gosselink	350	
Martin C. Rochelle	350	315
R. Lambeth Townsend	350	
Georgia N. Crump	325	
Geoffrey M. Gay	375	
Brian L. Sledge	330	
Lauren J. Kalisek	300	
J. Chris Phillips	330	
Michael A. Gershon	295	
Thomas L. Brocato	325	
Brad B. Castleberry	295	
Duncan C. Norton	345	
Ty H. Embrey	290	
Jose E. de la Fuente	315	
Chris L. Brewster	275	
Sheila B. Gladstone	300	
Christopher B. Pepper	350	
Jason T. Hill	275	
Cathleen C. Slack	330	300
<u>Associates</u>		
Jeffrey S. Reed	225	
David J. Klein	250	
Amy M. Emerson	235	
Sara R. Thornton	225	
Stefanie P. Albright	225	
Kristen O. Fancher	225	
Eileen L. McPhee	220	
Melissa A. Long	215	
Cristina D. Ramage	225	205
Daniel M. Gonzales	190	
Alex R. McCready	225	205
Shauna N. Fitzsimmons	195	
<u>Legal and Technical Assistants, Analysts, Intern, Librarian</u>		
Richard A. Dyer	170	
Fred L. Castro	120	
Debra A. Fehrenkamp	120	
Joe A. Jimenez	120	
Barbara O. Kimmell	115	
Jeff D. Goldstein	115	
Holly N. Paxton	115	
Mindy M. Martinez	115	
Paula L. McCormick	115	
Judy Golden-Bentley	120	
Palge L. Hamilton	115	
Erin D. Zoch	120	
Contract Paralegals	115	
Jeanne A. Rials	100	
Law Clerks	95	
Cara L. Holt	75	
Karen W. Mallios	75	
Paralegal Assistants	35	

12/9/2011
1423615



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Bob McNaughton, Director of Finance

SUBJECT: Sale of City of Midland Certificates of Obligations, Series 2012

Purpose:

Consider all matters incident and related to the issuance and sale of "City of Midland, Texas, Tax and Limited Pledge Revenue Certificates of Obligation, Series 2012," including the adoption of an ordinance authorizing the issuance of such certificates of obligation.

Comment [1]: This section should relate the necessity for the item being placed on the agenda in two (2) sentences or less.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Sale of 2012 Certificates of Obligation not to exceed \$31,150,000 to fund proposed projects, levy ad valorem taxes to pay debt service and approve agreements associated with issue.

Comment [2]: This section, should state, if applicable, all costs associated with item and funding sources. Any and all financial benefits to the city should be stated here.

Discussion:

Required notices have been posted at City Hall and published as required.

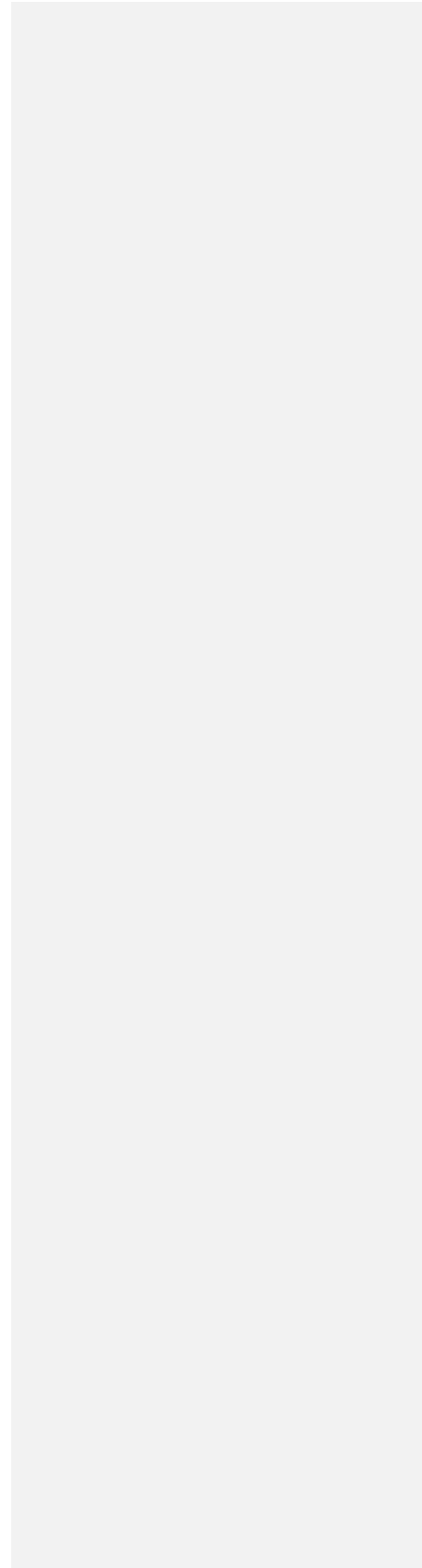
Standard & Poor's has affirmed the City's bond rating at AA+. Also, Moody's affirmed the City's the bond rating at Aa1. Both ratings are the next to highest rating available.

Attachment 1 is a schedule of events leading to the issuance of the Certificates.

Attachment 2 is a summary statement of uses of the Certificates.

Attachment 3 is the ratings information from Moody's and Standard and Poor's.

Comment [3]: This section is to provide a concise narrative of the agenda item. Information should be such that City Council is fully aware of expectations from recommended action.



ORDINANCE NO. _____

AN ORDINANCE authorizing the issuance of “CITY OF MIDLAND, TEXAS, TAX AND LIMITED PLEDGE REVENUE CERTIFICATES OF OBLIGATION, SERIES 2012”; levying an ad valorem tax upon all taxable property within the City and providing for a limited pledge of the net revenues of the City’s Waterworks and Sewer System for the payment of said Certificates; prescribing the terms and details of such Certificates and resolving other matters incident and related to the issuance, sale, security, payment and delivery of said Certificates, including the approval of a Paying Agent/Registrar Agreement and the approval and distribution of an Official Statement pertaining thereto; and providing an effective date.

WHEREAS, notice of the City Council’s intention to issue certificates of obligation in the maximum principal amount of \$31,150,000 for the purpose of paying contractual obligations to be incurred for the construction, improvement, and acquisition of public works and equipment, to wit: (i) acquiring and installing a voice and data communication system for public services, including police and fire departments, (ii) improving, constructing and equipping fire fighting facilities, (iii) improving, constructing and equipping park and recreational facilities, (iv) improving and equipping the City’s information technology system, (v) constructing and improving streets, including drainage, landscaping, curbs, gutters, sidewalks, signage and traffic signalization incidental thereto and the acquisition of land and rights-of-way therefor, (vi) improving and extending the City’s water and sewer system and (vii) paying professional services rendered in relation to such projects and the financing thereof, has been duly published in the *Midland Reporter-Telegram*, a newspaper of general circulation in the City of Midland, Texas (the “City”) on December 16, 2011 and December 23, 2011, the date of the first publication of such notice being not less than thirty-one (31) days prior to the tentative date stated therein for the passage of the ordinance authorizing the issuance of such certificates; and

WHEREAS, the *Midland Reporter-Telegram* is a newspaper which devotes not less than twenty-five percent (25%) of its total column lineage to items of general interest, is published not less frequently than once each week, entered as second-class (periodical class) postal matter in the county where it is published, and has been published regularly and continuously for not less than twelve (12) months prior to the date of the publication of said “NOTICE OF INTENTION TO ISSUE CITY OF MIDLAND, TEXAS, CERTIFICATES OF OBLIGATION”;

WHEREAS, no petition protesting the issuance of the certificates of obligation described in the aforesaid notice, signed by at least 5% of the qualified electors of the City, has been filed with or presented to the City Secretary on or prior to the date of the passage of this Ordinance; and

WHEREAS, the Council hereby finds and determines that \$31,150,000 in principal amount of the certificates of obligation described in such notice should be issued and sold at this time; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND:

SECTION 1: Authorization-Designation-Principal Amount-Purpose. Certificates of obligation of the City shall be and are hereby authorized to be issued in the aggregate principal amount of \$31,150,000 to be designated and bear the title “CITY OF MIDLAND, TEXAS, TAX AND LIMITED PLEDGE REVENUE CERTIFICATES OF OBLIGATION, SERIES 2012” (the “Certificates”), for the purpose of paying contractual obligations to be incurred for the construction, improvement, and acquisition of public works and equipment, to wit: (i) acquiring and installing a voice and data communication system for public services, including police and fire departments, (ii) improving, constructing and equipping fire fighting facilities, (iii) improving, constructing and equipping park and recreational facilities, (iv) improving and equipping the City’s information technology system, (v) constructing and improving streets, including drainage, landscaping, curbs, gutters, sidewalks, signage and traffic signalization incidental thereto and the acquisition of land and rights-of-way therefor, (vi) improving and extending the City’s water and sewer system and (vii) paying professional services rendered in relation to such projects and the financing thereof; pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, including V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended.

SECTION 2: Fully Registered Obligations- Authorized Denominations- Stated Maturities- Date. The Certificates are issuable in fully registered form only; shall be dated January 15, 2012 (the “Certificate Date”) and shall be in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity), and the Certificates shall become due and payable on March 1 in each of the years and in principal amounts (the “Stated Maturities”) and bear interest at the per annum rate(s) in accordance with the following schedule:

<u>Year of Stated Maturity</u>	<u>Principal Amount</u>	<u>Interest Rates</u>
2013	\$ _____	_____ %
2014		
2015		
2016		
2017		
2018		
2019		
2020		
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2031		
2032		

The Certificates shall bear interest on the unpaid principal amounts thereof from the Certificate Date at the per annum rate(s) shown in the above schedule, and such interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. Interest on the unpaid principal amounts of the Certificates shall be payable on March 1 and September 1 in each year, commencing March 1, 2013.

SECTION 3: Terms of Payment-Paying Agent/Registrar The principal of, premium, if any, and the interest on the Certificates, due and payable by reason of maturity, redemption, or otherwise, shall be payable only to the registered owners or holders of the Certificates (the “Holders”) appearing on the registration and transfer books (the “Security Register”) maintained by the Paying Agent/Registrar. Such payments shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, to serve as Paying Agent/Registrar for the Certificates is hereby approved and confirmed. Books and records relating to the registration, payment, transfer and exchange of the Certificates (the “Security Register”) shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, as provided herein and in accordance with the terms and provisions of a “Paying Agent/Registrar Agreement,” substantially in the form attached hereto as **Exhibit A**, and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Mayor and City Secretary are hereby authorized to execute and deliver such Agreement in connection with the delivery of the Certificates. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Certificates are paid and discharged, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Certificates, the City agrees to promptly cause a written notice of the change to be sent to each Holder by United States Mail, first class postage prepaid, and such notice shall also give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Certificates shall be payable at the Stated Maturities or the redemption thereof only upon presentation and surrender of the Certificates to the Paying Agent/Registrar at its designated offices, initially in East Syracuse, New York, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the “Designated Payment/Transfer Office”). Interest on the Certificates shall be paid by the Paying Agent/Registrar to the Holders whose names appear in the Security Register at the close of business on the Record Date (the fifteenth (15th) day of the month next preceding each interest payment date) and payment of such interest shall be (i) by check sent United States mail, first-class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 4: Redemption.

(a) **Optional Redemption.** The Certificates having Stated Maturities on and after March 1, 20____ shall be subject to redemption prior to maturity, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on March 1, 20____, or on any date thereafter, at the redemption price of par plus accrued interest to the date of redemption.

(b) **Exercise of Redemption Option.** At least forty-five (45) days prior to an optional redemption date for the Certificates (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the City shall notify the Paying Agent/Registrar of the decision to redeem Certificates, the principal amount of each Stated Maturity to be redeemed, and the date of redemption therefor. The decision of the City to exercise the right to redeem Certificates shall be entered in the minutes of the governing body of the City.

(c) **Selection of Certificates for Redemption.** If less than all Outstanding Certificates of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall treat such Certificates as representing the number of Certificates Outstanding which is obtained by dividing the principal amount of such Certificates by \$5,000 and shall select the Certificates, or principal amount thereof, to be redeemed within such Stated Maturity by lot.

(d) **Notice of Redemption.** Not less than thirty (30) days prior to a redemption date for the Certificates, a notice of redemption shall be sent by United States mail, first-class postage prepaid, in the name of the City and at the City's expense, to each Holder of a Certificate to be redeemed in whole or in part at the address of the Holder appearing on the Security Register at the close of business on the business day next preceding the date of mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether or not received by the Holder.

All notices of redemption shall (i) specify the date of redemption for the Certificates, (ii) identify the Certificates to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Certificates, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment of the redemption price for the Certificates, or the principal amount thereof to be redeemed, shall be made at the Designated Payment/Transfer

Office of the Paying Agent/Registrar only upon presentation and surrender thereof by the Holder. If a Certificate is subject by its terms to prior redemption and has been called for redemption and notice of redemption thereof has been duly given as hereinabove provided, such Certificate (or the principal amount thereof to be redeemed) shall become due and payable and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys sufficient for the payment of such Certificate (or of the principal amount thereof to be redeemed) at the then applicable redemption price are held for the purpose of such payment by the Paying Agent/Registrar.

(e) **Conditional Notice of Redemption.** With respect to any optional redemption of the Certificates, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

SECTION 5: Registration- Transfer- Exchange of Certificates- Predecessor Certificates. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every Holder of the Certificates issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Certificate may, in accordance with its terms and the terms hereof, be transferred or exchanged for Certificates of other authorized denominations by the Holder, in person or by his duly authorized agent, upon surrender of such Certificate to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon the surrender of any Certificate for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Certificates of authorized denominations and having the same Stated Maturity and of a like aggregate principal amount as the Certificate or Certificates surrendered for transfer.

At the option of the Holder, Certificates may be exchanged for other Certificates of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Certificates surrendered for exchange, upon surrender of the Certificates to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Certificates are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Certificates to the Holder requesting the exchange.

All Certificates issued in any transfer or exchange of Certificates shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States mail, first-class postage prepaid, to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the City, evidencing the same

obligation to pay and entitled to the same benefits under this Ordinance, as the Certificates surrendered in such transfer or exchange.

All transfers or exchanges of Certificates pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Certificates canceled by reason of an exchange or transfer pursuant to the provisions of this Ordinance are hereby defined to be "Predecessor Certificates," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Certificate or Certificates registered and delivered in the exchange or transfer. Additionally, the term "Predecessor Certificates" shall include any mutilated, lost, destroyed, or stolen Certificate for which a replacement Certificate has been issued, registered, and delivered in lieu thereof pursuant to the provisions of Section 28 hereof, and such new replacement Certificate shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Certificate.

Neither the City nor the Paying Agent/Registrar shall be required to issue or transfer to an assignee of a Holder any Certificate called for redemption, in whole or in part, within 45 days of the date fixed for the redemption of such Certificate; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Certificate called for redemption in part.

SECTION 6: Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in this Ordinance relating to the payment, and transfer/exchange of the Certificates, the City hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement and transfer system provided by The Depository Trust Company ("DTC"), a limited purpose trust company organized under the laws of the State of New York, in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum, as amended, the Blanket Issuer Letter of Representations, by and between the City and DTC, and the Letter of Representation from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement") relating to the Certificates.

Pursuant to the Depository Agreement and the rules of DTC the Certificates shall be deposited with DTC who shall hold said Certificates for its participants (the "DTC Participants"). While the Certificates are held by DTC under the applicable Depository Agreement, the Holder of the Certificates on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Certificate (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Certificates or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general, the City covenants and agrees with the Holders of the Certificates to cause Certificates to be printed in definitive form and provide for the appropriate Certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Certificates in definitive form shall be assigned, transferred and exchanged on the

appropriate Security Register maintained by the Paying Agent/Registrar and payment of such Certificates shall be made in accordance with the provisions hereof other than this Section.

SECTION 7: Execution - Registration. The Certificates shall be executed on behalf of the City by the Mayor under its seal reproduced or impressed thereon and countersigned by the City Secretary. The signatures of said officers on the Certificates may be manual or facsimile. Certificates bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the Certificate Date shall be deemed to be duly executed on behalf of the City, notwithstanding that one or more of the individuals executing such Certificates shall cease to be such officers at the time of delivery of the Certificates to the initial purchaser(s) and with respect to Certificates delivered in subsequent exchanges and transfers, all as authorized and provided in the V.T.C.A., Government Code, Chapter 1201, as amended.

No definitive Certificate shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Certificate a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and such manually executed certificate upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly certified, registered and delivered.

No Initial Certificate (as defined below) shall be entitled to any right or benefit under this Ordinance or be valid or obligatory for any purpose unless there appears on such Initial Certificate a certificate of registration substantially in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas, or a duly authorized agent.

SECTION 8: Initial Certificate. The Certificates herein authorized shall be initially issued as a single fully-registered certificate in the principal amount of \$31,150,000 with principal installments to become due and payable as provided in Section 2 and numbered T-1 (the "Initial Certificate") and shall be registered in the name of the initial purchaser or the designee thereof. The Initial Certificate shall be submitted to the Office of the Attorney General of the State of Texas for approval; certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas; and, delivered to the initial purchaser. Any time after the delivery of the Initial Certificate, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser, or the designee thereof, shall cancel the Initial Certificate and exchange it for definitive Certificates of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified for such purpose; all pursuant to and in accordance with such written instructions from the initial purchaser, or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9: Forms.

(a) Forms Generally. The Certificates, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to appear on each of the Certificates, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have

such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends in the event the Certificates, or any maturities thereof, are purchased with insurance) and any reproduction of an opinion of counsel thereon as may, consistently herewith, be established by the City or determined by the officers executing such Certificates as evidenced by their execution. Any portion of the text of any Certificates may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Certificate.

The definitive Certificates and the Initial Certificates shall be printed, lithographed, engraved, typewritten, photocopied, or produced in any other similar manner, all as determined by the officers executing such Certificates as evidenced by their execution.

(b) Form of Definitive Certificate.

REGISTERED
NO. _____

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF MIDLAND, TEXAS
TAX AND LIMITED PLEDGE REVENUE
CERTIFICATE OF OBLIGATION
SERIES 2012

Certificate Date:
January 15, 2012

Interest Rate:
_____ %

Stated Maturity:

CUSIP NO:

Registered Owner:

Principal Amount:

The City of Midland (hereinafter referred to as the “City”), a body corporate and municipal corporation in the Counties of Midland and Martin, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, the Principal Amount stated above, on the Stated Maturity date specified above (or so much thereof as shall not have been paid upon prior redemption) and to pay interest (computed on the basis of a 360-day year consisting of twelve 30-day months) on the unpaid Principal Amount hereof from the Certificate Date at the per annum rate of interest specified above; such interest being payable on March 1 and September 1 of each year, commencing March 1, 2013. Principal of this Certificate is payable at its Stated Maturity or date of redemption to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor. Interest is payable to the registered owner of this Certificate (or one or more Predecessor Certificates, as defined in the Ordinance hereinafter referenced) whose name appears on the “Security Register” maintained by the Paying Agent/Registrar at the close of business on the “Record Date”, which is the fifteenth (15th) day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States mail, first-class postage prepaid, to the address of

the registered owner recorded in the Security Register on the Record Date or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the registered owner hereof and in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts.

This Certificate is one of the series specified in its title issued in the aggregate principal amount of \$31,150,000 (the "Certificates") for the purpose of paying contractual obligations to be incurred for the construction, improvement, and acquisition of public works and equipment, to wit: (i) acquiring and installing a voice and data communication system for public services, including police and fire departments, (ii) improving, constructing and equipping fire fighting facilities, (iii) improving, constructing and equipping park and recreational facilities, (iv) improving and equipping the City's information technology system, (v) constructing and improving streets, including drainage, landscaping, curbs, gutters, sidewalks, signage and traffic signalization incidental thereto and the acquisition of land and rights-of-way therefor, (vi) improving and extending the City's water and sewer system and (vii) paying professional services rendered in relation to such projects and the financing thereof, under and in strict conformity with the Constitution and laws of the State of Texas, particularly V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended, and pursuant to an Ordinance adopted by the governing body of the City (herein referred to as the "Ordinance").

The Certificates maturing on and after March 1, 20____, may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on March 1, 20____, or on any date thereafter.

The redemption price shall be par, together with accrued interest to the date of redemption and thirty (30) days prior written notice shall be sent by United States Mail, first class postage prepaid, to the registered owners of the Certificates to be redeemed. All redemptions are subject to the terms and provisions relating thereto contained in the Ordinance. If this Certificate (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date this Certificate (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor, provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the principal amount of a Certificate is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of

such Certificate to the Paying Agent/Registrar at its Designated Payment/Transfer Office, and a new Certificate or Certificates of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner without charge. If a Certificate is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such Certificate to an assignee of the registered owner within forty-five (45) days of the redemption date; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Certificate redeemed in part.

With respect to any optional redemption of the Certificates, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

The Certificates are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City and are additionally payable from and secured by a lien on and limited pledge of the Net Revenues (as defined in the Ordinance) of the City's Waterworks and Sewer System (the "System"), such lien and pledge being limited to an amount not in excess of \$2,500 and being junior and subordinate to the lien on and pledge of the Net Revenues of the System securing the payment of "Prior Lien Obligations" (as defined in the Ordinance) now outstanding and hereafter issued by the City. In the Ordinance, the City reserves and retains the right to issue Prior Lien Obligations while the Certificates are outstanding without limitation as to principal amount but subject to any terms, conditions or restrictions as may be applicable thereto under law or otherwise and additional certificates equally and ratably secured with the Certificates by a parity lien on and pledge of the Net Revenues of the System.

Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all the provisions of which the Registered Owner hereof by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Certificates; the properties constituting the System; the Net Revenues pledged to the payment of the principal of and interest on the Certificates; the nature and extent and manner of enforcement of the limited pledge; the terms and conditions relating to the transfer of this Certificate; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the registered owners of the Certificates; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which the tax levy and the liens, pledges, charges and covenants made therein may be discharged at or prior to the maturity of this Certificate, and this Certificate deemed to be no longer Outstanding thereunder; and for the other terms and provisions contained therein. Capitalized terms used herein have the meanings assigned in the Ordinance.

This Certificate, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the Registered Owner hereof, or his or her duly authorized agent. When a transfer on the Security Register occurs, one or more fully registered Certificates of authorized denominations and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, may treat the Registered Owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Certificate as the owner entitled to payment of principal hereof at its Stated Maturity or its date of redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each registered owner appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and covenanted that the City is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Certificates is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Certificates to render the same lawful and valid obligations of the City have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Certificates do not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Certificates by the levy of a tax and a pledge of the Net Revenues of the System as aforesated. In case any provision in this Certificate or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Certificate and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Certificate to be duly executed under the official seal of the City as of the Certificate Date.

CITY OF MIDLAND, TEXAS

Mayor

COUNTERSIGNED:

City Secretary

(SEAL)

(c) Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Certificates only.

**REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS**

OFFICE OF THE COMPTROLLER §
OF PUBLIC ACCOUNTS §
THE STATE OF TEXAS § REGISTER NO. _____
 §

I HEREBY CERTIFY that this Certificate has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(SEAL)

(d) Form of Certificate of Paying Agent/Registrar to appear on definitive Certificates only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Certificate has been duly issued and registered under the provisions of the within-mentioned Ordinance; the certificate or certificates of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated offices of the Paying Agent/Registrar in East Syracuse, New York, is the Designated Payment/Transfer Office of the Certificate.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., Dallas, Texas
as Paying Agent/Registrar

Registration Date:

By: _____
Authorized Signature

(e) **Form of Assignment.**

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee:) _____

(Social Security or other identifying number: _____) the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

Signature Guaranteed:

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Certificate in every particular.

(f) **The Initial Certificate(s) shall be in the form set forth in paragraph (b) of this Section, except that the form of the fully registered Initial Certificate shall be modified as follows:**

The Heading and the first paragraph shall be amended as follows:

REGISTERED
NO. T-1

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF MIDLAND, TEXAS
TAX AND LIMITED PLEDGE REVENUE
CERTIFICATE OF OBLIGATION
SERIES 2012

Certificate Date: January 15, 2012

Registered Owner:

Principal Amount: _____ DOLLARS

The City of Midland (hereinafter referred to as the “City”), a body corporate and municipal corporation in the Counties of Midland and Martin, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on March 1 in each of the years and in principal amounts and bearing interest at per annum rates in accordance with the following schedule:

<u>Year of</u> <u>Stated Maturity</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rates</u>
--	-----------------------------------	---------------------------------

(Information to be inserted from schedule in Section 2 of the Ordinance)

(or so much thereof as shall not have been paid upon prior redemption) and to pay interest (computed on the basis of a 360-day year consisting of twelve 30-day months) on the unpaid Principal Amount hereof from the Certificate Date at the per annum rate of interest specified above; such interest being payable on March 1 and September 1 of each year, commencing March 1, 2013. Principal of this Certificate is payable at its Stated Maturity or redemption to the Registered Owner hereof, by The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the “Paying Agent/Registrar”), upon presentation and surrender, at its designated offices initially in East Syracuse, New York, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the “Designated Payment/Transfer Office”). Interest is payable to the Registered Owner of this Certificate (or one or more Predecessor Certificates, as defined in the Ordinance hereinafter referenced) whose name appears on the “Security Register” maintained by the Paying Agent/Registrar at the close of business on the “Record Date”, which is the fifteenth (15th) day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States mail, first-class postage prepaid, to the address of the Registered Owner recorded in the Security Register on the Record Date or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Registered Owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the Registered Owner hereof and in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts.

SECTION 10: Definitions. For purposes of this Ordinance and for clarity with respect to the issuance of the Certificates herein authorized, and the levy of taxes and appropriation of Net Revenues for the Certificates, the following definitions are provided:

(a) The term “*Additional Certificates*” shall mean combination tax and revenue certificates of obligation hereafter issued under and pursuant to the provisions of the Act, or similar law hereafter enacted and payable from ad valorem taxes and additionally payable from

and secured by a parity lien on and pledge of the Net Revenues of the System of equal rank and dignity with the lien and pledge securing the payment of the Certificates.

(b) The term “*Certificates*” shall mean \$31,150,000 “CITY OF MIDLAND, TEXAS, TAX AND LIMITED PLEDGE REVENUE CERTIFICATES OF OBLIGATION, SERIES 2012” authorized by this Ordinance.

(c) The term “*Certificate Fund*” shall mean the special Fund created and established under the provisions of Section 11 of this Ordinance.

(d) The term “*Collection Date*” shall mean, when reference is being made to the levy and collection of annual ad valorem taxes, the date annual ad valorem taxes levied each year by the City become delinquent.

(e) The term “*Fiscal Year*” shall mean the annual financial accounting period used with respect to the operations of the System now ending on September 30th of each year; provided, however, the City Council may change, by ordinance duly passed, such annual financial accounting period to end on another date if such change is found and determined to be necessary for budgetary or other fiscal purposes.

(f) The term “*Government Securities*” shall mean (a) direct, noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (b) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the City are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (c) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the City are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (d) any other then authorized securities or obligations that may be used to defease obligations such as the Certificates under the then applicable laws of the State of Texas.

(g) The term “*Gross Revenues*” shall mean all income, revenues, and receipts of every nature derived from or received by virtue of the operation of the System, including interest income and earnings received from the investment of moneys in any special funds created for the payment and security of the Prior Lien Obligations and other obligations payable in whole or in part from and secured by a lien on and pledge of the Net Revenues.

(h) The term “*Net Revenues*” shall mean the Gross Revenues of the System, with respect to any period, after deducting the System’s Operating and Maintenance Expenses during such period.

(i) The term “*Operating and Maintenance Expenses*” shall mean all current expenses of maintenance and operation thereof, including all salaries, labor, materials, repairs and extensions necessary to render efficient service, provided, however, that only such expenses for repairs and extensions as in the judgment of the City Council, reasonably and fairly exercised, are necessary to keep the System in operation and render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition

which would otherwise impair any obligations payable from the Net Revenues of the System, shall be deducted in determining “Net Revenues.” Contractual payments for the purchase of water or the treatment of sewage shall be a maintenance and operating expense of the System to the extent provided in the contract incurred therefor and as may be authorized by statute. Depreciation shall never be considered as an expense of operation and maintenance.

(j) The term “*Outstanding*” when used in this Ordinance with respect to Certificates means, as of the date of determination, all Certificates theretofore issued and delivered under this Ordinance, except:

(i) those Certificates canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(ii) those Certificates deemed to be duly paid by the City in accordance with the provisions of Section 24 hereof; and

(iii) those Certificates that have been mutilated, destroyed, lost, or stolen and replacement Certificates have been registered and delivered in lieu thereof as provided in Section 28 hereof.

(k) The term “*Prior Lien Obligations*” shall mean all bonds or other similar obligations that are payable in whole or in part from and secured by a lien on and pledge of the Net Revenues of the System which is prior and superior in claim, rank and dignity to the lien on and pledge of the Net Revenues securing the payment of the Certificates, including:

(i) “City of Midland, Texas Waterworks and Sewer System Junior Lien Revenue Bonds, Series 1999,” dated December 1, 1999, and

(ii) “City of Midland, Texas Waterworks and Sewer System Revenue Refunding Bonds, Series 2002,” dated May 15, 2002; and

(iii) “City of Midland, Texas Combination Tax and Revenue Refunding Bonds, Series 2007,” dated January 15, 2007; and

(l) The term “*System*” shall mean the City’s existing Waterworks and Sewer System, including, but not limited to, all properties (real, personal or mixed and tangible or intangible) owned, operated, maintained, and vested in the City for the supply, treatment and distribution of treated water for domestic, commercial, industrial and other uses, and the collection and treatment of water carried wastes, together with all future additions, extensions, replacements and improvements to the System.

SECTION 11: Certificate Fund. For the purpose of paying the interest on and to provide a sinking fund for the payment and retirement of the Certificates, there shall be and is hereby created a special Fund to be designated “SPECIAL 2012 CITY OF MIDLAND, TEXAS, TAX AND LIMITED PLEDGE REVENUE CERTIFICATE OF OBLIGATION FUND”, and all moneys deposited to the credit of such Certificate Fund shall be kept and maintained at the City’s depository bank, and moneys deposited in said Certificate Fund shall be used for no other purpose. Proper officers of the City are hereby authorized and directed to cause to be transferred to the Paying Agent/Registrar for the Certificates, from funds on deposit in the Certificate Fund,

amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Certificates as the same accrues or matures or comes due by reason of redemption prior to maturity; such transfers of funds to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar for the Certificates at the close of business on the last business day next preceding each interest and/or principal payment date for the Certificates.

Pending the transfer of funds to the Paying Agent/Registrar, money in the Certificate Fund may, at the option of the City, be invested in obligations identified in, and in accordance with the provisions of the "Public Funds Investment Act," V.T.C.A. Government Code, Chapter 2256, as amended, relating to the investment of "bond proceeds"; provided that all such investments shall be made in such a manner that the money required to be expended from said Certificate Fund will be available at the proper time or times. All interest and income derived from deposits and investments in the Certificate Fund shall be credited to, and any losses debited to, the said Certificate Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Certificates.

SECTION 12: Tax Levy. To provide for the payment of the "Debt Service Requirements" on the Certificates being (i) the interest on said Certificates and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount shall be the greater), there shall be and there is hereby levied, within the limitations prescribed by law, for the current year and each succeeding year thereafter while said Certificates or any interest thereon shall remain Outstanding, a sufficient tax on each one hundred dollars' valuation of taxable property in said City, adequate to pay such Debt Service Requirements, full allowance being made for delinquencies and costs of collection; said tax shall be assessed and collected each year and applied to the payment of the Debt Service Requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be deposited into the Certificate Fund. This governing body hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay the said Debt Service Requirements, it having been determined that the existing and available taxing authority of the City for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding indebtedness.

The amount of taxes to be provided annually for the payment of the principal of and interest on the Certificates shall be determined and accomplished in the following manner:

(a) Prior to the date the City Council establishes the annual tax rate and passes an ordinance levying ad valorem taxes each year, the City Council shall determine:

(i) The amount on deposit in the Certificate Fund after (a) deducting the total amount of Debt Service Requirements to become due on Certificates prior to the Collection Date for the ad valorem taxes to be levied and (b) adding to that amount the amount of Net Revenues of the System appropriated and allocated to pay such Debt Service Requirements prior to the Collection Date for the ad valorem taxes to be levied.

(ii) The amount of Net Revenues and other lawfully available revenues, if any, that are appropriated and to be set aside for the payment of the Debt Service Requirements on the Certificates between the Collection Date for the taxes then to be

levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(iii) The amount of Debt Service Requirements to become due and payable on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(b) The amount of taxes to be levied annually each year to pay the Debt Service Requirements on the Certificates shall be the amount established in paragraph (iii) above less the sum total of the amounts established in paragraphs (i) and (ii), after taking into consideration delinquencies and costs of collecting such annual taxes.

SECTION 13: Limited Pledge of Net Revenues. The City hereby covenants and agrees that subject to the prior lien on and pledge of the Net Revenues to the payment and security of the Prior Lien Obligations, the Net Revenues of the System, in an amount not to exceed \$2,500, are hereby irrevocably pledged, equally and ratably, to the payment of the principal of and interest on the Certificates. This limited pledge of \$2,500 of the Net Revenues made for the payment of the Certificates shall constitute a lien on the Net Revenues until such time as the City shall pay all of such \$2,500 in Net Revenues, after which time the pledge shall cease, all in accordance with the terms and provisions of this Ordinance; this limited pledge shall be junior and subordinate to the lien on and pledge of Net Revenues of the System securing the payment of “Prior Lien Obligations” (as defined in the Ordinance) now outstanding and hereafter issued by the City; and, this limited pledge shall be valid and binding without further action by the City.

SECTION 14: System Fund. The City hereby covenants and agrees that all Gross Revenues (excluding earnings from the investment of money held in any special funds or accounts created for the payment and security of Prior Lien Obligations) shall be deposited from day to day as collected into a “City of Midland Waterworks and Sewer System Fund” (hereinafter called “System Fund”) which Fund shall be kept and maintained at an official depository bank of the City. All moneys deposited in the System Fund shall be pledged and appropriated to the extent required for the following purposes and in the order of priority shown, to wit:

First: To the payment of all necessary and reasonable Operating and Maintenance Expenses of the System as defined herein or required by statute to be a first charge on and claim against the Gross Revenues;

Second: To the payment of the amounts required to be deposited in the special Funds created and established for the payment, security and benefit of Prior Lien Obligations in accordance with the terms and provisions of the ordinances authorizing the issuance of Prior Lien Obligations; and

Third: To the payment of the amounts required to be deposited in the special funds and accounts created and established for the payment of the Certificates and Additional Certificates.

Any Net Revenues remaining in the System Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other City purpose now or hereafter permitted by law.

SECTION 15: Deposits to Certificate Fund. The City hereby covenants and agrees to cause to be deposited in the Certificate Fund from the pledged Net Revenues in the System Fund, an amount not to exceed \$2,500.

The City covenants and agrees that the amount of pledged Net Revenues (\$2,500), together with ad valorem taxes levied, collected, and deposited in the Certificate Fund for and on behalf of the Certificates, will be an amount equal to one hundred percent (100%) of the amount required to fully pay the interest and principal due and payable on the Certificates. In addition, any surplus proceeds from the sale of the Certificates not expended for authorized purposes shall be deposited in the Certificate Fund, and such amounts so deposited shall reduce the sums otherwise required to be deposited in said Fund from ad valorem taxes and the Net Revenues.

SECTION 16: Security of Funds. All moneys on deposit in the Funds for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested) shall be secured in the manner and to the fullest extent required by the laws of Texas for the security of public funds, and moneys on deposit in such Funds shall be used only for the purposes permitted by this Ordinance.

SECTION 17: Maintenance of System - Insurance. While the Certificates remain Outstanding, the City covenants and agrees to maintain and operate the System with all possible efficiency and to maintain casualty and other insurance on the properties of the System and its operations of a kind and in such amounts customarily carried by municipal corporations in the State of Texas engaged in a similar type business; and that it will faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State of Texas.

SECTION 18: Rates and Charges. The City hereby covenants and agrees that rates and charges for services provided by the System will be established and maintained, on the basis of all available information and experience and with due allowance for contingencies, that are reasonably expected to provide Gross Revenues to pay:

- (a) Operating and Maintenance Expenses of the System;
- (b) the interest on and principal of Prior Lien Obligations and the amounts required to be deposited into any special Funds created and established for the payment and security of the Prior Lien Obligations;
- (c) the amounts required to be deposited in the special Funds or Accounts (the Certificate Fund) created for the payment of the Certificates and Additional Certificates;
- (d) any other legally incurred indebtedness payable from the revenues of the System and/or secured by a lien on the System or the revenues thereof.

SECTION 19: Records and Accounts - Annual Audit. The City further covenants and agrees that while any Certificates remain Outstanding, it will keep and maintain

accurate and complete records and accounts pertaining to the ownership, operation and maintenance of the System. The Holders of the Certificates or any duly authorized agent or agents of such Holders shall have the right to inspect the System and all properties comprising the same. The City further agrees that following the close of each Fiscal Year, it will cause an audit of such books and accounts to be made by an independent firm of Certified Public Accountants. Copies of each annual audit shall be furnished to the Executive Director of the Municipal Advisory Council of Texas at his or her office in Austin, Texas and are available at the City's website, currently www.ci.midland.tx.us.

SECTION 20: Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the event the City (a) defaults in the payments to be made to the Certificate Fund, or (b) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in this Ordinance, any Holder shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the governing body of the City and other officers of the City to observe and perform any covenant, condition or obligation prescribed in this Ordinance.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedies herein provided shall be cumulative of all other existing remedies and the specification of such remedies shall not be deemed to be exclusive.

SECTION 21: Special Covenants. The City hereby further covenants as follows:

(a) It has the lawful power to pledge the Net Revenues of the System supporting this issue of Certificates and has lawfully exercised said powers under the Constitution and laws of the State of Texas, including said power existing V.T.C.A., Government Code, Chapter 1502, as amended, and V.T.C.A., Local Government Code, Subchapter C of Section 271, as amended.

(b) Other than for the payment of the outstanding Prior Lien Obligations and the Certificates, the Net Revenues of the System are not in any manner pledged to the payment of any debt or obligation of the City or of the System.

(c) While any Certificates remain Outstanding, the City will not sell, lease, or encumber the System or any substantial part thereof; provided that this covenant shall not be construed to prohibit the sale of such machinery, or other properties or equipment which has become obsolete or otherwise unsuited to the efficient operation of the System.

(d) To the extent that it legally may, while any of the Certificates are Outstanding, no franchise shall be granted for the installation or operation of any competing waterworks and sanitary sewer systems other than those owned by the City, and the operation of any such systems by anyone other than the City shall be prohibited.

SECTION 22: Issuance of Prior Lien Obligations and Additional Certificates. The City hereby expressly reserves the right to issue Prior Lien Obligations, without limitation as to principal amount but subject to any terms, conditions or restrictions applicable under law or

otherwise, and, also reserves the right to issue Additional Certificates which, together with the Certificates, shall be secured by a parity lien on and pledge of the Net Revenues of the System.

SECTION 23: Subordinate to Prior Lien Obligations, Covenants and Agreements. It is the intention of this governing body and accordingly hereby recognized and stipulated that the provisions, agreements and covenants contained herein bearing upon the management and operations of the System and the administering and application of revenues derived from the operation thereof, shall to the extent possible be harmonized with like provisions, agreements and covenants contained in ordinances authorizing the issuance of Prior Lien Obligations, and to the extent of any irreconcilable conflict between the provisions contained herein and in ordinances authorizing the issuance of Prior Lien Obligations, the provisions, agreements and covenants contained therein shall prevail to the extent of such conflict and be applicable to this Ordinance but in all respects subject to the priority of rights and benefits, if any, conferred thereby to the holders or owners of the Prior Lien Obligations. Notwithstanding the above, any change or modification affecting the application of revenues derived from the operation of the System shall not impair the obligation of contract with respect to the pledge of revenues herein made for the payment and security of the Certificates.

SECTION 24: Satisfaction of Obligations of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Certificates, at the times and in the manner stipulated in this Ordinance; then the pledge of taxes levied and the lien on and limited pledge of the Net Revenues of the System (to the extent such limited pledge of Net Revenues shall not have been discharged or terminated by prior payment of principal of or interest on the Certificates) under this Ordinance and all covenants, agreements, and other obligations of the City to the Holders shall cease, terminate, and be discharged and satisfied.

Certificates shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Certificates or the principal amount(s) thereof at maturity or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities (as defined in Section 10(f) above) shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Certificates, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The City reserves the right, subject to satisfying the requirements of (i) and (ii) above, to substitute other Government Securities for the Government Securities originally deposited, to reinvest the uninvested moneys on deposit for such defeasance and to withdraw for the benefit of the City moneys in excess of the amount required for such defeasance. The City covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would

cause the Certificates to be treated as “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

The City reserves the option, to be exercised at the time of the defeasance of the Certificates, to call for redemption, at an earlier date, those Certificates which have been defeased to their maturity date, if the City: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Certificates for redemption; (ii) gives notice of the reservation of that right to the owners of the Certificates immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

Any moneys so deposited with the Paying Agent/Registrar and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Certificates, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Certificates and remaining unclaimed for a period of three (3) years after the maturity, or applicable redemption date, of the Certificates such moneys were deposited and are held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

SECTION 25: Ordinance a Contract - Amendments. This Ordinance shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Certificate remains Outstanding except as permitted in this Section. The City, may, without the consent of or notice to any Holders of the Certificates, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders of the Certificates, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the written consent of Holders of the Certificates holding a majority in aggregate principal amount of the Certificates then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Holders of Outstanding Certificates, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Certificates, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Certificates, (2) give any preference to any Certificate over any other Certificate, or (3) reduce the aggregate principal amount of Certificates required to be held by Holders for consent to any such amendment, addition, or rescission.

SECTION 26: Notices to Holders - Waivers. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Certificates. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 27: Cancellation. All Certificates surrendered for payment, redemption, transfer, or exchange, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Certificates previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Certificates so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Certificates held by the Paying Agent/Registrar shall be returned to the City.

SECTION 28: Mutilated, Destroyed, Lost and Stolen Certificates. In case any Certificate shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Certificate of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Certificate, or in lieu of and in substitution for such destroyed, lost or stolen Certificate, only upon the approval of the City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Certificate, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Certificate shall be borne by the Holder of the Certificate mutilated, or destroyed, lost or stolen.

Every replacement Certificate issued pursuant to this Section shall be a valid and binding obligation, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Certificates; notwithstanding the enforceability of payment by anyone of the destroyed, lost or stolen Certificates.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Certificates.

SECTION 29: Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

“*Closing Date*” means the date on which the Certificates are first authenticated and delivered to the initial purchasers against payment therefor.

“Code” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

“Computation Date” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Gross Proceeds” means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Certificates.

“Investment” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Nonpurpose Investment” means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Certificates are invested and which is not acquired to carry out the governmental purposes of the Certificates.

“Rebate Amount” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Certificates. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“Yield” of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Certificates has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Certificate to become includable in the gross income, as defined in Section 61 of the Code, of the Holder thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Certificate, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Certificates:

(i) exclusively own, operate, and possess all property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Certificates, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed, or improved with such Gross Proceeds in any activity carried on by any person or entity (including the

United States or any agency, department, and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Certificates or any property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) **No Private Loan.** Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Certificates to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output, or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed, or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) **Not to Invest at Higher Yield.** Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Certificates directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Certificates.

(f) **Not Federally Guaranteed.** Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Certificates to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) **Information Report.** The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) **Rebate of Arbitrage Profits.** Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Certificate is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Certificates with other money of the City, provided that

the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Certificates until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Certificates by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Certificate Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Certificates equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) **Not to Divert Arbitrage Profits.** Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Certificates, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Certificates not been relevant to either party.

(j) **Elections.** The City hereby directs and authorizes the Mayor, City Manager and Director of Finance, either or any combination of them, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Certificates, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

SECTION 30: Sale of the Certificates – Execution of Purchase Contract – Approval of Official Statement. The Certificates authorized by this Ordinance have been and

are hereby sold to Wells Fargo Securities, Morgan Keegan & Company, Inc. and RBC Capital Markets, LLC (herein collectively referred to as the "Purchasers") in accordance with the [Purchase Contract] dated January 24, 2012 (the "Purchase Contract"), attached hereto as **Exhibit B** and incorporated herein by reference as a part of this Ordinance for all purposes. The Mayor is hereby authorized and directed to execute the Purchase Contract for and on behalf of the City and as the act and deed of this City Council, and in regard to the approval and execution of the Purchase Contract, the City Council hereby finds, determines and declares that the representations, warranties and agreements of the City contained therein are true and correct in all material respects and shall be honored and performed by the City. The Initial Certificate shall be registered as provided in the Purchase Contract.

Furthermore, the Preliminary Official Statement prepared in connection with the public offering and sale of the Certificates is hereby ratified, confirmed and approved in all respects. The final Official Statement dated January 24, 2012 reflecting the terms of the sale of the Certificates, together with all addenda, supplements and amendments thereto issued on behalf of the City, is hereby approved as to form and content, and the City Council hereby finds that the information and data contained in said Official Statement pertaining to the City and its financial affairs is true and correct in all material respects and no material facts have been omitted which are necessary to make the statements contained in the Official Statement, in light of the circumstances under which they were made, not misleading. The use of such Official Statement in the reoffering of the Certificates by the Purchasers is hereby approved and authorized.

SECTION 31: Proceeds of Sale. The proceeds of sale of the Certificates, excluding the amounts set aside to pay the costs of issuing the Certificates [and the cash premium received from the Purchasers, if any,] shall be deposited in a construction fund maintained at the City's depository bank. Pending expenditure for authorized projects and purposes, such proceeds of sale may be invested in authorized investments pursuant to the Public Funds Investment Act, V.T.C.A., Chapter 2256, Government Code, as amended, and, any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Certificate Fund as shall be determined by the City Council. All surplus proceeds of sale of the Certificates, including investment earnings, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Certificate Fund. The premium of \$_____ will be used as follows: [\$_____ will be used to pay underwriter's discount and \$_____ will be used to pay cost of issuance].

SECTION 32: Control and Custody of Certificates. The Mayor of the City shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, including the printing of the Certificates, and shall take and have charge and control of the Initial Certificates pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

Furthermore, the Mayor, City Secretary, City Manager, and Director of Finance, any one or more of said officials, are hereby authorized and directed to furnish and execute such documents and certifications relating to the City and the issuance of the Certificates, including a certification as to facts, estimates, circumstances and reasonable expectations pertaining to the use and expenditure and investment of the proceeds of the Certificates as may be necessary for the approval of the Attorney General, registration by the Comptroller of Public Accounts and

delivery of the Certificates to the purchasers thereof and, together with the City's financial advisor, bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Certificates to the initial purchaser(s) and the exchange thereof for definitive Certificates.

SECTION 33: Continuing Disclosure Undertaking.

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“MSRB” means the Municipal Securities Rulemaking Board.

“Rule” means SEC Rule 15c2 12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

(b) Annual Reports.

The City shall provide annually to the MSRB (1) within six months after the end of each fiscal year, beginning in or after 2011, financial information and operating data with respect to the City of the general type described in **Exhibit C** hereto, and (2) if not provided as part of such financial information and operating data, audited financial statements of the City, when and if available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in **Exhibit C** hereto, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

(c) Notices of Certain Events.

The City shall provide notice of any of the following events with respect to the Certificates to the MSRB in a timely manner and not more than ten (10) business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;

6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
7. Modifications to rights of holders of the Certificates, if material;
8. Certificate calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Certificates, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

For these purposes, any event described in item 12 of the immediately preceding paragraph is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB.

All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers, and Amendments.

The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an “obligated person” with respect to the Certificates within the meaning of the Rule, except that the City in any event will give the notice required by subsection (c) of this Section of any Certificate calls and defeasance that cause the City to be no longer such an “obligated person.”

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Certificates; and, nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section. Except as expressly provided within this Section, the City does not undertake to provide any other information, whether or not it may be relevant or material to a complete presentation of the City’s financial results, condition, or prospects; nor does the City undertake to update any information provided in accordance with this Section or otherwise. Furthermore, the City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Certificates. The provisions of this

Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent underwriters of the initial public offering of the Certificates from lawfully purchasing or selling Certificates in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 34: Bond Counsel's Opinion. The Purchaser's obligation to accept delivery of the Certificates is subject to being furnished a final opinion of Fulbright & Jaworski L.L.P., Dallas, Texas approving the Certificates as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Certificates.

SECTION 35: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Certificates shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving said Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Certificates.

SECTION 36: Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar and the Holders.

SECTION 37: Inconsistent Provisions. All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 38: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 39: Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 40: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 41: Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 42: **Incorporation of Findings and Determinations.** The findings and determinations of the City Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 43: **Public Meeting.** It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, Texas Government Code, as amended.

SECTION 44: **Effective Date.** In accordance with the provisions of Section 1201.028, Texas Government Code, as amended, this Ordinance shall take effect and be in full force immediately from and after its date of adoption shown below.

[Remainder of page intentionally left blank]

The above and foregoing ordinance was duly proposed, read in full and finally adopted on first and final reading, the 24th day of January, A.D., 2012, on motion of Council Member _____, seconded by Council Member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED this the 24th day of January, 2012.

CITY OF MIDLAND, TEXAS

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

(City Seal)

APPROVED AS TO FORM :

Keith Stretcher, City Attorney

PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT is entered into as of January 24, 2012 (this “Agreement”), by and between The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, a banking association duly organized and existing under the laws of the United States of America (the “Bank”) and the City of Midland, Texas (the “Issuer”),

RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its “City of Midland, Texas, Tax and Limited Pledge Revenue Certificates of Obligation, Series 2012” (the “Securities”), dated January 15, 2012, such Securities scheduled to be delivered to the initial purchasers thereof on or about February 23, 2012; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE ONE

APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR

Section 1.01 Appointment. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the “Authorizing Document” (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 Compensation. As compensation for the Bank’s services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of

EXHIBIT B
Purchase Agreement

EXHIBIT C

Description of Annual Financial Information

The following information is referred to in Section 33 of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

1. The financial statements of the City appended to the Official Statement as Appendix B, but for the most recently concluded fiscal year.
2. The information included under Tables numbered 1 through 6 and Tables 8 through 18 of the Official Statement.

Accounting Principles

The accounting principles referred to in such Section with respect to the City are the accounting principles described in the notes to the financial statements referred to in paragraph 1 above.

City of Midland **Preliminary Schedule of Events** **For Certificates of Obligation, Series 2012**

<u>Date</u>	<u>Event</u>
Wednesday, November 2, 2011	Review with Finance and Audit Committee
Tuesday, November 8, 2011	Direction from City Council on proceeding with Certificate of Obligation issue
Tuesday, November 8, 2011 or Tuesday, December 13, 2011	City Council act on Resolution to publish Notice of Intention to issue Certificates of Obligation
Wednesday, November 9, 2011	Initiate preparation of Preliminary Official Statement
Saturday, December 24, 2011	Last date for 1 st publication of Notice of Intention to issue Certificates of Obligation (1 st publication must precede January 24, 2012 date for authorization by at least 31 days). 2 nd publication must occur on same day of following week.
Tuesday, December 27, 2011	Submit Preliminary Official Statement and information to rating agencies
Wednesday, January 4, 2012 - Tuesday, January 10, 2012	Discussions with rating agencies
Monday, January 16, 2012	Receive ratings Distribute Preliminary Official Statement
Monday, January 23, 2012	If negotiated sale – pricing of issue by underwriters, overseen by First Southwest Company
Tuesday, January 24, 2012	City Council: Sale of Certificate of Obligation issue; Ordinance Authorizing Issuance of Certificates of Obligation
Thursday, February 23, 2012	Delivery of Certificates of Obligation, receipt of proceeds by City

SOURCES AND USES OF FUNDS

Midland, Texas
Certificates of Obligation, Series 2012
Current Rates as of 10/27/2011 +60bps
(preliminary)

=====

Dated Date 02/23/2012
Delivery Date 02/23/2012

Sources:	General Purpose Portion	Water & Sewer Supported Portion	Total
Bond Proceeds:			
Par Amount	14,375,000.00	16,775,000.00	31,150,000.00
	14,375,000.00	16,775,000.00	31,150,000.00
Uses:	General Purpose Portion	Water & Sewer Supported Portion	Total
Project Fund Deposits:			
Project Fund	14,185,000.00	16,550,000.00	30,735,000.00
Delivery Date Expenses:			
Cost of Issuance	103,000.00	122,000.00	225,000.00
Underwriter's Discount	87,000.00	103,000.00	190,000.00
	190,000.00	225,000.00	415,000.00
	14,375,000.00	16,775,000.00	31,150,000.00

Note: preliminary

BOND DEBT SERVICE

Midland, Texas
Certificates of Obligation, Series 2012
Current Rates as of 10/27/2011 +60bps
(preliminary)

Period Ending	Principal	Interest	Debt Service
09/30/2013	355,000	2,013,317.27	2,368,317.27
09/30/2014	1,075,000	1,289,549.23	2,364,549.23
09/30/2015	1,120,000	1,242,774.71	2,362,774.71
09/30/2016	1,170,000	1,193,975.77	2,363,975.77
09/30/2017	1,225,000	1,142,939.32	2,367,939.32
09/30/2018	1,275,000	1,089,665.37	2,364,665.37
09/30/2019	1,330,000	1,034,153.92	2,364,153.92
09/30/2020	1,390,000	976,191.87	2,366,191.87
09/30/2021	1,450,000	915,672.66	2,365,672.66
09/30/2022	1,510,000	852,596.30	2,362,596.30
09/30/2023	1,580,000	786,749.69	2,366,749.69
09/30/2024	1,645,000	718,026.29	2,363,026.29
09/30/2025	1,715,000	646,426.11	2,361,426.11
09/30/2026	1,790,000	571,736.03	2,361,736.03
09/30/2027	1,875,000	493,636.42	2,368,636.42
09/30/2028	1,950,000	412,127.27	2,362,127.27
09/30/2029	2,035,000	327,208.59	2,362,208.59
09/30/2030	2,125,000	238,560.75	2,363,560.75
09/30/2031	2,220,000	145,970.63	2,365,970.63
09/30/2032	2,315,000	49,331.68	2,364,331.68
	31,150,000	16,140,609.88	47,290,609.88

Note: preliminary

BOND DEBT SERVICE**Midland, Texas****General Purpose Portion****Current Rates as of 10/27/2011 +60bps****(preliminary)**

Period Ending	Principal	Interest	Debt Service
09/30/2013	165,000	929,074.01	1,094,074.01
09/30/2014	495,000	595,070.02	1,090,070.02
09/30/2015	515,000	573,547.35	1,088,547.35
09/30/2016	540,000	551,065.74	1,091,065.74
09/30/2017	565,000	527,518.65	1,092,518.65
09/30/2018	590,000	502,906.09	1,092,906.09
09/30/2019	615,000	477,228.05	1,092,228.05
09/30/2020	640,000	450,484.53	1,090,484.53
09/30/2021	670,000	422,568.98	1,092,568.98
09/30/2022	695,000	393,481.40	1,088,481.40
09/30/2023	730,000	363,115.24	1,093,115.24
09/30/2024	760,000	331,363.96	1,091,363.96
09/30/2025	790,000	298,334.12	1,088,334.12
09/30/2026	825,000	263,919.15	1,088,919.15
09/30/2027	865,000	227,905.96	1,092,905.96
09/30/2028	900,000	190,294.55	1,090,294.55
09/30/2029	940,000	151,084.92	1,091,084.92
09/30/2030	980,000	110,170.53	1,090,170.53
09/30/2031	1,025,000	67,444.82	1,092,444.82
09/30/2032	1,070,000	22,801.25	1,092,801.25
	14,375,000	7,449,379.32	21,824,379.32

Note: preliminary

BOND DEBT SERVICE

Midland, Texas
Water & Sewer Supported Portion
Current Rates as of 10/27/2011 +60bps
(preliminary)

Period Ending	Principal	Interest	Debt Service
09/30/2013	190,000	1,084,243.26	1,274,243.26
09/30/2014	580,000	694,479.21	1,274,479.21
09/30/2015	605,000	669,227.36	1,274,227.36
09/30/2016	630,000	642,910.03	1,272,910.03
09/30/2017	660,000	615,420.67	1,275,420.67
09/30/2018	685,000	586,759.28	1,271,759.28
09/30/2019	715,000	556,925.87	1,271,925.87
09/30/2020	750,000	525,707.34	1,275,707.34
09/30/2021	780,000	493,103.68	1,273,103.68
09/30/2022	815,000	459,114.90	1,274,114.90
09/30/2023	850,000	423,634.45	1,273,634.45
09/30/2024	885,000	386,662.33	1,271,662.33
09/30/2025	925,000	348,091.99	1,273,091.99
09/30/2026	965,000	307,816.88	1,272,816.88
09/30/2027	1,010,000	265,730.46	1,275,730.46
09/30/2028	1,050,000	221,832.72	1,271,832.72
09/30/2029	1,095,000	176,123.67	1,271,123.67
09/30/2030	1,145,000	128,390.22	1,273,390.22
09/30/2031	1,195,000	78,525.81	1,273,525.81
09/30/2032	1,245,000	26,530.43	1,271,530.43
	16,775,000	8,691,230.56	25,466,230.56

Note: preliminary

January 10, 2012

Midland, Texas; General Obligation

Primary Credit Analyst:

Sarah Smaardyk, Dallas (1) 214-871-1428; sarah_smaardyk@standardandpoors.com

Secondary Contact:

Lauren Spalten, Dallas 214-871-1421; lauren_spalten@standardandpoors.com

Table Of Contents

Rationale

Outlook

Economy

Financial Management Assessment: 'Good'

Related Criteria And Research

Midland, Texas; General Obligation

Credit Profile		
US\$31.15 mil tax & ltd pledge rev certs of oblig ser 2012 dtd 01/15/2012 due 03/01/2032		
Long Term Rating	AA+/Stable	New
Midland GO		
Long Term Rating	AA+/Stable	Affirmed

Rationale

Standard & Poor's Ratings Services assigned its 'AA+' long-term rating to Midland, Texas' series 2012 tax and limited pledge revenue certificates of obligation. At the same time, Standard & Poor's affirmed its 'AA+' long-term rating and underlying rating (SPUR) on the city's existing general obligation debt. The outlook is stable.

The ratings reflect our view of the city's:

- Low level of funding interdependence with the federal government;
- Diversifying economy that remains anchored by a prominent, but cyclical oil and gas production sector;
- Strong wealth and income levels;
- Very strong financial position, as evidenced by the historical maintenance of reserves in excess of 36% of general fund expenditures.

The preceding credit strengths are offset in part by our view of the city's below-average amortization of debt.

The city's unlimited ad valorem tax pledge and a limited pledge of surplus net revenues of the city's waterworks and sewer system secure the debt. Officials will use bond proceeds to purchase a communication system, to improve firefighting facilities and parks, and to construct and improve streets and drainage.

Midland, with a population of about 114,852, is located in West Texas. The city serves as headquarters for several petroleum companies that have extensive mineral exploration, drilling, production, and processing activities throughout the Permian Basin. During the past several years, the city has worked to diversify the employment base, and the leading employers are found in the education, oil and gas, and medical fields. In addition, the city serves as a regional trade, service, and medical center for West Texas. Service sector growth, particularly in retail and distribution-related positions, has further diversified the economy. Midland's wealth and income levels are strong, in our view, with median household effective buying income at 105% and 112% of the state and national levels, respectively. Per capita retail sales are very strong, in our opinion, at 135% and 130% of state and national levels, respectively, which reflects Midland's role as a regional economic center in West Texas.

Midland's property tax base continues to expand, increasing by 10% annually during the past five years to \$7.1 billion in fiscal 2012. We believe the tax base is very diverse, with the 10 leading taxpayers account for 4.3% of total assessed value. Market value per capita remains strong, in our opinion, at \$61,774.

We believe that Midland's financial position remains very strong. The fiscal 2012 budget was balanced without the use of reserves. However, officials plan to draw down the unreserved fund balance by \$7 million during the next few years to fund capital improvement projects. Despite the planned drawdown, officials have no plans to draw

down the city's fund balance below their formal 25% reserve policy. Currently the city levies a property tax equal to 47.05 cents per \$100 of assessed value. Unaudited results for fiscal 2011 reflect a surplus of roughly \$10 million due to higher-than-budgeted revenues; as a result, the unreserved fund balance will increase to \$39.4 million, or 51% of expenditures, which we consider very strong.

Historically, Midland has maintained reserve levels in excess of 36% of expenditures, which we consider very strong. In fiscal 2010, officials increased the unreserved general fund balance by \$1.6 million due to a salary and hiring freeze. As a result, the city ended fiscal 2010 with a \$29.1 million unreserved general fund balance, or 38% of expenditures, which we consider very strong. The city's primary revenue sources include property taxes (44%), sales taxes (34%), and franchise fees (19%).

Standard & Poor's deems Midland's financial management practices "good" under its Financial Management Assessment (FMA) methodology, indicating practices exist in most areas, though not all might be formalized or regularly monitored by governance officials.

In our opinion, Midland's overall net debt levels are low at roughly \$1,997 per capita, and moderate at 3.2% of market value. Carrying charges are low, in our view, at 4.6% of fiscal 2010 expenditures. We believe amortization of principal is below average, with 88% of principal due to be retired within 20 years. We understand that management currently has no plans to issue additional general obligation debt during the next 12 to 24 months.

The city provides pension benefits through a nontraditional, joint contributory, hybrid-defined benefit plan: the Texas Municipal Retirement Plan (TMRS). The city's TMRS fund was 63% funded as of Dec. 31, 2009, resulting in a \$57.4 million unfunded actuarial accrued liability, or \$500 per capita. The city made 100% of its annual required contribution, which totaled \$9.7 million, or 12.6% of general fund expenditures, in fiscal 2010. The city provides postemployment medical care for retirees on a pay-go basis. Midland made 9.8%, or \$500,939, of its annual required contribution, which translates to 0.65% of expenditures, in fiscal 2010. The city's unfunded actuarial accrued liability totaled \$94.1 million, or \$813 per capita, as of Sept. 30, 2010.

Outlook

The stable outlook reflects our anticipation that the city's very strong reserves will provide stability in the event of a downturn in the oil and gas market. We could take a positive rating action if the city's property tax base continues to expand and its debt levels moderate. However, if debt levels increase and the city experiences any significant operating declines, we could lower the ratings.

Economy

The Permian Basin region, west of Midland, is a mineral reservoir with exploration and drilling for additional reserves. Midland, employing a primarily white-collar workforce involved in oil production management and global planning, is an important center for the petroleum industry. The city serves as a regional trade, service, and medical center for West Texas. Leading employers include:

- Basic Energy Services (4,621 employees),
- Plains Marketing LP (3,729),
- Midland Independent School District (3,093), and

- Key Energy Services (2,580).

Unemployment averaged 4.5% through October 2011, which was well below state and national rates. The 10 leading taxpayers are primarily commercial real estate, retail, and oil and gas. Despite the national slowdown in residential homes, the city issued 493 single-family residential permits, which is 100 more than calendar year 2010.

Financial Management Assessment: 'Good'

Midland's management practices are considered "good" under Standard & Poor's FMA methodology, indicating practices exist in most areas, though not all might be formalized or regularly monitored by governance officials.

In terms of revenue and expenditure assumptions, management prepares its budgets based on historical revenue and expenditure trends. Officials monitor the budget monthly and make adjustments quarterly as needed. The city has a written, in-depth, and conservative investment policy; and it makes quarterly updates to the governing body. Management has an informal debt management policy, which limits the amount of debt the city can issue. In addition, the city has an informal three-year long-term financial plan based on conservative revenue and expenditure growth. The city has a five-year rolling capital improvement plan. A formal reserve policy targets reserves of at least 25% of operating expenditures to protect the city against fluctuations in the economy.

Midland, Texas			
Economic statistics			
Population	114,852		
Median household EBI, % of U.S.	105		
Per capita EBI, % of U.S.	112		
Total market value per capita (\$)	61,774		
Net direct debt (\$000s)	66,755		
Net direct debt per capita (\$)			
Net direct debt, % of market value	0.9		
Assessed value (\$000s)	7,094,923		
Market value (\$000s)	7,094,923		
EBI - effective buying income. Population and income -Source: Claritas			
Financial statistics (fiscal year end)	9/30/2010	9/30/2009	9/30/2008
General fund balance (\$000s)	38,074	39,776	38,060
General fund balance, % of general fund expenditures	49.6	52.1	55.8
Unreserved fund balance (\$000s)	29,107	27,502	32,460
Unreserved fund balance, % of general fund expenditures	37.9	36.0	47.6
Total general fund expenditures (\$000s)	76,703	76,292	68,195
Total general fund expenditures - one-year change (%)	0.5	11.9	8.8
Total general fund revenues (\$000s)	70,825	72,910	70,672
Total general fund revenues - one-year change (%)	(2.9)	3.2	8.2

Related Criteria And Research

USPF Criteria: GO Debt, Oct. 12, 2006

Ratings Detail (As Of January 10, 2012)		
Midland GO		
Unenhanced Rating	AA+(SPUR)/Stable	Affirmed
Many issues are enhanced by bond insurance.		

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MOODY'S ASSIGNS Aa1 RATING TO THE CITY OF MIDLAND'S (TX) \$31.2 MILLION TAX AND LIMITED PLEDGE REVENUE CERTIFICATES OF OBLIGATION, SERIES 2012

Aa1 RATING AND AFFIRMATION AFFECTS \$137 MILLION IN OUTSTANDING PARITY DEBT, INCLUSIVE OF CURRENT ISSUE

Moody's Investor Service has assigned Aa1 rating to the City of Midland's (TX) \$31.2 million Tax and Limited Pledge Revenue Certificates of Obligation, Series 2012. Concurrently, Moody's has affirmed the Aa1 rating on the city's outstanding parity debt affecting \$106.3 million, net of the current issue. Proceeds from the sale of the certificates will be used for various capital improvements throughout the city.

SUMMARY RATINGS RATIONALE

The certificates are direct obligations of the city and are payable from a direct and continuing ad valorem tax, within the limits prescribed by law, on all taxable property located within the city. The certificates are additionally secured by a limited pledge not to exceed \$2,500 of surplus net revenues of the city's waterworks and sewer system. The rating assignment reflects the city's sizable tax base characterized by consistent annual rates of growth over the past five fiscal years, conservative budget and fiscal policies resulting in ample financial reserves, and a manageable debt profile with a sizable portion supported by the Water and Sewer Fund.

STRENGTHS

- *History of strong financial performance
- *Sizable tax base that has experienced multiple years of growth
- *Favorable unemployment rate

CHALLENGES

- *Indirect exposure to cyclicity of oil and gas sector

DETAILED CREDIT DISCUSSION

RESIDENTIAL VALUES DRIVE TAX BASE GROWTH OVER PAST FISCAL YEARS

Located in west Texas along Interstate 20, the City of Midland's economy has historically been indirectly driven by the oil and gas industry. Over the past five fiscal years, oil and gas mineral values have represented less than 1% of the city's total taxable assessed values. However, the city's economy remains strongly correlated to the oil and gas industry, largely located in the county, as indicated by increased single-family and multi-family residential taxable assessed values, increased commercial and industrial taxable assessed values, and unemployment rates that have tracked well below the state and national averages, since the record high oil prices experienced in the summer of 2008. Single-family and multi-family residential taxable assessed values have grown from \$3.8 billion in fiscal year 2008 to \$5.2 billion in fiscal year 2012, representing a 36% rate of growth. Commercial and industrial taxable assessed values have grown from \$862 million in fiscal year 2008 to \$1.3 billion in fiscal year 2012, representing a 56% rate of growth. The city's fiscal year 2012 total taxable assessed values are \$7.1 billion representing a 5.0% increase from the prior year, and yielding a healthy five-year average annual growth rate of 9.9%. The tax base is not concentrated among the top taxpayers, as the top ten

taxpayers represent a modest 4.2% of fiscal year 2011 total taxable assessed values. However, the city's largest employers are moderately concentrated as seven of the top 10 employers represent oil and gas related firms, with a 2010 employee count of 14,156 resulting in 21.7% of the total labor force. The November 2011 Moody's Economy report for the City of Midland states, "In the short term, the Midland economy will outperform the U.S. economy, fueled by its concentration in the oil industry. Employment and wage growth spurred by oil-related industries will bolster growth in consumer services and construction. Over the long run, the lack of industrial diversification will remain a risk, especially if there is a drop in oil prices, or if alternative fuels play a larger role in global energy supply." Moody's believes the city will continue to benefit from its indirect relationship to the oil and gas industry so long as oil and gas production remain robust. However, given the cyclical nature of the oil and gas industry coupled with lack of industrial diversification, the city's tax base is exposed to the risk of falling oil and gas production.

The district's wealth indicators are average as measured by per capita income and median family income (1999 U.S. Census) which approximate 96.7% and 96.5% of the national level, respectively. The October 2011 unemployment rate for the City of Midland was 4.5%. This was significantly lower than state (8.0%) and national (8.5%) levels for the same time period.

CONSERVATIVE BUDGET AND FISCAL POLICIES PRESERVE CITY'S STRONG FINANCIAL POSITION

The city posted operating surpluses in two of the past three fiscal years (fiscal year 2008 through fiscal year 2010). Surpluses of \$3.2 million and \$1.7 million in fiscal year 2008 and 2009 resulted in a total General Fund balance of \$39.7 million (a strong 50.4% of revenues). In fiscal year 2010, the city posted a \$1.7 million operating deficit due to reduced sales tax revenues, state and federal grants, and developer contributions. The fiscal year-end 2010 total General Fund balance was \$38.1 million (a strong 50.4% of revenues). Unaudited financial results for fiscal year 2011 indicate a \$10.5 million General Fund operating surplus, yielding a total General Fund balance of \$48.6 million (a still strong 55.1% of revenues). Officials attribute most of the surplus to strong sales tax growth (\$7 million over original budget). The city has a General Fund balance policy that states it will maintain, at minimum, 25% of General Fund expenditures in reserve. The city's fiscal year 2012 General Fund budget projects a \$3.5 million operating deficit, yielding a total General Fund balance of \$45.1 million (55% of budgeted General Fund revenues). The \$3.5 million draw in fund balance is solely for the capital expenditures related to the first phase of constructing a new courthouse facility. Officials are budgeting to spend \$3.5 million in fiscal year 2012 for phase one of this capital project, but indicate the city may elect to fund the entire project (another \$3.5 million) if construction progress exceeds expectations and the city's overall financial performance exceeds expectations. Moody's expects the city's financial position will remain sound in the near to medium terms given the presence of strong budgetary and fiscal policies.

WATER AND SEWER SYSTEM SUPPORTS SUBSTANTIAL PORTION OF GENERAL OBLIGATION DEBT YIELDING MANAGEABLE DEBT PROFILE

The city's has a total gross direct debt burden of 1.9% and an overall direct debt burden of 4.2%, both expressed as a percentage of fiscal year 2012 taxable assessed values. However, \$65.5 million of the city's direct debt is supported by the water and sewer system. When adjusting for debt supported by the water and sewer system, the city's direct burden is 1.0% and 3.3% overall. The elevated overall debt burden is primarily due to overlapping debt of Midland Independent School District (Aa2/NOO). Amortization is satisfactory with 54.4% of principal retired in ten years. The city anticipates issuing additional certificates of obligation in the near term for ongoing capital improvements. Moody's

believes the city's debt burdens will remain manageable given the city's limited future debt issuance plans.

WHAT COULD MAKE THE RATING GO – UP

- *Continued tax base expansion coupled with improved socioeconomic indices
- *Bolstered level of reserves increasing financial flexibility

WHAT COULD MAKE THE RATING GO – DOWN

- *Significant contraction in the tax base
- *Significant reduction in financial reserves

KEY STATISTICS

FY 2012 Total Taxable Assessed Value: \$7.1 billion

FY 2012 Taxable Assessed Value Per Capita: \$63,834

1999 U.S. Census Per Capita Income: \$20,884 (106.5% of state, 96.7% of U.S.)

1999 U.S. Census Median Family Income: \$48,290 (105.3% of state, 96.5% of U.S.)

Direct Debt Ratio, excluding self-supporting debt: 1.0%

Overall Debt Ratio, excluding self-supporting debt: 3.3%

Principal Payout (10 years): 54.4%

FY 2010 General Fund Balance: \$38.1 million (50.4% of revenues)

FY 2011 (unaudited) General Fund Balance: \$48.6 million (55.0% of unaudited fiscal year 2011 General Fund revenues)

Post-sale Parity Debt Outstanding: \$137.4 million



City Council Agenda

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Amy Turner, City Secretary

SUBJECT: MEX-TEX FAMILY FIESTA CONCERT HOURS

Purpose:

Consider allowing the Hispanic Chamber of Commerce to operate a concert, in conjunction with the annual Mex-Tex Family Fiesta, until 1:00 a.m. on Sunday, June 10, 2012.

Recommended City Council Action

☐ Approve

☐ Deny

☒ Direction/Informational

Fiscal Impact:

None.

Discussion:

The Hispanic Chamber of Commerce is preparing for the 25th Annual Mex-Tex Family Fiesta to be held June 8-10, 2012, at the Scharbauer Sports Complex Commons Area.

This is the 4th year for the event to be held at the Scharbauer Sports Complex. In prior years, it was held downtown at Centennial Plaza. Since at the sports complex, the Saturday night concert has gone until 1:00 a.m. In 2008 in downtown, the concert was allowed to run until 1:00 a.m. Sunday morning.

The additional hour has been an issue with nearby residents since the concert moved to the Scharbauer Sports Complex. Last year, dispatch received one phone call regarding loud music. In 2010, dispatch received two calls, in 2009, three calls were received, and none were received in 2008.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE MIDLAND
HISPANIC CHAMBER OF COMMERCE TO EXTEND
THE HOURS OF THE MEX-TEX FAMILY FIESTA TO
OPERATE A CONCERT UNTIL 1:00 A.M. ON SUNDAY,
JUNE 10, 2012**

WHEREAS, the Midland Hispanic Chamber of Commerce has requested that the hours of operation for the Mex-Tex Family Fiesta taking place June 8-10, 2012 at the Scharbauer Sports Complex Common Area, be extended for a concert until 1:00 a.m. on Sunday, June 10, 2012; and

WHEREAS, the concert has lasted until 1:00 a.m. in 2009, 2010 and 2011; and

WHEREAS, the City of Midland dispatch received one phone call in 2011, two phone calls in 2010 and three phone calls in 2009, and the Monday morning following the concert, phone calls were received at City Hall in reference to the loud music questioning why the concert was allowed until 1:00 a.m.; and

WHEREAS, the concert lasting until 1:00 a.m. is an ongoing concern of nearby residents since the concert moved from downtown Centennial Plaza to the Scharbauer Sports Complex; and

WHEREAS, the Council deems that the event serves a public purpose and that it is in the public interest to extend the hours of operation until 1:00 a.m. for the Mex-Tex Family Fiesta Concert;

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

THAT the City Manager and City Secretary are hereby authorized and directed to, on behalf of the City of Midland, extend the hours of operation for the Mex-Tex Family Fiesta and Concert Special Event until 1:00 a.m. on Sunday, June 10, 2012.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, Interim City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



January 3, 2012

2011-12 Board of Directors

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Chairman of the Board
Lupe Villanueva
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George B. Lara, Sr.
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Renee Rivera
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Billy Castañeda
Alex Hermosillo
Dee Hinojos
Rey Lascano
Dr. Ryder Warren

Rachel L. Stone
President/CEO

Amy Turner
City of Midland
P.O. Box 1152
Midland, TX 79702

Ref: Mex-Tex Family Fiesta

Dear Amy,

As you well know the Midland Hispanic Chamber of Commerce is hosting the 25th Annual Mex-Tex Family Fiesta on June 8-9, 2012 at the Scharbauer Sports Complex – Commons Area.

The event hours are as follows: Friday, June 8th – 6:00 p.m. – 12:00 a.m. and Saturday, June 9th – Noon – 1:00 a.m. Last year we requested an extension to 1:00 a.m. for Saturday's concert hours and we are requesting the same for this year.

We would like for the city council to consider our request. We are available to meet with you if you need additional information. Please feel free to contact us at (432) 682-2960.

Sincerely,

Diana Cano
Chairman of the Board

Rachel L. Stone
President/CEO



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: O-11-009; consider a resolution approving an oil and gas well drilling permit (Bus Barn #2601) near the south side of Briarwood Avenue, 870' east of Heidelberg Lane.

Purpose:

Consider a resolution on a request from **RSP Permian, L.L.C.** (Bus Barn #2601) for a *Permit to Drill an Oil and Gas Well within the City Limits* located 733' FNL and 1905' FWL, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. Council held a public hearing on December 13, 2011; therefore, it is now appropriate to consider a resolution since the required 30 day comment period has passed. Staff received one letter of objection stating noise, pollution, traffic and smell as reasons for objection.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval. The applicant is requesting a variance from the landscaping as well as a variance from the 500' distance requirement due to a commercial building located within 465' of the well site. No waiver of the road repair agreement has been requested.

Attachments: Application; Location map; Drill site location.

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO RSP PERMIAN, L.L.C. (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 733 FEET FROM THE NORTH LINE AND 1,905 FEET FROM THE WEST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NEAR THE SOUTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 870 FEET EAST OF HEIDELBERG LANE)

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance

with Section 6-1-23(H)(1) and a public hearing was held on December 13, 2011; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 733 feet from the north line and 1,905 feet from the west line, Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on January 24, 2012, considered the application of RSP Permian, L.L.C., dated June 21, 2011, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of RSP Permian, L.L.C., dated June 21, 2011, and filed with the Midland City Secretary, a copy of which is attached here to as Exhibit "A" and incorporated herein for all legal purposes.

The location of RSP Permian, L.L.C., Bus Barn #2601 oil and gas well shall be 733 feet from the north line and 1905 feet from the west line, Section 26, Blk 40, T-1-S, T&P Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of RSP Permian, L.L.C. , attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes. . Included is approved variance for permitted well to be located 465 feet from occupied commercial structures, marked as Exhibit "D", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from January 24, 2012, through January 24, 2013, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of January, 2012.

RSP Permian, L.L.C.

By: _____

William R. Huck, Vice President/Operations

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "B"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000 Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.

\$10,000,000 Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.

d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
William R Huck, Vice President/Operations

RSP Permian, L.L.C
125 W. Missouri, Ste 450
Midland, Texas 79701
(432)818-1300

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "C"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (100) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping. WAIVED by City Council on January 24, 2012.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his

designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
William R. Huck, Vice President/Operations

RSP Permian, L. L. C.
125 W Missouri, Ste 450
Midland, Texas 79701
(432) 818-1300

Exhibit D

RSP Permian, L.L.C.

Variance Request

Bus Barn № 2601

The Bus Barn № 2601 Drill Site is situated such that Occupied Structure(s) falls within 500 feet of the Drill Site.

In this regard, RSP Permian, L.L.C. hereby requests a variance from the 500 ft. restriction as set forth under Section H.2 of City Ordinance 8769. The location(s) of the Occupied Structure(s) is depicted on the certified plat included herewith as part of Exhibit E. The nearest Occupied Structure is the MISD Bus Barn Shop which is located 465 feet from the Drill Site.



Bus Barn № 2601

0-11-009

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 6/21/2011	Operator Name (must match W-1) RSP Permian, L.L.C.	Operator Address 125 W. Missouri, Ste 450 Midland, TX 79701
Representative Name William R. Huck	Representative Address (within Midland City Limits) same as above	Rep. Tele. 432.818.1300 Rep. Fax 432.818.1350
Fee: \$4,000.00 Rec'd Yes ___ No ___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): See Exhibit "A" Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): See Exhibit "A" RSP Permian, L.L.C. 24/7 Answering Service - 432.818.1300 Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]): None - N/A		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. See Exhibit "C"		
2.		
3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from Jim Spradlin, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location):		
Surface Use: MISD Bus Storage/Shop, Open/Vacant Lots, Residential, Barn/Corral, old caliche pit. Surface Ownership: See Exhibit D		
ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from Jim Spradlin, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Bus Barn #2601

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attachment under Exhibit G

Legal Description of Proposed Well Site:

733' FNL, 1905' FWL, Sec 26, Blk 40, T1S, T&P Survey, Midland County, TX

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- | | | |
|-----|-------------|---------------------------------------|
| (1) | Drilling: | None |
| (2) | Operations: | Electrical - Sharyland Utilities L.P. |

Description of water source to be used during Drilling:

Water to be trucked onto well site.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "H"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Exhibit O

Trench and encapsulate per RRC Rule 27(C)(10)(v)

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

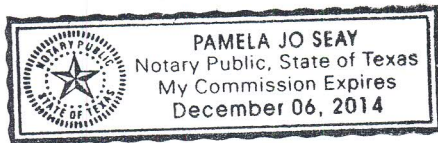
RSP PERMIAN, L.L.C.

By: William R. Huck
William R. Huck, Vice President/Operations

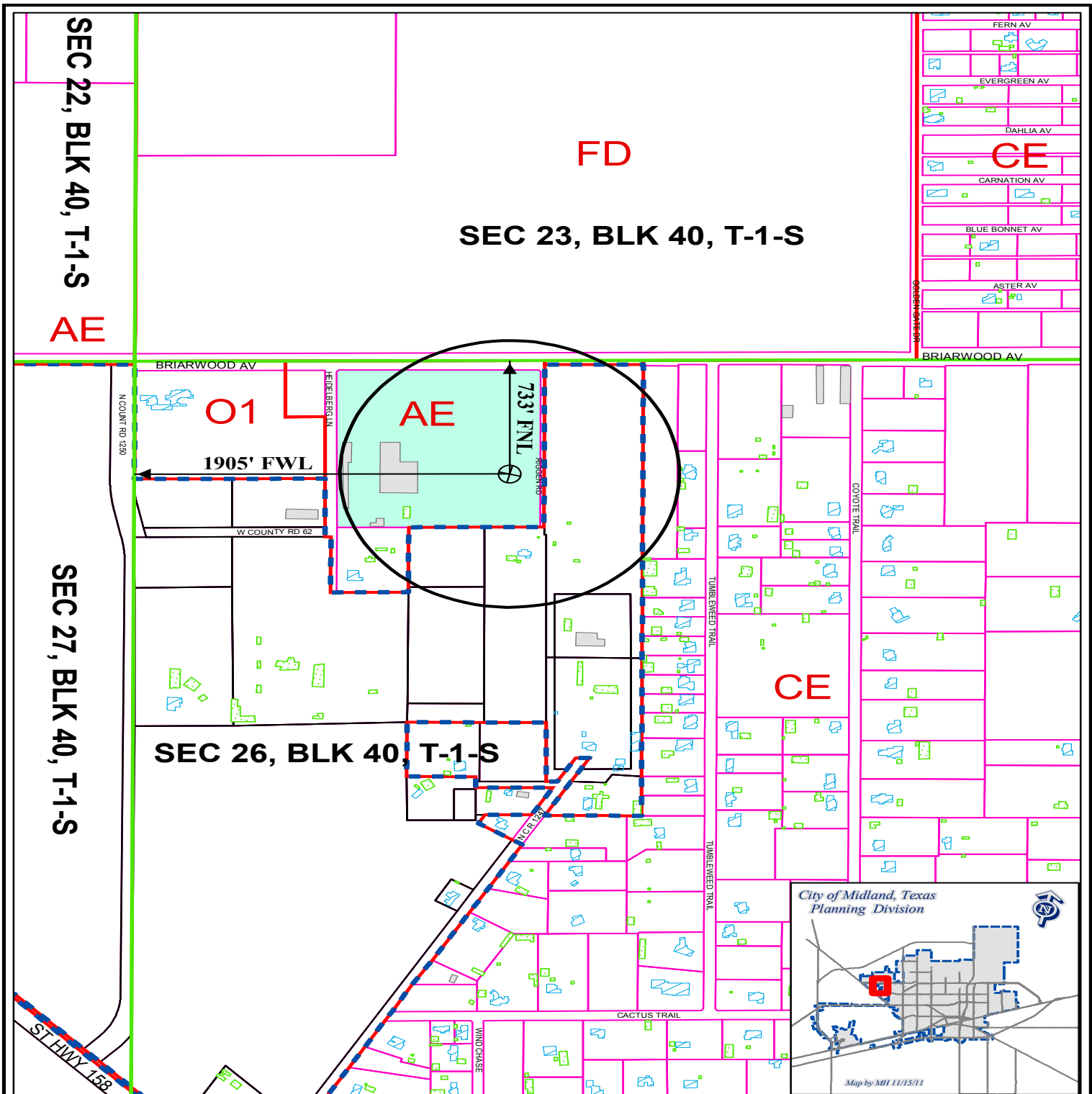
STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 21st day of June, 2011 by William R. Huck, Vice President/Operations of RSP Permian, L.L.C., a Delaware Limited Liability Company, who personally appeared before me, and being first duly sworn declared he signed the application in the capacity designated, if any, and further states that he has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



Pamela Jo Seay
Notary Public, State of Texas



LOCATION AND ZONING MAP

O - 11 - 009

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 733' FNL and 1905' FWL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Bus Barn #2601

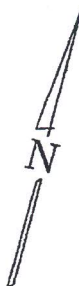
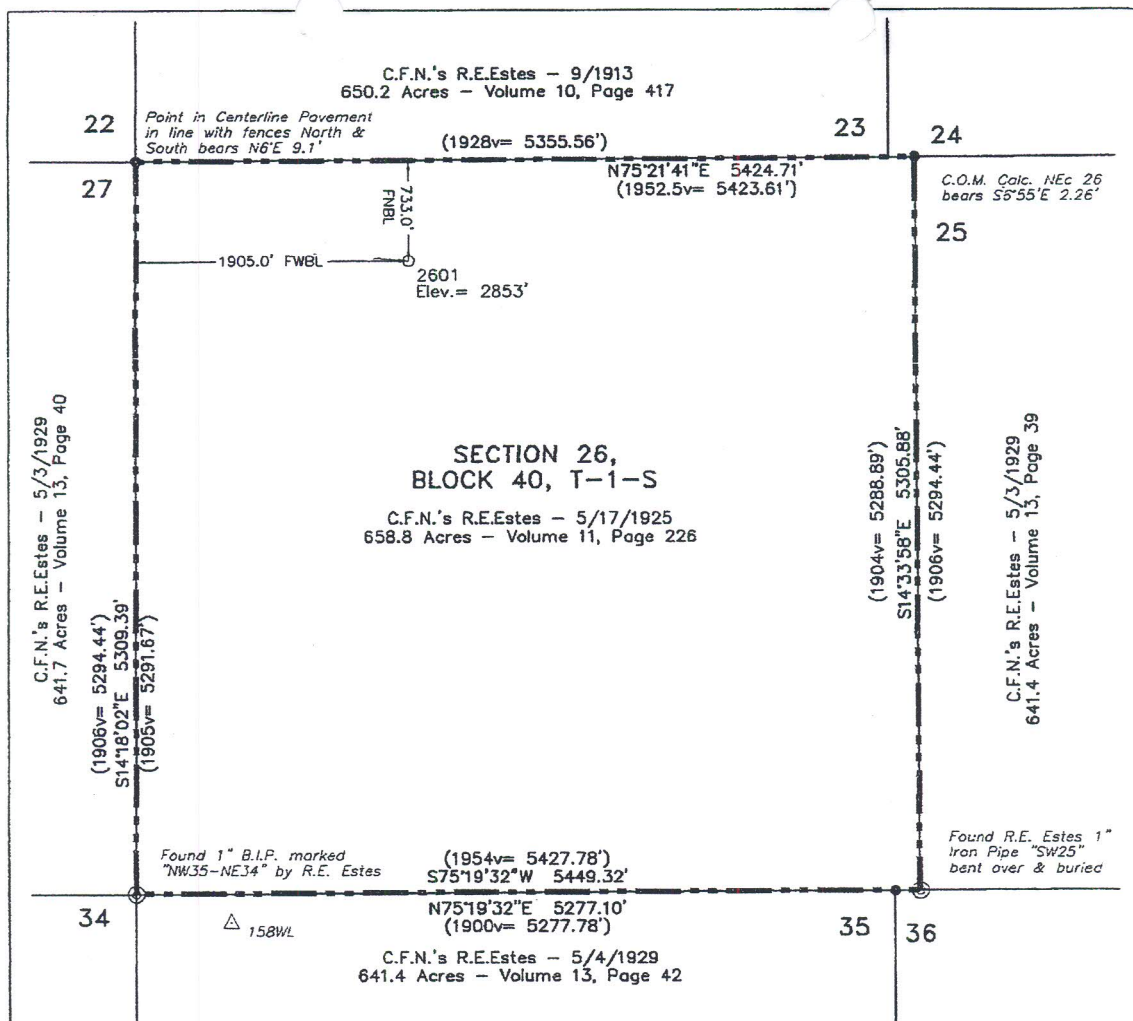
LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY

20.a.41



1927 NAD

N/Y= 859806.92
E/X= 1424855.25



Revised: 1/12/10 by GMR

OPERATOR: RSP PERMIAN, LLC 125 W. MISSOURI SUITE 450 MIDLAND, TX 79701	BUS BARN #2601 DESCRIPTION: All of Section 26, Block 40, T-1-S, T.&P. RR. Co: Survey, Midland County, Texas	FIELD: ACREAGE: 662.48 in Sec. 662.48 in Lease ELEVATION: 2853' DATE: 12/7/09 SCALE: 1"=1000'
The well location shown on this plot represents an actual survey made by me, or under my supervision, to the best of my knowledge as of the date of 12/27/09.  J. STAN PIPER PROFESSIONAL LAND SURVEYOR REGISTERED SEAL NO. 1974	LOCATION IN SURVEY: 733.0' FNL & 1905.0' FWL of Sec. 26 LOCATION IN LEASE: 733.0' FNBL & 1905.0' FWBL of Lease NEAREST POST OFFICE: 7 Miles Southeast to Midland, Texas GEODEIC POSITION: LATITUDE: 32°01'03.399" LONGITUDE: 102°11'21.433" STATE PLANE COORDINATES: NORTH (Y) 10702382.79 EAST (X) 1721321.95	DRAWN BY: Gene M. Rodriguez DWG FILE: Patriot-BusBarn.Dwg FIELD BOOK: See 11x17" Calc. Sheet NORTH AMERICA DATUM OF: 1983/86 ZONE: Central STATE: TX

0-11-009

From: Ron Jenkins
Sent: Thursday, January 19, 2012 3:17 PM
To: Amy Turner; Marisela Garcia
Subject: RSP Permian and Pioneer Natural- Petitions and letters of objection for Agenda Packet
Attachments: Petition Bus Barn 2603 Mayor Office.pdf; Petition Bus Barn 2603 Tellinhuisen.pdf; Petition Bus Barn 2603 Full Packet.pdf; Ltr for 2603 1.pdf; Ltr for 2603 2.pdf; Ltr for 2603 3.pdf; Ltr for 2603 4.pdf; Ltr for 2603 5.pdf; Ltr for 2603 6.pdf; Ltr for 2603 8.pdf; Ltr for 2603 9.pdf; Ltr for 2603 10.pdf; Ltr for 2603 11.pdf; Ltr for 2603 12.pdf; Ltr for 2603 13.pdf; Ltr for 2603 14.pdf; Ltr for 2603 15.pdf; Ltr for 2603 16.pdf; Ltr for 2603 17.pdf; Ltr for 2603 18.pdf; Ltr for 2603 19.pdf; Ltr for 2603 20.pdf; Ltr for 2603 21.pdf; Bus Barn 2603 Letter 3.pdf; Bus Barn 2603 Letter 2.pdf; Bus Barn 2603 Letter 1.pdf; Bus Barn 2602 Letter 2.pdf; Bus Barn 2602 Letter 1.pdf; Bus Barn 2601.pdf; Pioneer Mabee E #4.pdf

Subject: RSP Permian and Pioneer Natural- Agenda Packet

RSP Permian L.L.C. -These applications are requesting a variance from the landscaping stating due to scarcity of water. Opportunity to donate to the tree fund and park endowment fund has been discussed.

Bus Barn #2601- 1 letter of objection.

Requesting a variance from the 500 ft minimum distance from an occupied commercial building. The proposed drill-site for the Bus Barn #2601 will be 465 feet from the MISD Bus Barn Shop.

Bus Barn #2602- 2 letters of objection.

Requesting a variance from the 500 ft minimum distance from an occupied commercial building. The proposed drill-site for the Bus Barn #2602 will be 448 feet from the Mid-Cities Community Church Office.

Bus Barn #2603- two petitions and 23 letters of objection

The Oil and Gas Advisory Committee recommends a variance to landscaping for Bus Barn #2603 be denied. This is the specific well noted in the petition.

Pioneer Natural Resources, USA, Inc. are presenting four applications for oil & gas well permit

The application wells are the **Mabee E #3-** no letters of objection

Mabee E #4- 1 letter of objection

Mabee D #5-no letters of objection

Mabee D #6-no letters of objection

Wells would be located East of Hwy 349 and North of Arapaho. Opportunity to donate to tree fund and park endowment fund has been discussed.

These applications are requesting a variance from the fencing . This lease has several producing wells which are not subject to this ordinance. The 652 acres are surrounded by barbed wire fence with locked cattle guard gates.

These applications are requesting a variance from the landscaping stating due to nothing but natural vegetation on the tract. Pioneer states would be a gross waste of natural resources of both plants and water. Three prior permits were granted a variance in this same 652 acre tract.

These Pioneer applications are requesting a waiver of the Road Repair Agreement. No city streets will be used.

NIX CLEABURN D
4310 HEIDELBERG LANE
MIDLAND TX 79707



Code Administration
432.685.7390

Community Development
432.685.7408

Engineering Services
432.685.7286

Development Services

300 N. Loraine
Post Office Box 1152
Midland, Texas 79702-1152
Fax 432.683.1786

GIS
432.685.7284

Planning Division
432.685.7400

Transportation
432.685.7287

PUBLIC NOTICE

The **City Council**, of the City of Midland, Texas, will hold a public hearing at **11:12 a.m. on Tuesday, December 13, 2011**, in the Council Chamber, City Hall, 300 N. Loraine, on a request by **RSP Permian, LLC.** for approval of a **Permit to Drill within the City Limits** on the following described property:

LEGAL DESCRIPTION: Located 733' FNL and 1905' FWL, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.

LOCATION: Generally located on the south side of the Briarwood Avenue, approximately 870 feet east of Heidelberg Lane.

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered in writing** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request ☒ Comments: Noise, pollution, traffic, smell

Required Information:

[Signature]
Property Owner's Signature

C. David Nix
Printed Name

4310 Heidelberg Lane
Property Address (No P. O. Boxes)

Any property owner having a fresh water well within 860 feet of any of these well locations should advise the City requesting a "pre-drilling" and "post-drilling" water analysis to be provided by **RSP Permian, LLC.** Please contact the City's Planning Division at (432)685-7405.

If any further information is desired, please contact the Planning Division at 685-7405. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7405.

Notices Mailed: 3

Date Mailed: November 23, 2011

Case Number: O-11-009

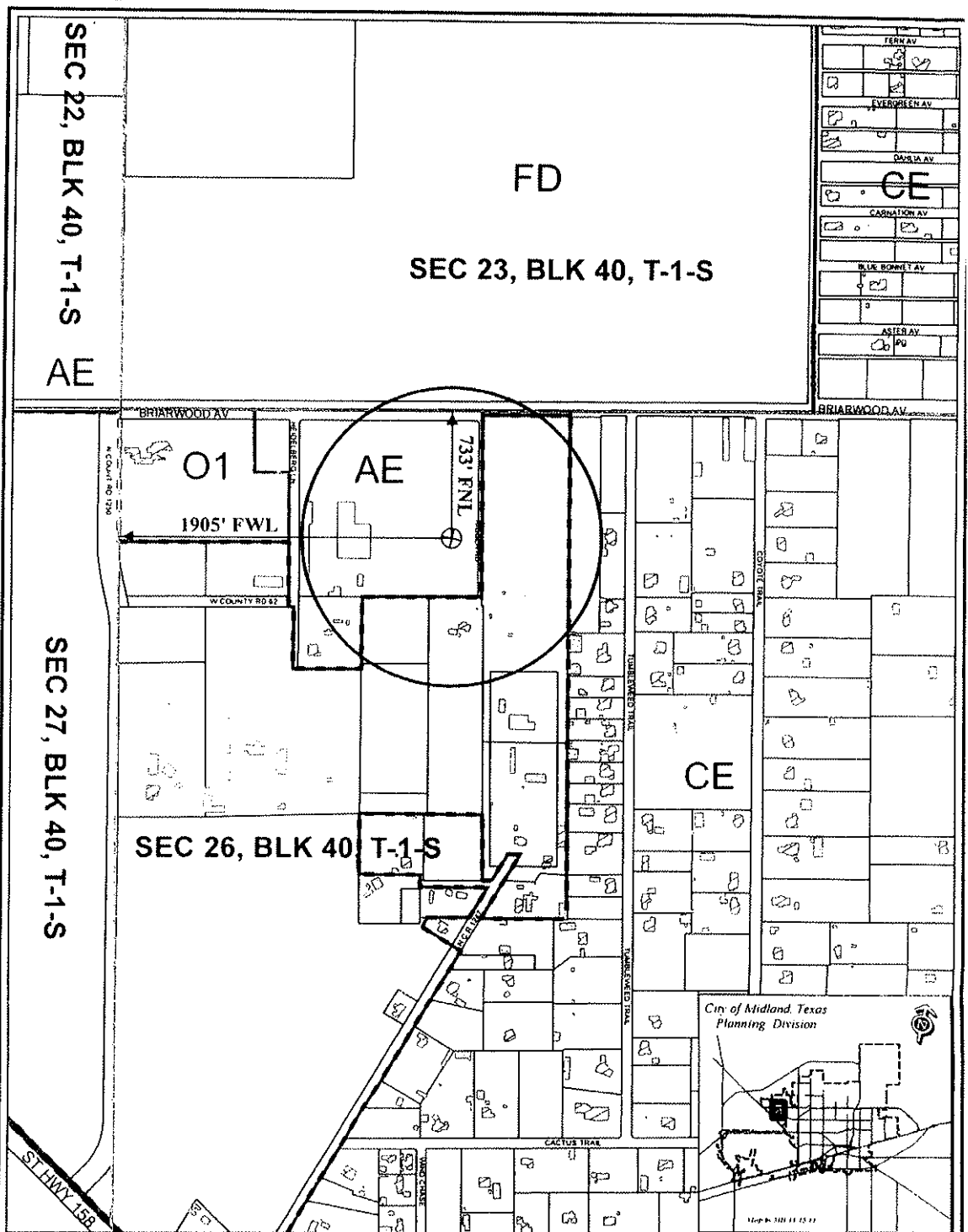
Case Name: RSP Permian, LLC.

[Signature] Planner's Initials

DEC 13 2011

[Signature]
Cameron Walker, AICP
Planning Division Manager
Department of Development Services

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Beth Mosley, Compliance Coordinator for the City of Midland, at (432) 685-7250. If communication via TDD is required, please call 1-800-735-2989.



LOCATION AND ZONING MAP

O - 11 - 009

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 733' FNL and 1905' FWL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Bus Barn #2601

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
IF1, IF2, IF3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
IF	TWO-FAMILY DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: O-11-009; consider a resolution regarding a road repair agreement between the City of Midland and RSP Permian, LLP. related to an oil and gas well drilling permit (Bus Barn #2601) on the south side of Briarwood Avenue, 870' east of Heidelberg Lane.

Purpose:

Consider a resolution approving a road repair agreement between the City of Midland and RSP Permian, LLP.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

This agreement will cover the cost of road damages to Briarwood Avenue that are attributable to RSP Permian in association with the above drilling permit. The total amount of the certificate of deposit covering three proposed well sites is \$75,000; this is the amount specified in the City's oil and gas drilling regulations.

Discussion:

RSP Permian has met the requirements contained in the City code related to this matter. Staff recommends approval.

Attachments: Draft agreement

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
ROAD REPAIR AGREEMENT WITH RSP PERMIAN,
L.L.C. REGARDING ITS APPLICATION TO DRILL AN
OIL AND GAS WELL WITHIN THE CITY LIMITS
LOCATED 733 FEET FROM THE NORTH LINE AND
1,905 FEET FROM THE WEST LINE, SECTION 26,
BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND
COUNTY OF MIDLAND, TEXAS**

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a road repair agreement with RSP Permian, L.L.C.;

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

THAT the Mayor is hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a road repair agreement with RSP Permian, L.L.C. Said agreement shall be substantially similar in form as that of Exhibit "A", which is attached hereto and incorporated herein for all purposes.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

ROAD REPAIR AGREEMENT

RSP Permian, L. L. C. ("RSP Permian") intends to use portions of Briarwood Street ("Access Route") to access its Bus Barn #2601 oil and gas lease as provided in its applications for the wells listed herein. RSP Permian as operator agrees to pay actual road repair costs up to a maximum amount of Twenty-Five Thousand and no /hundred dollars (\$25,000.00) per calendar year for damage done to Access Route and the lease entrance gate to the extent that any such damage is verifiably attributable to traffic servicing the Bus Barn Lease. RSP Permian will not be obligated to pay for any damage to Access Route attributable to other parties or for damage associated with normal wear and tear. RSP Permian will not be required to pay road repair in excess of \$25,000 per calendar year per well it operates within the city limits in Section 26 Block 40, T-1-S, T & P Survey, Midland County Texas. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permits shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permits shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

RSP Permian and the City of Midland agree that documentation of any road damage determined to be caused by RSP Permian's use of Access Route to access the Bus Barn #2601 Lease shall be presented to RSP Permian. If the Operator does not agree the Operator may file a written objection with the City Manager with ten (10) days of being notified of the road damage. The City Manager shall review the objections and give RSP Permian the opportunity to be heard and present facts that RSP Permian deems relevant. The City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) General Conditions of all Oil and Gas Well Permits, in order to remedy such situation under ordinance 8769, 6-1-23 "Oil & Gas Well Permits". The amount drawn from the certificate of deposit shall not exceed the limits previously described by this agreement.

AGREED TO AND ACCEPTED BY THE FOLLOWING PARTIES

RSP Permian, L.L.C.

City of Midland, Texas

Date: _____

Date: _____

By: _____

By: _____

William R. Huck, Vice President-Operations

Mayor: W. Wesley Perry

Exhibit "A"



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: O-11-010; consider a resolution approving an oil and gas well drilling permit (Bus Barn #2602) near the south side of Briarwood Avenue, 450' east of Heidelberg Lane.

Purpose:

To consider a resolution on a request from **RSP Permian, L.L.C.** (Bus Barn #2602) for a *Permit to Drill an Oil and Gas Well within the City Limits* located 600' FNL and 525' FWL, Section 26, Block 40, T-1-S T&P RR Co. Survey, Midland County, Texas. Council held a public hearing on December 13, 2011; therefore, it is now appropriate to consider a resolution since the required 30 day comment period has passed. Staff received two letters of objection citing noise, traffic, pollution and smell as reasons for objection.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval. The applicant is requesting a variance from the landscaping as well as a variance from the 500' distance requirement due to an office building located within 448' of the well site. No waiver of the road repair agreement has been requested.

Attachments: Application; Location map; Drill site location.

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO RSP PERMIAN, L.L.C. (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 600 FEET FROM THE NORTH LINE AND 525 FEET FROM THE WEST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NEAR THE SOUTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 450 FEET EAST OF HEIDELBERG LANE)

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance

with Section 6-1-23(H)(1) and a public hearing was held on December 13, 2011; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 600 feet from the north line and 525 feet from the west line, Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

ROAD REPAIR AGREEMENT

RSP Permian, L. L. C. ("RSP Permian") intends to use portions of Briarwood & Heidelberg Street, ("Access Route") to access its Bus Barn #2602 oil and gas lease as provided in its applications for the wells listed herein. RSP Permian as operator agrees to pay actual road repair costs up to a maximum amount of Twenty-Five Thousand and no /hundred dollars (\$25,000.00) per calendar year for damage done to Access Route and the lease entrance gate to the extent that any such damage is verifiably attributable to traffic servicing the Bus Barn Lease. RSP Permian will not be obligated to pay for any damage to Access Route attributable to other parties or for damage associated with normal wear and tear. RSP Permian will not be required to pay road repair in excess of \$25,000 per calendar year per well it operates within the city limits in Section 26 Block 40,T-1-S, T & P Survey, Midland County Texas. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permits shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permits shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

RSP Permian and the City of Midland agree that documentation of any road damage determined to be caused by RSP Permian's use of Access Route to access the Bus Barn #2602 Lease shall be presented to RSP Permian. If the Operator does not agree the Operator may file a written objection with the City Manager with ten (10) days of being notified of the road damage. The City Manager shall review the objections and give RSP Permian the opportunity to be heard and present facts that RSP Permian deems relevant. The City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) General Conditions of all Oil and Gas Well Permits, in order to remedy such situation under ordinance 8769, 6-1-23 "Oil & Gas Well Permits". The amount drawn from the certificate of deposit shall not exceed the limits previously described by this agreement.

AGREED TO AND ACCEPTED BY THE FOLLOWING PARTIES

RSP Permian, L.L.C.

City of Midland, Texas

Date: _____

Date: _____

By: _____

By: _____

William R. Huck, Vice President-Operations

Mayor: W. Wesley Perry

Exhibit "A"

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "B"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

- f. Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.
- g. If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

- a. The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;
- b. The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;
- c. The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);
- d. The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and
- e. The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

a. General requirements applicable to all policies.

i.

The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.

ii.

All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.

iii.

All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.

iv.

Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.

v.

Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.

vi.

All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.

vii.

Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.

viii.

Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.

ix.

During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
William R Huck, Vice President/Operations

RSP Permian, L.L.C
125 W. Missouri, Ste 450
Midland, Texas 79701
(432)818-1300

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "C"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

a.

The physical size of the compressor;

b.

The power source of the compressor;

c.

The horsepower of the compressor;

d.

The noise of the compressor; and

e.

The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping. WAIVED by City Council on January 24, 2012.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his

designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
William R. Huck, Vice President/Operations

RSP Permian, L. L. C.
125 W Missouri, Ste 450
Midland, Texas 79701
(432) 818-1300

Exhibit D

RSP Permian, L.L.C.

Variance Request

Bus Barn № 2602

The Bus Barn № 2602 Drill Site is situated such that Occupied Structure(s) falls within 500 feet of the Drill Site.

In this regard, RSP Permian, L.L.C. hereby requests a variance from the 500 ft. restriction as set forth under Section H.2 of City Ordinance 8769. The location(s) of the Occupied Structure(s) is depicted on the certified plat included herewith as part of Exhibit E. The nearest Occupied Structure is a shop which is located 442 feet from the Drill Site.



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 6/27/2011	Operator Name (must match W-1) RSP Permian, L.L.C.	Operator Address 125 W. Missouri, Ste 450 Midland, TX 79701
Representative Name William R. Huck	Representative Address (within Midland City Limits) same as above	Rep. Tele. 432.818.1300 Rep. Fax 432.818.1350
Fee: \$4,000.00 Rec'd Yes ___ No ___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____		
Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): See Exhibit "A"		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): See Exhibit "A" RSP Permian, L.L.C. 24/7 Answering Service - 432.818.1300		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). None - N/A		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. See Exhibit "C"		
2.		
3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from Jim Spradlin _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location):		
Surface Use: Church Office, Bus Barn Shop / Bus Storage / Corral		
Surface Ownership: See Exhibit D		
ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from Jim Spradlin _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Bus Barn #2602

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attachment under Exhibit G

Legal Description of Proposed Well Site:

600' FNL, 525' FWL, Sec 26, Blk 40, T1S, T&P Survey, Midland County, TX

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) Drilling: None
- (2) Operations: Electrical - Sharyland Utilities L.P.

Description of water source to be used during Drilling:

Water to be trucked onto well site.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "H"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

Exhibit O

Trench and encapsulate per RRC Rule 27(C)(10)(v)

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

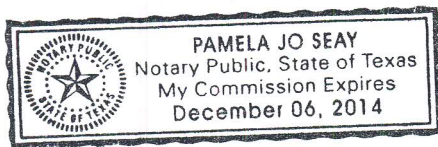
RSP PERMIAN, L.L.C.

By: William R. Huck
William R. Huck, Vice President/Operations

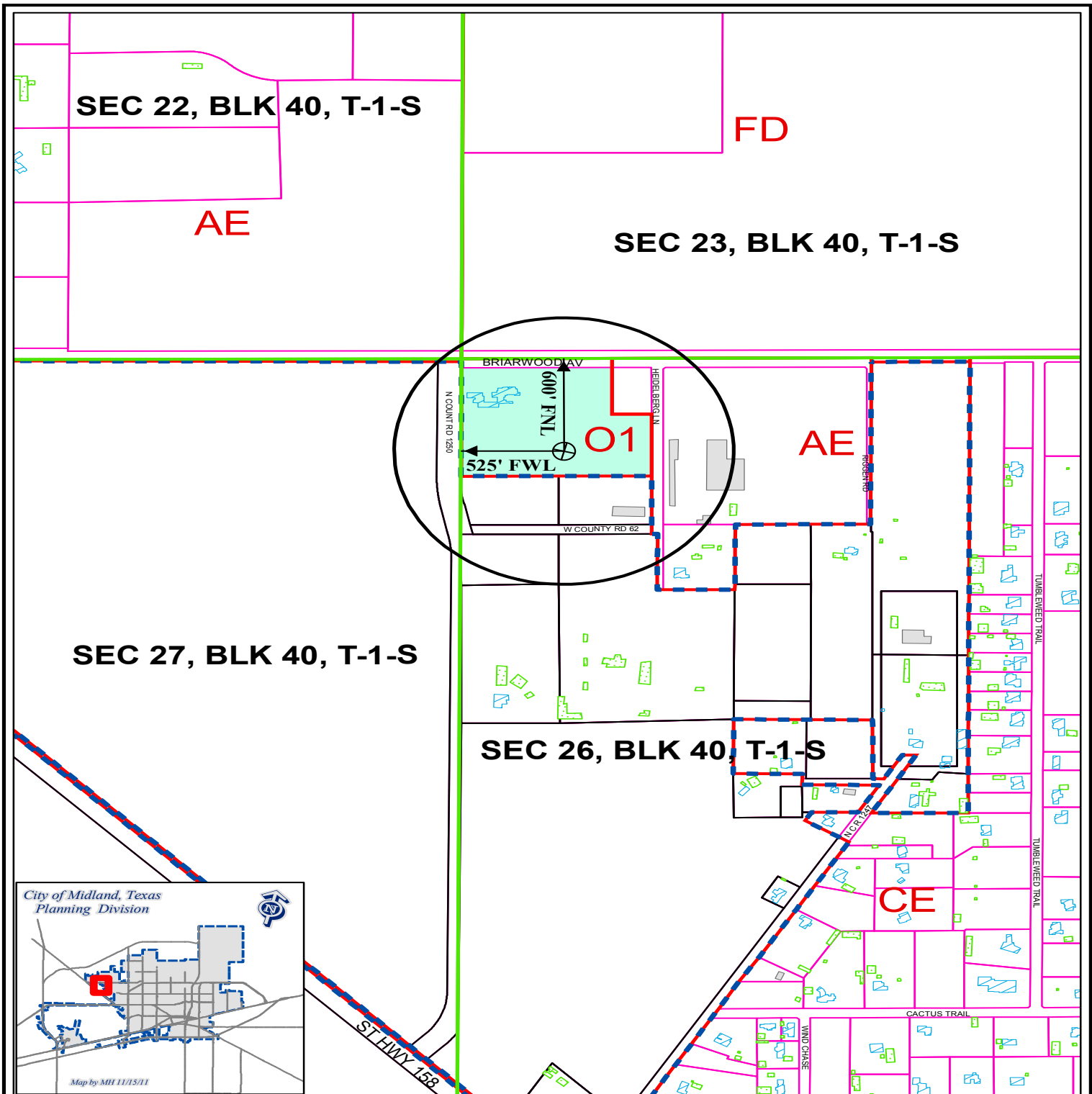
STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 27th day of June, 2011 by William R. Huck, Vice President/Operations of RSP Permian, L.L.C., a Delaware Limited Liability Company, who personally appeared before me, and being first duly sworn declared he signed the application in the capacity designated, if any, and further states that he has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



Pamela Jo Seay
Notary Public, State of Texas



LOCATION AND ZONING MAP

O - 11 - 010

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 600' FNL and 525' FWL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Bus Barn #2602

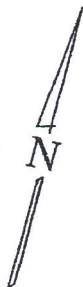
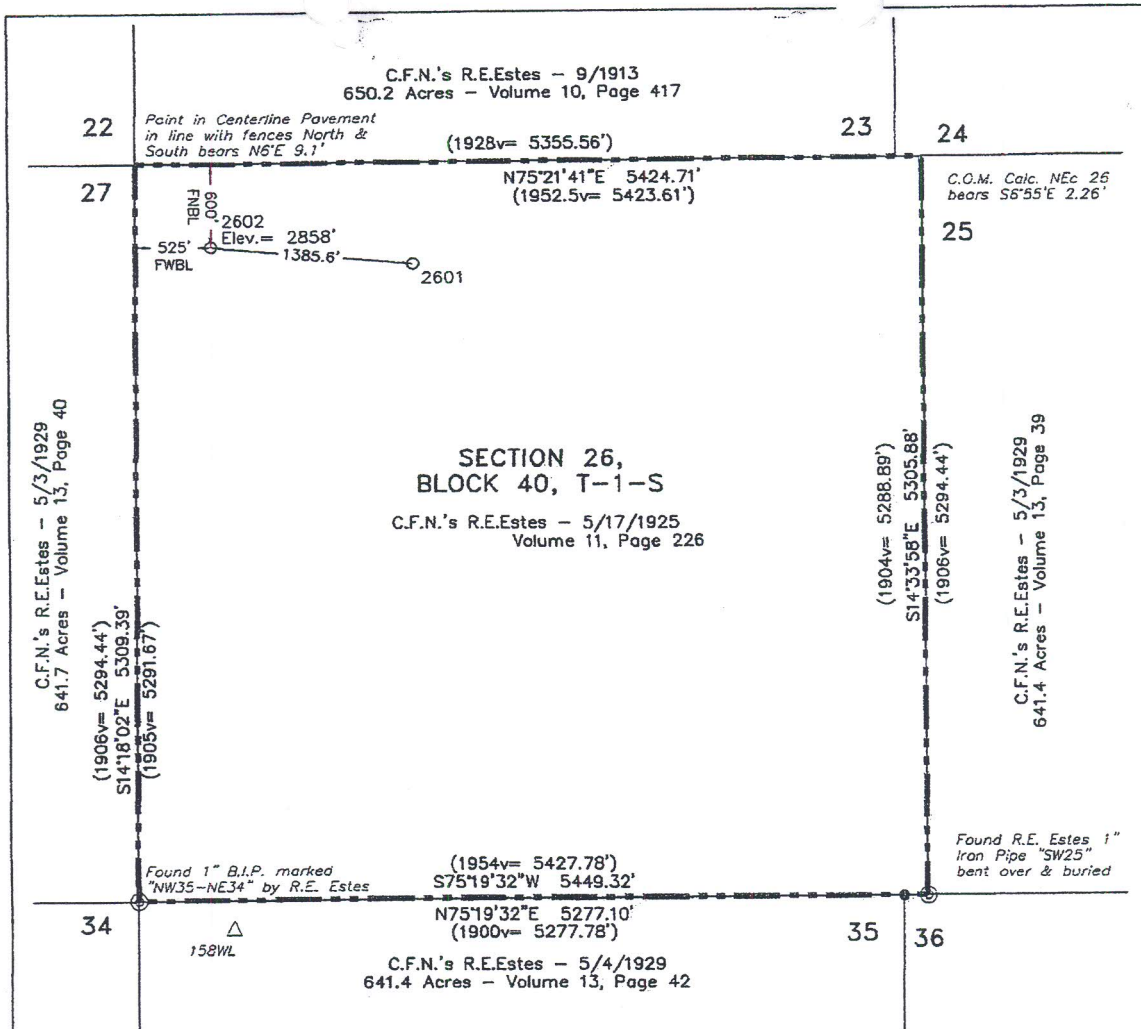
LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY

21.a.39

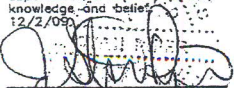


1927 NAD

N/Y= 859587.09
E/X= 1423487.23



Revised: 4/8/10 by GMR

OPERATOR: RSP PERMIAN, LLC 125 W. MISSOURI SUITE 450 MIDLAND, TX 79701		BUS BARN #2602		FIELD:	
The well location shown on this plot represents an actual survey made by me or under my supervision to the best of my knowledge and belief. 12/2/09  J. STAN PIPER PROFESSIONAL LAND SURVEYOR REGISTERED SEAL NO. 1994		DESCRIPTION: All of Section 26, Block 40, T-1-S, T.&P. RR. Co. Survey, Midland County, Texas		ACREAGE: 662.48 in Sec. 662.48 in Lease	
				ELEVATION: 2858'	
				DATE: 12/7/09	
				SCALE: 1"=1000'	
				DRAWN BY: Gene M. Rodriguez	
LOCATION IN SURVEY: 600' FNL & 525' FWL of Sec. 26		LOCATION IN LEASE: 600' FNBL & 525' FWBL of Lease		DWG FILE: Patriot-BusBarn.Dwg	
NEAREST POST OFFICE: 7 Miles Southeast to Midland, Texas		GEODETIC POSITION: LATITUDE: 32°01'00.998"		FIELD BOOK: See 11x17" Calc. Sheet	
		LONGITUDE: 102°11'37.276"		NORTH AMERICA DATUM OF: 1983/86	
STATE PLANE COORDINATES: NORTH (Y) 10702162.94		EAST (X) 1719953.93		ZONE: Central STATE: TX	

0-11-010

Marisela Garcia

From: Ron Jenkins
Sent: Thursday, January 19, 2012 3:17 PM
To: Amy Turner; Marisela Garcia
Subject: RSP Permian and Pioneer Natural- Petitions and letters of objection for Agenda Packet
Attachments: Petition Bus Barn 2603 Mayor Office.pdf; Petition Bus Barn 2603 Tellinhuisen.pdf; Petition Bus Barn 2603 Full Packet.pdf; Ltr for 2603 1.pdf; Ltr for 2603 2.pdf; Ltr for 2603 3.pdf; Ltr for 2603 4.pdf; Ltr for 2603 5.pdf; Ltr for 2603 6.pdf; Ltr for 2603 8.pdf; Ltr for 2603 9.pdf; Ltr for 2603 10.pdf; Ltr for 2603 11.pdf; Ltr for 2603 12.pdf; Ltr for 2603 13.pdf; Ltr for 2603 14.pdf; Ltr for 2603 15.pdf; Ltr for 2603 16.pdf; Ltr for 2603 17.pdf; Ltr for 2603 18.pdf; Ltr for 2603 19.pdf; Ltr for 2603 20.pdf; Ltr for 2603 21.pdf; Bus Barn 2603 Letter 3.pdf; Bus Barn 2603 Letter 2.pdf; Bus Barn 2603 Letter 1.pdf; Bus Barn 2602 Letter 2.pdf; Bus Barn 2602 Letter 1.pdf; Bus Barn 2601.pdf; Pioneer Mabee E #4.pdf

Subject: RSP Permian and Pioneer Natural- Agenda Packet

RSP Permian L.L.C. -These applications are requesting a variance from the landscaping stating due to scarcity of water. Opportunity to donate to the tree fund and park endowment fund has been discussed.

Bus Barn #2601- 1 letter of objection.

Requesting a variance from the 500 ft minimum distance from an occupied commercial building. The proposed drill-site for the Bus Barn #2601 will be 465 feet from the MISD Bus Barn Shop.

Bus Barn #2602- 2 letters of objection.

Requesting a variance from the 500 ft minimum distance from an occupied commercial building. The proposed drill-site for the Bus Barn #2602 will be 448 feet from the Mid-Cities Community Church Office.

Bus Barn #2603- two petitions and 23 letters of objection

The Oil and Gas Advisory Committee recommends a variance to landscaping for Bus Barn #2603 be denied. This is the specific well noted in the petition.

Pioneer Natural Resources, USA, Inc. are presenting four applications for oil & gas well permit

The application wells are the **Mabee E #3-** no letters of objection

Mabee E #4- 1 letter of objection

Mabee D #5-no letters of objection

Mabee D #6-no letters of objection

Wells would be located East of Hwy 349 and North of Arapaho. Opportunity to donate to tree fund and park endowment fund has been discussed.

These applications are requesting a variance from the fencing . This lease has several producing wells which are not subject to this ordinance. The 652 acres are surrounded by barbed wire fence with locked cattle guard gates.

These applications are requesting a variance from the landscaping stating due to nothing but natural vegetation on the tract. Pioneer states would be a gross waste of natural resources of both plants and water. Three prior permits were granted a variance in this same 652 acre tract.

These Pioneer applications are requesting a waiver of the Road Repair Agreement. No city streets will be used.

ESTATE OF JOE G. ROPER

2409 Never Bend Cove
Austin, Texas 78746

Phone (512) 342-8811
Fax (512) 306-1615

December 7, 2011

Honorable Members of the Midland City Council
300 N. Loraine
Midland, Texas 79702

Sent Via Facsimile to (432)-686-1609 and Certified Mail

Re: Notice of Public Hearing pursuant Case Number O-11-010 regarding a request by RSP Permian, LLC requesting a Permit to Drill within the City Limits on a property generally located on the south side of Briarwood Avenue, approximately 450' west of Heidelberg Lane and described as Located 600' FNL and 525' FWL, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas (the "Notice"). The common address of the property is 7401 Briarwood, Midland Texas and the legal description of such property is Lot 1 Block 1 Roper Addition, according the map or plat of record located in Midland County, Texas ("Lot 1").

Members of the City Council and to whom it may concern:

The undersigned is in receipt of the above referenced Notice. Lot 1 was formerly our family home and was donated to Mid-Cities Community Church to use for charitable purposes. It is our understanding that the property was recently zoned for O-1 Office District and that construction of a charitable housing complex is planned in the immediate future. The heirs of Joe G. Roper own Lot 2 Block 1 of the aforementioned Roper Addition which is located on the northeast corner of Block 1 as further indicated on the attached Exhibit A ("Lot 2"). Our intention is to develop Lot 2 for commercial purposes when the market will support such development. The heirs of Joe G. Roper specifically object to the permit due to the potential negative effect on the Lots 1 and 2. More generally we object to drilling within the limits of the City of Midland. Our family partnership owns another vacant 50.74 acre property (the "Property") located in the City of Midland which according to the Planning and Development Department is directly in the growth path and is located at the future intersection of Mockingbird Lane and Trenton Drive. According to the Planning and Development Department the Property will be well suited for residential and commercial use in the future and a 12" waterline has been installed to its western edge to facilitate development. In addition the Property is adjacent to the Pecan Acres and Kalpowar Estates subdivisions and near the Llano Estacado subdivision. The partnership has been notified that the owner of the mineral rights intends to drill two wells on the Property in the immediate future. Due to the proposed location of the wells and the shape of the Property, the ability for future development will be very negatively impacted. Although it appears it will be possible geometrically to locate the wells in a manner that complies with existing ordinances, rules and regulations, it will be extremely difficult to build improvements on the Property that comply with those same ordinances, rules and regulations. If homes cannot be built within 500 feet of

existing wells the Property may be virtually useless for development. Unless the City of Midland intends to allow homes to be constructed in close proximity to wells in the future, growth in Midland may be limited and residential lots will be very large and expensive to develop. It appears that the time has come when the City Council will have to decide the highest and best use for the properties located within the Midland City Limits and balance the interests of its citizens and affordable housing against those of the oil companies. It is our belief and opinion that property located within the City of Midland should not contain wells for reasons we believe are obvious.

It is hereby formally requested that the City Council deny the above requested permit and avoid setting further precedents that will affect the citizens of Midland for many years to come.

Your serious consideration of this matter is greatly appreciated.

Yours truly,

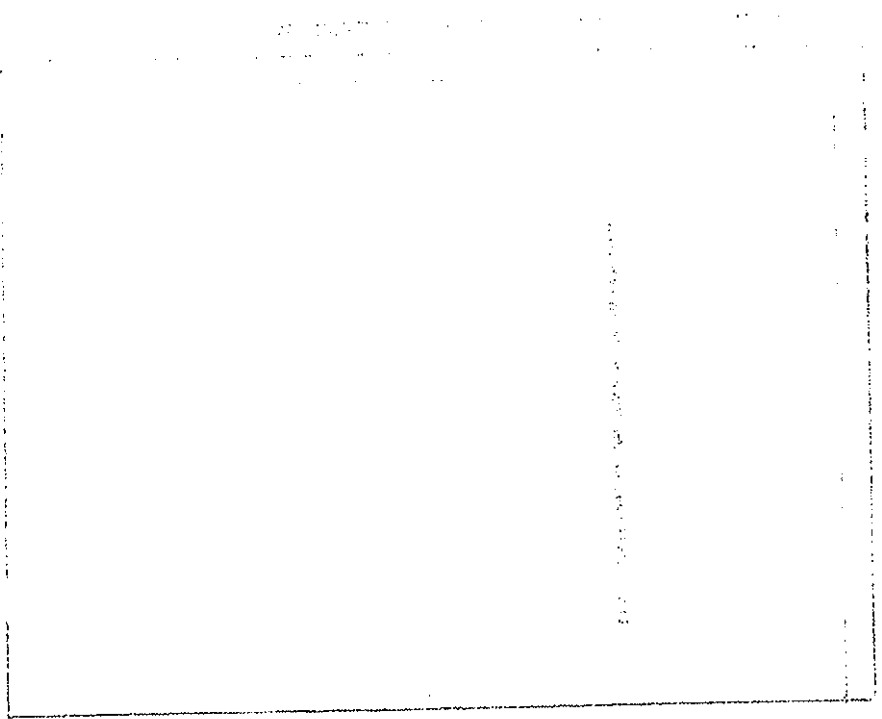


J. Mark Roper

EXHIBIT "A"

POPER ADDITION

1. The addition of the following text to the contract is hereby approved.



NIX CLEABURN D
4310 HEIDELBERG LANE
MIDLAND TX 79707



Code Administration
432.685.7390

Development Services

GIS
432.685.7284

Community Development
432.685.7408

300 N. Loraine
Post Office Box 1152
Midland, Texas 79702-1152
Fax 432.683.1786

Planning Division
432.685.7400

Engineering Services
432.685.7286

Transportation
432.685.7287

PUBLIC NOTICE

The **City Council**, of the City of Midland, Texas, will hold a public hearing at **11:15 a.m. on Tuesday, December 13, 2011**, in the Council Chamber, City Hall, 300 N. Loraine, on a request by **RSP Permian, LLC.** for approval of a **Permit to Drill within the City Limits** on the following described property:

LEGAL DESCRIPTION: Located 600' FNL and 525' FWL, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.

LOCATION: Generally located on the south side of the Briarwood Avenue, approximately 450 feet west of Heidelberg Lane.

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered in writing** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request ☒ Comments: Noise, traffic, pollution, smell,

Required Information:

C. David Nix
Property Owner's Signature

C. David Nix
Printed Name

4310 Heidelberg Lane
Property Address (No P. O. Boxes)

Any property owner having a fresh water well within 860 feet of any of these well locations should advise the City requesting a "pre-drilling" and "post-drilling" water analysis to be provided by **RSP Permian, LLC.** Please contact the City's Planning Division at (432)685-7405.

If any further information is desired, please contact the Planning Division at 685-7405. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7405.

Notices Mailed: 6

Date Mailed: November 23, 2011

Case Number: O-11-010

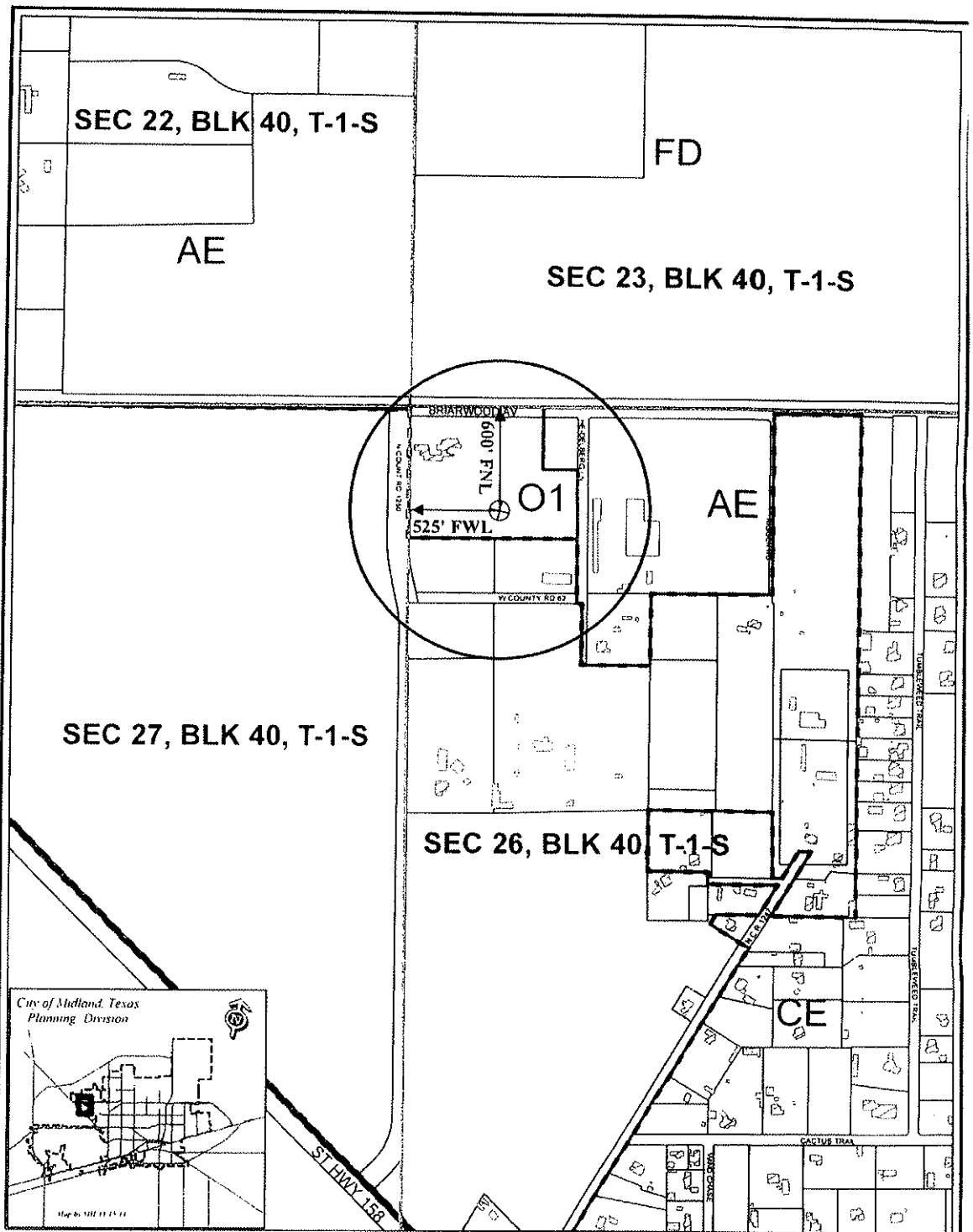
Case Name: RSP Permian, LLC.

0 Planner's Initials

DEC 13 2011

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Beth Mosley, Compliance Coordinator for the City of Midland, at (432) 685-7250. If communication via TDD is required, please call 1-800-735-2989.



LOCATION AND ZONING MAP

O - 11 - 010

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 600' FNL and 525' FWL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Bus Barn #2602

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
ZF	TWO-FAMILY DWELLING	IP, 1P1, 1P2, 1P3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: O-11-010; consider a resolution regarding a road repair agreement between the City of Midland and RSP Permian, LLP. related to an oil and gas well drilling permit (Bus Barn #2602) on the south side of Briarwood Avenue, 450' east of Heidelberg Lane.

Purpose:

Consider a resolution approving a road repair agreement between the City of Midland and RSP Permian, LLP.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

This agreement will cover the cost of road damages to Briarwood Avenue and Heidelberg Lane that are attributable to RSP Permian in association with the above drilling permit. The total amount of the certificate of deposit covering three proposed well sites is \$75,000; this is the amount specified in the City's oil and gas drilling regulations.

Discussion:

RSP Permian has met the requirements contained in the City code related to this matter. Staff recommends approval.

Attachments: Draft agreement

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
ROAD REPAIR AGREEMENT WITH RSP PERMIAN,
L.L.C. REGARDING ITS APPLICATION TO DRILL AN
OIL AND GAS WELL WITHIN THE CITY LIMITS
LOCATED 600 FEET FROM THE NORTH LINE AND
525 FEET FROM THE WEST LINE, SECTION 26,
BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND
COUNTY OF MIDLAND, TEXAS**

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a road repair agreement with RSP Permian, L.L.C.;

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

THAT the Mayor is hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a road repair agreement with RSP Permian, L.L.C. Said agreement shall be substantially similar in form as that of Exhibit "A", which is attached hereto and incorporated herein for all purposes.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

ROAD REPAIR AGREEMENT

RSP Permian, L. L. C. ("RSP Permian") intends to use portions of Briarwood & Heidelberg Street, ("Access Route") to access its Bus Barn #2602 oil and gas lease as provided in its applications for the wells listed herein. RSP Permian as operator agrees to pay actual road repair costs up to a maximum amount of Twenty-Five Thousand and no /hundred dollars (\$25,000.00) per calendar year for damage done to Access Route and the lease entrance gate to the extent that any such damage is verifiably attributable to traffic servicing the Bus Barn Lease. RSP Permian will not be obligated to pay for any damage to Access Route attributable to other parties or for damage associated with normal wear and tear. RSP Permian will not be required to pay road repair in excess of \$25,000 per calendar year per well it operates within the city limits in Section 26 Block 40,T-1-S, T & P Survey, Midland County Texas. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permits shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permits shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

RSP Permian and the City of Midland agree that documentation of any road damage determined to be caused by RSP Permian's use of Access Route to access the Bus Barn #2602 Lease shall be presented to RSP Permian. If the Operator does not agree the Operator may file a written objection with the City Manager with ten (10) days of being notified of the road damage. The City Manager shall review the objections and give RSP Permian the opportunity to be heard and present facts that RSP Permian deems relevant. The City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) General Conditions of all Oil and Gas Well Permits, in order to remedy such situation under ordinance 8769, 6-1-23 "Oil & Gas Well Permits". The amount drawn from the certificate of deposit shall not exceed the limits previously described by this agreement.

AGREED TO AND ACCEPTED BY THE FOLLOWING PARTIES

RSP Permian, L.L.C.

City of Midland, Texas

Date: _____

Date: _____

By: _____

By: _____

William R. Huck, Vice President-Operations

Mayor: W. Wesley Perry

Exhibit "A"



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: O-11-012; consider a resolution approving an oil and gas well drilling permit (Mabee #3) located on the east side of State Highway 349, north of Arapahoe Lane.

Purpose:

Consider a resolution on a request from **Pioneer Natural Resources** (Mabee #3) for a *Permit to Drill an Oil and Gas Well within the City Limits* located 660' FNL and 1980' FEL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. Council held a public hearing on December 13, 2011; therefore, it is now appropriate to consider a resolution since the required 30 day comment period has passed. Received no public comments.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval. The applicant is requesting a variance from the fencing and landscaping requirements. A waiver of the road repair agreement has been submitted since access to the property is from State Highway 349.

Attachments: Application; Location map; Drill site location.

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PIONEER NATURAL RESOURCES USA, INC. ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 660 FEET FROM THE NORTH LINE AND 1,980 FEET FROM THE EAST LINE, SECTION 12, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 349, NORTH OF ARAPAHOE LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, "Police Regulations," Chapter 1, "General Offenses," of the City Code of Midland, Texas, so as to establish Section 23, "Oil and Gas Well Permits issued on or after January 1, 2010," which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on December 13, 2011; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 660 feet from the north line and 1,980 feet from the east line, Section 12, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



APPLICATION FOR OIL AND GAS PERMIT
(Pursuant to Midland City Ordinance No. 8769)

0-11-012

I. General Information

Date 08/17/2011	Operator Name (must match W-1) Pioneer Natural Resources USA, Inc.	Operator Address 5205 N. O'Connor Blvd Irving, Texas 75039
Representative Name James Cunningham	Representative Address (within Midland City Limits) 303 W. Wall Street Suite 101, Midland, Texas 79702-3178	Rep. Tele. (432) 571-3222

Permit Compliance Contact (Choose 1):

Option A:

Option B: 24/7 Answering Services - No. 1 (Tele.): (432) 563-8432

No. 2 (Tele.): (432) 571-2800

Company Compliance Representative (Name, Address, Local Telephone) If Option A is Selected ATTACH STATEMENT AS EXHIBIT A:

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Larry Hambeck
4815 E. Hwy 80
24/7 Answering Service Call (432) 563-8432 or (432) 571-2800 Midland, Texas 79706

Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). ATTACHED

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): Various See Exhibit C
1. _____

ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from David Smith with Stubbeman, McRae, Sealy, Laughlin & Browder, Inc., a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].
ATTACHED

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location): Land is owned by Shenandoah Bar M. Ranch, LLC and the land within 500' and 860' of the drillsite is vacant.

ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from Bill Brown, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)]. ATTACHED

ATTACHED AS EXHIBIT E is a (map/plot/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/plot/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].
ATTACHED

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)]. ATTACHED

IV. Well & Operations Information

Proposed Well Name: Mabee #3

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Well will be drilled with a 17-1/2" hole and 12-3/4" Casing will be set to an approximate depth of 350' and cemented with 425 sks of Class C Cement. 8 5/8" Intermediate Casing will be set to an approximate depth of 5700' and cemented with 485 sks of Class C Cement. 4 1/2" Production Casing will be set at approximately 11,000 and cemented with approximately +/-1200 sacks of Cement.

Legal Description of Proposed Well Site:
660' FNL and 1980' FEL of Section 12 Blk 39 T-1-S being a part of the T&P RR Co/ Clark, W T Survey A-871

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. ATTACHED

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. ATTACHED

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of

W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)]. ATTACHED

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)]. ATTACHED VARIANCE REQUEST

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)]. ATTACHED VARIANCE REQUEST

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. ATTACHED

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) Drilling: No Public Utilities will be needed during drilling operations.
- (2) Operations: Electric Lines will be extended as shown on Exhibit N attached.

Description of water source to be used during Drilling:

Water from a Water Well on the Mabee Foundation Lease will be pumped West in a 3" poly line for water to be used during drilling.

Description of all electric lines to production facilities (reference exhibits as necessary)[See § L(10)]: See EXHIBIT G & N for details and a legal description of the Pipelines, Electric Lines and Roads on the property.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: See EXHIBIT O. Pits will be deep Buried in accordance to City of Midland Requirements.

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the Letter of Credit/Certificate of Deposit in accordance with Subsection (K)(2). [See § J(18)]. ATTACHED

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. ATTACHED

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)]. ATTACHED

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. SEE ATTACHED TOPO MAP

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)]. ATTACHED

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)]. ATTACHED

PIONEER NATURAL RESOURCES USA, INC.

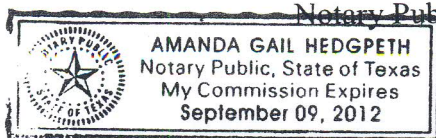
By Tammy Smith Tammy Smith
Its ENGINEERING Technician

State of Texas)

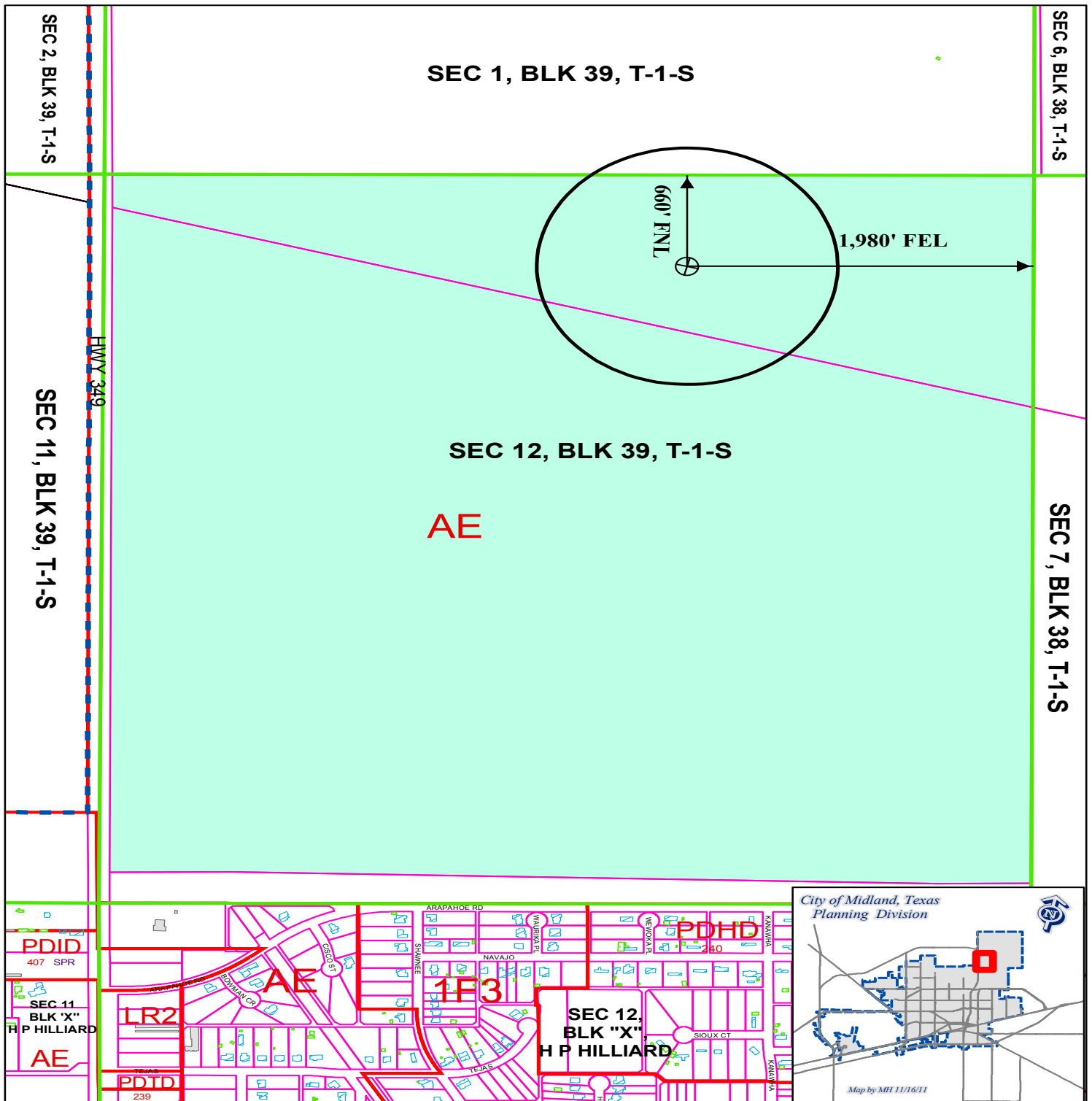
County of Dallas)

Tammy Smith, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

[S E A L]



Amanda Gail Hedgpeth



LOCATION AND ZONING MAP

O - 11 - 012

Scale: 1" = 800'

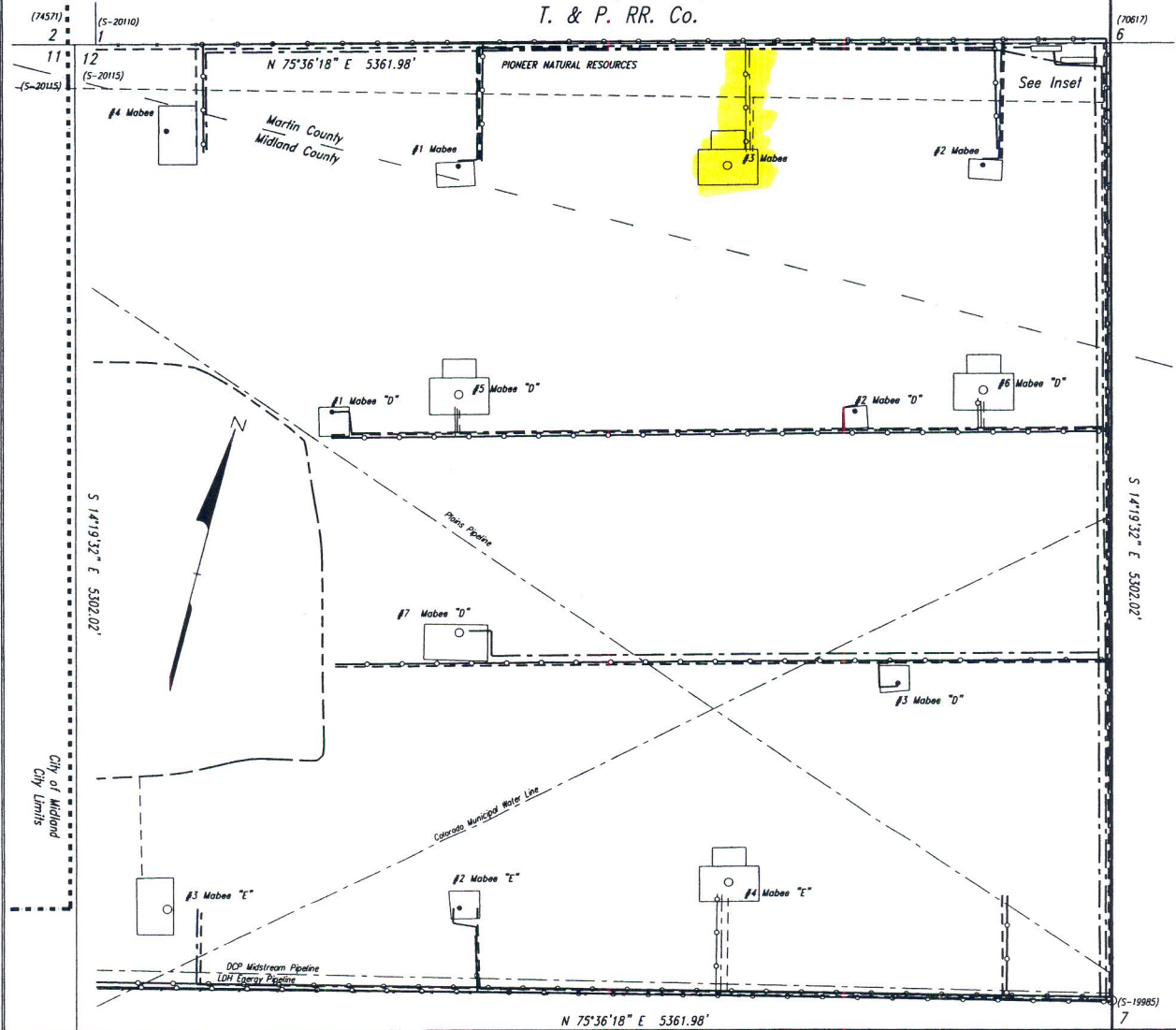
Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 660' FNL and 1980' FEL, Section 12, Block 39, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Mabee #3

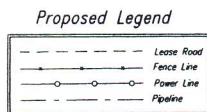
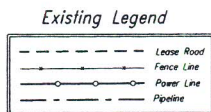
LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.
ZONING DISTRICTS:					
FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK		
PD	PLANNED DISTRICT	P	PARKING		
AE	AGRICULTURE ESTATE	01, O2	OFFICE		
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE		
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL		
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL		
2F	TWO-FAMILY DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK		
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY		
		HI	HEAVY INDUSTRY		

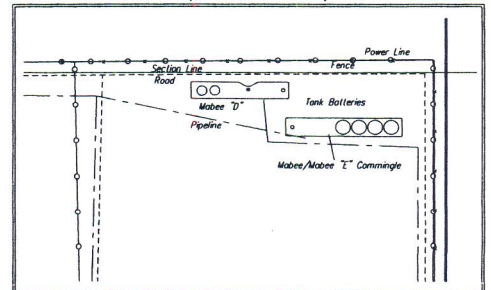
Block 3, T-1-S,
T. & P. RR. Co.



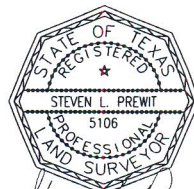
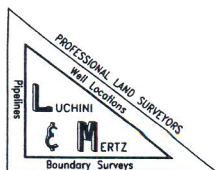
Block X HP Hilliard



Inset (Scale: 1" = 200')



Note: Survey Reconstruction filed in the Office of Luchini and Mertz Land Surveying Company.
 Note: All bearings and coordinates shown are based on the Texas Coordinate System of 1927, Central Zone.
 A combined grid factor of 0.999922826 must be divided into Section Line distances to obtain a true horizontal distance.
 Note: Example: (S-99999) indicates General Land Office file number.
 Note: NAD '27 decimal degree Latitude/Longitude.



July 22, 2011
Mabees Section 12

PIONEER NATURAL RESOURCES USA, Inc.
Existing and Proposed Pad sites &
Proposed Lease Roads in
Section 12, Block 39, T-1-S,
T. & P. RR. Co.
Midland & Martin Counties, Texas

Scale: 1" = 600'

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on January 24, 2012, considered the application of Pioneer Natural Resources USA, Inc., dated August 17, 2011, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Pioneer Natural Resources USA, Inc., dated August 17, 2011, and filed with the Midland City Secretary, a copy of which is attached here to as Exhibit "A" and incorporated herein for all legal purposes.

The location of Pioneer Natural Resources USA, Inc., Mabee #3 oil and gas well shall be 660 feet from the north line and 1980 feet from the east line, Section 12, Blk 39, T-1-S, T&P Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Pioneer Natural Resources USA, Inc., attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from January 24, 2012, through January 24, 2013, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of January, 2012.

Pioneer Natural Resources USA, Inc.

By: _____

James Cunningham

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "B"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section. WAIVED by City Council on January 24, 2011.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000 Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.

\$10,000,000 Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.

d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

- iii. Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.
- iv. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".
- v. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.
- vi. At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
James Cunningham

Pioneer Natural Resources USA, Inc.
5205 N. O'Connor Blvd.
Irving, Texas 75039
(432)571-3222

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "C"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or reCompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A variance is requested due to tract of land is barbed wire fenced and variance was allowed on prior permitted wells.

2.

Landscaping.

Variance requested due to vegetation would not be visible to public and would be a gross waste of natural resources.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his

designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____

James Cunningham

Pioneer Natural Resources USA, Inc.
5205 N. O'Connor Blvd.
Irving, Texas
(432) 571-3222

From: Ron Jenkins
Sent: Thursday, January 19, 2012 3:17 PM
To: Amy Turner; Marisela Garcia
Subject: RSP Permian and Pioneer Natural- Petitions and letters of objection for Agenda Packet
Attachments: Petition Bus Barn 2603 Mayor Office.pdf; Petition Bus Barn 2603 Tellinhuisen.pdf; Petition Bus Barn 2603 Full Packet.pdf; Ltr for 2603 1.pdf; Ltr for 2603 2.pdf; Ltr for 2603 3.pdf; Ltr for 2603 4.pdf; Ltr for 2603 5.pdf; Ltr for 2603 6.pdf; Ltr for 2603 8.pdf; Ltr for 2603 9.pdf; Ltr for 2603 10.pdf; Ltr for 2603 11.pdf; Ltr for 2603 12.pdf; Ltr for 2603 13.pdf; Ltr for 2603 14.pdf; Ltr for 2603 15.pdf; Ltr for 2603 16.pdf; Ltr for 2603 17.pdf; Ltr for 2603 18.pdf; Ltr for 2603 19.pdf; Ltr for 2603 20.pdf; Ltr for 2603 21.pdf; Bus Barn 2603 Letter 3.pdf; Bus Barn 2603 Letter 2.pdf; Bus Barn 2603 Letter 1.pdf; Bus Barn 2602 Letter 2.pdf; Bus Barn 2602 Letter 1.pdf; Bus Barn 2601.pdf; Pioneer Mabee E #4.pdf

Subject: RSP Permian and Pioneer Natural- Agenda Packet

RSP Permian L.L.C. -These applications are requesting a variance from the landscaping stating due to scarcity of water. Opportunity to donate to the tree fund and park endowment fund has been discussed.

Bus Barn #2601- 1 letter of objection.

Requesting a variance from the 500 ft minimum distance from an occupied commercial building. The proposed drill-site for the Bus Barn #2601 will be 465 feet from the MISD Bus Barn Shop.

Bus Barn #2602- 2 letters of objection.

Requesting a variance from the 500 ft minimum distance from an occupied commercial building. The proposed drill-site for the Bus Barn #2602 will be 448 feet from the Mid-Cities Community Church Office.

Bus Barn #2603- two petitions and 23 letters of objection

The Oil and Gas Advisory Committee recommends a variance to landscaping for Bus Barn #2603 be denied. This is the specific well noted in the petition.

Pioneer Natural Resources, USA, Inc. are presenting four applications for oil & gas well permit

The application wells are the **Mabee E #3-** no letters of objection

Mabee E #4- 1 letter of objection

Mabee D #5-no letters of objection

Mabee D #6-no letters of objection

Wells would be located East of Hwy 349 and North of Arapaho. Opportunity to donate to tree fund and park endowment fund has been discussed.

These applications are requesting a variance from the fencing . This lease has several producing wells which are not subject to this ordinance. The 652 acres are surrounded by barbed wire fence with locked cattle guard gates.

These applications are requesting a variance from the landscaping stating due to nothing but natural vegetation on the tract. Pioneer states would be a gross waste of natural resources of both plants and water. Three prior permits were granted a variance in this same 652 acre tract.

These Pioneer applications are requesting a waiver of the Road Repair Agreement. No city streets will be used.

CRONIN SUSAN
3013 SUNNYSIDE LN
PARADISE CA 95969-6707

MIDLAND
CITY OF MIDLAND

Code Administration
432.685.7390

Community Development
432.685.7408

Engineering Services
432.685.7286

Development Services

300 N. Loraine
Post Office Box 1152
Midland, Texas 79702-1152
Fax 432.683.1786

GIS
432.685.7284

Planning Division
432.685.7400

Transportation
432.685.7287

PUBLIC NOTICE

The **City Council**, of the City of Midland, Texas, will hold a public hearing at **11:24 a.m. on Tuesday, December 13, 2011**, in the Council Chamber, City Hall, 300 N. Loraine, on a request by **Pioneer Natural Resources USA, Inc.** for approval of a **Permit to drill an Oil and Gas Well within the City Limits** on the following described property:

LEGAL DESCRIPTION: Located 800' FSL and 1980' FEL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas.

LOCATION: Generally located on the east side of the State Hwy 349 north of Arapahoe Road.

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered in writing** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request ☒ Comments: MORE ODOR - MORE NOISE - FIRE DANGER - LOWERING MY ABILITY TO SELL HERE

Required Information:

Property Owner's Signature

Printed Name

Property Address (No P. O. Boxes) MIDLAND

Any property owner having a fresh water well within 860 feet of any of these well locations should advise the City requesting a "pre-drilling" and "post-drilling" water analysis to be provided by **Pioneer Natural Resources USA, Inc.** Please contact the City's Planning Division at (432)685-7400.

If any further information is desired, please contact the Planning Division at 685-7405. Si usted desea más información en Español sobre esta cuestión, llame al : 685-7405.

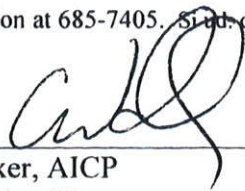
Notices Mailed: 3

Date Mailed: November 23, 2011

Case Number: O-11-013

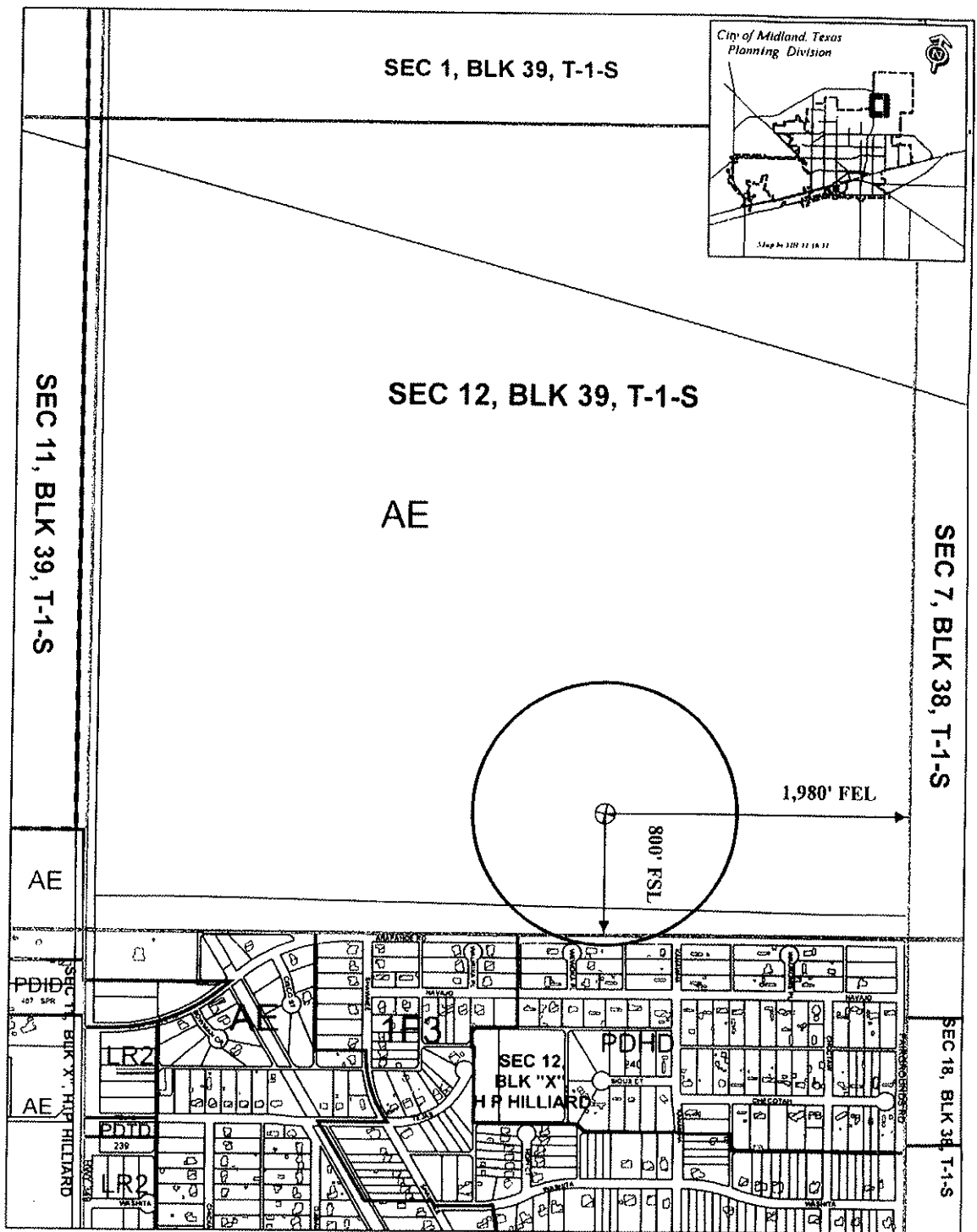
Case Name: Pioneer Natural Resources

Planner's Initials


Cameron Walker, AICP
Planning Division Manager
Department of Development Services

RECEIVED
DEC - 7 2011

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Beth Mosley, Compliance Coordinator for the City of Midland, at (432) 685-7250. If communication via TDD is required, please call 1-800-735-2989.



LOCATION AND ZONING MAP

O - 11 - 013

Scale: 1" = 800'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 800' FSL and 1980' FEL, Section 12, Block 39, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Mabee E #4

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	HP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
IF1, IF2, IF3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: O-11-013; consider a resolution approving an oil and gas well drilling permit (Mabee E #4) located on the east side of State Highway 349, north of Arapahoe Lane.

Purpose:

Consider a resolution on a request from **Pioneer Natural Resources** (Mabee E #4) for a *Permit to Drill an Oil and Gas Well within the City Limits* located 800' FSL and 1980' FEL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. Council held a public hearing on December 13, 2011; therefore, it is now appropriate to consider a resolution since the required 30 day comment period has passed. Received one public comment.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval. The applicant is requesting a variance from the fencing and landscaping requirements. A waiver of the road repair agreement has been submitted since access to the property is from State Highway 349.

Attachments: Application; Location map; Drill site location.

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PIONEER NATURAL RESOURCES USA, INC. ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 800 FEET FROM THE SOUTH LINE AND 1,980 FEET FROM THE EAST LINE, SECTION 12, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 349, NORTH OF ARAPAHOE LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, "Police Regulations," Chapter 1, "General Offenses," of the City Code of Midland, Texas, so as to establish Section 23, "Oil and Gas Well Permits issued on or after January 1, 2010," which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on December 13, 2011; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 800 feet from the south line and 1,980 feet from the east line, Section 12, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

0-11-013



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date 08/17/2011	Operator Name (must match W-1) Pioneer Natural Resources USA, Inc.	Operator Address 5205 N. O'Connor Blvd Irving, Texas 75039
Representative Name James Cunningham	Representative Address (within Midland City Limits) 303 W. Wall Street Suite 101, Midland, Texas 79702-3178	Rep. Tele. (432) 571-3222

Permit Compliance Contact (Choose 1):

Option A:
Option B: 24/7 Answering Services - No. 1 (Tele.): (432) 563-8432 No. 2 (Tele.): (432) 571-2800

Company Compliance Representative (Name, Address, Local Telephone) If Option A is Selected *ATTACH STATEMENT AS EXHIBIT A:*

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Larry Hambeck
4815 E. Hwy 80
24/7 Answering Service Call (432) 563-8432 or (432) 571-2800 Midland, Texas 79706

Other Permitted Wells in City (*ATTACH EXHIBIT B* [see § J(26)]). ATTACHED

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): Various See Exhibit C
1. _____

ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from David Smith with Stubbeman, McRae, Sealy, Laughlin & Browder, Inc., a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].
ATTACHED

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location): Land is owned by Shenandoah Bar M. Ranch, LLC, TXU Electric Delivery Co., Susan Cronin, and TXU Delivery Service and the land within 500' and 860' of the drillsite is vacant.

ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from Bill Brown, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)]. ATTACHED

ATTACHED AS EXHIBIT E is a (map/plat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/plat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)]. ATTACHED

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)]. ATTACHED

IV. Well & Operations Information

Proposed Well Name: Mabee "E" #4

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Well will be drilled with a 17-1/2" hole and 12-3/4" Casing will be set to an approximate depth of 350' and cemented with 425 sks of Class C Cement. 8 5/8" Intermediate Casing will be set to an approximate depth of 5700' and cemented with 485 sks of Class C Cement. 4 1/2" Production Casing will be set at approximately 11,000 and cemented with approximately +/-1200 sacks of Cement.

Legal Description of Proposed Well Site:
800' FSL and 1980' FEL of Section 12 Blk 39 T-1-S being a part of the T&P RR Co/ Clark, W T Survey A-1020

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. ATTACHED

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. ATTACHED

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of

W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)]. ATTACHED

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)]. ATTACHED VARIANCE REQUEST

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)]. ATTACHED VARIANCE REQUEST

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. ATTACHED

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) Drilling: No Public Utilities will be needed during drilling operations.
- (2) Operations: Electric Lines will be extended as shown on Exhibit N attached.

Description of water source to be used during Drilling:

Water from a Water Well on the Mabee Foundation Lease will be pumped West in a 3" poly line for water to be used during drilling.

Description of all electric lines to production facilities (reference exhibits as necessary)[See § L(10)]: See EXHIBIT G & N for details and a legal description of the Pipelines, Electric Lines and Roads on the property.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: See EXHIBIT O. Pits will be deep Buried in accordance to City of Midland Requirements.

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the Letter of Credit/Certificate of Deposit in accordance with Subsection (K)(2). [See § J(18)]. ATTACHED

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. ATTACHED

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)]. ATTACHED

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. SEE ATTACHED TOPO MAP

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)]. ATTACHED

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)]. ATTACHED

PIONEER NATURAL RESOURCES USA, INC.

By
Its

Tammy S Smith
ENGINEERING TECHNICIAN

State of Texas)

County of Dallas)

Tammy Smith

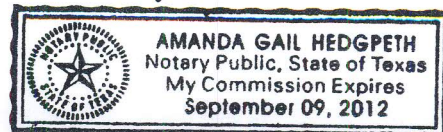
, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Notary Public, State of

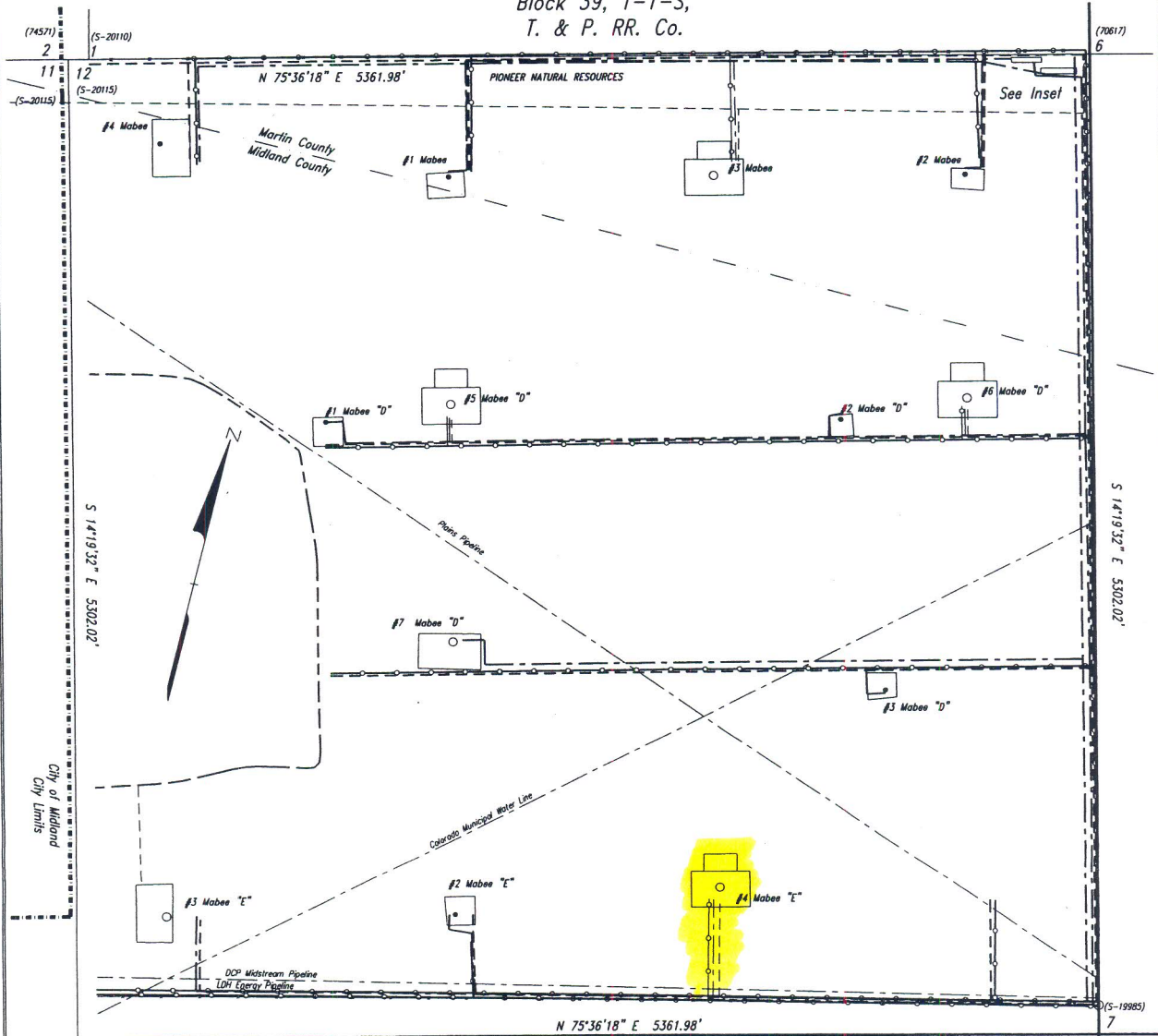
Texas

[SEAL]

Amanda Gail Hedgpeth



Block 39, T-1-S,
T. & P. RR. Co.

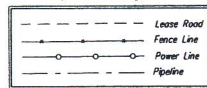


Block X HP Hilliard

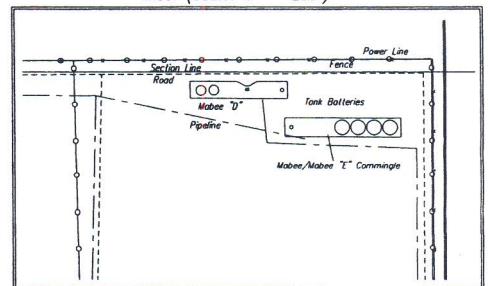
Existing Legend



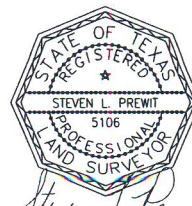
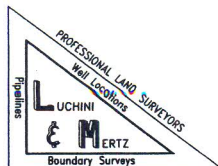
Proposed Legend



Inset (Scale: 1" = 200')



Note: Survey Reconstruction filed in the Office of Luchini and Mertz Land Surveying Company.
Note: All bearings and coordinates shown are based on the Texas Coordinate System of 1927, Central Zone.
A combined grid factor of 0.999922826 must be divided into Section Line distances to obtain a true horizontal distance.
Note: Example: (S-99999) indicates General Land Office file number.
Note: NAD '27 decimal degree Latitude/Longitude.



July 22, 2011
Mabey Section 12

PIONEER NATURAL RESOURCES USA, Inc.
Existing and Proposed Pad sites &
Proposed Lease Roads in
Section 12, Block 39, T-1-S,
T. & P. RR. Co.
Midland & Martin Counties, Texas

Scale: 1" = 600'

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on January 24, 2012, considered the application of Pioneer Natural Resources USA, Inc., dated August 17, 2011, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Pioneer Natural Resources USA, Inc., dated August 17, 2011, and filed with the Midland City Secretary, a copy of which is attached here to as Exhibit "A" and incorporated herein for all legal purposes.

The location of Pioneer Natural Resources USA, Inc., Mabee E #4 oil and gas well shall be 800 feet from the south line and 1980 feet from the east line, Section 12, Blk 39, T-1-S, T&P Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Pioneer Natural Resources USA, Inc., attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from January 24, 2012, through January 24, 2013, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of January, 2012.

Pioneer Natural Resources USA, Inc.

By: _____

James Cunningham

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "B"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.
WAIVED by City Council on January 24, 2011.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

- iii. Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.
- iv. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".
- v. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.
- vi. At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
James Cunningham

Pioneer Natural Resources USA, Inc.
5205 N. O'Connor Blvd.
Irving, Texas 75039
(432)571-3222

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "C"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or reCompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (100) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A variance is requested due to tract of land is barbed wire fenced and variance was allowed on prior permitted wells.

2.

Landscaping.

Variance requested due to vegetation would not be visible to public and would be a gross waste of natural resources.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his

designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a.
An amendment fee of \$1,000.00.
- b.
A description of the proposed amendments.
- c.
Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d.
Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e.
Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a.
No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b.
Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
James Cunningham

Pioneer Natural Resources USA, Inc.
5205 N. O'Connor Blvd.
Irving, Texas
(432) 571-3222

From: Ron Jenkins
Sent: Thursday, January 19, 2012 3:17 PM
To: Amy Turner; Marisela Garcia
Subject: RSP Permian and Pioneer Natural- Petitions and letters of objection for Agenda Packet
Attachments: Petition Bus Barn 2603 Mayor Office.pdf; Petition Bus Barn 2603 Tellinhuisen.pdf; Petition Bus Barn 2603 Full Packet.pdf; Ltr for 2603 1.pdf; Ltr for 2603 2.pdf; Ltr for 2603 3.pdf; Ltr for 2603 4.pdf; Ltr for 2603 5.pdf; Ltr for 2603 6.pdf; Ltr for 2603 8.pdf; Ltr for 2603 9.pdf; Ltr for 2603 10.pdf; Ltr for 2603 11.pdf; Ltr for 2603 12.pdf; Ltr for 2603 13.pdf; Ltr for 2603 14.pdf; Ltr for 2603 15.pdf; Ltr for 2603 16.pdf; Ltr for 2603 17.pdf; Ltr for 2603 18.pdf; Ltr for 2603 19.pdf; Ltr for 2603 20.pdf; Ltr for 2603 21.pdf; Bus Barn 2603 Letter 3.pdf; Bus Barn 2603 Letter 2.pdf; Bus Barn 2603 Letter 1.pdf; Bus Barn 2602 Letter 2.pdf; Bus Barn 2602 Letter 1.pdf; Bus Barn 2601.pdf; Pioneer Mabee E #4.pdf

Subject: RSP Permian and Pioneer Natural- Agenda Packet

RSP Permian L.L.C. -These applications are requesting a variance from the landscaping stating due to scarcity of water. Opportunity to donate to the tree fund and park endowment fund has been discussed.

Bus Barn #2601- 1 letter of objection.

Requesting a variance from the 500 ft minimum distance from an occupied commercial building. The proposed drill-site for the Bus Barn #2601 will be 465 feet from the MISD Bus Barn Shop.

Bus Barn #2602- 2 letters of objection.

Requesting a variance from the 500 ft minimum distance from an occupied commercial building. The proposed drill-site for the Bus Barn #2602 will be 448 feet from the Mid-Cities Community Church Office.

Bus Barn #2603- two petitions and 23 letters of objection

The Oil and Gas Advisory Committee recommends a variance to landscaping for Bus Barn #2603 be denied. This is the specific well noted in the petition.

Pioneer Natural Resources, USA, Inc. are presenting four applications for oil & gas well permit

The application wells are the **Mabee E #3-** no letters of objection

Mabee E #4- 1 letter of objection

Mabee D #5-no letters of objection

Mabee D #6-no letters of objection

Wells would be located East of Hwy 349 and North of Arapaho. Opportunity to donate to tree fund and park endowment fund has been discussed.

These applications are requesting a variance from the fencing . This lease has several producing wells which are not subject to this ordinance. The 652 acres are surrounded by barbed wire fence with locked cattle guard gates.

These applications are requesting a variance from the landscaping stating due to nothing but natural vegetation on the tract. Pioneer states would be a gross waste of natural resources of both plants and water. Three prior permits were granted a variance in this same 652 acre tract.

These Pioneer applications are requesting a waiver of the Road Repair Agreement. No city streets will be used.

CRONIN SUSAN
3013 SUNNYSIDE LN
PARADISE CA 95969-6707

MIDLAND
CITY OF MIDLAND

Code Administration
432.685.7390

Community Development
432.685.7408

Engineering Services
432.685.7286

Development Services

300 N. Loraine
Post Office Box 1152
Midland, Texas 79702-1152
Fax 432.683.1786

GIS
432.685.7284

Planning Division
432.685.7400

Transportation
432.685.7287

PUBLIC NOTICE

The **City Council**, of the City of Midland, Texas, will hold a public hearing at **11:24 a.m. on Tuesday, December 13, 2011**, in the Council Chamber, City Hall, 300 N. Loraine, on a request by **Pioneer Natural Resources USA, Inc.** for approval of a **Permit to drill an Oil and Gas Well within the City Limits** on the following described property:

LEGAL DESCRIPTION: Located 800' FSL and 1980' FEL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas.

LOCATION: Generally located on the east side of the State Hwy 349 north of Arapahoe Road.

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered in writing** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request ☒ Comments: MORE ODOR - MORE NOISE - FIRE DANGER - LOWERING MY ABILITY TO SELL HOME

Required Information:

Property Owner's Signature

Printed Name

Property Address (No P. O. Boxes) MIDLAND

Any property owner having a fresh water well within 860 feet of any of these well locations should advise the City requesting a "pre-drilling" and "post-drilling" water analysis to be provided by **Pioneer Natural Resources USA, Inc.** Please contact the City's Planning Division at (432)685-7400.

If any further information is desired, please contact the Planning Division at 685-7405. Si desea más información en Español sobre esta cuestión, llame al : 685-7405.

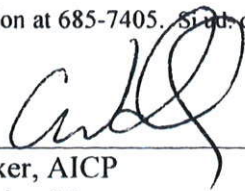
Notices Mailed: 3

Date Mailed: November 23, 2011

Case Number: O-11-013

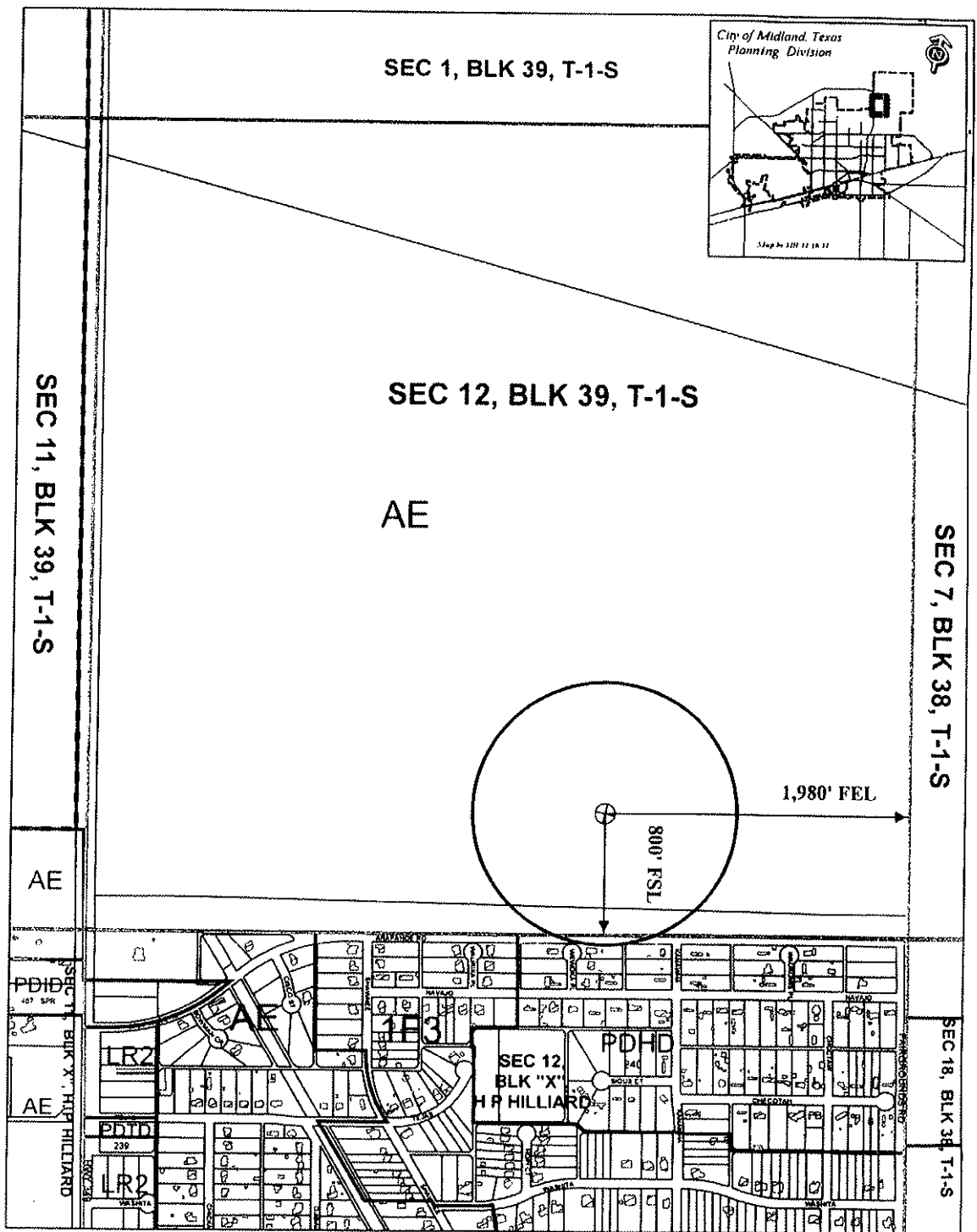
Case Name: Pioneer Natural Resources

Planner's Initials


Cameron Walker, AICP
Planning Division Manager
Department of Development Services

RECEIVED
DEC - 7 2011

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Beth Mosley, Compliance Coordinator for the City of Midland, at (432) 685-7250. If communication via TDD is required, please call 1-800-735-2989.



LOCATION AND ZONING MAP

O - 11 - 013

Scale: 1" = 800'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 800' FSL and 1980' FEL, Section 12, Block 39, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Mabee E #4

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	HP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
IF1, IF2, IF3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: O-11-014; consider a resolution approving an oil and gas well drilling permit (Mabee D #5) located on the east side of State Highway 349, north of Arapahoe Lane.

Purpose:

Consider a resolution on a request from **Pioneer Natural Resources** (Mabee D #5) for a *Permit to drill an Oil and Gas Well within the City Limits* located 1880' FNL and 1980' FWL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. Council held a public hearing on December 13, 2011; therefore, it is now appropriate to consider a resolution since the required 30 day comment period has passed. Received no public comments.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval. The applicant is requesting a variance from the fencing and landscaping requirements. A waiver of the road repair agreement has been submitted since access to the property is from State Highway 349.

Attachments: Application; Location map; Drill site location.

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PIONEER NATURAL RESOURCES USA, INC. ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1,880 FEET FROM THE NORTH LINE AND 1,980 FEET FROM THE WEST LINE, SECTION 12, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 349, NORTH OF ARAPAHOE LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, "Police Regulations," Chapter 1, "General Offenses," of the City Code of Midland, Texas, so as to establish Section 23, "Oil and Gas Well Permits issued on or after January 1, 2010," which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on December 13, 2011; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 1,880 feet from the north line and 1,980 feet from the west line, Section 12, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



APPLICATION FOR OIL AND GAS PERMIT
(Pursuant to Midland City Ordinance No. 8769)

0-11-014

I. General Information

Date
08/17/2011

Operator Name (must match W-1)
Pioneer Natural Resources USA, Inc.

Operator Address
5205 N. O'Connor Blvd
Irving, Texas 75039

Representative Name
James Cunningham

Representative Address (within Midland City Limits)
303 W. Wall Street Suite 101, Midland, Texas 79702-3178

Rep. Tele. (432) 571-3222

Permit Compliance Contact (Choose 1):

Option A:

Option B: 24/7 Answering Services - No. 1 (Tele.): (432) 563-8432

No. 2 (Tele.): (432) 571-2800

Company Compliance Representative (Name, Address, Local Telephone) If Option A is Selected ATTACH STATEMENT AS EXHIBIT A:

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Larry Hambeck
4815 E. Hwy 80
24/7 Answering Service Call (432) 563-8432 or (432) 571-2800 Midland, Texas 79706

Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). ATTACHED

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): Various See Exhibit C
1. _____

ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from David Smith with Stubbeman, McRae, Sealy, Laughlin & Browder, Inc., a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].
ATTACHED

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location): Land is owned by Shenandoah Bar M. Ranch, LLC and the land within 500' and 860' of the drillsite is vacant.

ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from Bill Brown, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)]. ATTACHED

ATTACHED AS EXHIBIT E is a (map/plat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/plat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)]. ATTACHED

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)]. ATTACHED

IV. Well & Operations Information

Proposed Well Name: Mabec "D" #5

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Well will be drilled with a 17-1/2" hole and 12-3/4" Casing will be set to an approximate depth of 350' and cemented with 425 sks of Class C Cement. 8 5/8" Intermediate Casing will be set to an approximate depth of 5700' and cemented with 485 sks of Class C Cement. 4 1/2" Production Casing will be set at approximately 11,000 and cemented with approximately +/-1200 sacks of Cement.

Legal Description of Proposed Well Site:

1880' FNL and 1980' FWL of Section 12 Blk 39 T-1-S being a part of the T&P RR Co/ Clark, W T Survey A-1020

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. ATTACHED

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. ATTACHED

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of

W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)]. ATTACHED

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)]. ATTACHED VARIANCE REQUEST

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)]. ATTACHED VARIANCE REQUEST

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. ATTACHED

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: No Public Utilities will be needed during drilling operations.

(2) Operations: Electric Lines will be extended as shown on Exhibit N attached.

Description of water source to be used during Drilling:

Water from a Water Well on the Mabee Foundation Lease will be pumped West in a 3" poly line for water to be used during drilling.

Description of all electric lines to production facilities (reference exhibits as necessary)[See § L(10)]: See EXHIBIT G & N for details and a legal description of the Pipelines, Electric Lines and Roads on the property.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: See EXHIBIT O. Pits will be deep Buried in accordance to City of Midland Requirements.

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the Letter of Credit/Certificate of Deposit in accordance with Subsection (K)(2). [See § J(18)]. ATTACHED

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. ATTACHED

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)]. ATTACHED

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. SEE ATTACHED TOPO MAP

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)]. ATTACHED

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)]. ATTACHED

PIONEER NATURAL RESOURCES USA, INC.

By Tammy Smith
Its ENGINEERING TECHNICIAN

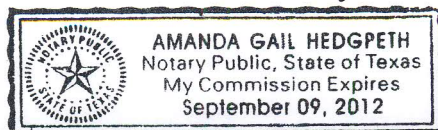
State of Texas)

County of Dallas)

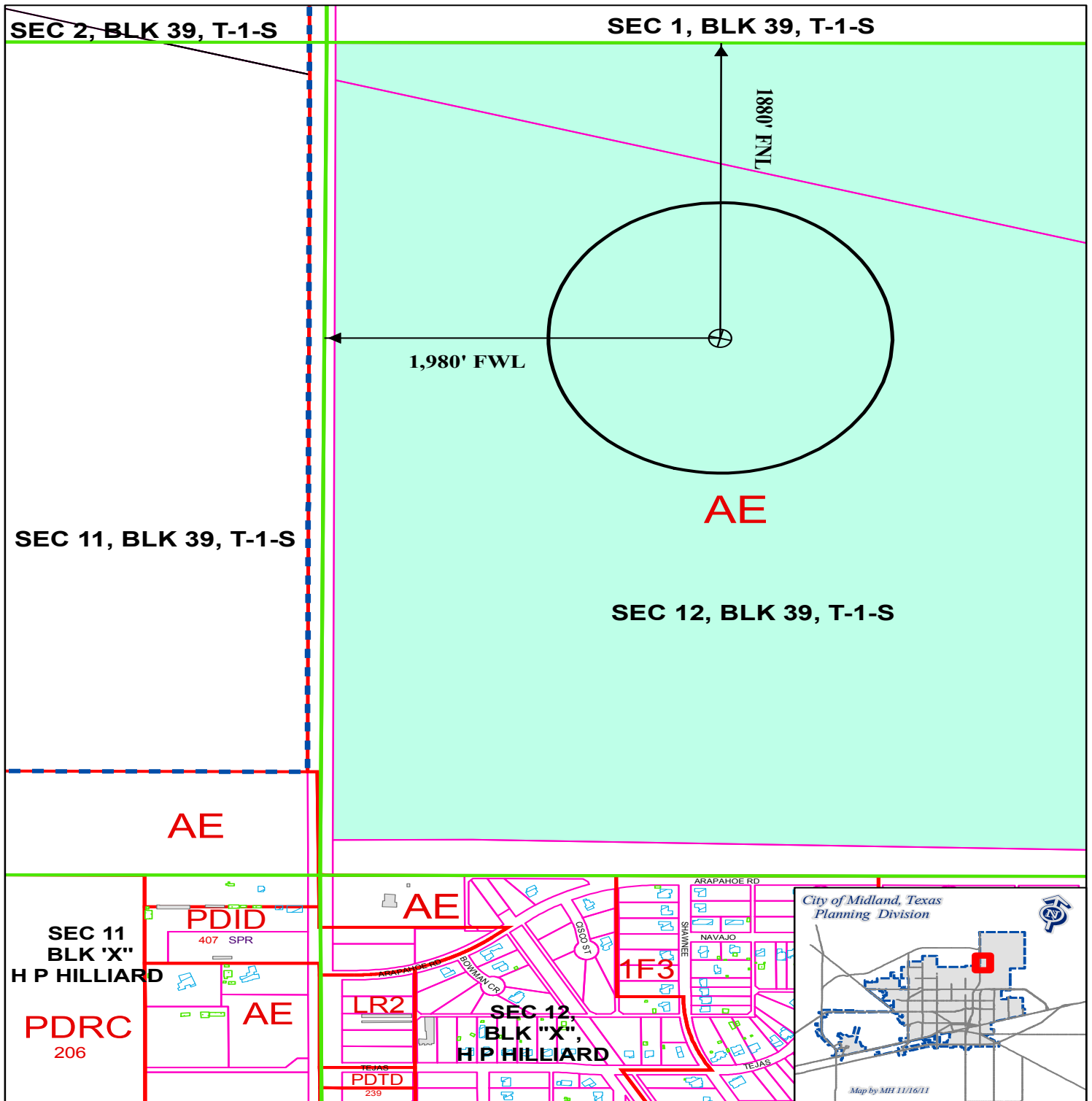
Tammy Smith, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Notary Public, State of Texas

[SEAL]



Amanda Gail Hedgpeth



LOCATION AND ZONING MAP

O - 11 - 014

Scale: 1" = 700'

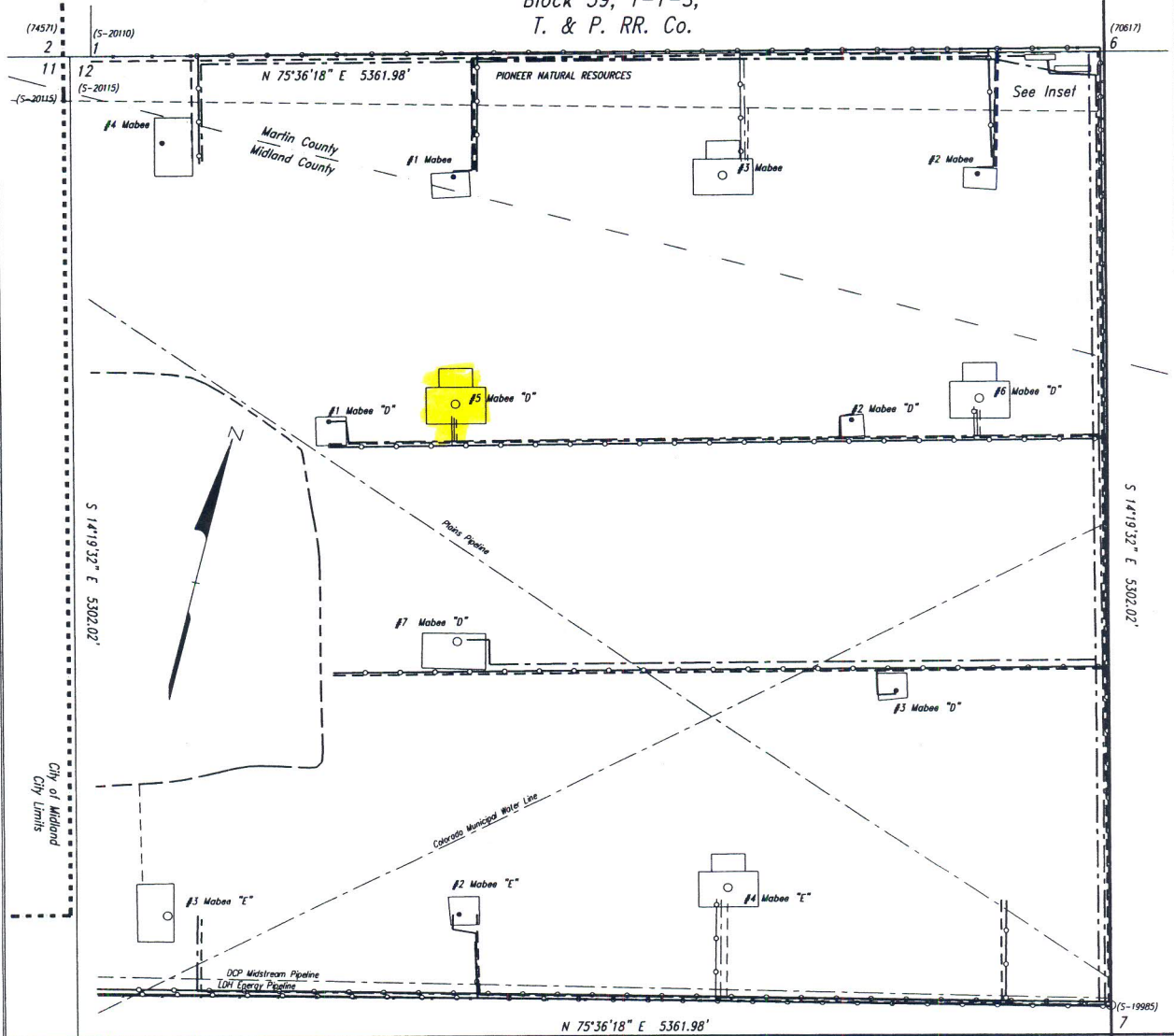
Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1880' FNL and 1980' FWL, Section 12, Block 39, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Mabee D #5

LEGEND

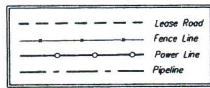
	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.
ZONING DISTRICTS:					
FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK		
PD	PLANNED DISTRICT	P	PARKING		
AE	AGRICULTURE ESTATE	01, 02	OFFICE		
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE		
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL		
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL		
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK		
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY		
		HI	HEAVY INDUSTRY		

Block 39, T-1-S,
T. & P. RR. Co.

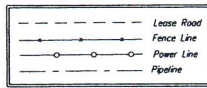


Block X HP Hilliard

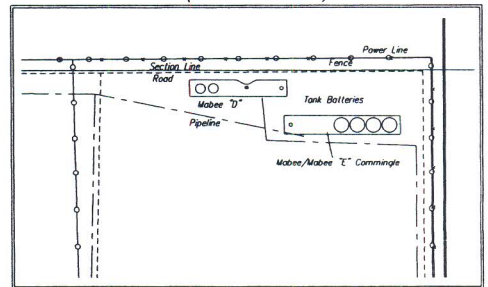
Existing Legend



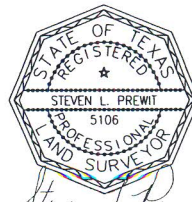
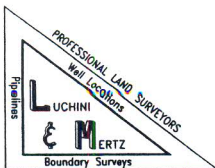
Proposed Legend



Inset (Scale: 1" = 200')



Note: Survey Reconstruction filed in the Office of Luchini and Meritz Land Surveying Company.
Note: All bearings and coordinates shown are based on the Texas Coordinate System of 1927, Central Zone.
A combined grid factor of 0.999922826 must be divided into Section Line distances to obtain a true horizontal distance.
Note: Example: (S-99999) indicates General Land Office file number.
Note: NAD '27 decimal degree Latitude/Longitude.



July 22, 2011
Mabee Section 12

PIONEER NATURAL RESOURCES USA, Inc.
Existing and Proposed Pad sites &
Proposed Lease Roads in
Section 12, Block 39, T-1-S,
T. & P. RR. Co.
Midland & Martin Counties, Texas

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on January 24, 2012, considered the application of Pioneer Natural Resources USA, Inc., dated August 17, 2011, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Pioneer Natural Resources USA, Inc., dated August 17, 2011, and filed with the Midland City Secretary, a copy of which is attached here to as Exhibit "A" and incorporated herein for all legal purposes.

The location of Pioneer Natural Resources USA, Inc., Mabee D #5 oil and gas well shall be 1880 feet from the north line and 1980 feet from the west line, Section 12, Blk 39, T-1-S, T&P Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Pioneer Natural Resources USA, Inc., attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from January 24, 2012, through January 24, 2013, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of January, 2012.

Pioneer Natural Resources USA, Inc.

By: _____

James Cunningham

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "B"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

- f. Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.
- g. If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.
WAIVED by City Council on January 24, 2011.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

- a. The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;
- b. The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;
- c. The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);
- d. The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and
- e. The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000 Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.

\$10,000,000 Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.

d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
James Cunningham

Pioneer Natural Resources USA, Inc.
5205 N. O'Connor Blvd.
Irving, Texas 75039
(432)571-3222

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "C"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (100) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A variance is requested due to tract of land is barbed wire fenced and variance was allowed on prior permitted wells.

2.

Landscaping.

Variance requested due to vegetation would not be visible to public and would be a gross waste of natural resources.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his

designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____

James Cunningham

Pioneer Natural Resources USA, Inc.
5205 N. O'Connor Blvd.
Irving, Texas
(432) 571-3222

From: Ron Jenkins
Sent: Thursday, January 19, 2012 3:17 PM
To: Amy Turner; Marisela Garcia
Subject: RSP Permian and Pioneer Natural- Petitions and letters of objection for Agenda Packet
Attachments: Petition Bus Barn 2603 Mayor Office.pdf; Petition Bus Barn 2603 Tellinhuisen.pdf; Petition Bus Barn 2603 Full Packet.pdf; Ltr for 2603 1.pdf; Ltr for 2603 2.pdf; Ltr for 2603 3.pdf; Ltr for 2603 4.pdf; Ltr for 2603 5.pdf; Ltr for 2603 6.pdf; Ltr for 2603 8.pdf; Ltr for 2603 9.pdf; Ltr for 2603 10.pdf; Ltr for 2603 11.pdf; Ltr for 2603 12.pdf; Ltr for 2603 13.pdf; Ltr for 2603 14.pdf; Ltr for 2603 15.pdf; Ltr for 2603 16.pdf; Ltr for 2603 17.pdf; Ltr for 2603 18.pdf; Ltr for 2603 19.pdf; Ltr for 2603 20.pdf; Ltr for 2603 21.pdf; Bus Barn 2603 Letter 3.pdf; Bus Barn 2603 Letter 2.pdf; Bus Barn 2603 Letter 1.pdf; Bus Barn 2602 Letter 2.pdf; Bus Barn 2602 Letter 1.pdf; Bus Barn 2601.pdf; Pioneer Mabee E #4.pdf

Subject: RSP Permian and Pioneer Natural- Agenda Packet

RSP Permian L.L.C. -These applications are requesting a variance from the landscaping stating due to scarcity of water. Opportunity to donate to the tree fund and park endowment fund has been discussed.

Bus Barn #2601- 1 letter of objection.

Requesting a variance from the 500 ft minimum distance from an occupied commercial building. The proposed drill-site for the Bus Barn #2601 will be 465 feet from the MISD Bus Barn Shop.

Bus Barn #2602- 2 letters of objection.

Requesting a variance from the 500 ft minimum distance from an occupied commercial building. The proposed drill-site for the Bus Barn #2602 will be 448 feet from the Mid-Cities Community Church Office.

Bus Barn #2603- two petitions and 23 letters of objection

The Oil and Gas Advisory Committee recommends a variance to landscaping for Bus Barn #2603 be denied. This is the specific well noted in the petition.

Pioneer Natural Resources, USA, Inc. are presenting four applications for oil & gas well permit

The application wells are the **Mabee E #3-** no letters of objection

Mabee E #4- 1 letter of objection

Mabee D #5-no letters of objection

Mabee D #6-no letters of objection

Wells would be located East of Hwy 349 and North of Arapaho. Opportunity to donate to tree fund and park endowment fund has been discussed.

These applications are requesting a variance from the fencing . This lease has several producing wells which are not subject to this ordinance. The 652 acres are surrounded by barbed wire fence with locked cattle guard gates.

These applications are requesting a variance from the landscaping stating due to nothing but natural vegetation on the tract. Pioneer states would be a gross waste of natural resources of both plants and water. Three prior permits were granted a variance in this same 652 acre tract.

These Pioneer applications are requesting a waiver of the Road Repair Agreement. No city streets will be used.

CRONIN SUSAN
3013 SUNNYSIDE LN
PARADISE CA 95969-6707



Code Administration
432.685.7390

Community Development
432.685.7408

Engineering Services
432.685.7286

Development Services

300 N. Loraine
Post Office Box 1152
Midland, Texas 79702-1152
Fax 432.683.1786

GIS
432.685.7284

Planning Division
432.685.7400

Transportation
432.685.7287

PUBLIC NOTICE

The **City Council**, of the City of Midland, Texas, will hold a public hearing at **11:24 a.m. on Tuesday, December 13, 2011**, in the Council Chamber, City Hall, 300 N. Loraine, on a request by **Pioneer Natural Resources USA, Inc.** for approval of a **Permit to drill an Oil and Gas Well within the City Limits** on the following described property:

LEGAL DESCRIPTION: Located 800' FSL and 1980' FEL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas.

LOCATION: Generally located on the east side of the State Hwy 349 north of Arapahoe Road.

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered in writing** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request ☒ Comments: MORE ODOR - MORE NOISE - FIRE DANGER - LOWERING MY ABILITY TO SELL HERE

Required Information:

Property Owner's Signature

Printed Name

Property Address (No P. O. Boxes) MIDLAND

Any property owner having a fresh water well within 860 feet of any of these well locations should advise the City requesting a "pre-drilling" and "post-drilling" water analysis to be provided by **Pioneer Natural Resources USA, Inc.** Please contact the City's Planning Division at (432)685-7400.

If any further information is desired, please contact the Planning Division at 685-7405. Si desea más información en Español sobre esta cuestión, llame al : 685-7405.

Notices Mailed: 3

Date Mailed: November 23, 2011

Case Number: O-11-013

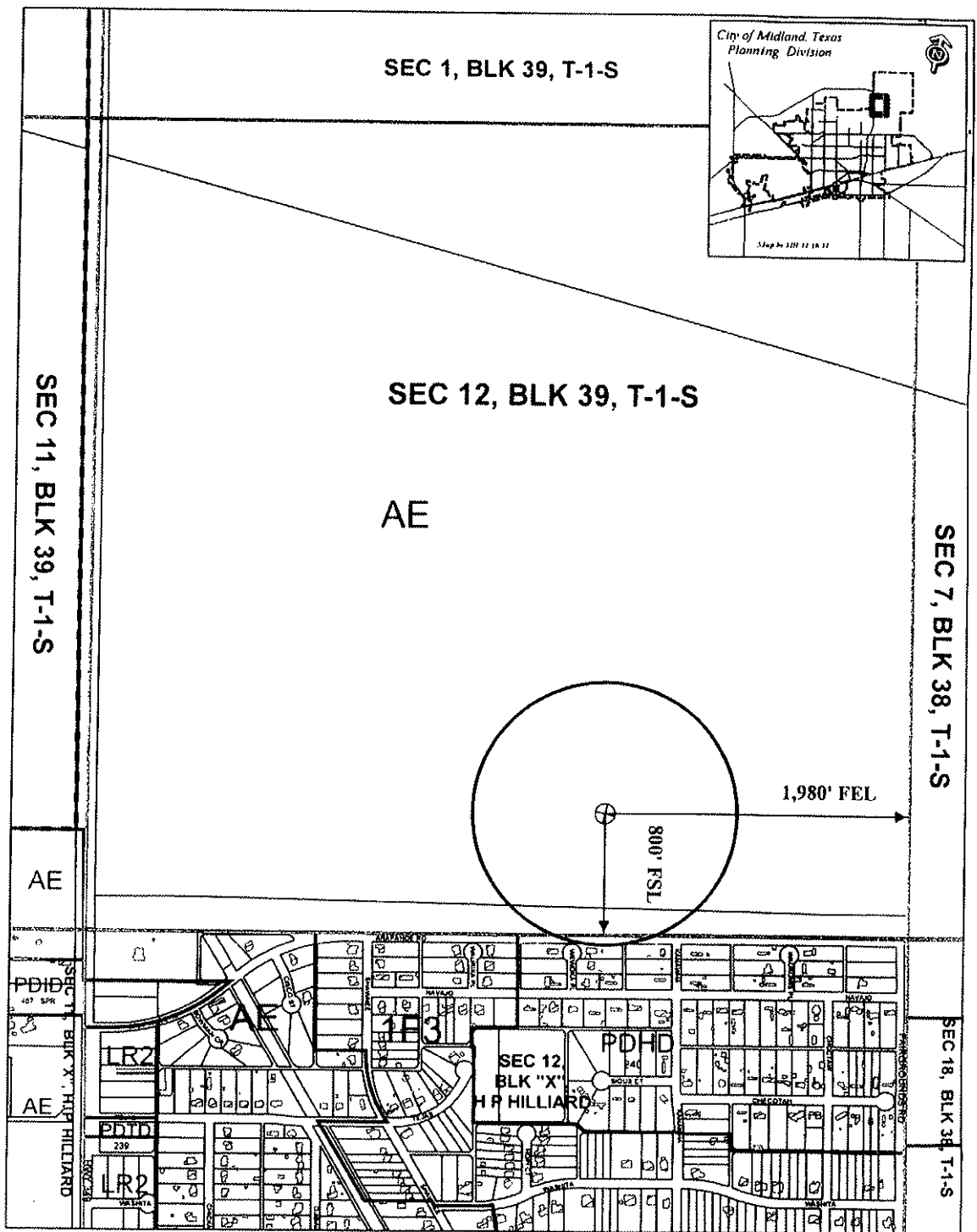
Case Name: Pioneer Natural Resources

Planner's Initials

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

DEC - 7 2011

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Beth Mosley, Compliance Coordinator for the City of Midland, at (432) 685-7250. If communication via TDD is required, please call 1-800-735-2989.



LOCATION AND ZONING MAP

O - 11 - 013

Scale: 1" = 800'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 800' FSL and 1980' FEL, Section 12, Block 39, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Mabee E #4

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	HP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, 1F1, 1F2, 1F3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: January 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: O-11-015; consider a resolution approving an oil and gas well drilling permit (Mabee D #6) located on the east side of State Highway 349, north of Arapahoe Lane.

Purpose:

Consider a resolution on a request from **Pioneer Natural Resources** (Mabee D #6) for a *Permit to drill an Oil and Gas Well within the City Limits* located 1,865' FNL and 660' FEL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. Council held a public hearing on December 13, 2011; therefore, it is now appropriate to consider a resolution since the required 30 day comment period has passed. Received no public comments.

Recommended City Council Action

☒ Approve

☐ Deny

☒ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval. The applicant is requesting a variance from the fencing and landscaping requirements. A waiver of the road repair agreement has been submitted since access to the property is from State Highway 349.

Attachments: Application; Location map; Drill site location.

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PIONEER NATURAL RESOURCES USA, INC. ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1,865 FEET FROM THE NORTH LINE AND 660 FEET FROM THE EAST LINE, SECTION 12, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 349, NORTH OF ARAPAHOE LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, "Police Regulations," Chapter 1, "General Offenses," of the City Code of Midland, Texas, so as to establish Section 23, "Oil and Gas Well Permits issued on or after January 1, 2010," which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on December 13, 2011; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 1,865 feet from the north line and 660 feet from the east line, Section 12, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



APPLICATION FOR OIL AND GAS PERMIT
(Pursuant to Midland City Ordinance No. 8769)

0-11-015

I. General Information

Date 08/17/2011	Operator Name (must match W-1) Pioneer Natural Resources USA, Inc.	Operator Address 5205 N. O'Connor Blvd Irving, Texas 75039
Representative Name James Cunningham	Representative Address (within Midland City Limits) 303 W. Wall Street Suite 101, Midland, Texas 79702-3178	Rep. Tele. (432) 571-3222

Permit Compliance Contact (Choose 1):

Option A:
Option B: 24/7 Answering Services - No. 1 (Tele.): (432) 563-8432 No. 2 (Tele.): (432) 571-2800

Company Compliance Representative (Name, Address, Local Telephone) If Option A is Selected ATTACH STATEMENT AS EXHIBIT A:

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Larry Hambeck
4815 E. Hwy 80
24/7 Answering Service Call (432) 563-8432 or (432) 571-2800 Midland, Texas 79706

Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). ATTACHED

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): Various See Exhibit C
1. _____

ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from David Smith with Stubbeman, McRae, Sealy, Laughlin & Browder, Inc., a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)]. ATTACHED

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location): Land is owned by Shenandoah Bar M. Ranch, LLC and D B Fite Properties and the land within 500' and 860' of the drillsite is vacant.

ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from Bill Brown, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)]. ATTACHED

ATTACHED AS EXHIBIT E is a (map/plat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/plat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)]. ATTACHED

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)]. ATTACHED

IV. Well & Operations Information

Proposed Well Name: Mabec "D" #6

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Well will be drilled with a 17-1/2" hole and 12-3/4" Casing will be set to an approximate depth of 350' and cemented with 425 sks of Class C Cement. 8 5/8" Intermediate Casing will be set to an approximate depth of 5700' and cemented with 485 sks of Class C Cement. 4 1/2" Production Casing will be set at approximately 11,000 and cemented with approximately +/-1200 sacks of Cement.

Legal Description of Proposed Well Site:

1865' FNL and 660' FEL of Section 12 Blk 39 T-I-S being a part of the T&P RR Co/ Clark, W T Survey A-1020

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. ATTACHED

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. ATTACHED

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of

W-1 with City Secretary before commencement drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)]. ATTACHED

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)]. ATTACHED VARIANCE REQUEST

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)]. ATTACHED VARIANCE REQUEST

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. ATTACHED

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: No Public Utilities will be needed during drilling operations.

(2) Operations: Electric Lines will be extended as shown on Exhibit N attached.

Description of water source to be used during Drilling:

Water from a Water Well on the Mabee Foundation Lease will be pumped West in a 3" poly line for water to be used during drilling.

Description of all electric lines to production facilities (reference exhibits as necessary)[See § L(10)]: See EXHIBIT G & N for details and a legal description of the Pipelines, Electric Lines and Roads on the property.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: See EXHIBIT O. Pits will be deep Buried in accordance to City of Midland Requirements.

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the Letter of Credit/Certificate of Deposit in accordance with Subsection (K)(2). [See § J(18)]. ATTACHED

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. ATTACHED

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)]. ATTACHED

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. SEE ATTACHED TOPO MAP

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)]. ATTACHED

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)]. ATTACHED

PIONEER NATURAL RESOURCES USA, INC.

By Tammy S Smith Tammy S Smith
Its ENGINEERING TECHNICIAN

State of Texas)

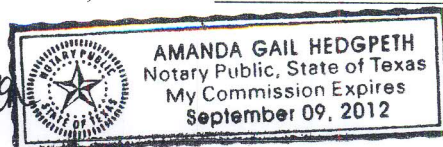
County of Dallas)

Tammy Smith, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

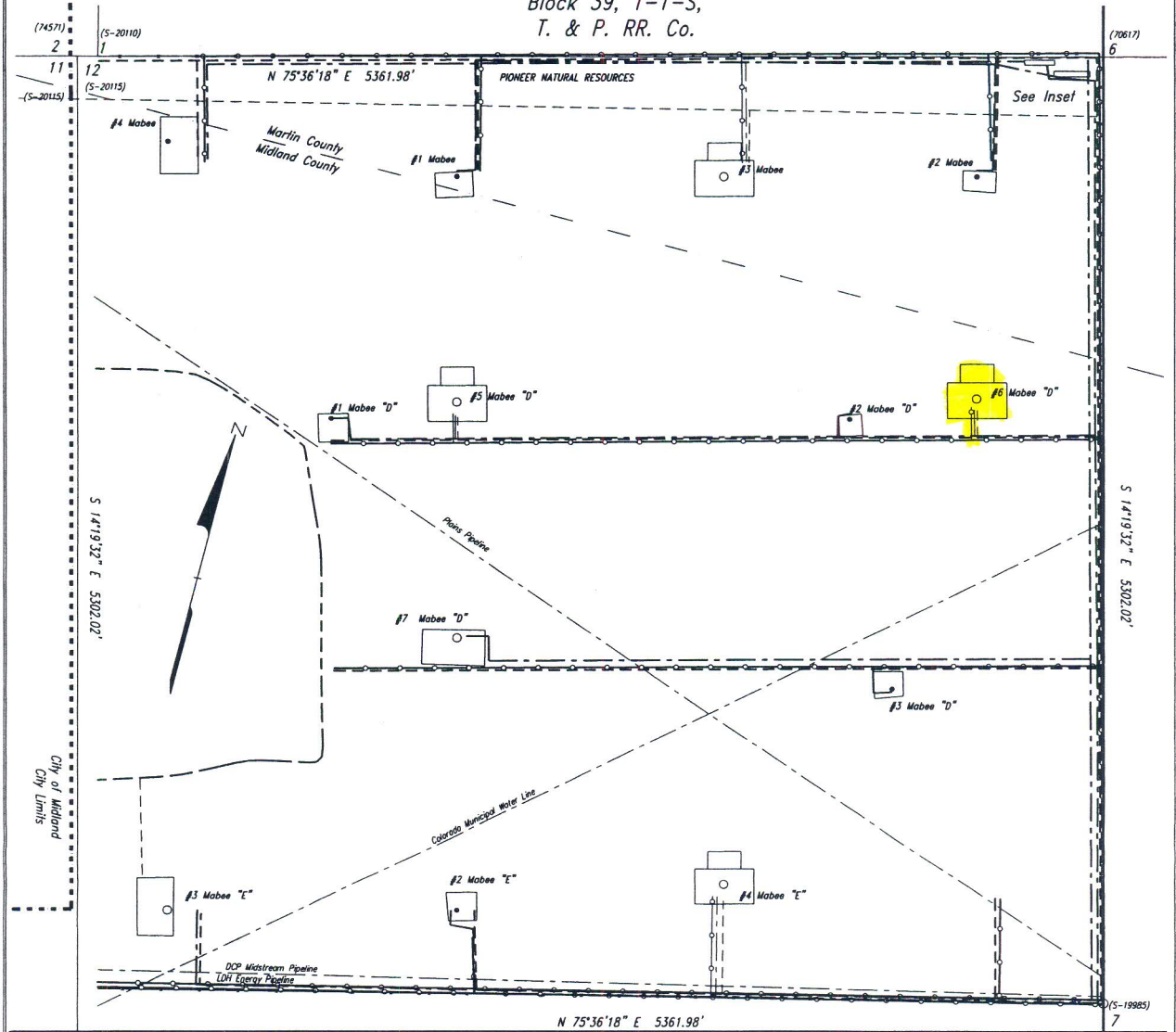
Notary Public, State of Texas

[S E A L]

Amanda Gail Hedgpeth

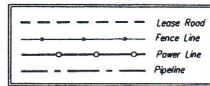


Block 39, T-1-S,
T. & P. RR. Co.



Block X HP Hilliard

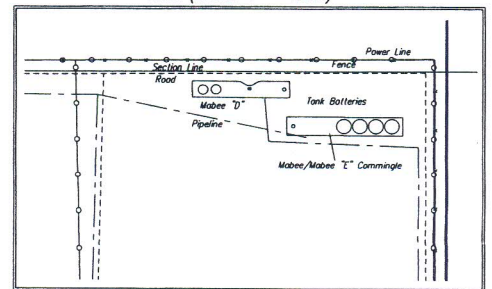
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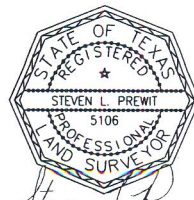
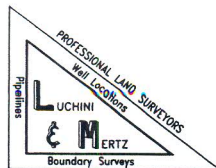
Proposed Legend



Inset (Scale: 1" = 200')



Note: Survey Reconstruction filed in the Office of Luchini and Mertz Land Surveying Company.
Note: All bearings and coordinates shown are based on the Texas Coordinate System of 1927, Central Zone.
A combined grid factor of 0.999922826 must be divided into Section Line distances to obtain a true horizontal distance.
Note: Example: (S-99999) indicates General Land Office file number.
Note: NAD '27 decimal degree Latitude/Longitude.



July 22, 2011
Mabee Section 12

Plat

PIONEER NATURAL RESOURCES USA, Inc.
Existing and Proposed Pad sites &
Proposed Lease Roads in
Section 12, Block 39, T-1-S,
T. & P. RR. Co.
Midland & Martin Counties, Texas

Scale: 1" = 600'

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on January 24, 2012, considered the application of Pioneer Natural Resources USA, Inc., dated August 17, 2011, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Pioneer Natural Resources USA, Inc., dated August 17, 2011, and filed with the Midland City Secretary, a copy of which is attached here to as Exhibit "A" and incorporated herein for all legal purposes.

The location of Pioneer Natural Resources USA, Inc., Mabee D #6 oil and gas well shall be 1865 feet from the north line and 660 feet from the east line, Section 12, Blk 39, T-1-S, T&P Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Pioneer Natural Resources USA, Inc., attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from January 24, 2012, through January 24, 2013, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of January, 2012.

Pioneer Natural Resources USA, Inc.

By: _____

James Cunningham

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "B"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

- f. Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.
- g. If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section. WAIVED by City Council on January 24, 2011.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

- a. The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;
- b. The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;
- c. The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);
- d. The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and
- e. The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000 Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.

\$10,000,000 Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.

d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
James Cunningham

Pioneer Natural Resources USA, Inc.
5205 N. O'Connor Blvd.
Irving, Texas 75039
(432)571-3222

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "C"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or reCompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (100) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A variance is requested due to tract of land is barbed wire fenced and variance was allowed on prior permitted wells.

2.

Landscaping.

Variance requested due to vegetation would not be visible to public and would be a gross waste of natural resources.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his

designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a.
An amendment fee of \$1,000.00.
- b.
A description of the proposed amendments.
- c.
Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d.
Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e.
Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.
Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a.
No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b.
Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
James Cunningham

Pioneer Natural Resources USA, Inc.
5205 N. O'Connor Blvd.
Irving, Texas
(432) 571-3222

From: Ron Jenkins
Sent: Thursday, January 19, 2012 3:17 PM
To: Amy Turner; Marisela Garcia
Subject: RSP Permian and Pioneer Natural- Petitions and letters of objection for Agenda Packet
Attachments: Petition Bus Barn 2603 Mayor Office.pdf; Petition Bus Barn 2603 Tellinhuisen.pdf; Petition Bus Barn 2603 Full Packet.pdf; Ltr for 2603 1.pdf; Ltr for 2603 2.pdf; Ltr for 2603 3.pdf; Ltr for 2603 4.pdf; Ltr for 2603 5.pdf; Ltr for 2603 6.pdf; Ltr for 2603 8.pdf; Ltr for 2603 9.pdf; Ltr for 2603 10.pdf; Ltr for 2603 11.pdf; Ltr for 2603 12.pdf; Ltr for 2603 13.pdf; Ltr for 2603 14.pdf; Ltr for 2603 15.pdf; Ltr for 2603 16.pdf; Ltr for 2603 17.pdf; Ltr for 2603 18.pdf; Ltr for 2603 19.pdf; Ltr for 2603 20.pdf; Ltr for 2603 21.pdf; Bus Barn 2603 Letter 3.pdf; Bus Barn 2603 Letter 2.pdf; Bus Barn 2603 Letter 1.pdf; Bus Barn 2602 Letter 2.pdf; Bus Barn 2602 Letter 1.pdf; Bus Barn 2601.pdf; Pioneer Mabee E #4.pdf

Subject: RSP Permian and Pioneer Natural- Agenda Packet

RSP Permian L.L.C. -These applications are requesting a variance from the landscaping stating due to scarcity of water. Opportunity to donate to the tree fund and park endowment fund has been discussed.

Bus Barn #2601- 1 letter of objection.

Requesting a variance from the 500 ft minimum distance from an occupied commercial building. The proposed drill-site for the Bus Barn #2601 will be 465 feet from the MISD Bus Barn Shop.

Bus Barn #2602- 2 letters of objection.

Requesting a variance from the 500 ft minimum distance from an occupied commercial building. The proposed drill-site for the Bus Barn #2602 will be 448 feet from the Mid-Cities Community Church Office.

Bus Barn #2603- two petitions and 23 letters of objection

The Oil and Gas Advisory Committee recommends a variance to landscaping for Bus Barn #2603 be denied. This is the specific well noted in the petition.

Pioneer Natural Resources, USA, Inc. are presenting four applications for oil & gas well permit

The application wells are the **Mabee E #3-** no letters of objection

Mabee E #4- 1 letter of objection

Mabee D #5-no letters of objection

Mabee D #6-no letters of objection

Wells would be located East of Hwy 349 and North of Arapaho. Opportunity to donate to tree fund and park endowment fund has been discussed.

These applications are requesting a variance from the fencing . This lease has several producing wells which are not subject to this ordinance. The 652 acres are surrounded by barbed wire fence with locked cattle guard gates.

These applications are requesting a variance from the landscaping stating due to nothing but natural vegetation on the tract. Pioneer states would be a gross waste of natural resources of both plants and water. Three prior permits were granted a variance in this same 652 acre tract.

These Pioneer applications are requesting a waiver of the Road Repair Agreement. No city streets will be used.

CRONIN SUSAN
3013 SUNNYSIDE LN
PARADISE CA 95969-6707



Code Administration
432.685.7390

Community Development
432.685.7408

Engineering Services
432.685.7286

Development Services

300 N. Loraine
Post Office Box 1152
Midland, Texas 79702-1152
Fax 432.683.1786

GIS
432.685.7284

Planning Division
432.685.7400

Transportation
432.685.7287

PUBLIC NOTICE

The City Council, of the City of Midland, Texas, will hold a public hearing at **11:24 a.m. on Tuesday, December 13, 2011**, in the Council Chamber, City Hall, 300 N. Loraine, on a request by **Pioneer Natural Resources USA, Inc.** for approval of a **Permit to drill an Oil and Gas Well within the City Limits** on the following described property:

LEGAL DESCRIPTION: Located 800' FSL and 1980' FEL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas.

LOCATION: Generally located on the east side of the State Hwy 349 north of Arapahoe Road.

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered in writing** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request ☒ Comments: MORE ODOR - MORE NOISE - FIRE DANGER - LOWERING MY ABILITY TO SELL HERE

Required Information:

Property Owner's Signature

Printed Name

Property Address (No P. O. Boxes) MIDLAND

Any property owner having a fresh water well within 860 feet of any of these well locations should advise the City requesting a "pre-drilling" and "post-drilling" water analysis to be provided by **Pioneer Natural Resources USA, Inc.** Please contact the City's Planning Division at (432)685-7400.

If any further information is desired, please contact the Planning Division at 685-7405. Si usted desea más información en Español sobre esta cuestión, llame al : 685-7405.

Notices Mailed: 3

Date Mailed: November 23, 2011

Case Number: O-11-013

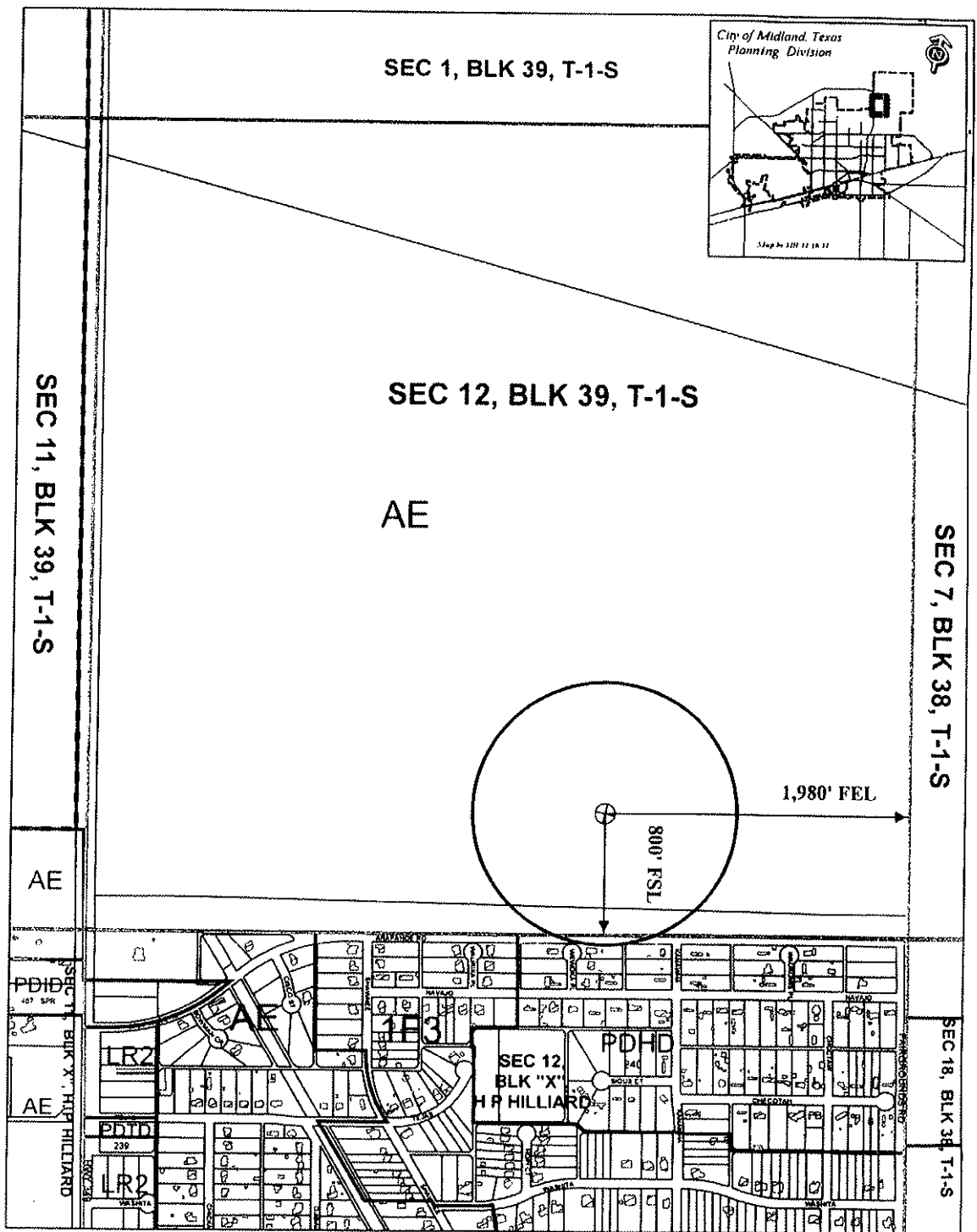
Case Name: Pioneer Natural Resources

Planner's Initials

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

RECEIVED
DEC - 7 2011

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Beth Mosley, Compliance Coordinator for the City of Midland, at (432) 685-7250. If communication via TDD is required, please call 1-800-735-2989.



LOCATION AND ZONING MAP

O - 11 - 013

Scale: 1" = 800'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 800' FSL and 1980' FEL, Section 12, Block 39, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Mabee E #4

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	HP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, 1P1, 1P2, 1P3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: January 19, 2012
To: The Honorable Mayor Perry and Council
From: Amy M. Turner, City Secretary
Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective January 24, 2012. Remaining expirations and vacancies are listed below:

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS –Two terms expired on September 30, 2011 and two vacancies for Alternate terms expired on September 30, 2007.

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, two terms expired on January 1, 2010 and one term expired on January 1, 2012.

MIDLAND HOUSING FINANCE CORPORATION –One vacancy expired on September 30, 2010 and two terms expired on September 30, 2011.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

PARKS AND RECREATION COMMISSION –One term expired on September 30, 2011.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico) and three terms expired on September 30, 2011.

PLANING AND ZONING COMMISSION – One term expired on September 30, 2011.

TAX INCREMENT REINVESTMENT ZONE BOARD – One term expired on March 20, 2009 (one College representative), seven terms expired on March 20, 2010 and two terms expired March 20, 2011. (Four City representatives, two Hospital representatives, two County representatives and one College representative.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT-
Two terms expired on September 30, 2011, one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

Should you have any questions, please call me on 685-7432.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

January 24, 2012

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 2012	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
Brooks Smith	11/11	Sept 30 2014	Sept 30 2017
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<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

* Indicates appointment to an unexpired term.

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>
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Lena Margita	10/09	Sept 30 2013	Sept 30 2013
Alonda Massey`	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

To sunset December 31, 2011

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Joe Molina, Jr.	09/03	Sept 30 2011	Sept 30 2011
James W. Rigger (Architect)	09/99	Sept 30 2011	Sept 30 2011
Don Woodward (At Large)	11/11*	Sept 30 2012	Sept 30 2020
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018

ALTERNATES:

Vacancy	Sept 30 2007
Vacancy	Sept 30 2007

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Tyler Wolfe	04/11*	Sept 30 2012	Sept 30 2012
Jon S. Blair	02/09*	Sept 30 2012	Sept 30 2014
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	9/09	Sept 30 2013	Sept 30 2013
Alice Church	4/11*	Sept 30 2013	Sept 30 2015
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

* Indicates appointment to an unexpired term.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Rosie Gransberry	06/08*	Oct 2012	Oct 2012
Norma Duran	11/08*	Oct 2012	Oct 2014
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2013

ALTERNATES:

Dennis Bade	11/11	Oct 2013	Oct 2015
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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	01/02
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.

- **Indicates appointment to an unexpired term.**

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
Ttracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Fred Poe	12/95	Dec 31 2011

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

- Indicates appointment to an unexpired term.

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Eligibility Term Expires</u>	<u>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 2012	Jan 1 2012

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

- Indicates appointment to an unexpired term.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date**Vacancy**

Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Raymond McCarthy	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Richard D. Dunham (Realtor/Petro Eng.)	01/10	Sept 30 2013	Sept 30 2016
D. Patrick Darden (Petroleum Eng.)	02/10	Sept 30 2012	Sept 30 2015
Don Eubank (Drilling Eng.)	04/10	Sept 30 2012	Sept 30 2015
Paul Brown	11/11	Sept 30 2014	Sept 30 2017
David Rosen	11/11	Sept 30 2014	Sept 30 2017

*

Indicates appointment to an unexpired term.

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Berry Simpson	09/10*	Sept 30 2011	Sept 30 2017
Amanda McCann	11/11*	Sept 30 2012	Sept 30 2018
David Ham	09/06	Sept 30 2012	Sept 30 2012
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Richard J. McGrath	09/10	Sept 30 2013	Sept 30 2016
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<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
Isabelle Blanchard (Pecos)	10/10	Sept 30 2011
David Harrell (Snyder)	10/07	Sept 30 2011
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2012
Jim Little (Big Spring)	09/03	Sept 30 2012
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Don Bethel (Lamesa)	02/91	Sept 30 2012
Henry Cutbirth (Monahans)	09/05	Sept 30 2012
Willie Taylor (Odessa)	02/00	Sept 30 2012
Gloria Pena (Odessa)	03/03*	Sept 30 2012
Barbara Graff (Odessa)	06/10*	Sept 30 2012
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012
Glenn Wortham (Sweetwater)	10/07	Sept 30 2012
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2012
Larry Fry (Roswell, NM)	09/00	Sept 30 2012

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

*

Indicates appointment to an unexpired term.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)

(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2012	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)

(Membership - 3; No designated terms.)

	<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>
Becky Ferguson, Chairman	03/04*	Sept 30 2011	Sept 30 2011
Kevin Wilton	09/08*	Sept 30 2012	Sept 30 2015
Bill Woodruff	02/05*	Sept 30 2012	Sept 30 2012
Royce Watkins	02/08*	Sept 30 2012	Sept 30 2015
Karen York	01/10*	Sept 30 2012	Sept 30 2018
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014

ALTERNATES:

Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017
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- Indicates appointment to an unexpired term.

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)

(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Neil Florer (College)	07/01	Mar 20 2009	Mar 20 2009
Dan Rush (City)	07/01	Mar 20 2010	Mar 20 2010
Mark T. Wellen (City), Vice Chairman	07/01	Mar 20 2010	Mar 20 2010
Jay Reynolds (Hospital)	03/02	Mar 20 2010	Mar 20 2010
Ralph Way (College)	07/01	Mar 20 2010	Mar 20 2010
Jimmy Davis (Hospital)	03/07	Mar 20 2010	Mar 20 2013
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
C. Mark Wheeler (City), Treasurer	04/08	Mar 20 2011	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Brent Kennedy (City)	06/09	Mar 20 2012	Mar 20 2015
John L. Kennedy (City)	10/09*	Mar 20 2012	Mar 20 2018

Ex-Officio member is President, Board of Trustees, Midland Independent School District

ZONING BOARD OF ADJUSTMENT**AND****AIRPORT ZONING BOARD OF ADJUSTMENT**

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Trudi Edwards	10/07	Sept 30 2011	Sept 30 2011
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Todd Byars	02/08*	Sept 30 2012	Sept 30 2014
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

* Indicates appointment to an unexpired term.