

**CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
February 11, 2014 - 9:00 A.M.
BASEMENT CONFERENCE ROOM
300 North Loraine
Midland, Texas**

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

1. Receive a presentation from Brad Barnett regarding Midland Center parking options.
2. Receive a presentation from Community Services regarding the installation of a Splashpad, a Capital Project at the Scharbauer Sports Complex.
3. Receive a presentation from Freese and Nichols regarding the South Midland Mobility Study.
4. Receive a presentation from the Utilities Department regarding the Wastewater Treatment Overview.

AGENDA FOR CITY COUNCIL MEETING

February 11, 2014 – 10:00 AM

Council Chamber - City Hall

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

OPENING ITEMS

1. Invocation - Pastor Wayne Keller, Alamo Heights Baptist Church
2. Pledge of Allegiance

PRESENTATIONS

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

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. (Please limit remarks to no more than three minutes per person.)

CONSENT AGENDA

5. Consider a motion approving the following minutes:
 - a. Regular meeting of January 28, 2014.
 - b. Special meeting of January 29, 2014.
6. Consider a resolution authorizing the execution of a Professional Services Agreement with Jeffrey D. Blume, Limited of Magnolia, Texas at a total cost of \$133,000.00 for architectural and engineering services for Hogan Park Golf Course improvements and renovations for the Community Services Department; and appropriating funds. (PURCHASING) (2014 - 030)

7. Consider a resolution approving the purchase of one (1) Python PHP 5000 Integrated Asphalt Patching Unit for the Garage Division from Global Environmental Products through the Houston-Galveston Area Council at a total cost of \$292,966.50; this item was not bid but purchased through a Council of Governments; and appropriating funds. (PURCHASING) (2014 - 031)
8. Consider a resolution approving the purchase of one (1) complete Type 1 Ambulance in the amount of \$182,350.00 and remounting a Type 1 Ambulance Body on a Dodge Ram 4500 Diesel DRW cab and chassis in the amount of \$79,775.00 for a total cost of \$262,125.00 for the Garage Division from Dallas Dodge Chrysler Jeep through the Houston-Galveston Area Council at a total cost of \$262,125.00; this item was not bid but purchased through a Council of Governments; and appropriating funds. (PURCHASING) (2014 - 032)
9. Consider a resolution approving the purchase of fifty (50) bunker coats and fifty (50) bunker pants for the Fire Department from Dooley Tackaberry, Inc. through Buyboard at a total cost of \$95,900.00; this item was not bid but purchased through a Cooperative Purchasing Program. (PURCHASING) (2014 - 033)
10. Consider a resolution authorizing the execution of a contract with Kraftsman, L.P., of Spring, Texas for labor, material, equipment and supervision necessary for the turnkey installation of a splashpad at the Scharbauer Sports Complex through Buyboard at a total cost of \$405,750.52; this item was not bid but purchased through a Cooperative Purchasing Program. (PURCHASING) (2014 - 034)
11. Consider a resolution approving the purchase of Thirty Alpha FMX 2000-SNMP UPS battery backup systems for the Transportation Division from Paradigm Traffic Systems, Inc. through Buyboard at a total cost of \$124,200.00; this item was not bid but purchased through a Cooperative Purchasing Program. (PURCHASING) (2014 - 035)
12. Consider a resolution authorizing the execution of a sports agreement with West Texas BMX to administer programs, special events and services related to West BMX racing and riding. (COMMUNITY SERVICES) (2014 - 036)
13. Consider a resolution authorizing the execution of a sports agreement with the Texas Cricket Club to administer programs, special events and services related to cricket. (COMMUNITY SERVICES) (2014 - 037)
14. Consider a resolution authorizing the execution of a sports agreement with City of Midland Aquatics, Incorporated, to administer programs, special events, and other services related to swimming in the City of Midland; and the contract covers the Doug Russell Pool. (COMMUNITY SERVICES) (2014 - 038)

15. Consider a resolution authorizing the execution of a sports agreement with the Greater Midland Football League to administer programs, special events and services related to football. (COMMUNITY SERVICES) (2014 - 039)
16. Consider a resolution authorizing the execution of a sports agreement with Midland Softball Association, Incorporated, to administer programs, special events and services related to softball for adults ages fifteen (15) and older. (COMMUNITY SERVICES) (2014 - 040)
17. Consider a resolution authorizing the execution of a sports agreement with Midland Junior Baseball Association, Incorporated, to administer programs, special events and services related to baseball for men ages nineteen and younger. (COMMUNITY SERVICES) (2014 - 041)
18. Consider a resolution authorizing the execution of a sports agreement with Midland Soccer Association, Incorporated, to administer programs, special events and services related to soccer for adults and youth. (COMMUNITY SERVICES) (2014 - 042)
19. Consider a resolution authorizing the execution of a sports agreement with Midland United Girls Softball Association, Incorporated to administer programs, special events and services related to softball for girls. (COMMUNITY SERVICES) (2014 - 043)
20. Consider a resolution authorizing the execution of a Professional Services Agreement with Dunaway Associates, LP for engineering services in connection with the widening of Fairgrounds Road from Pine Avenue to Loop 250; appropriating funds for said Fairgrounds Road Project in the amount of \$4,000,000; and authorizing payment for said professional services in the amount of \$99,825.00. (ENGINEERING SERVICES) (2014 - 044)
21. Consider a resolution authorizing the second renewal of the contract with TEC Excavation, Inc. for the Water, Wastewater and Fire Hydrant Taps Project for one (1) additional six (6) month term; and appropriating \$500,000 therefor. (ENGINEERING SERVICES) (2014 - 045)
22. Consider a resolution authorizing the execution of an amendment to the six-month right of way license with Dawson Geophysical Company, for seismic testing across City-owned property in Block 38-T2-S, Sections 4, 5, 8, 9 and 10, Midland County, Texas, near the water pollution control plant; said amendment will authorize a six month extension to the original right of way license which was effective October 9, 2013 and ending April 8, 2014. (UTILITIES) (2014 - 046)

SECOND READINGS

23. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 1-12, Block 40, Belmont Addition, City and County of Midland, Texas, which is presently zoned MH, Manufactured Home Dwelling District, in part, and LR-2, Local Retail District, in part, to be used as a PD, Planned District for a Shopping Center (Generally located on the southeast corner of the intersection of Rankin Highway and West Gist Avenue); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9224)
24. Consider an ordinance on second reading amending Title IV, "Building Regulations", Chapter 1, "Building Code", of the City Code of the City of Midland, Texas, and adopting the 2012 International Building Code as the Building Code of the City of Midland, Texas, for the purpose of regulating the construction, alteration, repair, equipment, use and occupancy, location, maintenance, removal and demolition of buildings and structures or any appurtenance connected or attached to such building or structure; providing for the inspection of said buildings or structures, providing for the issuance of permits for the construction, alteration, repair, equipment, use and occupancy, removal and demolition of said buildings or structures and collection of inspection fees therefor; establishing minimum floor elevations for certain structures; requiring cash deposits to insure site clearance after removal or demolition of structures; containing a cumulative clause; containing a savings and severability clause; providing for a maximum fine or penalty of two thousand (\$2000.00) dollars; and establishing an effective date of April 1, 2014; and ordering publication. (DEVELOPMENT SERVICES) (9225)
25. Consider an ordinance on second reading amending Title IV, "Building Regulations", Chapter 3, "Plumbing Code", of the City Code of the City of Midland, Texas, and adopting the 2012 International Plumbing Code as the Plumbing Code of the City of Midland for the purpose of regulating the installation, alteration, and maintenance of all piping and plumbing within the corporate limits of the City of Midland; providing for the inspection of said piping and plumbing; providing for the issuance of permits for the installation of said piping and the collection of inspection fees therefor; providing for the bonding of persons engaged in the business of installing, repairing and maintaining said piping or plumbing; providing for appeals; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2000.00); establishing an effective date of April 1, 2014; and ordering publication. (DEVELOPMENT SERVICES) (9226)

26. Consider an ordinance on second reading amending Title IV, "Building Regulations", Chapter 4, "Gas Code", of the City Code of the City of Midland, Texas, and adopting the 2012 International Fuel Gas Code as the Gas Code of the City of Midland; providing minimum standards, provisions and requirements for gas piping and appliances; providing for the issuance of permits for the installation of said piping and appliances and the collection of inspection fees therefor; providing for bonding of persons engaged in the business of installing, repairing and maintaining said piping and appliances; regulating use of existing piping and appliances; providing for certificates of approval for piping work; providing for appeals; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); establishing an effective date of April 1, 2014; and ordering publication. (DEVELOPMENT SERVICES) (9227)
27. Consider an ordinance on second reading amending Title IV, "Building Regulations", Chapter 10, "Mechanical Code", of the City Code of Midland, Texas, and adopting the 2012 International Mechanical Code as the Mechanical Code of the City of Midland for the purpose of providing minimum standards, provisions and requirements for safe installation and maintenance of mechanical systems within the corporate limits of the City of Midland, Texas; providing for the inspection of said mechanical systems; providing for the issuance of permits for the installation of said mechanical systems and the collection of inspection fees therefor; providing for appeals; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2000.00); establishing an effective date of April 1, 2014; and ordering publication. (DEVELOPMENT SERVICES) (9228)
28. Consider an ordinance on second reading amending Title IV, "Building Regulations", Chapter 11, "Residential Code", of the City Code of the City of Midland, Texas, and adopting the 2012 edition of the International Residential Code, as the Residential Building Code for the City of Midland, Texas, for the purpose of regulating and controlling the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of one-and two-family dwellings and townhouses in the City of Midland, Texas, providing for the issuance of permits, the review of plans, the inspection of footings and foundations and framing, the collection of inspection fees therefor; containing a cumulative clause; containing a savings and severability clause; providing for a maximum fine or penalty of two thousand dollars (\$2,000.00); ordering publication; and establishing an effective date of April 1, 2014. (DEVELOPMENT SERVICES) (9229)

PUBLIC HEARINGS

29. At approximately 10:30 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City

Code of Midland, Texas, by permitting Lot 2, Block 2, Pavilion Park, Section 1, and Lot 3, Block 2, Pavilion Park, Section 2, City and County of Midland, Texas, which is presently zoned O-1, Office District, in part, and PD, Planned District for Housing Development, in part, to be used as a PD, Planned District for a Housing Development (Generally located near the southeast corner of the intersection of North Big Spring Street and Pavilion Parkway); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9232)

30. At approximately 10:33 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 2A and 3A, Block 7, Claydesta Plaza, Section 4, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Transition District, to be used as an Amended Planned District (Generally located near the northwest corner of the intersection of West Wadley Avenue and Desta Drive); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9233)
31. At approximately 10:36 A.M. hold a public hearing and consider an ordinance changing the name of the Guadalupe Street to "Stonebridge Drive" adjacent to Lots 14 and 15, Block 2, and Lot 1, Block 3, Adobe Meadows, Section 2, City and County of Midland, Texas, and to Lot 13A Block 2, and Lot 2A, Block 3, Adobe Meadows, Section 6, City and County of Midland, Texas; changing the name of Lamesa Road to "Stonebridge Drive" adjacent to Lots 2, 4 and 5, Block 1, Lot 3, Block 2, Lots 1 and 11, Block 3, Lot 1, Block 4, and Lots 1, 14, 15 and 21, Block 9, Pavilion Park, Section 2, City and County of Midland, Texas; said streets are generally located on the north and south sides of East Mockingbird Lane, east of North Big Spring Street; containing a cumulative clause; containing a savings and severability clause; and directing the City Secretary to send the Midland Emergency Communications District a certified copy of this ordinance. (DEVELOPMENT SERVICES) (9234)

MISCELLANEOUS

32. Consider an ordinance making certain transfers in various funds of the 2012-2013 Fiscal Year Budget and making certain budget amendments; and ordering recordation. (FINANCE) (9235)
33. Receive a presentation from Colby Denison with Denison Development and Construction, Incorporated, and discuss Affordable Housing, including a discussion of Low Income Housing Tax Credits from the Texas Department of

Housing and Community Affairs and discuss a Revitalization Plan and the needs of certain areas in Midland. Also, the Council may discuss the Texas Department of Housing and Community Affairs 2014 qualified application plan including a resolution of support. (CITY ATTORNEY'S OFFICE)

34. Consider an ordinance amending the official Municipal Budget for Fiscal Year 2013-2014 in order to provide additional funds to the Downtown Midland Management District for a Fourth of July event in downtown Midland; the additional funding provided will help promote tourism in the City of Midland; and authorizing the City Manager to execute an agreement with the Downtown Midland Management District. (CITY SECRETARY'S OFFICE) (9236)
35. Consider a motion appealing the Building Official's denial of a sign permit application by Alamo Heights Baptist Church located on 1305 N. Midland Drive. (Generally located on the southwest corner of the intersection of Princeton Avenue and Midland Drive.) (DEVELOPMENT SERVICES)
36. Consider an ordinance vacating and abandoning a 0.14-acre north/south alley adjacent to Lots 1-12, Block 40, Belmont Addition, City and County of Midland, Texas (Generally located on the east side of Rankin Highway, between West Gist Avenue and West Stokes Avenue); adopting the appraisal by the City Manager of \$12,196.00; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9237)
37. The City Council shall consider a motion on whether the financial backing, financial term sheet and/or commitment submitted by or on behalf of 301 Ventures, L.L.C. complies with the Agreement between the City of Midland and 301 Ventures, L.L.C. The evidence of adequate financial backing of the individual or entity constructing the Fuel Hotel was to be provided to the City of Midland by February 1, 2014. This evidence was to include current documentation from a bank or other lending institution stating that they are providing a specific funding level to support the hotel project without disclaimers, caveats, or exceptions. 301 Ventures, L.L.C. is sometimes referred to as Texas 301 Ventures, L.L.C. in the contract documents. (DOWNTOWN DEVELOPMENT)
38. Consider a motion making appointments to the Midland-Odessa Urban Transit District Board, the Midland Development Corporation, the Tax Increment Reinvestment Zone Board, Midland Spaceport Development Corporation and consider motions appointing individuals to all other boards and commissions.

EXECUTIVE SESSION

39. 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 551.072 Deliberation Regarding Real Property.
 - a.1. Discuss the purchase, exchange, lease or value of real property described as Lot 1 less 7.87 acres, Block 1, Westridge Park Addition, Section 1, an addition to the City of Midland, Midland County, Texas.

Respectfully Submitted,

Courtney B. Sharp
City Manager

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

**MIDLAND CITY COUNCIL
MINUTES
January 28, 2014**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:30 a.m. on January 28, 2014.

Council Members present: Mayor Jerry F. Morales, Council Member Scott Dufford (At-Large), Mayor Pro Tem Jeff Sparks (District 1), Council Member John Love (District 2), Council Member Sharla Hotchkiss (District 3), and Council Member J.Ross Lacy (District 4).

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, Police Chief Price Robinson, Administrative Services Director Catherine Clifton, Finance Director Pam Simecka, Director of Airports Marv Esterly, Solid Waste Director Morris Williams, Chief Information Officer Sharlett Chowning, and Human Resources Manager Chuck Moad.

1. Receive a presentation from Administrative Services on the City's Compensation and Classification Study.

City Manager Courtney Sharp reported that Council previously authorized staff to hire a consultant for a compensation and classification study. Staff budgeted 2% in the current budget to potentially address recommendations made by the consultant.

Administrative Services Director Catherine Clifton reported the last study was done prior to 2000. The goals of the study were to make sure employees are appropriately compensated and classified, to ensure that the City of Midland is competitive with other public and private sector employers, to eliminate compression and to prepare for future growth.

Ms. Clifton reviewed the current pay steps and broadband pay for all employees and explained the current methodology used to classify positions. Salary surveys are completed annually and adjustments made can cause compression or expansion between midpoints of zones.

The new comparison cities as recommended by the consultant are: Odessa, Lubbock, Mesquite, Frisco, Grand Prairie, Pearland, Round Rock, Lewisville and Carrollton. Jobs will now be arranged by families and pay ranges will consistently be 35% wide with each midpoint being 5% apart. In public safety the recommendation was to eliminate the first three steps in supervisory pay in order to avoid compression.

Ms. Clifton reviewed the costs involved with implementation noting the total cost would be \$1.99 million or \$990,000 for a mid-year implementation. \$1.1 million has already been set aside in the current budget for this purpose.

City Manager Sharp reported the additional \$1 million will need to be addressed in the next fiscal year budget.

Mayor Morales challenged Council to work with staff and decide where Midland's benchmark should be. He asked if the Council wants to keep Midland in the middle of the range of comparative cities or move higher. It was suggested this would be a good topic to discuss as the retreat.

The foregoing agenda item was 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 10:04 a.m., January 28, 2014.

Council Members present: Mayor Jerry F. Morales, Council Member Scott Dufford (At-Large), Mayor Pro Tem Jeff Sparks (District 1), Council Member John Love (District 2), Council Member Sharla Hotchkiss (District 3), and Council Member J. Ross Lacy (District 4).

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

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

OPENING ITEMS

1. Invocation - Reverend Pat Bryant, Travis Baptist Church
2. Pledge of Allegiance to the United States Flag and Texas State Flag.

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Mayor Morales received a mock check from Midland Retired Seniors Volunteer Program in the amount of \$2,173,351.85 which is the value of 98,164 documented community service hours.

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. (Please limit remarks to no more than three minutes per person.)

Todd Brown, 3200 Marriot Avenue, spoke on behalf of the Midessa Mobile Food Vendor Association. He extended his thanks to the City Council for considering revisions to the mobile food vendor ordinance and asked Council to construct those ordinances to the benefit of the citizens of Midland.

Jack Fisher, 5320 Ellen Jane Way, asked Council to approve the Betenbough subdivision because Midland needs affordable housing. According to his calculations, if this property is developed the City will collect approximately \$74,000 in City sales tax. Betenbough does as much local buying as they can which benefits the City. He requested Council approve Betenbough's item.

John Coleman, 5601 Drexel Court, reported he is the General Manager of Ferguson Enterprise in Odessa and they supply Betenbough with all of their plumbing, lighting, and HVAC needs. Their company just opened a Midland office and he just broke ground on a Betenbough home. He asked Council to approve their item.

CONSENT AGENDA

Council Member Dufford moved to approve Consent Agenda items 5 - 18 excluding 18; seconded by Council Member Lacy. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:
 - a. Special meeting of January 13, 2014.
 - b. Regular meeting of January 14, 2014.
6. Approved a resolution authorizing a contract for labor, material, equipment and supervision necessary to purchase and install Ball Field Lighting for Hogan Park Fields #1, #2, #8 and Simons Field from MUSCO Lighting, LLC through Buy Board contract 346-10, in the amount of \$773,400.00 for the Community Services Department and appropriating funds therefore. (PURCHASING)

RESOLUTION NO. 2014-018

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH MUSCO LIGHTING LLC, OF OSKALOOSA, IOWA FOR LABOR, MATERIAL, EQUIPMENT AND SUPERVISION NECESSARY TO PURCHASE AND INSTALL BALL FIELD LIGHTING FOR HOGAN PARK FIELDS #1, #2, #8, AND SIMONS FIELD THROUGH BUYBOARD AT A TOTAL COST OF \$773,400.00; THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COOPERATIVE PURCHASING PROGRAM; AND APPROPRIATING FUNDS

7. Approved a resolution approving the issuance of a request for qualifications for a construction manager at risk for the new Municipal Court building. (PURCHASING)

RESOLUTION NO. 2014-019

RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ISSUE A REQUEST FOR QUALIFICATIONS FOR A CONSTRUCTION MANAGER AT RISK

FOR THE NEW MUNICIPAL COURT BUILDING

8. Approved a resolution amending Resolution No. 2012-244 authorizing the City Manager or his designee to execute on behalf of the City of Midland, all contracts and agreements with the State of Texas, represented by the Texas Department of Transportation described as Airpark Hangar Expansion which is an improvement contained in the Airport Capital Improvement Program, and appropriate necessary funds. (AIRPORTS)

RESOLUTION NO. 2014-020

RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO RESOLUTION NO. 2012-244 AUTHORIZING THE CITY MANAGER TO EXECUTE AND APPROVE ON BEHALF OF THE CITY OF MIDLAND ALL CONTRACTS AND AGREEMENTS WITH THE STATE OF TEXAS, REPRESENTED BY THE TEXAS DEPARTMENT OF TRANSPORTATION AND SUCH OTHER PARTIES AS SHALL BE NECESSARY FOR THE IMPLEMENTATION OF THE PROJECT DESCRIBED AS MIDLAND AIRPARK HANGAR EXPANSION; AND APPROPRIATING FUNDS; SAID AMENDMENT TO INCLUDE CONSTRUCTING 12 T-HANGARS AT THE MIDLAND AIRPARK AIRPORT WITH DRAINAGE IMPROVEMENTS TO THE EXISTING HANGARS THEREBY INCREASING THE TOTAL COST ESTIMATES FOR THIS PROJECT

9. Approved a resolution authorizing a three-year extension contingent upon an amendment to the Non-Exclusive Commercial Fixed Base Operator Lease Agreement between the City of Midland and Basin Aviation. (AIRPORTS)

RESOLUTION NO. 2014 - 021

RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE NON-EXCLUSIVE COMMERCIAL FIXED BASE OPERATOR LEASE AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND BASIN AVIATION, INCORPORATED, AT MIDLAND AIRPARK AIRPORT

10. Approved a resolution authorizing payment in the amount of \$53,643.20 to Crosswind Communications, LLC for promotional services. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2014 - 022

RESOLUTION APPROVING THE MIDLAND DEVELOPMENT CORPORATION'S PAYMENT IN THE AMOUNT OF \$53,643.20 TO CROSSWIND COMMUNICATIONS, LLC FOR PROMOTIONAL SERVICES.

11. Approved a resolution amending the budget for the Midland Development Corporation's 2013-2014 Fiscal Year. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2014 - 023

RESOLUTION APPROVING THE AMENDED FISCAL YEAR 2013-2014 BUDGET OF THE MIDLAND DEVELOPMENT CORPORATION, A TYPE A CORPORATION AS AUTHORIZED BY CHAPTER 504 OF THE TEXAS LOCAL GOVERNMENT CODE

12. Approved a resolution authorizing the execution of an economic development agreement between the Midland Development Corporation and Orbital Outfitters, Ltd.;

and authorizing payment therefor. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2014 - 024

RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND ORBITAL OUTFITTERS, LTD., AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE

13. Approved a resolution authorizing the execution of a lease agreement with the City of Midland regarding certain real property located at Midland International Airport and described as an approximate 2 acre tract of land located in Section 8, Lot 1A, Block 3, Industrial Park Regional Air Terminal, Unit 12, Midland, Midland County, Texas. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2014 - 025

RESOLUTION APPROVING A SUBLEASE AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND ORBITAL OUTFITTERS, LTD. REGARDING CERTAIN REAL PROPERTY LOCATED AT MIDLAND INTERNATIONAL AIRPORT AND DESCRIBED AS A 1.28-ACRE TRACT OF LAND LOCATED IN LOT 1A, BLOCK 13, INDUSTRIAL PARK REGIONAL AIR TERMINAL, UNIT 12, MIDLAND, MIDLAND COUNTY, TEXAS

14. Approved a resolution authorizing the execution of a sublease agreement with Orbital Outfitters, Ltd. regarding certain real property located at Midland International Airport and described as an approximate 2 acre tract of land located in Section 8, Lot 1A, Block 13, Industrial Park Regional Air Terminal, Unit 12, Midland, Midland County, Texas. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2014 - 026

RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH THE MIDLAND DEVELOPMENT CORPORATION REGARDING CERTAIN REAL PROPERTY AT MIDLAND INTERNATIONAL AIRPORT AND DESCRIBED AS A 1.28-ACRE TRACT OF LAND LOCATED IN LOT 1A, BLOCK 13, INDUSTRIAL PARK REGIONAL AIR TERMINAL, UNIT 12, MIDLAND, MIDLAND COUNTY, TEXAS

15. Approved a resolution Amending the Protective Covenants applicable to Entrada Enterprise Park located in Midland International Airport Industrial Park, Section 5, Midland, Midland County, Texas, and ordering recordation. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2014 - 027

RESOLUTION APPROVING AN AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS APPLICABLE TO ENTRADA ENTERPRISE PARK LOCATED IN MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, SECTION 5, MIDLAND, MIDLAND COUNTY, TEXAS; AND ORDERING RECORDATION

16. Approved a resolution calling a special election on May 10, 2014 to fill the unexpired Council Member At Large term. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2014 - 028

RESOLUTION CALLING A SPECIAL ELECTION FOR ONE CITY COUNCIL MEMBER-

AT-LARGE; PROVIDING FOR USE OF ACCESSIBLE VOTING SYSTEMS; ESTABLISHING ELECTION PRECINCTS FOR SAID ELECTION; AND ESTABLISHING POLLING PLACES FOR SAID ELECTION; SAID ELECTION SHALL BE HELD ON MAY 10, 2014, WITH EARLY VOTING TO BEGIN ON APRIL 28, 2014.

17. Approved a resolution authorizing the City Manager to negotiate, approve and execute the MOUTD Management Services Agreement with McDonald Transit Associates, Inc. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2014 - 029

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE MIDLAND-ODESSA URBAN TRANSIT DISTRICT, THE CITY OF ODESSA, THE CITY OF MIDLAND, AND MCDONALD TRANSIT ASSOCIATES, INCORPORATED, RELATED TO THE MANAGEMENT AND OPERATION OF A MOTORBUS SYSTEM IN THE CITY OF ODESSA AND THE CITY OF MIDLAND; AND THE CITY MANAGER AND CITY ATTORNEY ARE AUTHORIZED TO MAKE NON-SUBSTANTIVE MODIFICATIONS TO THE AGREEMENT AS LONG AS THE INTENT IS NOT CHANGED

The following item was pulled from Consent Agenda and considered individually.

18. Presentation of schedule for Fiscal Year 2014/2015 Community Development Block Grant (CDBG) Program Funding Cycle. (DEVELOPMENT SERVICES)

Council Member Love pulled the item to allow for the presentation to be made.

Council Member Sparks noted he would be unable to attend the April 22nd meeting because he would be out of town. Community Development Manager Sylvester Cantu gave a brief overview of the item emphasizing the schedule of events.

SECOND READINGS

19. Consider an ordinance on second reading on a request by Real Property Resources for a zone change from FD, Future Development District to PD, Planned District for a Housing Development on a 40.498-acre tract of land (Tract 1) out of Sections 37, 38 and 48; from PD, Planned District for a Housing Development to an Amended Planned District on a 5.954-acre tract of land (Tract 2) and from PD, Planned District for a Housing Development to an Amended Planned District for a Housing Development on a 0.270-acre tract of land (Tract 3) all out of Section 37, both out of Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located at the south extension of Avalon Drive, approximately 700 feet south of Hall of Fame Boulevard.) (DEVELOPMENT SERVICES) (First reading held on November 26, 2013)

ORDINANCE NO. 9210

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 40.498-ACRE TRACT OF LAND OUT OF SECTIONS 37, 38 AND 48, BLOCK 40, T-1-S, T&P RR CO. SURVEY, A 5.954-ACRE TRACT OF LAND OUT OF SECTION 37, BLOCK 40, T-1-S, T&P RR CO. SURVEY, AND A 0.270-ACRE TRACT OF LAND OUT OF SECTION 37, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED FD, FUTURE

DEVELOPMENT DISTRICT, IN PART, AND PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, IN PART, TO BE USED AS AN AMENDED PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE EAST SIDE OF THE SOUTH EXTENSION OF AVALON DRIVE, APPROXIMATELY 700 FEET SOUTH OF HALL OF FAME 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

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9210.

Council Member Hotchkiss reported she would be abstaining on this item and on Agenda Item No. 22 because she heard these items while she was on Planning & Zoning.

Council Member Lacy asked Building Official Steve Thorpe if he was satisfied with the results. Mr. Thorpe reported they have done a remarkable job in the cleanup and they are very pleased with the condition of the alleys and hoped the residents would continue to keep them in the same condition. He suggested Council also check with Engineering.

Engineer Services Director Jose Ortiz reported they conducted inspections on eight sections in Legends Park. One section has been approved and in section two they have inspected the alleys and are satisfied with the improvements. Betenbough is working diligently on sections three, four and five and he expects those to receive approval as well.

Council Member Love moved to approve the second and final reading of Ordinance No. 9210 in accordance with the Charter of the City of Midland; seconded by Council Member Lacy. The motion carried by the following vote: AYE: Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: Hotchkiss. ABSENT: None.

20. Consider an ordinance on second reading on a request by Stanley Beard/Corky Allen for a zone change from AE, Agriculture Estate District to PD, Planned District for a Housing Development on a 21.85-acre tract of land out of Section 11, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of North State Highway 349, west of Pueblo.) (DEVELOPMENT SERVICES) (First Reading Held on January 14, 2014)

ORDINANCE NO. 9218

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 21.85-ACRE TRACT OF LAND OUT OF SECTION 11, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH STATE HIGHWAY 349, WEST OF PUEBLO); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9218.

Planning Division Manager Jim Compton gave a brief overview of the item noting Council originally considered this item on January 14th. Following that meeting, the applicant requested the underlying zoning be changed to reduce the minimum lot size to 5,000 square feet rather than 5,500 square feet. Staff has no objection to the request and it does not change the minimum square footage of the homes.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9218 in accordance with the Charter of the City of Midland with the amendment to change the minimum lot size from 5,500 square feet to 5,000 square feet; seconded by Council Member Lacy. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

21. Consider an ordinance on second reading on a request by Pulman, Cappuccio, Puller, Benson & Jones, LLP for a zone change from O-1, Office District to PD, Planned District for a Office Center on Lots 2 and 3, Block 1, The Vineyard Addition, Section 3, City and County of Midland, Texas. (Generally located on the west side of Holiday Hill Road, approximately 800 feet north of Sherwood Drive.) (DEVELOPMENT SERVICES) (First Reading Held on January 14, 2014)

ORDINANCE NO. 9219

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 2 AND 3, BLOCK 1, THE VINEYARD ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED O-1, OFFICE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED ON THE WEST SIDE OF HOLIDAY HILL ROAD, APPROXIMATELY 800 FEET NORTH OF SHERWOOD 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

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9219.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9219 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

22. Consider an ordinance on second reading on a request by Jeff Benson for a zone change from PD, Planned District for a Shopping Center to Amended Planned District, on Lot 1A, Block 2, Gateway Plaza, Section 3, City and County of Midland, Texas. (Generally located near the southeast corner of the intersection of Liberty Drive and Starboard Drive.) (DEVELOPMENT SERVICES) (First Reading Held on January 14, 2014)

ORDINANCE NO. 9220

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1A, BLOCK 2, GATEWAY PLAZA, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, 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 LIBERTY DRIVE AND STARBOARD 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

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9220.

Council Member Lacy moved to approve the second and final reading of Ordinance No. 9220 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: Hotchkiss. ABSENT: None.

23. Consider an ordinance on second reading on a request by Kevin Leary & Borgata Partners, LLC for the vacation of a 0.126-acre portion of the right-of-way of Holiday Hill Road adjacent to Lot 1, Block 2, Grandridge Park Addition, Section 1, City and County of Midland, Texas. (Generally located on the west side of the intersection of Holiday Hill Road and North Loop 250 West.) (DEVELOPMENT SERVICES) (First Reading Held on January 14, 2014)

ORDINANCE NO. 9221

AN ORDINANCE VACATING AND ABANDONING A 0.126-ACRE PORTION OF HOLIDAY HILL ROAD RIGHT-OF-WAY ADJACENT TO LOT 1, BLOCK 2, GRANDRIDGE PARK ADDITION, SECTION 1, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF THE INTERSECTION OF HOLIDAY HILL ROAD AND NORTH LOOP 250 WEST); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$8,235.00; RETAINING A GENERAL PUBLIC UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9221.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9221 in accordance with the Charter of the City of Midland; seconded by Council Member Lacy. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

24. Consider an ordinance on second reading amending Ordinance 9214, Title III, "Departments", Chapter 1, "Water Department" Section 2 "Rates", Subsection (A) "Customers Inside of City Limits", of the City Code of Midland, Texas and ordering publication. (UTILITIES) (First Reading Held on January 14, 2014)

ORDINANCE NO. 9222

AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 1, "WATER DEPARTMENT", SECTION 2, "RATES," OF THE CITY CODE OF MIDLAND, TEXAS,

SO AS TO CHANGE THE RATES CHARGED FOR WATER AND SEWER SERVICES; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION; AND THE CITY MANAGER SHALL NOTIFY ALL CUSTOMERS OUTSIDE THE CITY LIMITS AS REQUIRED BY STATE LAW; AND RESCINDING ORDINANCE NUMBER 9214 ON THE DATE THIS ORDINANCE BECOMES EFFECTIVE

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9222.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9222 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

25. At approximately 10:30 A.M. hold a public hearing and consider an ordinance ON APPEAL on a request by Real Property Resources/Lone Star Trails for a zone change from AE, Agriculture Estate District to PD, Planned District for a Housing Development on a 302.19-acre tract of land and to O-1, Office District on a 15.83-acre tract of land all out of 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 Hwy 349, approximately 840 feet north of Arapahoe Road.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9223

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 302.19-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 15.83-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN O-1, OFFICE DISTRICT; SAID TRACTS BEING OUT OF 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, APPROXIMATELY 840 FEET NORTH OF ARAPAHOE ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Jim Compton gave a brief overview of the item noting this item is for a zone change request for a property located on North Big Spring for an office district and housing development. Staff is asking for direction. Planning & Zoning considered the item on January 6 and the motion failed by a vote of 3-3. There was no public opposition raised at that meeting and of the five notices mailed one letter of opposition has been received. The residential portion will contain 952 residential homes with no alleys. The original plat contained nearly 1,000 lots with each lot being 50 feet wide. The applicant agreed to increase the lot sizes and reduce the overall density to the 952 homes by designing the area in three different regions. The first area has an average lot width of 70.4 feet, the second area has an average lot width of 62.5 feet and the third area has an average lot width of 54 feet. He emphasized there is no underlying zoning which has to do with the way the application was submitted. Within each region

the lot sizes vary quite a bit. Staff was not given a minimum lot size but only an average lot size for each region. Not all lots in a region will meet minimum standards of a specific district such as a 1-F-2 District.

The Planning Commission had two major issues with this application. Their first issue was related to the four oil wells located on the property. The Commission was concerned about the proximity of the wells to the residences. The applicant has been working with Pioneer Resources. The distance was increased from 135 feet to 250 feet which is still below the 500 feet required in the ordinance. At this time there is not a written agreement between the surface owner and the mineral owner. The second issue was the lack of alleys. Plats without alleys require a variance to the subdivision code and that specific findings are made. The Council has previously approved two significant plats without alleys. The applicant has made a concession already by increasing the lot sizes. If this zoning is approved today a preliminary plat will be brought to Council in the future for approval. He clarified that the 4th region on the map was the office district and that the one letter of opposition does not add up to 20 percent of the land area.

When asked about how this development will impact traffic along Highway 349, City Engineer Jose Ortiz noted staff is putting together a traffic impact analysis to address traffic in the area and explained other options of how traffic could be relieved. Mr. Compton clarified that initially the entrance will be on Big Spring but ultimately there will be various entrances to the property from several streets.

Council Member Sparks clarified that there is no written agreement between the developer and the subsurface developer and suggested the item be deferred until the agreement is in place.

Melanie Robertson, 4800 Sunshine Parkway, representing Pioneer, noted there is one pending issue on the agreement that needs to be resolved prior to finalization. They have been working on the agreement since last summer.

Mayor Morales opened the public hearing at 11:06 a.m.

Kelly Oaks, 5603 Champions, representing Betenbough, reported that the agreement presented to them from Pioneer has been signed and returned to them. They are waiting on a description of a 1.8 tract of land from the surveyor so it can be filed to secure the easement before Pioneer will sign the agreement.

Mayor Morales asked what the consequences would be if this item was approved today and still did not have a written agreement in place prior to the second reading. City Attorney Keith Stretcher noted if Council approves it today they should make it clear that they are not approving the plat nor is there a guarantee of approval of the ordinance on second reading.

Melanie Robertson of Pioneer clarified that the final surface lease document has not been reviewed and there is one item that all parties need to be in agreement on. She clarified that once Troy Martin signs off on it, they will also sign the document.

Vicki Lowry, 4615 Pleasant Drive, representing ABC Supply, stated they are a roofing and window distributor for Betenbough. They have supplied Betenbough and other

builders in the community for several years. If this project is slowed down it will not only affect them but many other builders in the area. She asked Council to support Betenbough.

Jason Noltie, 10001 West County Road 75, representing Noltex Truss of Midland, reported they have 30 employees. The majority of their time is spent supplying Betenbough Homes with pre-engineered roof trusses and wall panels. They have worked with Betenbough for over 12 years and moved to Midland because Betenbough likes to work with local suppliers. Betenbough has an indirect impact on the community because they have brought their suppliers to Midland and now those suppliers are available to work on other projects in the area. He urged the Council to consider the huge impact Betenbough has on the citizens of Midland.

Rick Betenbough, Betenbough Homes, reported this has been a long and productive process and they are completely willing to adjust to whatever the City wants. They are trying to meet the needs of the marketplace and meet the needs of the City. He reported they do have an agreement in principal. They bought the land from Troy Martin who still owns property to the north. Mr. Martin is a cooperative and willing participant and has agreed to grant Pioneer a site. The surveyor is currently working on getting them what they need. He expects everything to be in place within a few days.

There being no one else wishing to speak, the public hearing was closed at 11:16 a.m.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9223.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 9223 in accordance with the Charter of the City of Midland; seconded by Council Member Hotchkiss. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

26. At approximately 10:33 A.M. hold a public hearing and consider an ordinance on a request by Ed Hernandez for a zone change from MH, Manufacture Home District on Lots 1 through 6 and from LR-2, Local Retail District on Lots 7 through 12 to PD, Planned District for a Shopping Center, all out of Block 40, Belmont Addition, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of Rankin Highway and West Gist Avenue.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9224

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-12, BLOCK 40, BELMONT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED MH, MANUFACTURED HOME DWELLING DISTRICT, IN PART, AND LR-2, LOCAL RETAIL DISTRICT, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF RANKIN HIGHWAY AND WEST GIST AVENUE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Jim Compton gave a brief overview of the item noting the proposal was for a new shopping center that would include a screening fence 6 feet in height constructed of brick. Planning & Zoning recommended approval of the item. Fourteen letters were mailed and one letter of opposition has been received.

Mayor Morales opened the public hearing at 11:27 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Moreno read the caption of Ordinance No. 9224.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9224 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

27. At approximately 10:36 A.M. hold a public hearing and consider a request for the annexation of a 37.09-acre tract of land out of Sections 7 and 8, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas. (Generally on the northeast corner of the intersection of FM 1788 and Loop 40.) (DEVELOPMENT SERVICES)

Planning Division Manager Jim Compton gave a brief overview of the item noting this was the first of two annexations being heard today. This annexation is for a 37 acre tract of land. Today is a public hearing only and no further action will be taken. He noted there is a second public hearing scheduled for the next day at 8:15 a.m.

Mayor Pro Tem Love opened the public hearing at 11:31 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

28. At approximately 10:39 A.M. hold a public hearing and consider a request for the annexation of Lot 3, Block 5, Pecan Acres Addition, Section 5 and of Lots 4A and 4B, Block 5, Pecan Acres Addition, Section 7, Midland County, Texas. (Generally located on the north side of Trenton Drive, approximately 550 feet east of Trobaugh Boulevard.) (DEVELOPMENT SERVICES)

Planning Division Manager Jim Compton gave a brief overview of the item noting it is for the annexation of 3 plotted lots. The reason they are requesting annexation is to obtain City water. Today's meeting is for a public hearing only and no further action is required.

Mayor Morales opened the public hearing at 11:32 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

29. At approximately 10:42 A.M. hold a public hearing regarding a proposed oil and gas permit to Callon Petroleum Operating Company (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Pecan Acres 23 #7) located 660 feet from south line and 1911 feet from east line, Section 23, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the west side of Golden Gate Drive, approximately 660 feet north of Briarwood Avenue.) (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins gave a brief overview of the item noting the item had been reviewed by the Oil & Gas Advisory Committee who made a couple of

recommendations for corrections. Callon Petroleum has made those corrections and is requesting a landscaping and irrigation variance of 18 months. No letters of objection have been received. The well is located on property owned by Callon Petroleum.

Mayor Morales opened the public hearing at 11:34 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

DEVELOPMENT SERVICES

30. Consider an ordinance adopting the 2012 International Building Code, with amendments; as the building code of the City of Midland. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9225

AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 1, "BUILDING CODE", OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, AND ADOPTING THE 2012 INTERNATIONAL BUILDING CODE AS THE BUILDING CODE OF THE CITY OF MIDLAND, TEXAS, FOR THE PURPOSE OF REGULATING THE CONSTRUCTION, ALTERATION, REPAIR, EQUIPMENT, USE AND OCCUPANCY, LOCATION, MAINTENANCE, REMOVAL AND DEMOLITION OF BUILDINGS AND STRUCTURES OR ANY APPURTENANCE CONNECTED OR ATTACHED TO SUCH BUILDING OR STRUCTURE; PROVIDING FOR THE INSPECTION OF SAID BUILDINGS OR STRUCTURES, PROVIDING FOR THE ISSUANCE OF PERMITS FOR THE CONSTRUCTION, ALTERATION, REPAIR, EQUIPMENT, USE AND OCCUPANCY, REMOVAL AND DEMOLITION OF SAID BUILDINGS OR STRUCTURES AND COLLECTION OF INSPECTION FEES THEREFOR; ESTABLISHING MINIMUM FLOOR ELEVATIONS FOR CERTAIN STRUCTURES; REQUIRING CASH DEPOSITS TO INSURE SITE CLEARANCE AFTER REMOVAL OR DEMOLITION OF STRUCTURES; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF TWO THOUSAND (\$2000.00) DOLLARS; AND ESTABLISHING AN EFFECTIVE DATE OF APRIL 1, 2014; AND ORDERING PUBLICATION

Building Official Steve Thorpe gave a brief overview of the item noting that every three years the International Code Council publishes the latest editions of the Building Code, Plumbing Code, and Mechanical Code. This agenda item and the subsequent four items are requests to adopt the latest version of those codes. This item came before the City Council on November 26 and the codes have been available for public review and comment in the City Secretary's Office. No comments have been received. The Code Change Committee met and reviewed the proposed changes. Many of the changes are based on technology, new products and other relatively minor changes. He noted the 2012 International Energy Code is not being adopted at this time.

Council Member Love asked for the prioritized schedule of paving unpaved streets. City Manager Sharp reported he would provide the list to Council.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9225.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 9225 in accordance with the Charter of the City of Midland; seconded by Council Member Hotchkiss. The motion carried by the following vote: AYE: Hotchkiss, Love,

Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

31. Consider an ordinance adopting the 2012 International Plumbing Code, with amendments; as the plumbing code of the City of Midland. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9226

AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 3, "PLUMBING CODE", OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, AND ADOPTING THE 2012 INTERNATIONAL PLUMBING CODE AS THE PLUMBING CODE OF THE CITY OF MIDLAND FOR THE PURPOSE OF REGULATING THE INSTALLATION, ALTERATION, AND MAINTENANCE OF ALL PIPING AND PLUMBING WITHIN THE CORPORATE LIMITS OF THE CITY OF MIDLAND; PROVIDING FOR THE INSPECTION OF SAID PIPING AND PLUMBING; PROVIDING FOR THE ISSUANCE OF PERMITS FOR THE INSTALLATION OF SAID PIPING AND THE COLLECTION OF INSPECTION FEES THEREFOR; PROVIDING FOR THE BONDING OF PERSONS ENGAGED IN THE BUSINESS OF INSTALLING, REPAIRING AND MAINTAINING SAID PIPING OR PLUMBING; PROVIDING FOR APPEALS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2000.00); ESTABLISHING AN EFFECTIVE DATE OF APRIL 1, 2014; AND ORDERING PUBLICATION

Building Official Steve Thorpe reported this item is for the adoption of the International Plumbing Code.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9226.

Council Member Love moved approval of the first of two readings of Ordinance No. 9226 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

32. Consider an ordinance adopting the 2012 International Fuel Gas Code, with amendments; as the gas code of the City of Midland. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9227

AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 4, "GAS CODE", OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, AND ADOPTING THE 2012 INTERNATIONAL FUEL GAS CODE AS THE GAS CODE OF THE CITY OF MIDLAND; PROVIDING MINIMUM STANDARDS, PROVISIONS AND REQUIREMENTS FOR GAS PIPING AND APPLIANCES; PROVIDING FOR THE ISSUANCE OF PERMITS FOR THE INSTALLATION OF SAID PIPING AND APPLIANCES AND THE COLLECTION OF INSPECTION FEES THEREFOR; PROVIDING FOR BONDING OF PERSONS ENGAGED IN THE BUSINESS OF INSTALLING, REPAIRING AND MAINTAINING SAID PIPING AND APPLIANCES; REGULATING USE OF EXISTING PIPING AND APPLIANCES; PROVIDING FOR CERTIFICATES OF APPROVAL FOR PIPING WORK; PROVIDING FOR APPEALS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ESTABLISHING AN EFFECTIVE DATE OF

APRIL 1, 2014; AND ORDERING PUBLICATION

Building Official Steve Thorpe reported this item is for the adoption of the International Fuel Gas Code.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9227.

Council Member Hotchkiss moved approval of the first of two readings of Ordinance No. 9227 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

33. Consider an ordinance adopting the 2012 International Mechanical Code, with amendments; as the mechanical code of the City of Midland. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9228

AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 10, "MECHANICAL CODE", OF THE CITY CODE OF MIDLAND, TEXAS, AND ADOPTING THE 2012 INTERNATIONAL MECHANICAL CODE AS THE MECHANICAL CODE OF THE CITY OF MIDLAND FOR THE PURPOSE OF PROVIDING MINIMUM STANDARDS, PROVISIONS AND REQUIREMENTS FOR SAFE INSTALLATION AND MAINTENANCE OF MECHANICAL SYSTEMS WITHIN THE CORPORATE LIMITS OF THE CITY OF MIDLAND, TEXAS; PROVIDING FOR THE INSPECTION OF SAID MECHANICAL SYSTEMS; PROVIDING FOR THE ISSUANCE OF PERMITS FOR THE INSTALLATION OF SAID MECHANICAL SYSTEMS AND THE COLLECTION OF INSPECTION FEES THEREFOR; PROVIDING FOR APPEALS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2000.00); ESTABLISHING AN EFFECTIVE DATE OF APRIL 1, 2014; AND ORDERING PUBLICATION

Building Official Steve Thorpe reported this item is for the adoption of the 2012 Mechanical Code.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9228.

Council Member Lacy moved approval of the first of two readings of Ordinance No. 9228 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

34. Consider an ordinance adopting the 2012 International Residential Code, with amendments; as the residential code of the City of Midland. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9229

AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 11, "RESIDENTIAL CODE", OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, AND ADOPTING THE 2012 EDITION OF THE INTERNATIONAL RESIDENTIAL CODE, AS THE RESIDENTIAL BUILDING CODE FOR THE CITY OF MIDLAND,

TEXAS, FOR THE PURPOSE OF REGULATING AND CONTROLLING THE DESIGN, CONSTRUCTION, QUALITY OF MATERIALS, ERECTION, INSTALLATION, ALTERATION, REPAIR, LOCATION, RELOCATION, REPLACEMENT, ADDITION TO, USE OR MAINTENANCE OF ONE-AND TWO-FAMILY DWELLINGS AND TOWNHOUSES IN THE CITY OF MIDLAND, TEXAS, PROVIDING FOR THE ISSUANCE OF PERMITS, THE REVIEW OF PLANS, THE INSPECTION OF FOOTINGS AND FOUNDATIONS AND FRAMING, THE COLLECTION OF INSPECTION FEES THEREFOR; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE OF APRIL 1, 2014

Building Official Steve Thorpe reported this is a request to adopt the 2012 International Residential Code and can be used as an all-in-one exclusive book by a builder for the construction of a residential home.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9229.

Council Member Lacy moved approval of the first of two readings of Ordinance No. 9229 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

MISCELLANEOUS

35. Consider an ordinance authorizing the issuance of "City of Midland, Texas, Tax and Limited Pledge Revenue Certificates of Obligation, Series 2014"; 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. (FINANCE)

ORDINANCE NO. 9230

AN ORDINANCE AUTHORIZING THE ISSUANCE OF "CITY OF MIDLAND, TEXAS, TAX AND LIMITED PLEDGE REVENUE CERTIFICATES OF OBLIGATION, SERIES 2014"; 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.

Finance Director Pam Simecka gave a brief overview of the item noting that the ordinance included in the agenda was a draft. They worked with the underwriters

yesterday and the final ordinance was distributed this morning. She introduced George Wilford, the City's financial advisor, who is available to answer questions.

George Wilford of First Southwest Company reported that they priced the certificates of obligation and refunding bond issue yesterday noting each Council Member was given a booklet of information. He reviewed the information contained in the book taking special note that the Fitch Ratings gave the City of Midland a AAA rating which is the highest rating a city can have.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9230.

Council Member Dufford moved approval of the first and only reading of Ordinance No. 9230 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

36. Consider an ordinance authorizing the issuance of "City of Midland, Texas, General Obligation Refunding Bonds, Series 2014"; specifying the terms and features of said bonds; levying a continuing direct annual ad valorem tax for the payment of said bonds; providing for the redemption of certain outstanding obligations of the City; and resolving other matters incident and related to the issuance, sale, payment, and delivery of said bonds, including the approval and execution of a Paying Agent/Registrar Agreement and the approval and distribution of an Official Statement; and providing an effective date. (FINANCE)

ORDINANCE NO. 9231

AN ORDINANCE AUTHORIZING THE ISSUANCE OF "CITY OF MIDLAND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2014"; SPECIFYING THE TERMS AND FEATURES OF SAID BONDS; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX FOR THE PAYMENT OF SAID BONDS; PROVIDING FOR THE REDEMPTION OF CERTAIN OUTSTANDING OBLIGATIONS OF THE CITY; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE, PAYMENT, AND DELIVERY OF SAID BONDS, INCLUDING THE APPROVAL AND EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT; AND PROVIDING AN EFFECTIVE DATE.

Finance Director Pam Simecka gave a brief overview of the item noting the City is paying off an older bond in order to get present day value savings.

George Wilford reviewed the information provided to Council noting the City would save over \$300,000 over the next six years.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9231.

Council Member Sparks moved approval of the first and only reading of Ordinance No. 9231 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

37. Consider a motion approving a proposed preliminary plat of The Pines at Mira Vista,

being a 21.85-acre tract of land out of Section 11, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of N. State Hwy 349, west of Pueblo.) (DEVELOPMENT SERVICES)

Council Member Dufford moved to approve a motion approving a proposed preliminary plat of The Pines at Mira Vista, being a 21.85-acre tract of land out of Section 11, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of N. State Hwy 349, west of Pueblo.); seconded by Council Member Love. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

38. Consider a motion appointing a Mayor Pro Tempore.

Council Member Lacy moved to appoint Council Member Love as Mayor Pro Tempore; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Hotchkiss, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: Love. ABSENT: None.

39. Consider a motion making an appointment to the Tax Increment and Reinvestment Zone Board, Midland Development Corporation, Planning and Zoning Commission and consider motions making appointments to all other boards and commissions.

Council Member Lacy moved to appoint Taylor Spalla to the Airport Planning and Development Board and the Permian Basin Airport Board; seconded by Council Member Love. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: None.

EXECUTIVE SESSION

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

a. Section 551.074 Personnel Matters.

- a.1. Deliberate the employment, evaluation, compensation and duties of the City Manager, the City Attorney, the City Secretary, the Municipal Court Presiding Judge and the Municipal Court Associate Judge.

b. Section 551.072 Deliberation Regarding Real Property.

- b.1. Discuss the purchase, exchange, lease or value of real property described as Lot 1 less 7.87 acres, Block 1, Westridge Park Addition, Section 1, an addition to the City of Midland, Midland County, Texas.

c. Section 551.071 Consultation with the City Attorney

- c.1. Discuss contemplated litigation involving approximately 508 acres of real property located in Section 28, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.

Mayor Morales recessed the meeting to Executive Session at 11:56 a.m.

All of the business at hand having been completed, the meeting adjourned at 2:30 p.m.

PASSED AND APPROVED the 11th day of February, 2014.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

DRAFT

**MIDLAND CITY COUNCIL
MINUTES
January 29, 2014**

The City Council convened in a Special Session in the Council Chamber, City Hall, Midland, Texas, at 8:18 a.m. on January 29, 2014.

Council Members present: Mayor Jerry F. Morales, Council Member Jeff Sparks (District 1), Mayor Pro Tem John Love (District 2), Council Member Sharla Hotchkiss (District 3), and Council Member J. Ross Lacy (District 4).

Council Members absent: Council Member Scott Dufford (At-Large).

PUBLIC HEARINGS

1. At approximately 8:15 a.m. hold a public hearing and consider an annexation of the property (Tract 1), being a 37.09-acre tract of land out of Sections 7 and 8, Block 40, T-2-S, T & P RR Co. Survey, Midland County, Texas. (Generally located on the northeast corner of the intersection of FM 1788 and Loop 40).

Planning Division Manager Jim Compton gave a brief overview of the item noting this was the second of two required public hearings. No letters of opposition have been received. He clarified today is for a public hearing only and no further action is needed.

Mayor Morales opened the public hearing at 8:19 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

2. At approximately 8:18 a.m. hold a public hearing and consider an annexation of the property (Tract 2), being Lot 3, Block 5, Pecan Acres Addition, Section 5 and of Lots 4A & 4B, Block 5, Pecan Acres Addition, Section 7, Midland County, Texas. (Generally located on the north side of Trenton Drive, approximately 550 feet east of Trobaugh Boulevard).

Planning Division Manager Jim Compton gave a brief overview of the item noting this is a voluntary annexation of three properties that wish to tap into City water. This is the second of two required public hearing and no letters of opposition have been received since yesterday.

Mayor Morales opened the public hearing at 8:20 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

All of the business at hand having been completed, the meeting adjourned at 8:20 a.m.

PASSED AND APPROVED the 11th day of February, 2014.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving an agreement with Jeffrey D. Blume, Limited for \$133,000.00 for Hogan Park Golf Course Improvements and Renovations for the Community Services Department and appropriating funds therefore.

Purpose:

Approval of a professional services agreement with Jeffrey D. Blume, Limited for Hogan Park Golf Course Improvements and Renovations.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$133,000.00 from the 2014 CO Golf Fund

Discussion:

Resolution 2013-439 approved the issuance of the request for qualifications for architectural and engineering services for golf course improvements at Hogan Park Golf Course. We received a proposal from Weibring Wolfard Golf Design and a proposal from Jeffrey D. Blume, Limited. Staff recommends entering into an agreement with Jeffrey D. Blume, Limited. Please see the attached memo from Tina Jauz, Community Services Director for more information.

Therefore, please consider a resolution entering into an agreement with Jeffrey D. Blume, Limited of Magnolia, Texas for architectural and engineering services for Hogan Park Golf Course improvements for a total cost of \$133,000.00.

City of Midland
Hogan Park Golf Course
Interoffice Memorandum

Date: January 27, 2014

To: Tina Jauz, Community Services Director

From: David Byrd, Golf Course Superintendent

Subject: Professional Services Agreement- Hogan Park Golf Course
Renovations and Improvements

The City of Midland advertised a Request for Qualifications for Professional Design Services for the Hogan Park Golf Course Renovations and Improvements. Staff reviewed the proposals and ranked them using a standard scoring system. Jeffrey D. Blume was selected as the consultant to provide professional design services for the project.

Blume submitted a scope of services with three phases:

Phase I - Preliminary Consultation and Planning Phase\$30,000
Consultation with Staff to address needs, feature
design study and preliminary cost estimate

Phase 2 -Design Development and Construction Documents
Phase\$61,000
Preliminary construction drawings and revised
cost estimate, irrigation system evaluation and
design development

Phase 3 –Construction Observation\$42,000
Design review, processing contractor's payment
applications, issuing instructions to contractor,
interpreting contract requirements, submittals,
change orders and project completion.

Total Fee **\$133,000**

All expenses, including printing costs, travel, lodging, food and ground transportation are the responsibility of the Architect.

Phase 1 will begin with approval and signed contracts and proceed through Phase 3 as quickly as possible to complete the project this calendar year.

Improvements will include:

- Replacement of asphalt cart paths
- Re-building and re-grassing needed tee boxes
- Leveling and re-grassing of certain fairways and roughs
- Improvements to the practice area
- Replacement of an existing irrigation pump station

The Hogan Golf Course was allocated up to \$2,000,000 in the 2014 Certificate of Obligation. Therefore the sum of \$133,000 is hereby appropriated from the 2014 CO Golf Fund (447) Unappropriated Fund Balance (5650) to the Hogan Golf Course Renovation Project (9071)

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH JEFFREY D. BLUME, LIMITED OF MAGNOLIA, TEXAS AT A TOTAL COST OF \$133,000.00 FOR ARCHITECTURAL AND ENGINEERING SERVICES FOR HOGAN PARK GOLF COURSE IMPROVEMENTS AND RENOVATIONS FOR THE COMMUNITY SERVICES DEPARTMENT; AND APPROPRIATING FUNDS

WHEREAS, the City of Midland advertised a Request for Qualifications for professional services for architectural and engineering services for golf course improvements at Hogan Park Golf Course; and

WHEREAS, Jeffrey D. Blume, Limited, proposes to perform said Professional Services for a total cost of \$133,000.00; and

WHEREAS, the City Council adopts the recommendation of the City Manager and finds it to be in the public interest to execute a professional services agreement with Jeffrey D. Blume, Limited;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional services agreement with Jeffrey D. Blume, Limited, for performance of said Professional Services.

SECTION TWO. The sum of \$133,000 is hereby appropriated from the 2014 CO Golf Fund (447) Unappropriated Fund Balance (5650) to the Hogan Golf Course Renovation Project (9071).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to Jeffrey D. Blume, Limited, pursuant to the terms of said professional services agreement from funds appropriated herein upon receipt of proper invoice(s) 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., 2014, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTURAL SERVICES

THIS AGREEMENT is made and effective the 12th day of February 2014, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Jeffrey D. Blume, Limited, hereinafter referred to as "CONSULTANT."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CONSULTANT shall design and develop plans and specifications, together with the bid documents for cart path additions, re-turfing several areas, and rebuilding of certain tees at Hogan Park Golf Course.

ARTICLE II. SERVICES TO BE PERFORMED

1. CONSULTANT shall provide those services described in Exhibit "A."
2. CONSULTANT shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same region at approximately the same point in time and for the same types of projects. CONSULTANT represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A."

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay CONSULTANT according to the schedule set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out service fees for the month and those Additional Expenses and Reimbursable Expenses described in Exhibit "A" incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. CONSULTANT shall perform professional services as outlined in the "Services to be Performed". Total fee for basic services shall in no event exceed One Hundred Thirty Three Thousand Dollars (\$133,000.00), including Additional Services and Reimbursable Expenses. After all work is completed by the Consultant, including all Change Orders altering the original scope and amount of said agreement are completed, and the City has inspected and approved that the work is completed and in compliance with the agreement and all subsequent Change Orders, the City shall thereafter issue payment to the Consultant in the amount of the agreement and all Change Orders. The City shall be the final judge of when the work is completed by the

Consultant. The City, in its sole discretion, shall determine if the work under the agreement and under any Change Orders has been done to the City's requirements. The City may make periodic payments to the Consultant, however such periodic payments may only be made pursuant to this paragraph, and only after all work and all Change Orders are completed by the Consultant and approved by the City. Any approval of payments shall be in the City's sole discretion.

ARTICLE IV. TERM

The term of this Agreement shall be from February 12, 2014, until May 31, 2015 , unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

The CITY may terminate this Agreement at will for no or any reason upon giving at least one-hundred-eighty (180) days written notice to the Consultant. The parties to this Agreement understand and agree that it is in the CITY's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the CITY. The Consultant has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

ARTICLE VI. ASSIGNMENT

Consultant shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of the CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of the CITY.

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

All reports, information and other data ("instruments of service"), given to, prepared or assembled by CONSULTANT under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that

CONSULTANT may make copies of any and all instruments of service for its files. The CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of CONSULTANT, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Consultant shall perform all work and services described herein as an independent Consultant and not as an officer, agent, servant or employee of the CITY; that Consultant shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between CITY and Consultant, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between CITY and Consultant. No person performing any of the work and services described hereunder by Consultant shall be considered an officer, agent, servant or employee of the CITY. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Consultant shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. The CITY does not have the power to direct the order in which the work is done. The CITY shall not have the right to control the means, methods or details of the Consultant's work. Consultant shall assume exclusive responsibility for the work. Consultant is entirely free to do the work in its own way.

ARTICLE IX. INSURANCE

1. Insurance

Consultant shall at all times during the term of this Agreement maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

-Personal Injury:	\$1,000,000.00 per person
	\$1,000,000.00 per occurrence
-Property Damage:	\$500,000:00 per occurrence

Business Automobile Liability: \$250,000.00 combined single limit -
Personal Injury and Property Damage
Worker's Compensation: Statutory limits
Employers' Liability: \$500,000.00 per accident or occurrence

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

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

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

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of the City. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the City as an additional insured on a claims occurred basis. City shall be provided the notice by Consultant's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

Consultant shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers compensation).

The parties agree that, prior to the execution of the Agreement, Consultant shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of the City. The City shall not be required to provide any insurance whatsoever pursuant to this Agreement.

The Consultant certifies that the certificate of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CONSULTANT AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE CONSULTANT SPECIFICALLY AGREES THAT IF THE CONSULTANT 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 CONSULTANT AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CONSULTANT MIGHT OTHERWISE BE ENTITLED.

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

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

ARTICLE XI. SOVEREIGN IMMUNITY

By executing this agreement the CITY is not waiving its right of sovereign immunity. The CITY is retaining its immunity from suit. The CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

The CITY's approval of this agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

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

D. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to CONSULTANT: Jeffrey D. Blume, Limited
28250 FM 2978
Magnolia, Texas 77354

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

E. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

G. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

H. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

I. Federal Wage Requirements. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Agreement, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Agreement, to which the parties to this Agreement have agreed to be bound.

J. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this

Agreement, Consultant or his legal representative, shall give the City Manager, or any other reasonable official of the CITY, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Consultant will settle, the physical and mailing addresses of Consultant at the time and date the claim was presented and the physical and mailing addresses of Consultant for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Consultant relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the CITY from any liability whatsoever. The CITY is under no obligation to provide notice to Consultant that Consultant's notice is insufficient. CITY reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

CONSULTANT:

By: _____
Courtney B. Sharp, City Manager

By: _____
Jeffrey D. Blume, Limited

Name: _____

Title: _____

APPROVED AS TO CONTENT
AND COMPLETENESS

Tina Jauz, Community Services Director

APPROVED ONLY AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____,
2014.

Notary Public, State of Texas

EXHIBIT “A” –
SCOPE OF SERVICES AND COMPENSATION

**For Development of Renovation & Irrigation Plans, together with other various
improvements at Hogan Park Golf Course**

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Article I Project Information

1.1 Project Information

The Owner is legally in possession of certain real property, further described as **Hogan Park Golf Course**, reasonably expects to have funding of \$2,000,000 for design and improvements, and desires to construct improvements to said property, generally described as turf, tee and bunker renovations, irrigation improvements, modifications to the practice areas, some new cart paths and new pump station, hereinafter referred to as "Project."

Article II Golf Course Architect's Services

2.1 General Provisions

The Golf Course Architect shall:

- Become acquainted with, and develop a design based on approved project requirements.
- Perform services under this agreement expeditiously, consistent with professional skill.
- Periodically consult and communicate with, submit design documents or make presentations to the Owner and members of the Project team, for the advancement of the Project. The Golf Course Architect shall coordinate its services with services provided by the Owner and the Owner's Consultants.
- Maintain confidentiality where specifically designated by Owner, unless doing so violates the law, creates public risk or limits the Golf Course Architect's lawful rights.
- Follow the Professional Conduct Code of the American Society of Golf Course Architects.

2.2 Preliminary Consultation and Planning Phase

In the Consultation Phase the Golf Course Architect shall:

- Consult with Owner staff and representatives to determine a final detailed scope of work to address the needs of the golf course, its users and staff.
- Consult with the Owner regarding the necessity of obtaining services from other consultants and professionals to complete the Project (if necessary).

In the Preliminary Planning Phase the Golf Course Architect shall prepare:

- A Feature Design Study illustrating any proposed features for Golf Course, including locations and configurations of the turf replacement areas, new bunker configurations, renovated tee complexes, areas of cart path replacement, areas of irrigation expansion and/or renovation, and modifications made to the practice areas.
- A Preliminary Cost Estimate for golf course construction costs, based on information contained in the preliminary documents, and utilizing area, and/or volume estimates, unit pricing, or similar conceptual estimating techniques, subject to the provisions of Appendix I.

2.3 Design Development Phase

In the Design Development Phase, the Golf Course Architect shall prepare Design Development documents based on the approved Preliminary Design documents. The Design Development

Documents shall endeavor to refine the design for the Project, better establishing golf course design elements with respect to location, size, and character and cost.

The Design Development documents shall include:

- Preliminary Construction Drawings, sufficient in detail to reasonably fix details and ascertain scope of construction.

The Design Development documents shall endeavor to meet submittal requirements of government authorities having jurisdiction over the Project during the permitting process, as applicable and if known in advance. The Golf Course Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required of governmental authorities having jurisdiction over the Project.

- A Revised Cost Estimate for golf course construction based on the Design Development Documents. If this estimate exceeds the Owner's initial budget for the Work, the Golf Course Architect and Owner shall cooperate to adjust the Project's scope of work, quality or budget, in further developing the design for the Project, subject to the provisions below.

Responsibility for Construction Cost

Evaluations of the Owner's Project and any estimates of Construction Cost prepared by the Golf Course Architect, represent the Architect's best judgment as a design professional familiar with the construction of golf courses. However, neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

The Owner may establish a fixed limit of Construction Cost, in which case the Owner and Golf Course Architect shall work together to determine reasonable materials, construction methods and Project Scope to include in the Contract Documents. Golf Course Architect shall provide as part of the bid package alternate bids as may be necessary to adjust the Construction Cost to the fixed limit.

If the lowest bona fide bid or negotiated proposal exceeds the fixed limit of Construction Cost the Owner shall have the option to:

1. Give written approval of an increase in such a fixed limit;
2. Authorize re-bidding or negotiating of the Project within reasonable time;
3. Terminate the Project
4. Cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

If the Owner proceeds under Clause 4, the Golf Course Architect, without additional compensation, shall modify the applicable documents as necessary to comply with the fixed limit. The modification of such documents without cost to the Owner shall be the limit of the Architect's responsibility. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not Construction commences.

2.4 Construction Documents Phase

The Golf Course Architect shall provide Construction Documents based on approved design development documents, adjustments in Project scope, quality or budget by the Owner, and conditions imposed by permits issued for the Project, as applicable.

The Construction Documents shall consist of drawings and specifications setting forth in detail the requirements for the construction of the Project, including the respective responsibilities of Owner, Contractor and Golf Course Architect, together with appropriate Bidding and Proposal Information for Contractors. Golf Course Architect shall determine the format and graphic character. Such documents shall be sufficient for a contractor experienced and knowledgeable in golf course construction to provide a qualified bid and complete the work.

Plans Not Included in the Construction Documents

The Golf Course Architect shall not prepare any Construction Documents listed in Appendix II, be prepared, unless specifically agreed to by the Golf Course Architect.

Work by Others

The following Plans and/or Specifications completed by others in connection with the Project shall be made a portion of the Construction Documents, for the purpose of obtaining a bid for the construction of the Project:

Such plans shall identify the consultant preparing the plan. These plans and specifications of other consultants are included in the Bidding or Construction Documents for the sole convenience of the Owner, and acknowledged and agreed by the Owner that the Golf Course Architect is not responsible for the design, performance or construction evaluation of any such Work.

- Terry J. Little for Irrigation Design – piping, control and pumping unit

The irrigation designer's responsibilities shall include Irrigation and Pumping Plant design, as follows

A. Preliminary Evaluation and Design Development

1. General

Coordination with the Owner, governmental agencies and other design team members.

Limits of irrigation system coverage

- Review product selections and applications to the project
- Pumping requirements
- Permit restrictions
- Project timetable and critical dates for completion of plans
- Projected irrigation budget
- Bidder's minimum requirements
- Prepare preliminary head and coverage plan based on budget limitations.
- Review of the coverage plan with the design team and Owner to review and agree to coverage and projected system cost making necessary adjustments to this plan to fit the final budget for the project.

B. B. Construction Documents and Technical Specifications

Construction plans

- Prepare detailed irrigation construction plans at a minimum scale of 1"=100' on base information provided by the Owner and Golf Course Architect.
- Head layout, piping design, pipe sizing, with notes.
- Controller station assignments for each added rotor.
- Layout and design of the 120-volt controller wiring and wire sizing based on system hydraulics and electric loads.
- Graphic installation details of major components of the system and general notes covering system installation.
- Schematic layout and configuration of the pumping plant and concrete slab.
- Refine estimate of probable construction cost.

Technical Specifications

- Technical specifications for the irrigation system's major components.
- Technical specifications for the pumping plant and control package for the pump station and other additional features to the station as called for on the plans.
- Lump sum bid form.
- System component unit price, quantity and extended item total schedule.
- Assist Golf Course Architect with any General Conditions specific to the irrigation system portion of the bid package.

Bidding and Negotiation

- Assist the Owner and Golf Course Architect in bidding the project to qualified contractors and suppliers.
- Participate in one (1) pre-bid meeting
- Issue clarification and addendum as required obtaining qualified accurate bids.
- Assist the Owner in evaluation of bids and make recommendations as appropriate.

Irrigation Staking and Construction Evaluation Services

- Conduct one (1) pre-construction meeting with the contractor and design team
- Provide irrigation field staking during/prior to construction with the assistance of the contractor and three members of his crew. Staking to be completed in three hole groupings or more with four [3] trips included the basic fee.
- Provide GPS based "as-staked" plans, trip report and hole by hole head chart after each site visit. These will be generated within 72 hours of the visit with copies being distributed to the Owner, Golf Course Architect and contractor.
- Assist Owner and Contractor to determine Substantial Completion, punch list and Final Completion. Upon completion of one (1) punch list trip with the contractor, recommend Final Acceptance of the system, and declare the start of the warranty period.

Optional Services - Post Construction Services

Provide GPS **As-Built Plans** of final irrigation construction, providing more detail from GPS site information gathered during and after irrigation staking and additional information provided from the irrigation contractor's sketches, and notes. These plans will be in the following format:

- 1"=100' vellum plots printed with black ink of the entire system.

2.5 Construction Procurement Phase

Obtaining Bids or Negotiated Proposals

The Golf Course Architect, following the Owner's approval of the Construction Documents, shall assist the Owner in obtaining either bids or negotiated proposals for golf course construction, and in awarding a contract or contracts for the construction of the Project.

2.6 Construction Observation Phase

The Golf Course Architect's responsibilities during the construction phase shall consist of making design and construction observations through periodic site visits.

The Golf Course Architect's duties, responsibilities and limitations of authority under this Agreement shall not be restricted, modified, or extended without written agreement of the Owner and the Golf Course Architect. If any part of the Contract Documents differs from this Agreement concerning the Golf Course Architect's duties, responsibilities and limitations of authority, they shall be enforceable only to the extent that they are consistent with this Agreement or approved in writing by the Golf Course Architect.

The Golf Course Architect's responsibility to provide services during the construction phase commences with the award of the initial Construction Contract for the Work and terminates at the issue of a certificate for final payment for the Project, but not later than the estimated time of completion of September 30, 2014, if the Project is delayed.

Design Review and Construction Observation

The Golf Course Architect and his sub consultants shall visit the site at intervals appropriate to Construction to become generally familiar with the progress of Work completed. The Golf Course Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

The Golf Course Architect shall have the authority to make changes to the Work for the purpose of enhancing and adapting the design for site conditions, such as vegetation, terrain and subsurface geology. All changes are subject to the approval of the Owner, which shall not be unreasonably withheld.

The Golf Course Architect shall keep the Owner informed of observations concerning the progress and quality of Work. The Golf Course Architect shall report to the Owner any observed deviations from the Contract Documents.

By providing these periodic construction observations or any other construction phase service to the Owner under this Agreement, the Golf Course Architect shall not be deemed responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Golf Course Architect shall neither have any control over or charge of, nor be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connections with the Work, since these are solely the Contractor's rights and responsibilities.

The Golf Course Architect shall not be responsible for the acts or omissions of the Contractor, or any subcontractors, or any of the Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work on the Project.

Processing Contractor's Payment Applications

The Golf Course Architect shall assist the Owner in review and authorization of the Contractor's payment applications. The Golf Course Architect's authorization of a payment application shall constitute only a representation that the Work has progressed approximately to the point indicated in such application, and that the Contractor is entitled to payment in the amount stated in the application for payment, subject to any specific qualifications expressed by the Golf Course Architect.

By authorizing an application for payment, the Golf Course Architect shall not be deemed to represent that he has made any exhaustive on-site examinations to check the quality or quantity of the Work, or an evaluation of the Project for conformance with the Contract Documents upon Substantial Completion, or ascertained how or for what purpose the Contractor has used money paid under the Construction Contract.

The Golf Course Architect shall not be required to execute certificates of any kind requiring knowledge, services or responsibilities beyond the scope of this Agreement, and shall have right of approval of any language contained in such certificates. The Owner shall submit proposed language of proposed Certificates of Payment to the Golf Course Architect for review at least 14 days before the requested dates of execution.

Issuing Instructions to the Contractor

The Golf Course Architect shall consult and assist the owner in issuing advice and instructions to the Contractor, but Owner shall issue all such instruction.

Interpreting Contract Requirements

The Golf Course Architect shall be available to interpret the requirements of the Contract Documents. The Golf Course Architect shall make recommendations, when requested, on claims of the Owner or Contractor relating to the Project.

Interpretations and recommendations of the Golf Course Architect shall be consistent with the intent of, and reasonably inferable from the Contract Documents. When making interpretations and recommendations, the Golf Course Architect shall show no partiality to either Owner or Contractor.

Whenever he deems it necessary or advisable, the Golf Course Architect retains the right, but not the duty, to recommend to the Owner the need to reject Work that does not conform to the Contract Documents, or request inspection or testing of Work.

No recommendation or interpretations made in good faith by the Golf Course Architect, including any recommendation to reject or not reject, or request any inspection or testing of the Work shall give rise to a duty or responsibility of the Golf Course Architect for the consequences to the Owner, Contractor, Subcontractors, Suppliers, or their agents or employees or others performing portions of the Work.

Submittals

The Golf Course Architect shall review and make recommendations to the Owner regarding Contractor's submittals such as Shop Drawings, Product Data and Samples, only for the limited purpose of checking for conformance with information and design concepts expressed in the Contract Documents. Such review shall not determine accuracy and completeness dimensions and quantities, or substantiate installation or performance standards, all of which remains the responsibility of the Contractor.

The Golf Course Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures.

Shop Drawings and other submittals designed or certified by the Contractor's design professionals shall bear such professional's written approval. The Golf Course Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals when reviewing submittals.

Change Orders

The Golf Course Architect shall have authority to order minor changes in the Work that are consistent with the intent of the Contract Documents, and not involving an adjustment in the Contract Sum or an extension of the Contract Time.

The Golf Course Architect shall assist the Owner in reviewing requests by the Contractor for Change Orders providing that making a reasonable determination can be made without extensive investigation or preparation of additional drawings or specifications.

Project Completion

The Golf Course Architect shall participate in a Substantial Completion inspection with the Owner, to assist in preparing a "Punch List" of items to be completed or corrected.

The Golf Course Architect shall participate in a Final Completion inspection with the Owner's Contract Administrator or Designated Representative to assist in reviewing the "Punch List" to verify that necessary items have been completed or corrected.

Article III Golf Course Architect's Compensation

4.1 Compensation

Compensation: Owner agrees to pay Golf Course Architect a total fee of One Hundred Thirty Three Thousand dollars (133,000.00). Golf Course Architect's fee shall be paid in U.S. Dollars. This fee covers the entire scope of services for which the Golf Course Architect will perform, but it is understood herein that the contract is to be carried out in distinct phases. Each phase shall be considered a separate point beyond which the Owner has no further obligation to the Golf Course Architect until notice is given by Owner (which may be oral, confirmed in writing) to proceed with the next phase. Such fee shall be paid by Owner to Golf Course Architect in accordance with the following schedule:

Phase I - Preliminary Consultation and Planning Phase – (\$30,000.00)

(\$10,000.00) upon execution of the contract

(\$20,000.00) upon the Owner's receipt and approval of a preliminary plan defining the scope of work for the project.

Phase II – Design Development and Construction Documents Phase – (\$61,000.00)

(\$10,000.00) upon notification to proceed with construction documents

(\$20,000.00) upon the Owner's receipt of the design development documents

(\$31,000.00) upon delivery of the final construction documents, specifications, and bid documents

Phase III - Construction Observation – (\$42,000.00)

(\$42,000.00) to be paid in six consecutive equal monthly installments throughout the construction period. (\$7,000.00 per month for six months).

The overall breakdown of the design fees for the project are as follows:

Golf Course Architect's Fees	\$111,620.00
Irrigation Designer's Fees	\$15,980.00
Irrigation Designer's Expenses	\$5,400.00

Expenses: All of Architect's reasonable out-of-pocket expenses, including printing costs, travel, lodging, food, and ground transportation, are to be the responsibility of the Architect.

- A. Any amounts past due more than 30 days shall bear interest at a rate of 1% per month not to exceed the maximum non-usurious interest rate permitted by applicable law.
- B. Should the acceptance of this Agreement by Client be delayed, the foregoing fees shall be applicable through March 31, 2014.

Base Information: The Owner shall be responsible for providing or obtaining at the Owner's expense all services or information set forth in this section and the Golf Course Architect shall be entitled to rely on the accuracy and completeness thereof.

- A. a legal description and certified survey of the Property;
- B. staking of the Property boundaries and golf hole locations;
- C. a topographical survey of the Property;
- D. aerial photographs of the Property;
- E. drainage plans for the Property incorporating the Golf Course construction plans;
- F. engineering and other consulting services, including test borings and analysis, and other technical services as reasonably deemed necessary by the Golf Course Architect; and
- G. any other services not otherwise included in this Agreement as an obligation of the Golf Course Architect.

The information and services described in this section shall be provided when deemed reasonably necessary by Golf Course Architect based on written notice by Golf Course Architect to Owner.

Article IV Other Agreements

4.1 OTHER AGREEMENTS:

- 1. The Design Documents are the property of both the Architect and Client, whether the Golf Course is completely constructed or not. Client shall be entitled to copies of the Design Documents for information and use in connection with Client's use and occupancy of the Golf Course. The Design Documents shall not be used by Client on any other project, for additions to this Golf Course, or for completion of this Golf Course by others, except pursuant to a written agreement with Architect providing for appropriate compensation to Architect.

2. In the event a party to this Agreement fails to comply with any of its obligations hereunder, through no fault of the other party, the non-defaulting party may terminate this Agreement upon thirty (30) days' written notice to the party in default, provided that such right of termination may not be exercised if the default is cured by the defaulting party within thirty (30) days of receipt of the written notice by such party. In the event of termination by Architect, Architect shall be entitled to immediate payment of all compensation due for phase currently in progress as to the amount of work actually performed. In the event of termination by Client, Architect shall be entitled to receive compensation for all services rendered to the time of termination. In the event Architect determines, in its reasonable discretion, that the Golf Course to be constructed on the Property is, because of regulatory, budgetary, adjustments in the final property configuration, or similar reasons, a golf course which will not be consistent with the minimum industry standards, Architect may terminate this Agreement upon sixty (60) days written notice to the Client. In the event of any termination of this Agreement, Client shall not be permitted to utilize the name of the Architect in connection with the Golf Course except upon the express written consent of Architect.
3. Client must utilize the name of the Architect in all publicity, promotional material and selling documents relating to the Golf Course. Any references to Architect shall be subject to Architect's prior review and approval, which approval shall be deemed given if Architect does not provide objections to material within thirty (30) days after submission of material to Architect for approval. Client further agrees that Architect will have the right to utilize photography in public relations and promotional materials prepared in the Architect's behalf, and agrees to make negatives available to Architect for these purposes upon request and at no charge.

Architect shall provide personal appearances in connection with the promotion of the Golf Course scheduled during his regular design phase or construction visits. However, for additional promotional visits other than golf course construction commencement and opening events, Architect shall be paid for such appearances at a rate of \$1,500.00 per diem plus all reasonable expenses.

4. Subject to consultation with the Architect, Client agrees it shall employ a greens superintendent, on or before the commencement of grassing of the Golf Course.
5. This Agreement shall be construed in accordance with the laws of the jurisdiction in which the Property is located.
6. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns. It is specifically agreed that, in the event Client sells the property prior to completion of the Agreement, Client shall either obtain the agreement of the purchaser to assume this Agreement or shall pay the Architect the remaining amounts due hereunder.
7. This Agreement sets forth all agreements between the Client and Architect relative to the Golf Course, and all prior negotiations or agreements are set forth in this Agreement. No modification hereof or subsequent agreement relative to the subject matter hereof shall be binding unless it is produced in writing and signed by the parties to this Agreement.
8. Client shall indemnify Architect and hold Architect harmless from any and all claims and causes of action asserted against Architect arising out of or related to the Property and/or the Golf Course. Architect shall indemnify Client and hold Client harmless from any and all claims and causes of action asserted against Client directly resulting from Architect's performance hereunder. The foregoing indemnities shall not apply if the party to be indemnified is guilty of gross negligence and/or willful misconduct. The Client agrees to limit the Architect's liability to the Client and to all construction contractors and subcontractors on the project resulting from negligent acts, errors and omissions of the

Architect such that the total aggregate liability of the Architect shall not exceed the Architect's fee earned and/or accrued through any termination, however, never to exceed \$133,000.00. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred, including but not limited to, reasonable attorney's fees.



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of one (1) Python PHP 5000 Integrated Asphalt Patching Unit for the Garage Division from Global Environmental Products through the Houston-Galveston Area Council (H-GAC).

Purpose:

Approval of the purchase of one (1) Python PHP 5000 Integrated Asphalt Patching Unit.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$292,966.50 from the Garage Fund

Discussion:

Staff is recommending the purchase of a Python PHP 5000 Integrated Asphalt unit because it is a cab controlled pothole patcher and is operated by one employee. This pothole patcher is an all in one unit which applies, levels and compacts the patching material thereby increasing the number of potholes that can be patched in a day. The traditional pothole patchers require a crew and they take longer to repair a pothole. This pothole patcher is available through H-GAC. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider a resolution authorizing the purchase of one (1) Python PHP 5000 Integrated Asphalt Patching Unit from Global Environmental Products of San Bernardino, California through H-GAC for a total cost of \$292,966.50.

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF ONE
(1) PYTHON PHP 5000 INTEGRATED ASPHALT
PATCHING UNIT FOR THE GARAGE DIVISION FROM
GLOBAL ENVIRONMENTAL PRODUCTS THROUGH
THE HOUSTON-GALVESTON AREA COUNCIL AT A
TOTAL COST OF \$292,966.50; THIS ITEM WAS NOT
BID BUT PURCHASED THROUGH A COUNCIL OF
GOVERNMENTS; AND APPROPRIATING FUNDS**

WHEREAS, the Houston-Galveston Area Council (H-GAC) is a cooperative purchasing agency with which the City participates with on purchases through a cooperative purchasing program in accordance with TEX. LOC. GOV'T CODE § 271.102; and

WHEREAS, Global Environmental Products has submitted a total proposed cost to the City of \$292,966.50 for the purchase of one (1) Python PHP 5000 Integrated Asphalt Patching Unit through H-GAC, as shown on the quote attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Global Environmental Products through H-GAC for said Python PHP 5000 Integrated Asphalt Patching Unit to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said Python PHP 5000 Integrated Asphalt Patching Unit from Global Environmental Products through H-GAC;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said Python PHP 5000 Integrated Asphalt Patching Unit referred to above through H-GAC at a total estimated cost of \$292,966.50.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said Python PHP 5000 Integrated Asphalt Patching Unit upon proper receipt of invoices or statements approved by the City Manager.

SECTION THREE. That the sum of \$292,966.50 is hereby appropriated from the Garage Fund (750) operating account for heavy trucks (8830).

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., 2014, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

**CONTRACT PRICING WORKSHEET**
For Standard Equipment PurchasesContract
No.:

SM10-12

Date
Prepared:

12/29/2013

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents **MUST** be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	City of Midland, TX	Contractor:	Global Sweeping Solutions
Contact Person:	Joe Garcia	Prepared By:	Chad Bormann
Phone:	432.685.7451	Phone:	909-713-1600
Fax:		Fax:	909-713-1613
Email:	jgarcia@midlandtexas.gov	Email:	cbormann@globalsweeper.com

Product Code:	AB01	Description:	Python PHP 5000 integrated asphalt patching unit - Single engine
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A. Product Item Base Unit Price Per Contractor's H-GAC Contract: 286366.5

B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
LED lights -	INC		INC
Patcher Body	INC	Lighting - LED Stop, Tail,	INC
Hopper access steps, walkway	INC	Tack Oil Flushing System	INC
Tack oil temperature control	INC	Asphalt V-Rake with manually adjustable wings	INC
Hopper temperature control	INC	Beacon lights - 5" Dual Cab Mount Strobe	INC
Arrow board - LED type	INC	2 Cab-mounted work lights at corners	INC
Strobe lights - Dual rear	INC	Fire Extinguisher	INC
Chemical spray system -	INC		
Mirrors - Power / Heated West	INC		
Camera system - 7" Color LCD	INC		
	INC	Subtotal From Additional Sheet(s):	
		Subtotal B:	0

C. Unpublished Options - Itemize below - Attach additional sheet if necessary
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
		Subtotal From Additional Sheet(s):	
		Subtotal C:	0

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).

For this transaction the percentage is:

0%

D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	286366.5	=	Subtotal D:	286366.5
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E. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
Freight to Midland, TX	3800		
Training	2800		
		Subtotal E:	6600

Delivery Date:	90 Days ARO	F. Total Purchase Price (D+E):	292966.5
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City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of one (1) complete Type 1 Ambulance for \$182,350.00 and remounting a Type 1 Ambulance body on a Dodge Ram 4500 Diesel DRW cab and chassis for \$79,775.00 for the Garage Division from Dallas Dodge Chrysler Jeep through the Houston-Galveston Area Council (H-GAC) for a total cost of \$262,125.00.

Purpose:

Approve the purchase one (1) complete ambulance and remount an ambulance body on a new cab and chassis.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$262,125.00 from the Garage Fund

Discussion:

The ambulance and the ambulance remount are approved in the 2013-2014 budget and are available through H-GAC. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider a resolution approving the purchase of one (1) complete ambulance for \$182,350.00 and remounting an ambulance body on a Dodge Ram 4500 Diesel DRW cab and chassis for \$79,775.00 from Dallas Dodge Chrysler Jeep of Dallas, Texas through H-GAC for a total cost of \$262,125.00.

RESOLUTION NO. _____

RESOLUTION APPROVING THE PURCHASE OF ONE (1) COMPLETE TYPE 1 AMBULANCE IN THE AMOUNT OF \$182,350.00 AND REMOUNTING A TYPE 1 AMBULANCE BODY ON A DODGE RAM 4500 DIESEL DRW CAB AND CHASSIS IN THE AMOUNT OF \$79,775.00 FOR A TOTAL COST OF \$262,125.00 FOR THE GARAGE DIVISION FROM DALLAS DODGE CHRYSLER JEEP THROUGH THE HOUSTON-GALVESTON AREA COUNCIL AT A TOTAL COST OF \$262,125.00; THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COUNCIL OF GOVERNMENTS; AND APPROPRIATING FUNDS

WHEREAS, the Houston-Galveston Area Council (H-GAC) is a cooperative purchasing agency with which the City participates with on purchases through a cooperative purchasing program in accordance with TEX. LOC. GOV'T CODE § 271.102; and

WHEREAS, Dallas Dodge Chrysler Jeep has submitted a total proposed cost to the City of \$262,125.00 for the purchase of one (1) Complete Type 1 Ambulance (\$182,350.00) and remounting a Type 1 Ambulance Body on a Dodge Ram 4500 Diesel DRW cab and chassis (79,775.00) through H-GAC, as shown on the quote attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Dallas Dodge Chrysler Jeep through H-GAC for said Complete Type 1 Ambulance and Remounting a Type 1 Ambulance Body on a Dodge Ram 4500 Diesel DRW cab and chassis to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said Complete Type 1 Ambulance and Remounting a Type 1 Ambulance Body on a Dodge Ram 4500 Diesel DRW cab and chassis from Dallas Dodge Chrysler Jeep through H-GAC;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said Complete Type 1 Ambulance and Remounting a Type 1 Ambulance Body on a Dodge Ram 4500 Diesel DRW cab and chassis referred to above through H-GAC at a total cost of \$262,125.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said Complete Type 1 Ambulance and Remounting a Type 1 Ambulance Body on a Dodge Ram 4500 Diesel DRW cab and chassis upon proper receipt of invoices or statements approved by the City Manager.

SECTION THREE. That the sum of \$262,125 is hereby appropriated from the Garage Fund (750) operating account for medium and light trucks (8820).

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2014, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

**CONTRACT PRICING WORKSHEET**
For MOTOR VEHICLES OnlyContract
No.:

AM10-12

Date
Prepared:

12/17/13

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both the PO and the Worksheet **MUST** be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	Midland Fire Department	Contractor:	Dallas Dodge Quote 8811-HGAC
Contact Person:	Roche Bellamy	Prepared By:	Tim Middlebrooks
Phone:	432-413-1363	Phone:	214-319-1336
Fax:		Fax:	214-319-1306
Email:	rbellamy@midlandtexas.gov	Email:	tmiddlebrooks@kag-1.net

Product Code:	KD10	Description:	Type I 14' on Dodge Ram 4500 Diesel DRW Cab/Chassis, Gen Pwr Mod
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A. Product Item Base Unit Price Per Contractor's H-GAC Contract: \$132,250.00

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
34-Heat shielding for diesel chassis	\$1,500.00	6181-Voyager back up camera on the rear wall	\$550.00
9865-All products listed in the current Stryker List Price Book	\$15,080.00	6183-Voyager camera in the patient compartment on the rear pa	\$550.00
1388-Provide a Stryker antler and bar	\$700.00	6188-Voyager quad view monitor in the truck cab near the rear	\$1,050.00
1616-Striping and lettering - \$3300	\$3,300.00	908-Blue EVS captain's chair with built-in child safety seat	\$700.00
1630-Conspicuity on the entire rear of the module including the	\$1,500.00	4680-Single 30A Kussmaul auto eject shore power receptacle w	\$850.00
8367-Black Ranch Hand grille guard/full replacement bumper v	\$1,300.00	938-Double Squad bench cabinet w/ padding on end	\$600.00
8122-ArcRite running boards for 2009 thru 2012 Dodge Ram 35	\$850.00	958-3 high powder coated aluminum glove box holder/ end rail	\$450.00
7299-3M Opticom on the front wall (latching)	\$1,800.00	948-22 pocket acrylic organizer above squad bench (was PD1)	\$450.00
8328-Buell dual 10" & 12" air horns	\$800.00	460-MDT plate with swivel	\$450.00
7722-Mount a fast recovery compressor below the front I/O	\$1,200.00	564-Arm rests on the console	\$200.00
7654-Whelen Pioneer Plus dual panel Super-LED floodlights-on	\$2,200.00	Subtotal From Additional Sheet(s):	\$1,150.00
8322-Install a Knox Medvault in the corner area - includes runn	\$1,825.00	Subtotal B:	\$39,055.00

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
R4Tech air suspension	\$7,000.00		
Aluminum wheels on chassis	\$995.00	Subtotal From Additional Sheet(s):	
Slide-out flip down slide w/ "M" cylinder bracket	\$800.00	Subtotal C:	8795

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: 5%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)

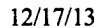
Quantity Ordered:	1	X Subtotal of A + B + C:	\$180,100.00	=	Subtotal D:	\$180,100.00
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E. H-GAC Order Processing Charge (Amount Per Current Policy) **Subtotal E:** \$1,000.00

F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
Delivery	\$1,250.00		
		Subtotal F:	1250

Delivery Date: **G. Total Purchase Price (D+E+F):** \$182,350.00



**CONTRACT PRICING WORKSHEET**
For MOTOR VEHICLES OnlyContract
No.:

AM10-12

Date
Prepared:

12/04/13

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both the PO and the Worksheet **MUST** be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	Midland Fire Department	Contractor:	Dallas Dodge Quote 8780A-HGAC
Contact Person:	Roche Bellamy	Prepared By:	Tim Middlebrooks
Phone:	432-413-1363	Phone:	214-319-1336
Fax:		Fax:	214-319-1306
Email:	rbellamy@midlandtexas.gov	Email:	tmiddlebrooks@kag-1.net

Product Code:	KE11	Description:	Rmt. Of Type I 14' Frazer conversion on Dodge Ram 4500 Diesel DRW Cab/Chassis
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A. Product Item Base Unit Price Per Contractor's H-GAC Contract: \$65,500.00

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
34-Heat shielding for diesel chassis	\$1,500.00		
8367-Black Ranch Hand grille guard/full replacement bumper w	\$1,300.00		
8122-ArcRite running boards for 2009 thru 2012 Dodge Ram 35	\$850.00		
8328-Buell dual 10" & 12" air horns	\$800.00		
7722-Mount a fast recovery compressor below the front I/O	\$1,200.00		
7667-Whelen 295HFSC9 in console in lieu of standard	\$225.00		
		Subtotal From Additional Sheet(s):	
		Subtotal B:	5875

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
R4Tech air suspension	\$7,000.00		
Slide-out flip down slide w/ cylinder bracket	\$800.00		
		Subtotal From Additional Sheet(s):	
		Subtotal C:	7800

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is: 11%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	\$79,175.00	=	Subtotal D:	\$79,175.00
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E. H-GAC Order Processing Charge (Amount Per Current Policy) Subtotal E: \$600.00**F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges**

Description	Cost	Description	Cost
		Subtotal F:	0

G. Total Purchase Price (D+E+F): \$79,775.00

Delivery Date:



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of fifty (50) bunker coats and fifty (50) bunker pants for the Fire Department from Dooley Tackaberry, Inc. through Buyboard contract #363-10 for a total cost of \$95,900.00.

Purpose:

Approval of the purchase of fifty (50) bunker coats and fifty (50) bunker pants.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

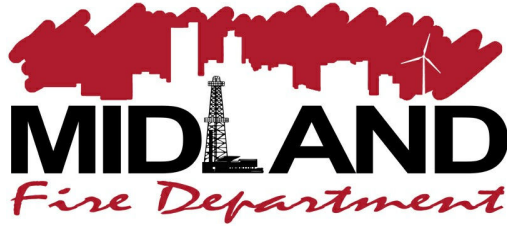
Fiscal Impact:

\$95,900.00 from the General Fund

Discussion:

Staff recommends purchasing fifty (50) bunker coats and fifty (50) bunker pants from Dooley Tackaberry, Inc. through the Buyboard. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. Please refer to the memo from the Fire Department for further discussion regarding this purchase.

Therefore, please consider a resolution approving the purchase of fifty (50) bunker coats and fifty (50) bunker pants from Dooley Tackaberry, Inc. of Deer Park, Texas through Buyboard contract #363-10 for a total cost of \$95,900.00.



Interoffice Memorandum

Date: 1/31/2014
To: Regina Stephenson
From: BC Charles Blumenauer
Subject: 2014 Personal Protective Equipment (PPE) purchase

We are in the process of our yearly purchase of PPE in accordance with NFPA 1851: Standard on Selection, Care, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting.

This is the same specification that we tested in 2009 through many vendors before settling on the Inno-Tex specs due to quality and price point.

This purchase was budgeted for this year to replace worn gear and to outfit new employees for this coming year.

Charles Blumenauer

Administrative Battalion Chief

RESOLUTION NO. _____

RESOLUTION APPROVING THE PURCHASE OF FIFTY (50) BUNKER COATS AND FIFTY (50) BUNKER PANTS FOR THE FIRE DEPARTMENT FROM DOOLEY TACKABERRY, INC. THROUGH BUYBOARD AT A TOTAL COST OF \$95,900.00; THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COOPERATIVE PURCHASING PROGRAM

WHEREAS, the Buyboard is a cooperative purchasing agency with which the City participates with on purchases through a cooperative purchasing program in accordance with TEX. LOC. GOV'T CODE § 271.102; and

WHEREAS, Dooley Tackaberry, Inc. has submitted a total proposed cost to the City of \$95,900.00 for the purchase of fifty (50) bunker coats and fifty (50) bunker pants through Buyboard, as shown on the quote attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Dooley Tackaberry, Inc. through Buyboard for fifty (50) bunker coats and fifty (50) bunker pants to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase fifty (50) bunker coats and fifty (50) bunker pants from Dooley Tackaberry, Inc. through Buyboard;

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 fifty (50) bunker coats and fifty (50) bunker pants referred to above through Buyboard at a total estimated cost of \$95,900.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said bunker coats and bunker pants upon proper receipt of invoices or statements approved by the City Manager.

SECTION THREE. That the sum of \$95,900 is hereby appropriated from the Fire Department (115) in the General Fund (001) from their clothing account (2570).

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., 2014, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney



Houston Corporate Headquarters
1515 W. 13th Street
Deer Park, Texas 77536 USA
PHONE: 281.479.9700
TOLL FREE: 800.833.0247

Bill To:
064204
MIDLAND FIRE DEPARTMENT
P.O. BOX 1152
MIDLAND, TX 79702

Ship To:
MIDLAND FIRE DEPARTMENT
ATTN: CHIEF FRITZ NIGGELER
1500 W. WALL
MIDLAND, TX 79701

REC'D JAN 23 2014

QUOTATION

DATE: 01/20/14
OUR REFERENCE: 929214
YOUR REFERENCE: BUNKER GEAR.
PAGE: 1 of 1
SLSM: 121

Attention: CHUCK BLUMENAUER

We are pleased to submit the following quotation for your consideration.

ITEM	QTY	PART NUMBER AND DESCRIPTION	ORIGIN	ECCN	SCHEDULE B	PRICE	U/M	EXTENSION
1	50	INNOTEX NO. INNO5000X-C-SPL BUNKER COAT 5000X SERIES PER CUSTOMER SPECIFICATIONS QUO-07641-T2NQ				1,128.00	EA	\$56,400.00
2	50	INNOTEX NO. INNO5000X-P-SPL BUNKER PANTS 5000X SERIES PER CUSTOMER SPECIFICATIONS QUO-07641-T2NQ FREIGHT IS PREPAID.				790.00	EA	\$39,500.00
3	1	TASB NO. BUYBOARD FEE BUYBOARD ORDER BUYBOARD CONTRACT # 363-10				0.00	EA	\$0.00
						MERCHANDISE TOTAL	TAX	QUOTE TOTAL USD
						95,900.00	0.00	95,900.00

Terms: NET 30 DAYS CASH

Shipping Terms:

Prices Firm: 02/19/14

Ship Via: BEST WAY

Freight Term: PREPAID

Shipment:

By PAUL BROWN
Phone: 713.427.3919 (Direct)
Email: paulb@dtlhome.com



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a contract for labor, material, equipment and supervision necessary for the turnkey installation of a Splashpad at the Scharbauer Sports Complex from Kraftsman L.P. through Buyboard for a total cost of \$405,750.52.

Purpose:

Approval of a resolution for turnkey installation of a Splashpad at the Scharbauer Sports Complex.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$405,750.52 from the Scharbauer Sports Complex Fund

Discussion:

The purchase and installation of a splashpad at the Scharbauer Sports Complex was recommended and included in the approved list of 2014 Capital Improvements by the 4B Board. Staff is recommending Kraftsman, L.P. for this project. Please see the attached memo from Tina Jauz, Community Services Director for further discussion.

Therefore, please consider a resolution approving the turnkey installation of a Splashpad at the Scharbauer Sports Complex from Kraftsman, L.P. of Spring, Texas through Buyboard contract #423-13 for a total cost of \$405,750.52.

CITY OF MIDLAND
Community Services Department
Parks & Recreation Division
Interoffice Memorandum

Date: January 28, 2014
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Purchase and Installation of a Splashpad at Scharbauer Sports Complex

The 4B Board has recommended the installation of a Splashpad at the Scharbauer Sports Complex Baseball Park in 2014. It was included in the approved list of 2014 Capital Improvements at an estimated cost of \$325,000.00.

City staff has worked with Kraftsman Commercial Playgrounds and Water Parks to design an addition to the Sports Complex that would serve as both an impressive water feature, shooting jets of water in lighted columns up to 30 feet, and an interactive Splashpad, shaped on the ground in the image of a baseball. The Splashpad would provide recreational opportunities for visitors of all ages at the Sports Complex. The feature would be operational during the baseball games, as well as possible utilization as a private rental when games are not going on. The Splashpad will be located south of the existing berm, replacing the currently underutilized wiffle ball field.

The original concept for the Splashpad was to re-purpose the water used while the feature was operational. Water was to be stored in an underground tank and then used for irrigation purposes on the grounds. Due to the complexity of the existing irrigation system at the Complex, as well as our ever increasing awareness to be mindful of our water resources, the design was changed to include a state-of-the-art filtration system which would recirculate the water that is used. The system is the most water efficient method of operating a water feature. This filtration system added additional costs above the original estimate.

The staff anticipates that construction of the feature will be completed in early June in order to be available to users throughout summer 2014.

The total cost of the project is \$405,750.52. Funds are available in the Fiscal Year 2014 Sports Complex budget accounts in the following amounts:

Other Impr (7860)	(Splashpad estimate)	\$ 325,000.00
Other Impr (7860)	(Playground Shade structure underrun)	\$ 15,350.52
Lighting (7261)	(Pavilion lighting underrun)	\$ 65,400.00

The original approved funds of \$325,000 will be added to funds from two other projects that came in under budget. No additional funding is needed to complete the project.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH KRAFTSMAN, L.P., OF SPRING, TEXAS FOR LABOR, MATERIAL, EQUIPMENT AND SUPERVISION NECESSARY FOR THE TURNKEY INSTALLATION OF A SPLASHPAD AT THE SCHARBAUER SPORTS COMPLEX THROUGH BUYBOARD AT A TOTAL COST OF \$405,750.52; THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COOPERATIVE PURCHASING PROGRAM

WHEREAS, the Buyboard is a cooperative purchasing agency with which the City participates with on purchases through a cooperative purchasing program in accordance with TEX. LOC. GOV'T CODE § 271.102; and

WHEREAS, Kraftsman, L.P. has submitted a total proposed cost to the City of \$405,750.52 for labor, material, equipment and supervision necessary to purchase and install a Splashpad at the Scharbauer Sports Complex through Buyboard as shown on the quote attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Kraftsman, L.P. through Buyboard for said labor, material, equipment and supervision necessary to purchase and install a Splashpad at the Scharbauer Sports Complex to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize a contract with Kraftsman, L.P., for said labor, material, equipment and supervision necessary to purchase and install a Splashpad at the Scharbauer Sports Complex through Buyboard;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Kraftsman, L.P., for labor, material, equipment and supervision necessary to purchase and install a Splashpad at the Scharbauer Sports Complex in the amount of \$405,750.52, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That upon proper receipt of invoices or statements approved by the City Manager, the City Treasurer is hereby authorized and directed to pay Kraftsman, L.P. the amount of \$405,750.52 for the work referenced herein.

SECTION THREE. That the sum of \$405,750.52 is hereby appropriated from the Scharbauer Sports Complex Fund (620) other improvements account (7860).

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., 2014, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney



CONTRACT

Contract No. 7541-14

THIS CONTRACT, effective the 12th day of February, 2014, by and between the City of Midland, hereinafter referred to as the "City", and Kraftsman, L.P., hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 405,750.52 DOLLARS
2. **Scope of Work:** The Contractor shall perform all work described for labor, material, equipment and supervision necessary for the turnkey installation of a Splash Pad at the Scharbauer Sports Complex in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary
EXHIBIT B..... Intentionally Omitted
EXHIBIT C..... Bonding instructions for Public Works Contract of \$50,000 and more
EXHIBIT D..... Wage Scale
3. **City:** The words "City's Representative" or "representative" shall mean Tina Jauz or her designee under whose supervision these contract documents, including the plans and specifications, were prepared, or who may inspect work performed under this Contract; or such other representative, supervisor, or inspector as may be authorized by the City to act in any particular capacity under this Contract.
4. **The City's Representative** may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. City's representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. City's representative will not be responsible for the Contractor's failure to perform the work in accordance with the contract.

5. **Contractor:** Unless otherwise stipulated, the Contractor shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

5.1. The Contractor shall, at its expense, obtain all permits and licenses necessary for the performance of this contract and pay all fees and taxes required by law, and comply with all laws, ordinances, rules and regulations governing the Contractor's performance of the contract, including all environmental laws and regulations, whether state or federal.

5.2. All work shall be done and all materials furnished in strict conformity with the contract and specifications.

6. **Minor Work Not Mentioned:** All minor detail of the work not specifically mentioned in the Specifications but obviously necessary for the proper completion of the work, such as the proper connection of new work to old, shall be considered as incidental to and a part of the work for which the prices are named in the contract. The Contractor will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the term "extra work" as used in this contract shall mean and include all work that may be required by the City to be done by the Contractor to accomplish any alteration or addition to the work as shown on the Specifications.

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

7. **Safety:** The Contractor shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws. All machinery and equipment and other physical hazards shall be guarded in accordance with federal, state or municipal laws or regulations.

8. **INDEMNITY: THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES,**

LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE CONTRACTOR, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8.1. THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE CITY, THE CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH THE CONTRACTOR OR THE CONTRACTOR'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8.2. THE CONTRACTOR AGREES THAT HE WILL INDEMNIFY AND SAVE THE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, THE CONTRACTOR

SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. THE CONTRACTOR, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS THE CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF THE CONTRACTOR OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

9. **Start of Work:** The Contractor shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 90 calendar days after release to proceed.

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

11. **Warranty:** Neither the final payment nor any provision in this contract shall relieve the Contractor of responsibility for faulty materials or workmanship, and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. The City shall give notice of observed defects with reasonable promptness.

12. **Remedy:** The City may, on account of subsequently discovered evidence, withhold whole or part of any payment to such extent as may be necessary to protect itself from loss on account of:

12.1. Defective work not remedied; or

12.2. Claims filed or reasonable evidence indicating possible filing of claims; or

12.3. Failure of the Contractor to make payments promptly to subcontractors or for material or labor which the City may pay as an agent for the Contractor; or

12.4. Damages to another contractor or subcontractor.

When the above grounds to withhold payment are removed, or the Contractor provides a surety bond satisfactory to the City, which will protect the City in the amount withheld, payment shall be released.

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

14. **Wage Scale:** The Contractor agrees to pay all workmen in his employ no less than the generally prevailing wage rate for employees of similar category in the Permian Basin Area, as is depicted in the wage rate scale attached hereto as EXHIBIT D, and incorporated herein by reference for all legal purposes.

14.1. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Contract, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Contract, to which the parties to this Contract have agreed to be bound.

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

16. **Payment:** After all work is completed by the Contractor, including all Change Orders altering the original scope and amount of said contract are completed, and the City has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, the City shall thereafter issue payment to the Contractor in the amount of the contract and all Change Orders. The City shall be the final judge of when the work is completed by the Contractor. The City, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to the City's requirements. The City may make periodic payments to the Contractor, however such periodic payments may only be made pursuant to this paragraph, and only after all work

and all Change Orders are completed by the Contractor and approved by the City. Any approval of payments shall be in the City's sole discretion.

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

20. **Insurance**

Contractor shall at all times during the term of this Contract maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of the City. All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name the City as an additional insured on a claims occurred basis. City shall be

provided the notice by Contractor's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

Contractor shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Contract to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers compensation).

The parties agree that, prior to the execution of the Contract, Contractor shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of the City. The City shall not be required to provide any insurance whatsoever pursuant to this Contract.

The Contractor certifies that the certificate of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

21. **Assignment:** Contractor shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

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

23. **Governing Law and Venue:** This Contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Contract shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Contract or the performance of this Contract shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Contract shall be deemed to have

occurred in Midland County, Texas.

24. **Independent Contractor:** It is expressly understood and agreed that Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor. No person performing any of the work and services described hereunder by Contractor shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Contract is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Contractor shall be an independent contractor under this Contract and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Contractor's work. Contractor shall assume exclusive responsibility for the work. Contractor is entirely free to do the work in its own way.

25. **Notice of Alleged Breach; Statutory Prerequisites:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, Contractor or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Contractor will settle, the physical and mailing addresses of Contractor at the time and date the claim was presented and the physical and mailing addresses of Contractor for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Contractor relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Contractor that Contractor's notice is insufficient. The City reserves the right to request reasonable additional

information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

27. **Termination At Will:** The City may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to the Contractor. The parties to this Contract understand and agree that it is in the City's sole discretion to cancel the Contract during the term of the Contract without penalty to the City. The Contractor has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

Contract No: 7541-14

City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED ONLY AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract No. 7541-14

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 20__.

Notary Public, State of Texas



Kraftsman

COMMERCIAL PLAYGROUNDS &
WATER PARKS

19535 Haude Road
Spring TX 77388
Phone: 281-353-9599
Fax: 281-353-2265

Quote #Q47961

Page: 1

Date: 1/30/2014
Project: 15548
By: Pat Kennedy

Sold To: Midland, City of
Laurie Williams
Security Bank Ballpark Fountain
2300 Butternut
Midland TX 79705
Phone: 432-685-7370 Fax: 432-685-7380
Terms: Percentage Completed Draws Monthly

Ship To: Midland, City of
Laurie Williams
Security Bank Ballpark Fountain
5514 Champions Dr
Midland TX 79706
Main Phone: 432-685-7370 Mobile Phone: 432-413-2076

Qty	Product	Description	Size	Weight	Color	Unit Price	Ext. Price
PD-1.1, Opt 1, Rev 0							
10	FIC-P14132	Custom Fountain-in-a-Can™ with Flush Jet, (1) LC3LSP10 LED Light Fixture, Junction Box with potting compound, Stainless Steel Slotted Drain Type Grate w/Perimeter Drain, Stainless Steel Housing Assembly w/anchors, Pipe and Conduit connections; Stainless Steel Anchor Bolts with nuts and washers; Anchor Bolt Template; and Concrete Pour					0.00
1	CWS-075	Wind Speed Sensor					0.00
16	W086	Directional Eyeball Jet, by Water Odyssey			N/A		0.00
1	CPL-P14132 -1	Custom UL Listed electronic control panel including NEMA-12 enclosure, power distribution, Power Line Modem, GFCI light circuits, time clocks, Touchscreen Color HMI, HOA switches, dual stage wind control, programmable feature effect controls, labeled terminal strips for field connections.					0.00
1	CPL-P14132 -2	UL Listed NEMA-12 Wall Mount Variable Frequency Drive.					0.00
1		subtotal for equipment				96,460.00	96,460.00
1	DISCBB	Discount on BuyBoard Purchase BuyBoard Contract # 423-13				-9,646.00	-9,646.00
1	W017-W	Vibration Launch Pad™, Wireless (Surface Mounted), bolts to concrete surface, antenna not included. By: Water Odyssey.				2,150.00	2,150.00
1	AKWFS900	Aquakraft Water Filtration pump System - Horizontal Sand Filters -				70,000.00	70,000.00

Exhibit "A"



Kraftsman

COMMERCIAL PLAYGROUNDS &
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Date: 1/30/2014
Project: 15548
By: Pat Kennedy

1	KWMF-12P	Water distribution Manifold, (12) 2" discharge assemblies each w/(1) true union ball valve and (1) 24VAC glass filled plastic solenoid valve.			9,000.00	9,000.00
1	DISCBB	Discount on BuyBoard Purchase BuyBoard Contract # 423-13			-3,950.00	-3,950.00
1	WRHT4	Water Reservoir Holding Tank, Concrete with epoxy coated interior, with access lid and hatch; 1½" Automatic fill valve with wall penetration; overflow and all penetrations as required by project design. 4000 Gallon; by AquaKraft	4000 Gallon		20,200.00	20,200.00
1	TRENCH DRAIN	Cast concrete trench drain with flexible PVC grate cove, By AquaKraft	8"	choice	9,000.00	9,000.00
1	SPLASHDECK	Spray Play Pad, 5" thick concrete pad with slope to drains, rebar reinforced, light broom finished to help prevent the possibility of slippage (no coloring or top coat), By: Kraftsman	1 sqft		39,400.00	39,400.00
1	REMOVAL	Removal of existing Turf, fencing, and concrete deck.			15,000.00	15,000.00
1	BOND1	Performance & Payment Surety Bond, and processing of the bond documentation.			12,172.52	12,172.52
962	KRAFTKOAT W/ DESIGN	KraftKoat Spray Play Deck coating, modified cementitious top coating concrete overlay. Coating is to provide slip resistance, cool deck surface (when used with light colored sealers) and architectural appearance. Multi color from selection of 19 standard colors with design (design to be approved by Kraftsman, and price is subject to increase depending on intricacy of layout).	sf	choose 4 of 19	9.50	9,139.00
1	TRAIN 1	One day of technical support personnel on site to assist with balancing features, system start up, and 4 hours of staff training. By: Kraftsman				0.00
1	INSURANCE-AI	Name customer as additional insured on General Liability Policy and processing of coverage.			1,200.00	1,200.00
1	INSURANCE	Waiver of Subrogation			800.00	800.00



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Date: 1/30/2014
Project: 15548
By: Pat Kennedy

Subtotal:	\$270,925.52
Shipping & Handling:	\$9,950.00
Equipment Subtotal:	\$280,875.52
Tax:	\$0.00
Install:	\$124,875.00
Total:	\$405,750.52



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Date: 1/30/2014
Project: 15548
By: Pat Kennedy

Notes

Subject: Buy Board

Date: 1/29/2014

Proposal is submitted with applicable discounts per Buy Board program to reflect established discounts on Water Odyssey equipment.

Subject: Bonding

Date: 1/29/2014

Performance and payment bonds are included.

Subject: Building Permits & Engineering Stamps

Date: 1/29/2014

1. Building permits are provided.
 2. Engineer stamped plans are not included.
 3. Submittals and reviews for State of Texas ADA compliance and inspections are not included.
- Additional charges will apply if these services are provided and / or required for completion of the project.

Subject: Site Work

Date: 1/29/2014

1. Site preparation, grading, and fill materials are included.
2. Proper drainage of the area is to be completed prior to start of construction by Kraftsman.
3. Preparation and submittal of SWPPP (Storm Water Pollution Prevention Plan) is not included.

Subject: Utilities

Date: 1/29/2014

Customer is to plan, permit, and provide installation of utilities as follows (Kraftsman has not included costs for required improvements to utilities to support the SplashPark):

1. Electrical service panel and connection of electrical service to filtration pump motor starters, chemical controller, and feature Dynamic Sequence Controller. Service is to be 480V, 3 Phase, 60 amp, for pumps, with 120v single phase, 100 amps. for control systems, utility plugs and needed lighting if required.
 2. Kraftsman will complete all low voltage connections.
 3. Electrical Bonding of all features, steel rebar, and filtration equipment per code requirements.
 4. City water meter with backflow preventer and water line connection to water holding tank. A 1" water line is to be provided (the minimum water supply to system is to be 50 GPM, with a minimum of 35 PSI). Kraftsman will supply automated water fill control system in tank.
 5. Proper drain line to within 5' of edge of filtration equipment area for backwash discharge from filters and overflow from holding tank. Minimum of 8" size is to be provided.
 6. Storm drain line to within 5' of holding for overflow.
- Kraftsman will connect drain boxes from pad to diverter valve and holding tank.
7. Utility leads and required facility improvements are to be completed and ready for connection of new improvements prior to Kraftsman coming on site for construction of the SplashPark improvements.

Subject: Installation

Date: 1/29/2014

Installation of SplashPark feature foundations, setting features, water supply piping to features from manifold (manifold is to be located within 50' of SplashDeck), connections between activators and controller, drain lines to edge of pad, per standard Kraftsman construction techniques.



Kraftsman

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Date:	1/30/2014
Project:	15548
By:	Pat Kennedy

Subject: Filtration**Date: 1/29/2014****Filtration System**

Pumping, Filtration, and Water Treatment System, with self-priming EQ Series pump by Pentair, with integral large capacity clear top strainer; high rate sand filters with manual backwash valve (sand by Kraftsman), connected Play Feature manifolds, pressure relief "dump" valve connected to holding tank, pressure gauges and one vacuum gauge. Electronic water quality monitoring controls with auto safety shutdown, pH treatment system and Liquid chlorine treatment system. Dynamic Sequencing Controller connected to feature valves, and motor starter.

Subject: Items Not Included**Date: 1/29/2014**

1. Shade systems or site amenities.
2. Site usage signage for use instructions, rules, safety, or emergency notifications as needed or required.
3. Temporary security fence during construction.
4. Storm Water Pollution Controls for project site.
5. Safety wash station for chemical use area in filtration equipment enclosure if required.

Subject: Insurance Terms**Date: 1/29/2014**

Kraftsman will supply a certificate of insurance verifying the limits of coverage.

Customer will be named as additional insured and waivers of subrogation will be provided per contract.

Subject: Start Up & System Training**Date: 1/29/2014**

Service includes one day of technical support personnel on site to assist with balancing of features, system start up, and 4 hours of staff operations training.

Subject: Sales Tax**Date: 1/29/2014**

Sales tax is not included in prices quoted. Customer is to supply Sales Tax Exemption or Sales Tax Resale certificate at time of acceptance of proposal, or sales tax will be added to final contract and invoicing for the project.

Subject: Project Completion**Date: 1/29/2014**

Kraftsman has a projected completion date of Memorial Day assuming approval by Midland City Council on February 11, 2014.

Shipping & Handling:



Kraftsman
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Quote #Q47961

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Date: 1/30/2014
Project: 15548
By: Pat Kennedy

Terms

Sold To: Midland, City of

Ship To: Security Bank Ballpark Fountain

Terms: Percentage Completed Draws Monthly

CONDITIONS OF SALE

1. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the contract.
2. No returns of merchandise will be accepted unless previously authorized in writing by Kraftsman. All returns are subject to restocking fee of 25% plus freight charges incurred for return to original shipment origination.
3. Title for all equipment is reserved by Kraftsman Commercial Playgrounds and Water Parks until payment in full is received. The right to enter the property and repossess said equipment is hereby granted to Kraftsman Commercial Playgrounds and Water Parks if payment is not rendered in accordance with the terms above. All payments made prior to repossession under this contract shall be forfeited to Kraftsman Commercial Playgrounds and Water Parks as cost incurred to recover the equipment. Repossession of product does not waive any damages or costs due as awarded by the court.
4. All collections or litigation concerning this contract shall be governed by the laws of the State of Texas, with venue in Harris County.
5. Kraftsman warrants the merchandise on this proposal to be up to the manufacturers published standards as to material and workmanship. See catalogs or attached drawings for specific layouts, warranties, and specifications.
6. Kraftsman reserves the right to review contract for final acceptance by management and to make corrections of clerical errors.
7. A service charge of 1.5% per month will be assessed on all past due amounts.
8. Installation services include all labor, equipment required to complete the job, and insurance coverage's as required by law. Extra installation charges will incur for abnormal sub surfaces, ie. rock, landfill, etc. Price quoted includes Kraftsman's standard insurance coverages of \$2 million in General Liability & Completed operations, \$1 million in Automobile Liability, \$1 million per occurrence/\$2 aggregate in Workman's Compensation. Any charges by Kraftsman's insurance carrier or agents for adding General Contractor or Owner as additional insured, waivers of subrogation, or changes to standard coverage shall be added to contract charges. No performance bond or labor and material payment bonds shall be provided by Kraftsman, unless listed as individual line item in proposal.
9. Kraftsman Commercial Playgrounds and Water Parks is not liable for damages to underground utilities, and irrigations systems during installation. It is the customers responsibility to locate all underground utilities.
10. Building permits required by local or state authorities & municipalities are not included and are the responsibility of the owner of the property, unless specifically included as a line item in the proposal. If you want Kraftsman to handle required permitting please contact our office and we will provide a quote if not included as a line item within this proposal.
11. This proposal may be withdrawn by Kraftsman if not accepted within thirty (30) days.

Respectfully Submitted: _____
Pat Kennedy

Date: January 30, 2014

Acceptance of Proposal:

The prices, specification and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. If contract is placed with an attorney for suit or collection through probate, bankruptcy or other legal proceedings, customer agrees to pay all expenses and reasonable attorney fees incurred. Any verbal instructions, agreements, or promises are not valid unless written as part of this contract.

Authorized Signature: _____

PO#: _____

Printed Name & Title : _____

Date of Acceptance: _____

Authorized Signature: _____

Printed Name & Title : _____

WE STRONGLY RECOMMEND A RESILIENT FALL SURFACE BE INSTALLED UNDER ALL PLAY & FITNESS EQUIPMENT

Thank You! We Appreciate Your Business!

EXHIBIT C

Bonding Requirements

The successful bidder shall be required to furnish a Performance & Payment Bond* for bids in excess of \$50,000.00, in an amount equal to one hundred percent (100%) of the total contract price, such bond to be executed in five (5) original counterparts by a Corporate Surety authorized to do business in the State of Texas and acceptable to the City of Midland. All bonds must be executed on forms contained in these contract documents. The form of agreement which the successful bidder, as contractor, will be required to execute is also included herewith. The form of agreement and the form of the bonds should be carefully examined by the bidder.

A certified check, cashier's check, bank money order, issued by a bank satisfactory to the Owner, or a bidder's bond on the form provided, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the owner, must accompany the bidder's proposal, as a guaranty that the bidder will enter a contract and execute the required payment bond and guaranty in the forms provided within fifteen (15) days after notice of award of contract to him. Bids or proposals without the required bid guaranty will not be considered. All bid sureties and payment bonds shall name the City of Midland as Obligee.

*A cash security such as a cashier's check for 100 % of the contract amount may be supplied in lieu of the Performance and Payment Bonds. The check will be returned un-cashed upon satisfactory completion of the work and evidence of payment of all obligations due for the contract.

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

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

_____ (hereinafter
called the Surety(s)), as Surety(s), are held and firmly bound unto the City of Midland, Texas, a
home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in
the amount of _____
DOLLARS, (\$ _____), for the payment whereof the said Principal and
Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly
and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee,
dated the _____ day of _____, 20____, to _____
_____,

which contract is hereby referred to and made a part hereof as fully and to the same extent as if
copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the
said Principal shall pay all claimants supplying labor and material to him or a subcontractor in
the prosecution of the work provided for in said contract, then this obligation shall be null and
void; otherwise, it is to remain in full force and effect.

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

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

Surety, for value received, stipulates and agrees that no change, extension of time,
alteration or addition to the terms of the contract, or to the work performed thereunder, or the
plans, specifications or drawings accompanying the same, or any assignment of the contract as
may be provided for in the instructions to bidders, shall in anywise affect its obligation on this

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

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this _____ day of _____, 20 ____.

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

_____.

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

_____,
(hereinafter called the Surety(s)), as Surety(s), are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), the amount of _____ DOLLARS, (\$ _____) for the payment whereof the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20____, to furnish and deliver the following equipment:

SPECIFICALLY including in the scope of this work and bond, the additional maintenance guaranty provisions set forth in the contract conditions, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein, as well as the Principals primary obligation to perform according to plans and specifications.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with the plans, specifications,

instructions to bidders, general and special conditions and other contract documents, including any addendums thereto, then this obligation shall be void; otherwise to remain in full force and effect.

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

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

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise effect its obligation on this Bond, and it does waive notice of any such change, extension of time, alteration or addition to the terms of this contract, assignment thereof, or to the work to be performed thereunder.

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this _____ day of _____, 20____.

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

EXHIBIT "D"

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

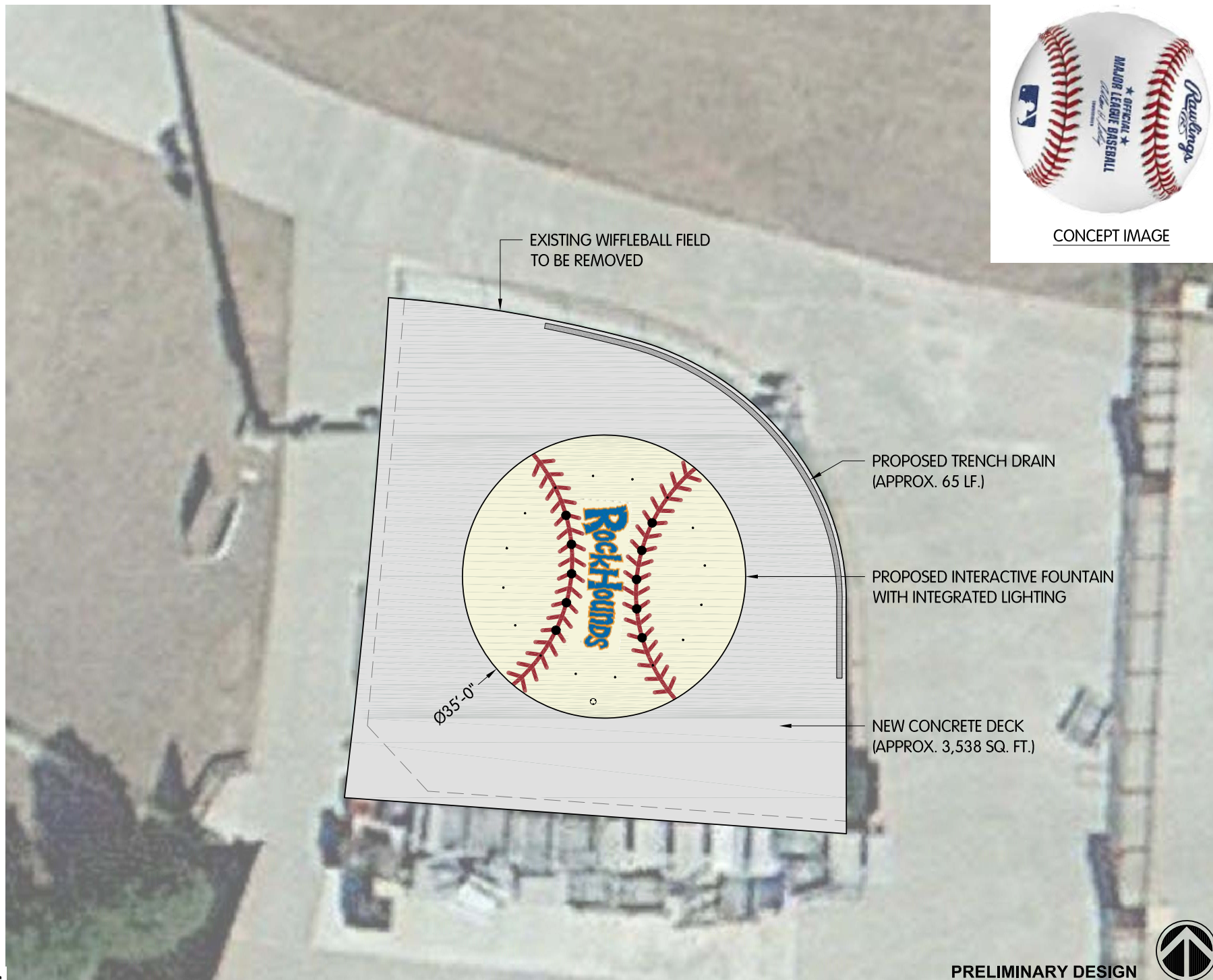
Classification	Rate/hr	Fringes
Acoustical Installers	\$ 11.18	
Boilermaker	\$ 26.02	\$ 13.66
Bricklayers	\$ 18.00	
Carpenters (Including Metal Stud Installation and Drywall Hanging)	\$ 15.17	
Cement Mason/ Concrete Finisher	\$ 13.89	
Drywall Hangers	\$ 11.08	
Electrician	\$ 13.63	\$ 1.25
Elevator Mechanics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

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

a under 5 years employment, 6% of BHR, over 5 years employment, 8%BHR.

Paid Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Labor Day, Thanksgiving Day, The Friday after thanksgiving and Christmas Day.

Unlisted classifications needed for the work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(v)).



CONCEPT IMAGE



www.kppe.com

KRAFTSMAN
COMMERCIAL PLAYGROUNDS
& WATER PARKS
19535 Haude Rd.
Spring, TX
77388

P: 800.451.4869
F: 281.353.2265

SCALE

1/16" = 1'

SALES REP

Pat
Kennedy

Security Bank Ballpark Fountain
Midland, Texas

PROJECT NO.
15548

VIEW
Concept Plan

DESIGNER
NSR

DATE
1-15-14

REVISION
0

OPTION
1

SHEET NO.
PD-1.0

PRELIMINARY DESIGN
NOT FOR CONSTRUCTION



Note: Drawing should not be scaled unless in its original 8" x 11" printed format

IF THIS FILE HAS BEEN TRANSMITTED ELECTRONICALLY, THE ORIGINAL IS IN THE OFFICE OF KRAFTSMAN COMMERCIAL PLAYGROUNDS & WATER PARKS. NO OTHER USE OR REPRODUCTION MAY BE MADE WITHOUT THE WRITTEN CONSENT OF KRAFTSMAN COMMERCIAL PLAYGROUNDS & WATER PARKS. ALL REPRODUCTIONS OF SERVICE, INCLUDING ORIGINAL DRAWINGS, AND SPECIFICATIONS PREPARED BY KRAFTSMAN COMMERCIAL PLAYGROUNDS & WATER PARKS SHALL REMAIN THE PROPERTY OF KRAFTSMAN COMMERCIAL PLAYGROUNDS & WATER PARKS. NO PART OF THIS DOCUMENT SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN CONSENT OF KRAFTSMAN COMMERCIAL PLAYGROUNDS & WATER PARKS. ALL REPRODUCTIONS OF SERVICE, INCLUDING ORIGINAL DRAWINGS, AND SPECIFICATIONS PREPARED BY KRAFTSMAN COMMERCIAL PLAYGROUNDS & WATER PARKS SHALL REMAIN THE PROPERTY OF KRAFTSMAN COMMERCIAL PLAYGROUNDS & WATER PARKS. NO PART OF THIS DOCUMENT SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN CONSENT OF KRAFTSMAN COMMERCIAL PLAYGROUNDS & WATER PARKS.



Lighted Splashpad



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of thirty (30) Alpha FXM 2000-SNMP UPS battery backup systems for the Transportation Division from Paradigm Traffic Systems, Inc. through Buyboard contract #363-10 for a total cost of \$124,200.00.

Purpose:

Approval of the purchase of thirty (30) Alpha FXM 2000-SNMP UPS battery backup systems.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$124,200.00 from the General Fund

Discussion:

The Alpha FXM 2000-SNMP battery backup systems will be used at various signalized intersections within the City. They are unique for two reasons. Firstly, the batteries are gel based which will extend the battery life. Secondly, when there is a power outage the battery backup unit will send a signal to the City's control center alerting personnel that the unit has automatically switched to battery backup. This is a desirable feature because if power is not restored before the backup batteries are exhausted then City personnel can switch to generator power. These battery backup systems are available through the Buyboard. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider a resolution authorizing the purchase of thirty (30) Alpha FXM 2000-SNMP battery backup systems from Paradigm Traffic Systems, Inc. of Arlington, Texas through Buyboard contract #363-10 for a total cost of \$124,200.00.

RESOLUTION NO. _____

RESOLUTION APPROVING THE PURCHASE OF THIRTY ALPHA FMX 2000-SNMP UPS BATTERY BACKUP SYSTEMS FOR THE TRANSPORTATION DIVISION FROM PARADIGM TRAFFIC SYSTEMS, INC. THROUGH BUYBOARD AT A TOTAL COST OF \$124,200.00; THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COOPERATIVE PURCHASING PROGRAM

WHEREAS, the Buyboard is a cooperative purchasing agency with which the City participates with on purchases through a cooperative purchasing program in accordance with TEX. LOC. GOV'T CODE § 271.102; and

WHEREAS, Paradigm Traffic Systems, Inc. has submitted a total proposed cost to the City of \$124,200.00 for the purchase of thirty (30) Alpha FMX 2000-SNMP UPS battery backup systems through Buyboard, as shown on the quote attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Paradigm Traffic Systems, Inc. through Buyboard for thirty (30) Alpha FMX 2000-SNMP UPS battery backup systems to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase thirty (30) Alpha FMX 2000-SNMP UPS battery backup systems from Paradigm Traffic Systems, Inc. through Buyboard;

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 thirty (30) Alpha FMX 2000-SNMP UPS battery backup systems referred to above through Buyboard at a total estimated cost of \$124,200.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for thirty (30) Alpha FMX 2000-SNMP UPS battery backup systems from funds available in the Fiscal Year 2014 general fund budget account upon proper receipt of invoices or statements approved by the City Manager.

SECTION THREE. That the sum of \$124,200 is hereby appropriated from the Transportation Division (085) of the Engineering Department (80) in the General Fund (001) from the Traffic Signal Account (4250); the object number is 4250 and 4240.

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., 2014, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

(817) 831-9406 ph
(817) 831-9407 fx

PARADIGM
TRAFFIC SYSTEMS, INC.

P.O. Box 5508
Arlington, TX 76005-5508

QUOTATION
REVISED ON 1/14/14 @ 11:15AM

TO: City of Midland

RFQ: BuyBoard Contract # 363-10

Public Safety, Fire House

Supply & Equipment &

Traffic Signals

512-467-0222 pn

1-800-211-5454 fax

attn: Eric Johnson

ph: 432-685-7983

fx: ejohnson@midlandtexas.gov

DATE	SLSMN	DELIVERY	FREIGHT	SHIP VIA	F.O.B	TERMS	QTE NUMBER
10/4/2013	DJ	See Notes	PPD & Allowed	Best Way	Destination	Net 30	Q15575DJ
ITEM	QTY**	DESCRIPTION				UNIT PRICE	TOTAL PRICE
		Quote Revision is a Quantity Change Only					
1	30	UPS BATTERY BACKUP SYSTEM C/O: 1 each Alpha FXM 2000 - SNMP UPS 1 each Automatic / Manual Transfer Switch AND Generator Switch 4 each 220 GXL Battery 1 each Battery Cable Kit 1 each Alpha Guard Battery Balancer 1 each UPS Stand Alone Cabinet				\$5,000.00	\$150,000.00
	30	First Time Purchase Discount				(\$860.00)	(\$25,800.00)
		NOTES: Current Lead Time For These Units Is 45 Days. Above Systems To Be Installed at Locations to be Determined Later					
		NOTE: PURCHASE ORDER MUST BE PROCESSED THROUGH WWW.BUYBOARD.COM					
						TOTAL	\$124,200.00

OFFERED BY:

Dan Jaynes

Paradigm Traffic Systems, Inc.

Federal ID# 75-2520341



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council/City Manager

FROM: Tina Jauz/Community Services Director

SUBJECT: Consider a resolution authorizing the execution of a sports agreement with West Texas BMX to administer programs, special events, and services related to BMX (Bicycle Motocross) racing and riding.

Purpose:

Consider a resolution authorizing the execution of a sports agreement with West Texas BMX to administer programs, special events, and services related to BMX (Bicycle Motocross) racing and riding.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Maintenance of athletic facilities, including the West Texas BMX Track, is carried in current operating budget of the Parks Division. The City, if funds are available, is expected to match all sport association's funds for capital improvement projects, through the contract.

Discussion:

Through this annual sports agreement, the West Texas BMX agrees to provide BMX programs to the citizens of Midland. The association handles advertisement, sign-ups and scheduling of seasonal competition and tournaments. City staff is responsible for the long-term maintenance and safe conditions of the sporting facilities.

This sports agreement will again require \$1 million liability insurance naming the City of Midland as an additional insured.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
SPORTS AGREEMENT WITH WEST TEXAS BMX TO
ADMINISTER PROGRAMS, SPECIAL EVENTS AND
SERVICES RELATED TO WEST BMX RACING AND
RIDING**

WHEREAS, the City Council finds it to be in the best interest of the public to enter into an agreement with West Texas BMX, to be the sponsoring organization responsible for administering all BMX racing and riding activities;

**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 sports agreement with West Texas BMX. Said agreement shall be on file in the office of the City Secretary referenced by the date and number of this resolution.

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., 2014, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

WEST TEXAS BMX SPORTS AGREEMENT

This Agreement, entered into and effective this 12th day of February, 2014, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and West Texas BMX (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association’s programs, special events, and other services related to BMX riding and racing. The Association shall have the right to collect fees and income generated by Association’s activities. This Agreement does not preclude the City or the Association from soliciting and hosting national BMX events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE 1 - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by the City to be park property.
- B. **Race track** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field** - one race track, as agreed by Association and the City Manager, reserved for Association’s championship BMX events or tournaments.

- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting BMX events and practice sessions. In addition, at the discretion of the City Manager and with advice from the Parks and Recreation Advisory Board, Association may be allowed to designate one (1) Race track as a "Championship Field." Said Championship Field may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve its playing surface, provided all of the following requirements are met:
 - 1. Selection of the one (1) Championship Field must be approved in writing, and in advance, by the City Manager;

2. If applicable, a proposed fence plan for said Championship Field must be approved by the City Manager;
3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field;
4. Association understands and agrees that the City retains an unlimited right of entry upon said Championship Field, as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and City's allowance of the designation and locking of any Championship Field in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager at his sole discretion;
7. Association shall abide by all conditions and requirements as set out in this Agreement; and
8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the

City Manager constitutes grounds for immediate termination of this Agreement.

- E. Provide general field maintenance which will include:
 - 1. Mowing of race track area once a week during the growing season, adjustments may be made for BMX events;
 - 2. Fertilizing in April and September with a third application if feasible as determined by City;
 - 3. Filling significant holes in track areas;
 - 4. Cutting necessary field lines prior to each Association season and prior to national events if applicable; and
 - 5. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled BMX events, and electricity for scheduled practices.
- H. Provide all maintenance for trees and shrubs surrounding race tracks as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.

- K. Coordinate with Association regarding provision and permitting/licensing of vendors.
- L. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled BMX events and practice sessions. Appropriateness will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two weeks prior to the start of BMX events, the Association shall furnish the Parks and Recreation Division of City a complete schedule of all BMX events and practices to occur during the season, including all races and special BMX events. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s).
- B. Furnish City a list showing the total number of individuals and/or teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and/or officials needed to conduct the BMX events.
- E. Prepare race tracks prior to BMX events, including:
 - 1. Marking or cutting any and all necessary lines on race tracks;
 - 2. Providing any and all necessary markers; and

3. Providing personnel, equipment and materials necessary to prepare BMX facility; and
 4. Preparing racing surface for all BMX events.
- F. If Association wishes to request that the City make a capital improvement, Association shall submit a request in writing on or before the 31st day of March, during the term of this Agreement, and accompany said request with at least a 50% monetary match. Association understands that the City's match of funds, labor, materials, or any combination thereof may not be available for capital improvements. All such requests shall be subject to the approval of the City Council. Requests submitted after the 31st day of March will not be considered.
- G. Submit any other request to the City in writing and no less than 15 days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one officer of Association, known as the "Facilities Director," who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.

- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the “City Liaison.”
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property, i.e.: all-terrain vehicles, golf carts, mowers, etc.
- M. Agree to pay electrical costs for field light use at a rate of \$10.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to the City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.

- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Insure that all vending operations are properly permitted by the City.
- S. Abide by all requirements and obligations as set out in this Agreement.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 12, 2014, through December 31, 2014. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by a resolution adopted by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and

services described hereunder shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. The City does not have the right to control the means, methods, or details of Association’s work. The City does not have the power to direct the order in which Association’s work should be done. Association 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. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association will provide City with an annual report by the 31st day of December, during the term of this Agreement, stating the number of teams and players which

participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or

condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name the City as an additional insured.

B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

"The City of Midland is included as an additional insured on all policies of insurance."

C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.

D. Premises. For purposes of this Agreement, “premises” shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.

E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

ARTICLE IX - INDEMNITY

ASSOCIATION WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY’S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY’S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, its agents or employees, or any subcontractor, arising out of, or resulting from Association’s use of, or activities on, the Agreement

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

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (1) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and, (2) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association will operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII - ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

ARTICLE XIII - TERMINATION

A. **Default.** Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

B. **No Cause.** The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term

of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. 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 occurred in Midland County, Texas.

C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

D. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice

by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City:	City of Midland P.O. Box 1152 Midland, Texas 79702 Attention: City Manager
with copies to:	City Attorney and Director of Community Services and Parks and Recreation Manager at the same address
If to Association:	West Texas BMX 3507 Jordan Ave. Midland, Texas 79707 Travis Bingham, President

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

E. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

G. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

H. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

I. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

J. Ownership. Association understands and agrees that ownership of said park property remains with City throughout the term of this agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from park property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other park property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said park property shall be deemed to mean

that Association shall have the right to control said park property during scheduled BMX events and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, the Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and the Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE ASSOCIATION 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 ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

ASSOCIATION AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. ASSOCIATION ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE ASSOCIATION FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE ASSOCIATION. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY. THE ASSOCIATION AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XVII - SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XVIII - NO THIRD PARTY BENEFICIARIES

The City's approval of this Agreement does not create a third party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX - RELEASE

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

ARTICLE XX - CONSIDERATION

The City and Association agree that this Agreement is supported by and has good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI - NOTICE OF ALLEGED BREACH
STATUTORY PREREQUISITES

Before the Association shall file suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request 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 Chapter 271.154 of the Texas Local Government Code and Section 311.034 of

the Texas Government Code. Notwithstanding any other provision, Association's failure to comply with the requirements herein shall perpetually bar Association's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages.

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Courtney Sharp, City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

WEST TEXAS BMX

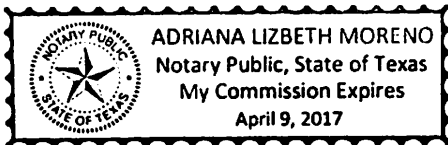
By Travis Bingham
Title President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared Travis J. Bingham known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the West Texas BMX.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 22nd day of January, 2014.

Adriana Moreno
Notary Public, State of Texas





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/28/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI of Southern CA Insurance Services Inc DBA Wick Pilcher Insurance, Inc 2201 East Camelback Road, Suite 220A Phoenix AZ 85016		CONTACT NAME: Catlina Daza-Obregon PHONE (A/C, No, Ext): 602-279-5800 FAX (A/C, No): 602-279-5899 E-MAIL: Obregon@wickpilcherins.com ADDRESS: Obregon@wickpilcherins.com	
INSURED American Bicycle Association DBA USA BMX P.O. Box 718 Chandler AZ 85244		INSURER(S) AFFORDING COVERAGE INSURER A: Philadelphia Indemnity Ins. Co INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
AMERI-4		NAIC #	

COVERAGES**CERTIFICATE NUMBER:** 1143618815**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC	Y	Y	PHPK986892	3/1/2013	3/1/2014	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$Excluded PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$5,000,000 PRODUCTS - COMP/OP AGG \$1,000,000 Abuse/Molestation \$1,000,000
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS			PHPK986892	3/1/2013	3/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION S	Y	Y	78824363	3/1/2013	3/1/2014	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$
	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				☐ WC STATUTORY LIMITS ☐ OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate holder and any other entities listed below are listed as additional insured under the General Liability on a primary & Non Contributory Basis including waiver of subrogation with respect the American Bicycle Association / USA BMX sanctioned events/competitions/practices and other operations conducted by American Bicycle Association / USA BMX track operators on behalf of the American Bicycle Association / USA BMX per attached forms PIMANU1 0100.

RE: West Texas BMX

CERTIFICATE HOLDER**CANCELLATION**

City of Midland
PO Box 1152
Midland TX 79702

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

Additional Insured/Waiver of Subrogation/Primary & Non-Contributory

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL INSURED: OWNERS AND / OR LESSORS OF PREMISES, LESSORS OF LEASED EQUIPMENT, SPONSORS OR CO-PROMOTERS

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

This policy is amended to include as an additional Insured any person or organization of the types designated below, but only with respect to liability arising out of your operations:

1. Owners and / or lessors of the premises leased, rented, or loaned to you, subject to the following additional exclusions:
 - a. This insurance applies only to an "occurrence" which takes place while you are a tenant in the premises;
 - b. This insurance does not apply to "bodily injury" or "property damage" resulting from structural alterations, new construction or demolition operations performed by or on behalf of the owner and / or lessor of the premises;
 - c. This insurance does not apply to liability of the owners and / or lessors for "bodily injury" or "property damage" arising out of any design defect or structural maintenance of the premises or loss caused by a premises defect.

With respect to any additional insured included under this policy, this insurance does not apply to the sole negligence of such additional insured.

2. Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s) subject to the following additional exclusions:
 - a. This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

3. Sponsors

All other terms and conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

4. Co-Promoters

THIS INSURANCE IS PRIMARY, WITH ANY INSURANCE OR SELF-INSURANCE PROGRAM MAINTAINED BY THE NAME OF PERSON OR ORGANIZATION LISTED ABOVE BEING NON-CONTRIBUTING EXCEPTING LOSS RESULTING FROM THE SOLE NEGLIGENCE OF THE NAME OF PERSON OR ORGANIZATION LISTED ABOVE

BLANKET WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is agreed that, notwithstanding anything to the contrary in paragraph 8. Transfer of Rights of Recovery Against Others To Us of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, in the event of any payment under this policy, we waive our right of recovery against any person or organization with respect to which the insured has waived its right of recovery.

It is further agreed that work commenced under letter of intent or work order, subject to subsequent reduction to writing, with customers whose customary contracts would require a waiver of recovery rights against them also falls within this blanket waiver of subrogation.

All other terms and conditions of this Policy remain unchanged.



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council/City Manager

FROM: Tina Jauz/Community Services Director

SUBJECT: Consider a resolution authorizing the execution of a sports agreement with the Texas Cricket Club to administer programs, special events, and services related to cricket.

Purpose:

Consider a resolution authorizing the execution of a sports agreement with the Texas Cricket Club to administer programs, special events, and services related to cricket.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Maintenance of athletic facilities is carried in current operating budget of the Parks Division. The City, if funds are available, is expected to match all sport association's funds for capital improvement projects, through the contract.

Discussion:

Through this annual sports agreement, the Texas Cricket Club agrees to provide cricket programs to the citizens of Midland. The association handles advertisement, sign-ups and scheduling of seasonal play and tournament. City staff is responsible for the long-term maintenance and safe conditions of the sporting facilities.

This sports agreement will again require \$1 million liability insurance naming the City of Midland as an additional insured.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
SPORTS AGREEMENT WITH THE TEXAS CRICKET
CLUB TO ADMINISTER PROGRAMS, SPECIAL
EVENTS AND SERVICES RELATED TO CRICKET**

WHEREAS, the City Council finds it to be in the best interest of the public to enter into an agreement with the Texas Cricket Club, to be the sponsoring organization responsible for administering all Texas Cricket Club programs, special events and services related to cricket;

**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 sports agreement with the Texas Cricket Club. Said agreement shall be on file in the office of the City Secretary referenced by the date and number of this resolution.

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., 2014, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

TEXAS CRICKET CLUB
SPORTS AGREEMENT

This Agreement, entered into and effective this 12th day of February 2014, is by and between the City of Midland, Texas, a home rule municipal corporation (“City”), and the Texas Cricket Club (“Association”).

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association’s programs, special events, organized sanctioned teams and other services related to cricket. The Association shall have the right to collect fees and income generated by Association’s cricket activities. This Agreement does not preclude the City or the Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY’S OFFICE.

ARTICLE 1 - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by the City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.

- C. **Championship Field** - one playing field, as agreed by Association and the City Manager, reserved for Association's championship games or tournaments, comprised of one (1) cricket field at Beal Park.
- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions. In addition, at the discretion of the City Manager and with advice from the Parks and Recreation Advisory Board, Association may be allowed to designate one (1) Playing Field as a "Championship Field." Said Championship Field may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve its playing surface, provided all of the following requirements are met:

1. Selection of the one (1) Championship Field must be approved in writing, and in advance, by the City Manager;
2. If applicable, a proposed fence plan for said Championship Field must be approved by the City Manager;
3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field;
4. Association understands and agrees that the City retains an unlimited right of entry upon said Championship Field, as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and City's allowance of the designation and locking of any Championship Field in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;
7. Association shall abide by all conditions and requirements as set out in this Agreement; and

8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.
- E. Provide general field maintenance which will include:
 1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in fields;
 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable; and
 5. Making major repairs to City-owned equipment and fixtures.
 - F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
 - G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
 - H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
 - I. Respond to emergency maintenance requests on a priority basis as determined by City.

- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Provide maintenance personnel during one tournament. If more than one venue is used, Association will be responsible for supplying any needed manpower.
- L. Coordinate with Association regarding provision and permitting/licensing of vendors.
- M. Allow Association first priority, as appropriate, in the scheduling of Associations scheduled games and practice sessions. Appropriateness will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two weeks prior to the start of Association play, the Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s).
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.

- E. Prepare playing fields prior to games, including:
1. Marking or cutting any and all necessary lines on playing fields;
 2. Providing any and all necessary bases, markers or goals;
 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 4. Dragging skinned infields for all games if applicable.
- F. If Association wishes to request that the City make a capital improvement, Association shall submit a request in writing on or before the 31st day of March, during the term of this Agreement, and accompany said request with at least a 50% monetary match. Association understands that the City's match of funds, labor, materials, or any combination thereof may not be available for capital improvements. All such requests shall be subject to the approval of the City Council. Requests submitted after the 31st day of March will not be considered.
- G. Submit any other request to the City in writing and no less than 15 days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.

- I. Appoint or elect one officer of Association, known as the “Facilities Director,” who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the “City Liaison.”
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property, i.e.: all-terrain vehicles, golf carts, line cutters, etc.
- M. Agree to pay electrical costs for field light use at a rate of \$10.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to the City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.

- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Insure that all vending operations are properly permitted by the City.
- S. Abide by all requirements and obligations as set out in this Agreement.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 12, 2014, through December 31, 2014. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by a resolution adopted by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior

shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. The City does not have the right to control the means, methods, or details of Association's work. The City does not have the power to direct the order in which Association's work should be done. Association 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. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association will provide City with an annual report by the 31st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property

damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name the City as an additional insured.

B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

"The City of Midland is included as an additional insured on all policies of insurance."

C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.

D. Premises. For purposes of this Agreement, “premises” shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.

E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

ARTICLE IX - INDEMNITY

ASSOCIATION WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY’S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY’S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, its agents or employees, or any subcontractor, arising out of, or resulting from Association’s use of, or activities on, the Agreement

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

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (1) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and, (2) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association will operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII - ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

ARTICLE XIII - TERMINATION

A. **Default.** Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

B. **No Cause.** The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term

of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. 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 occurred in Midland County, Texas.

C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

D. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice

by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City:	City of Midland P.O. Box 1152 Midland, Texas 79702 Attention: City Manager
with copies to:	City Attorney and Director of Community Services and Parks and Recreation Manager at the same address
If to Association:	Texas Cricket Club 5200 Sunshine Parkway Midland, Texas 79701 Jai Ramdeo, President

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

E. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

G. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

H. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

I. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

J. Ownership. Association understands and agrees that ownership of said park property remains with City throughout the term of this agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from park property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other park property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said park property shall be deemed to mean

that Association shall have the right to control said park property during scheduled games and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, the Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and the Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE ASSOCIATION 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 ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

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

ARTICLE XVII - SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XVIII - NO THIRD PARTY BENEFICIARIES

The City's approval of this Agreement does not create a third party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX - RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES, AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH ASSOCIATION HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS

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

ARTICLE XX - CONSIDERATION

The City and Association agree that this Agreement is supported by and has good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI - NOTICE OF ALLEGED BREACH
STATUTORY PREREQUISITES**

Before the Association shall file suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and

except the City from any liability whatsoever. The City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request 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 Chapter 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Association's failure to comply with the requirements herein shall perpetually bar Association's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages.

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Courtney Sharp, City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

TEXAS CRICKET CLUB

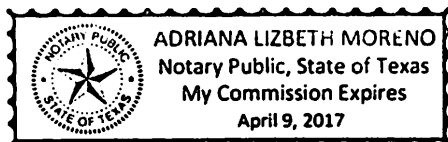
By Taikaran Ramdeo
Title Hon. President.

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared Taikaran Ramdeo known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Texas Cricket Club.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 22nd day of January, 2014.

Adriana Lizbeth Moreno
Notary Public, State of Texas



NOTARY PUBLIC STATE OF ALABAMA
My Commission Expires

April 9, 2017

NOTARY PUBLIC STATE OF ALABAMA

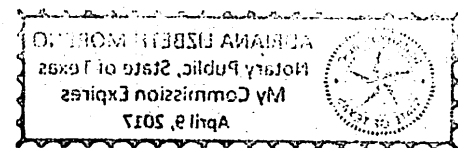
[Handwritten signature]

NOTARY PUBLIC STATE OF ALABAMA

My Commission Expires

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DATE (MM/DD/YYYY)
12/10/2013

ACORD

CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER SADLER & COMPANY, INC. P.O. BOX 5866 COLUMBIA, SOUTH CAROLINA 29250-5866	CONTACT NAME: Sports Dept PHONE (A/C, No. Ext): 800-622-7370 FAX (A/C, No): 803-256-4017 E-MAIL ADDRESS: soda@sadlersports.com PRODUCER CUSTOMER ID#:
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INSURED D/ B/ A SPORTSPLEX OPERATORS AND DEVELOPERS ASSOCIATION Texas Cricket Club of Midland 5200 Sunshine Parkway Midland, TX 79707 Club #: 19781	INSURER(S) AFFORDING COVERAGE INSURER A: NATIONAL CASUALTY COMPANY INSURER B: NATIONWIDE LIFE INSURANCE COMPANY INSURER C: INSURER D:	NAIC #
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A Member of the Sports, Leisure & Entertainment RPG

COVERAGES CERTIFICATE NUMBER REVISION NUMBER

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR ☐ ☐ GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC	X		KRO0000001413200	12:01AM ET 12/15/2013	12:01AM ET 12/15/2014	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MEDICAL EXPENSES (other than participants) \$5,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE NONE PRODUCTS- COMP/ OP AGG \$2,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON- OWNED AUTOS						COMBINED SINGLE LIMIT (Ea Accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	☐ UMBRELLA LIAB ☐ OCCUR ☒ EXCESS LIAB ☐ CLAIMS- MADE ☐ DEDUCTIBLE ☐ RETENTION			n/ a	n/ a	n/ a	EACH OCCURRENCE n/ a AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER / MEMBER EXCLUDED? ☐ (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			N/ A			☐ WC STATUTORY LIMITS ☐ OTHER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT
B	PARTICIPANT ACCIDENT			JXS0000025702600-A	12:01AM ET 12/15/2013	12:01AM ET 12/15/2014	EXCESS MEDICAL \$100,000 AD&D \$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: COVERED Team(s) - Adult - Accident & General Liability

Cricket - 2 Team(s) - [Maximum 20 players per team]

Team Names: Team A, Team B

(Adult Team Accident As Part of Package: \$100,000 Excess Medical; \$5,000 Accidental Death or Dismemberment; \$500 per claim deductible; Physical Therapy & Chiropractic Visits - 5 Visits Maximum @ \$50 Per Visit; Hospitalization - Inpatient & Outpatient - \$1,000 Maximum; Surgeon's Benefits - \$2,500 Maximum; Anesthesia And Assistant Surgeon - Maximum of 25% Surgeon's Benefits; Emergency Room - \$500 Maximum; Physician Visits - \$50 Maximum Per Visit)

(Adult Team General Liability as Part of Package: \$2,000,000 Each Occurrence; \$2,000,000 Participant Legal Liability; Waiver/ Release Recommended)

NOTE: The Participant Accident policy, if included above, is not a part of the ERS Risk Purchasing Group Association, Inc.

WAIVER OF RIGHT OF RECOVERY: We waive all rights of recovery when you have agreed to waive your rights when required by a written contract. However, this provision only applies if the written contract was executed prior to the date of the "occurrence".

The certificate holder is added as an additional insured, but only with respect to the liability arising out of the operations of the insured above.

CERTIFICATE HOLDER	CANCELLATION
RELATIONSHIP: Property Owner/ Lessor	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
City of Midland, Texas P.O. Box 1152 Midland, TX 79702	AUTHORIZED REPRESENTATIVE (company A) <i>Scott Fairhead</i>
	AUTHORIZED REPRESENTATIVE (company B) <i>John Smiley</i>

Coverage is only extended to U.S. events and activities

** NOTICE TO TEXAS INSURED: The Insurer for the purchasing group may not be subject to all the insurance laws and regulations of the State of Texas.

ACORD 25 (2009/09)

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City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council/City Manager

FROM: Tina Jauz/Community Services Director

SUBJECT: Consider a resolution authorizing the execution of a sports agreement with the City of Midland Aquatics, Incorporated, to administer programs, special events, and other services related to swimming in the City of Midland; the term of the agreement is from February 12, 2014, through December 31, 2014; and the contract covers Doug Russell Pool.

Purpose:

Consider a resolution authorizing the execution of a sports agreement with the City of Midland Aquatics, Incorporated, to administer programs, special events, and other services related to swimming in the City of Midland; the term of the agreement is from February 12, 2014, through December 31, 2014; and the contract covers Doug Russell Pool.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Maintenance of the Doug Russell Pool facility is carried in the current operating budget of the Recreation Division. The City, if funds are available, is expected to match all sport association's funds for capital improvement projects, through the contract.

Discussion:

Through this annual sports agreement, City of Midland Aquatics agrees to provide youth swim team programs to the citizens of Midland. The association handles advertisement, sign-ups, and scheduling of seasonal play and tournament. City staff is responsible for the long-term maintenance and safe conditions of the swimming facility.

This sports agreement will again require \$1 million liability insurance naming the City of Midland as an additional insured.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
SPORTS AGREEMENT WITH CITY OF MIDLAND
AQUATICS, INCORPORATED, TO ADMINISTER
PROGRAMS, SPECIAL EVENTS, AND OTHER
SERVICES RELATED TO SWIMMING IN THE CITY OF
MIDLAND; AND THE CONTRACT COVERS THE
DOUG RUSSELL POOL**

WHEREAS, the City Council finds it to be in the best interest of the public to enter into an agreement with City of Midland Aquatics, Inc., (“COM Aquatics”) to be the sponsoring organization responsible for administering all COM Aquatics programs, special events and services related to swimming;

**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 sports agreement with COM Aquatics. Said agreement shall be on file in the office of the City Secretary referenced by the date and number of this resolution.

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., 2014, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

CITY OF MIDLAND AQUATICS, INCORPORATED
SPORTS AGREEMENT

This Agreement, entered into and effective this 12th day of February, 2014, is by and between the City of Midland, Texas, a home rule municipal corporation ("City"), and City of Midland Aquatics, Inc., ("Association").

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association's programs, special events, organized sanctioned teams and other services related to swimming. The Association shall have the right to collect fees and income generated by Association's, swimming activities. This Agreement does not preclude the City or the Association from soliciting and hosting national events and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE 1 - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by the City to be park property.
- B. **Pool** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement, including Doug Russell Pool.
- C. **City Manager** - the City Manager of the City of Midland, Texas.

- D. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Doug Russell Pool for the sole purpose of conducting swimming meets and practice sessions.
- E. Provide general and customary grounds maintenance as deemed necessary by City.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled swim meets and practices.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Allow Association first priority, as appropriate, in the scheduling of Associations scheduled swim meets and practice sessions. Appropriateness will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two months prior to the start of Association play, the Association shall furnish the Parks and Recreation Division of City a complete schedule of all swim meets and practices to be held during the season, including all tournaments and special meets. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two weeks prior to the effected event(s).
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all clock operators and officials needed to conduct Association's events.
- E. If Association wishes to request that the City make a capital improvement, Association shall submit a request in writing on or before the 31st day of March, during the term of this Agreement, and accompany said request with at least a 50% monetary match. Association understands that the City's match of funds, labor, materials, or any combination thereof may not be available for capital improvements. All such requests shall be subject to the approval of the City Council. Requests submitted after the 31st day of March will not be considered.

- F. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- G. Appoint or elect one officer of Association, known as the "Facilities Director," who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- H. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- I. Agree to pay electrical costs for field light use at a rate of \$10.00 per hour for all unscheduled events or practices that are held after season starts.
- J. Association agrees to keep pool area clean and orderly by picking up trash after Association's events.
- K. Insure that all vending operations are properly permitted by the City.
- L. Abide by all requirements and obligations as set out in this Agreement.
- M. Association understands and agrees that the City retains an unlimited right of entry upon Doug Russell Pool, as well as any other Park Property, at any time and for any purpose whatsoever.
- N. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and City's allowance of Association's nonexclusive use of Doug Russell Pool or any other Park Property in no way conveys to Association or

any other party any right of ownership whatsoever in either Doug Russell Pool or any other Park Property.

- O. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.
- P. Association accepts responsibility for the provision, at Association's expense, of qualified lifeguards during Association's events.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 13, 2014, through December 31, 2014. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by a resolution adopted by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Association, its officers, agents, employees, contractors

and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. The City does not have the right to control the means, methods, or details of Association's work. The City does not have the power to direct the order in which Association's work should be done. Association 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. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association will provide City with an annual report by December 31st, stating the number of teams and players which participated during the reporting year.

ARTICLE VIII - INSURANCE

A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or

condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name the City as an additional insured.

B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

"The City of Midland is included as an additional insured on all policies of insurance."

C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.

D. Premises. For purposes of this Agreement, “premises” shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.

E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

ARTICLE IX - INDEMNITY

ASSOCIATION WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY’S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY’S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, its agents or employees, or any subcontractor, arising out of, or resulting from Association’s use of, or activities on, the Agreement

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

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (1) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and, (2) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII - ASSIGNMENT

Association shall not, either directly or indirectly, assign all or part of this Agreement or any interest, right or privilege herein, without the prior written consent of City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

ARTICLE XIII - TERMINATION

A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

B. No Cause. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. 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 occurred in Midland County, Texas.

C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

D. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City:	City of Midland
	P.O. Box 1152
	Midland, Texas 79702
	Attention: City Manager

with copies to: City Attorney and
Director of Community Services and
Parks and Recreation Manager
at the same address

If to Mr. Brad Swendig, President
Association: COM Aquatics, Inc.
3003 N. A Street
Midland, Texas 79705

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

E. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

G. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

H. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

I. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

J. Ownership. Association understands and agrees that ownership of said park property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from park property other than by locking the designated park property that is the subject of this Agreement. Regardless of the designation and/or locking of any park property that is the subject of this Agreement, Association shall not have the authority to evict, or to cause to be evicted, members of the public from any park property that is the subject of this Agreement or any other park property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said park property shall be deemed to mean that Association shall have the right to control said park property during scheduled events and practice sessions only.

K. 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.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, the Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and the Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE ASSOCIATION 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 ASSOCIATION AGREES TO

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

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

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

ARTICLE XVII - SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XVIII - NO THIRD PARTY BENEFICIARIES

The City's approval of this Agreement does not create a third party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX - RELEASE

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

ARTICLE XX - CONSIDERATION

The City and Association agree that this Agreement is supported by and has good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI - 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, Association or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of

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

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Courtney Sharp, City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

CITY OF MIDLAND AQUATICS, INC.

By [Signature]

Title PRESIDENT

THE STATE OF TEXAS

§

COUNTY OF MIDLAND

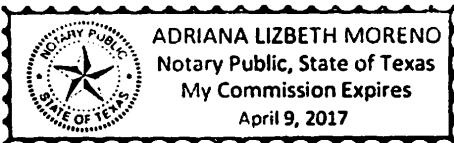
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BEFORE ME, the undersigned authority, on this day personally appeared Bradford M. Swendig known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of City of Midland Aquatics, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 22nd day of January, 2014.

[Signature]
Notary Public, State of Texas





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/26/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CBIZ Stoltz 3300 North A Street Suite 1100 Midland TX 79705	CONTACT NAME: Cortney Shankle PHONE (A/C No. Ext): (432) 571-4900 FAX (A/C No.): (888) 879-9409 E-MAIL ADDRESS: cshankle@cbizstoltz.com														
INSURED City of Midland Aquatics, Inc. 3003 North A Street Midland TX 79705	<table border="1"><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A: Scottsdale Insurance Company</td><td></td></tr><tr><td>INSURER B: Hallmark Specialty Ins Co</td><td></td></tr><tr><td>INSURER C: Texas Mutual Insurance Company</td><td></td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Scottsdale Insurance Company		INSURER B: Hallmark Specialty Ins Co		INSURER C: Texas Mutual Insurance Company		INSURER D:		INSURER E:		INSURER F:	
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INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES

CERTIFICATE NUMBER: 13-14 Master

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY					
	☒ COMMERCIAL GENERAL LIABILITY					
	☐ CLAIMS-MADE ☒ OCCUR		CPS1741304	5/7/2013	5/7/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/POP AGG \$ included
	GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC					
B	AUTOMOBILE LIABILITY					
	☐ ANY AUTO					
	☒ ALL OWNED AUTOS	☐ SCHEDULED AUTOS	TXH601538-03	5/7/2013	5/7/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	☒ HIRED AUTOS	☒ NON-OWNED AUTOS				
A	UMBRELLA LIAB					
	☒ EXCESS LIAB	☐ OCCUR				
	☐ DED ☐ RETENTION \$	☐ CLAIMS-MADE	XL80088160	5/7/2013	5/7/2014	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					
C	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐ Y/N				
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	TSF-0011131402	5/7/2013	5/7/2014	☒ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The City of Midland is included as additional insured on all policies of insurance except Work Comp as required by written contract. Blanket waiver of subrogation on all policies of insurance as required by written contract.

CERTIFICATE HOLDER**CANCELLATION**

(432) 684-7962 City of Midland P.O. Box 1152 300 N. Loraine Midland, TX 79702	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Mark A Stoltz/RSP2
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ACORD 25 (2010/05)

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City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council/City Manager

FROM: Tina Jauz/Community Services Director

SUBJECT: Consider a resolution authorizing the execution of a sports agreement with the Greater Midland Football League to administer programs, special events, and services related to football.

Purpose:

Consider a resolution authorizing the execution of a sports agreement with the Greater Midland Football League to administer programs, special events, and services related to football.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Maintenance of athletic fields is carried in the current operating budget of the Parks Division. The City, if funds are available, is expected to match all sport association's funds for capital improvement projects, through the contract.

Discussion:

Through the annual sports agreement, the Greater Midland Football League agrees to provide youth football programs to the citizens of Midland. The association handles advertisement, sign-ups, and scheduling of seasonal play and tournament. City staff is responsible for the long-term maintenance and safe conditions of the sporting facilities.

The sports agreement requires \$1 million liability insurance naming the City of Midland as additional insured.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
SPORTS AGREEMENT WITH THE GREATER
MIDLAND FOOTBALL LEAGUE TO ADMINISTER
PROGRAMS, SPECIAL EVENTS AND SERVICES
RELATED TO FOOTBALL**

WHEREAS, the City Council finds it to be in the best interest of the public to enter into an agreement with the Greater Midland Football League to be the sponsoring organization responsible for administering all Greater Midland Football League programs, special events and services related to football;

**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 sports agreement with the Greater Midland Football League. Said agreement shall be on file in the office of the City Secretary referenced by the date and number of this resolution.

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., 2014, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

GREATER MIDLAND FOOTBALL LEAGUE

SPORTS AGREEMENT

This Agreement, entered into and effective this 12th day of February, 2014, is by and between the City of Midland, Texas, a home rule municipal corporation ("City"), and the Greater Midland Football League ("Association").

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association's programs, special events, organized sanctioned teams and other services related to football activities for youth ages Eight (8) to Twelve (12) years old. The Association shall have the right to collect fees and income generated by Association's football activities for youth ages Eight (8) to Twelve (12) years old. This Agreement does not preclude the City or the Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE 1 - DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by the City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.

- C. **Championship Field** - one playing field, as agreed by Association and the City Manager, reserved for Association's championship games or tournaments.
- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II - DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of Park Property for the sole purpose of conducting games and practice sessions. In addition, at the discretion of the City Manager and with advice from the Parks and Recreation Advisory Board, Association may be allowed to designate one (1) Playing Field as a "Championship Field." Said Championship Field may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve its playing surface, provided all of the following requirements are met:

1. Selection of the one (1) Championship Field must be approved in writing, and in advance, by the City Manager;
2. If applicable, a proposed fence plan for said Championship Field must be approved by the City Manager;
3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field;
4. Association understands and agrees that the City retains an unlimited right of entry upon said Championship Field, as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and City's allowance of the designation and locking of any Championship Field in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;
7. Association shall abide by all conditions and requirements as set out in this Agreement; and

8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.
- E. Provide general field maintenance which will include:
 1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in fields;
 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable; and
 5. Making major repairs to City-owned equipment and fixtures.
 - F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
 - G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
 - H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
 - I. Respond to emergency maintenance requests on a priority basis as determined by City.

- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Provide maintenance personnel during one tournament. If more than one venue is used, Association will be responsible for supplying any needed manpower.
- L. Coordinate with Association regarding provision and permitting/licensing of vendors.
- M. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and practice sessions. Appropriateness will be determined by City.

ARTICLE III - DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two weeks prior to the start of Association play, the Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s).
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.

- E. Prepare playing fields prior to games, including:
1. Marking or cutting any and all necessary lines on playing fields;
 2. Providing any and all necessary bases, markers or goals;
 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 4. Dragging skinned infields for all games if applicable.
- F. If Association wishes to request that the City make a capital improvement, Association shall submit a request in writing on or before the 31st day of March, during the term of this Agreement, and accompany said request with at least a 50% monetary match. Association understands that the City's match of funds, labor, materials, or any combination thereof may not be available for capital improvements. All such requests shall be subject to the approval of the City Council. Requests submitted after the 31st day of March will not be considered.
- G. Submit any other request to the City in writing and no less than 15 days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.

- I. Appoint or elect one officer of Association, known as the “Facilities Director,” who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the “City Liaison.”
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property, i.e.: all-terrain vehicles, golf carts, line cutters, etc.
- M. Agree to pay electrical costs for field light use at a rate of \$10.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to the City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.

- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Insure that all vending operations are properly permitted by the City.
- S. Abide by all requirements and obligations as set out in this Agreement.

ARTICLE IV - TERM OF AGREEMENT

The term of this Agreement shall extend from February 12, 2014, through December 31, 2014. Thereafter, this Agreement may be extended upon agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by a resolution adopted by the Midland City Council.

ARTICLE V - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior

shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. The City does not have the right to control the means, methods, or details of Association's work. The City does not have the power to direct the order in which Association's work should be done. Association shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Association's work. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI - BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying

by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII - ANNUAL REPORTING

Association will provide City with an annual report by December 31st, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII - INSURANCE

A. General Liability. At all times during the term of this Agreement, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per

project aggregate and on an occurrence basis. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per project aggregate and on an per occurrence basis and shall name the City as an additional insured.

B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association 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 all policies of insurance.”

C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.

D. Premises. For purposes of this Agreement, “premises” shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.

E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

ARTICLE IX - INDEMNITY

ASSOCIATION WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY’S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY’S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY

NEGLIGENT ACT OF ASSOCIATION, its agents or employees, or any subcontractor, arising out of, or resulting from Association's use of, or activities on, the Agreement Premises, and Association will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH

COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X - NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (1) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and, (2) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI - LAWS AND REGULATIONS

Association will operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances

in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII - ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

ARTICLE XIII - TERMINATION

A. **Default.** Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

B. **No Cause.** The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The Association has no expectation and has received no guarantees that the Agreement will not be terminated

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

C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV - GENERAL PROVISIONS

A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. 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 occurred in Midland County, Texas.

C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

D. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City:	City of Midland P.O. Box 1152 Midland, Texas 79702 Attention: City Manager
with copies to:	City Attorney and Director of Community Services and Parks and Recreation Manager at the same address
If to Association:	Greater Midland Football League P.O. Box 10894 Midland, Texas 79702 Kyle Huckaba, President

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

E. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

G. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

H. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

I. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

J. Ownership. Association understands and agrees that ownership of said park property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from park property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or

any other park property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said park property shall be deemed to mean that Association shall have the right to control said park property during scheduled games and practice sessions only.

ARTICLE XV - SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, the Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and the Association agrees to be bound by that determination.

ARTICLE XVI - ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE ASSOCIATION 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 ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

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

ARTICLE XVII - SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XVIII - NO THIRD PARTY BENEFICIARIES

The City's approval of this Agreement does not create a third party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX - RELEASE

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

ARTICLE XX - CONSIDERATION

The City and Association agree that this Agreement is supported by good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI - NOTICE OF ALLEGED BREACH STATUTORY PREREQUISITES

Before the Association shall file suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Association or its legal representative, shall give the City Manager, or any other reasonable official of the City notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request

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 Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Association's failure to comply with the requirements herein shall perpetually bar Association's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages.

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

By _____
Courtney Sharp, City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

GREATER MIDLAND FOOTBALL LEAGUE

By _____

Title _____

THE STATE OF TEXAS

§

COUNTY OF MIDLAND

§

§

BEFORE ME, the undersigned authority, on this day personally appeared Kyle Huckabee known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Greater Midland Football League.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 24th day of January, 2014.

Sue Ann Reyes
Notary Public, State of Texas





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/21/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CBIZ Stoltz 3300 North A Street Suite 1100 Midland TX 79705		CONTACT NAME: Julie Childers PHONE (A/C, No, Ext): (432) 571-4900 FAX (A/C, No): (888) 879-9409 E-MAIL ADDRESS: jchilders@stoltzins.com	
INSURED Greater Midland Football League 2403 Metz Place P.O.Box 10894 Midland TX 79705		INSURER(S) AFFORDING COVERAGE INSURER A: Nationwide Mutual Insurance INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES

CERTIFICATE NUMBER: CL1412104990

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC		6BRPG0000005378800	2/8/2014	2/8/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 Legal Liability to Participants \$ 1,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☒ SCHEDULED AUTOS ☒ NON-OWNED AUTOS		6BRPG0000005378800	2/8/2014	2/8/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ EXCESS LIAB ☐ OCCUR ☐ CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N ☐ N/A					WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Medical Payment for Participants		6BRPG0000005378800	2/8/2014	2/8/2015	EXCESS MEDICAL \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Certificate Holder named as additional insured on general liability policy when required by written contract with respect to work performed by the named insured (s). Waiver of subrogation on general liability in favor of certificate holder as required by written contract with respects to work performed by the named insured(s).

CERTIFICATE HOLDER**CANCELLATION**

City of Midland
PO Box 1152
Midland, TX 79702

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Mark A Stoltz/BLN

ACORD 25 (2010/05)

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INS025 (201005) 01

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City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council/City Manager

FROM: Tina Jauz/Community Services Director

SUBJECT: Consider a resolution authorizing the execution of a sports agreement with Midland Softball Association, Incorporated, to administer programs, special events, and services related to softball for adults ages fifteen and older.

Purpose:

Consider a resolution authorizing the execution of a sports agreement with Midland Softball Association, Incorporated, to administer programs, special events, and services related to softball for adults ages fifteen and older.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Maintenance of athletic facilities is carried in current operating budget of the Parks Division. The City, if funds are available, is expected to match all sport association's funds for capital improvement projects, through the contract.

Discussion:

Through this annual sports agreement, the Midland Softball Association agrees to provide softball programs to the citizens of Midland. The association handles advertisement, sign-ups, and scheduling of seasonal play and tournament. City staff is responsible for the long-term maintenance and safe conditions of the sporting facilities.

This sports agreement will again require \$1 million liability insurance naming the City of Midland as an additional insured.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
SPORTS AGREEMENT WITH MIDLAND SOFTBALL
ASSOCIATION, INCORPORATED, TO ADMINISTER
PROGRAMS, SPECIAL EVENTS AND SERVICES
RELATED TO SOFTBALL FOR ADULTS AGES
FIFTEEN (15) AND OLDER**

WHEREAS, the City Council finds it to be in the best interest of the public to enter into an agreement with Midland Softball Association, Inc., to be the sponsoring organization responsible for administering its programs, special events and services related to softball for adults ages fifteen (15) and older;

**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 sports agreement with Midland Softball Association, Inc. Said agreement shall be on file in the office of the City Secretary referenced by the date and number of this resolution.

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., 2014, by the following vote:

Council members voting "AYE": _____

Council members voting "NAY": _____

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

MIDLAND SOFTBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement, entered into and effective this 12th day of February, 2014, is by and between the City of Midland, Texas, a home rule municipal corporation ("City"), and Midland Softball Association, Inc., ("Association").

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association's programs, special events, organized sanctioned teams and other services related to softball activities for adults ages Fifteen (15) and older. The Association shall have the right to collect fees and income generated by Association's softball activities for adults ages Fifteen (15) and older. This Agreement does not preclude the City or the Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE I. DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by the City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.

- C. **Championship Field(s)** - six (6) playing fields, as agreed by Association, the City Manager and the Parks and Recreation Advisory Board, reserved for Association's championship games or tournaments, comprised of the six (6) adult softball fields within the Bill Williams Complex at Hogan Park.
- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of the six (6) Championship Fields for the sole purpose of conducting games and practice sessions. Said Championship Field(s) may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve the playing surface, provided all of the following requirements are met:

1. Selection of Championship Field(s) must be approved in writing, and in advance, by the City Manager;
2. If applicable, a proposed fence plan for said Championship Field(s) must be approved by the City Manager, with Association paying all costs associated with said fence;
3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field(s);
4. Association understands and agrees that the City retains an unlimited right of entry upon said Championship Field(s), as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and that City's allowance of the designation and locking of any Championship Field(s) in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field(s) or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field(s) is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;

7. Association shall abide by all conditions and requirements as set out in this Agreement; and
 8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.
- E. Provide general field maintenance which will include:
1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in fields;
 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable; and
 5. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.

- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Provide maintenance personnel during one tournament. If more than one venue is used, Association will be responsible for supplying any needed manpower.
- L. Coordinate with Association regarding provision and permitting/licensing of vendors.
- M. Allow Association first priority, as appropriate, in the scheduling of Associations scheduled games and practice sessions. Appropriateness will be determined by City.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two weeks prior to the start of Association play, the Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s).
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:

1. Marking or cutting any and all necessary lines on playing fields;
 2. Providing any and all necessary bases, markers or goals;
 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 4. Dragging skinned infields for all games if applicable.
- F. If Association wishes to request that the City make a capital improvement, Association shall submit a request in writing on or before the 31st day of March, during the term of this Agreement, and accompany said request with at least a 50% monetary match. Association understands that the City's match of funds, labor, materials, or any combination thereof may not be available for capital improvements. All such requests shall be subject to the approval of the City Council. Requests submitted after the 31st day of March will not be considered.
- G. Submit any other request to the City in writing and no less than 15 days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one officer of Association, known as the "Facilities Director," who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.

- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the "City Liaison."
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property, i.e.: all-terrain vehicles, golf carts, line cutters, etc.
- M. Agree to pay electrical costs for field light use at a rate of \$10.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to the City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.

- R. Insure that all vending operations are properly permitted by the City.
- S. Abide by all requirements and obligations as set out in this Agreement.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 12, 2014, through December 31, 2014. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by a resolution adopted by the Midland City Council.

ARTICLE V. INDEPENDENT CONTRACTOR

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

right to control the means, methods, or details of Association's work. The City does not have the power to direct the order in which Association's work should be done. Association 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. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII. ANNUAL REPORTING

Association will provide City with an annual report by the 31st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either 1) uses Park Property for the performance of the sport activity pursuant to this Agreement, 2) maintains equipment on any Playing

Field, or 3) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name the City as an additional insured.

B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no

events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

"The City of Midland is included as an additional insured on all policies of insurance."

C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.

D. Premises. For purposes of this Agreement, "premises" shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.

E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

ARTICLE IX. INDEMNITY

ASSOCIATION WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, its agents or employees, or any subcontractor, arising out of, or resulting from Association's use of, or activities on, the Agreement Premises, and Association will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT

FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (1) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and, (2) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability

shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association will operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

ARTICLE XIII. TERMINATION

A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to

terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

B. No Cause. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. 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 occurred in Midland County, Texas.

C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

D. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Community Services and
 Parks and Recreation Manager
 at the same address

If to Midland Softball Association, Inc.
Association: 4487 Hackberry Ct.
 Midland, Texas 79707
 Tommy Hawkins

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

E. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

G. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

H. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

I. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

J. Ownership. Association understands and agrees that ownership of said park property remains with City throughout the term of this agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from park property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other park property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said park property shall be deemed to mean that Association shall have the right to control said park property during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, the Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and the Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S

FEEs, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE ASSOCIATION 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 ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

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

ARTICLE XVII. SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XVIII. NO THIRD PARTY BENEFICIARIES

The City's approval of this Agreement does not create a third party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES, AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH ASSOCIATION HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS

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

ARTICLE XX. CONSIDERATION

The City and Association agree that this Agreement is supported by good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI. 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, Association or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and

except the City from any liability whatsoever. The City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request 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 Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Association's failure to comply with the requirements herein shall perpetually bar Association's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Association agrees that the requirements of this entire Agreement are reasonable.

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Courtney Sharp, City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

MIDLAND SOFTBALL ASSOCIATION, INC.

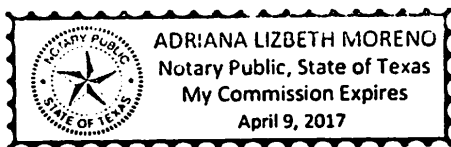
By *Tommy F. Hawkins*
Title *Pres. M.S.A.*

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared *Tommy F. Hawkins* known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland Softball Association, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this *22nd* day of *January*, 2014.

Adriana Lizbeth Moreno
Notary Public, State of *Texas*



ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/29/14

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER K & K Insurance Group, Inc. P.O. Box 2338 Fort Wayne, In 46801	CONTACT NAME:	SPORTS	
	PHONE (A/C, No, Ext):	800-441-3994	FAX (A/C, No): 260-459-5120
	E-MAIL ADDRESS:	KK.SPORTS@KANDKINSURANCE.COM	
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED UNITED STATES SPECIALTY SPORTS ASSOCIATION, INC. 611 LINE DRIVE KISSIMMEE, FL 34744	INSURER A: NATIONAL CASUALTY COMPANY		11991
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

1729404

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

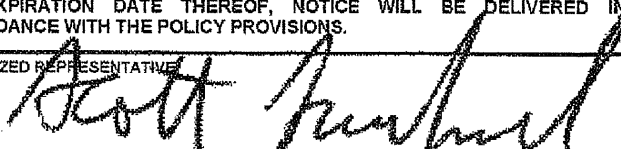
INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			KRO0004003000	12:01AM 1/01/14	12:01AM 1/01/15	EACH OCCURRENCE
	☒ COMMERCIAL GENERAL LIABILITY						2000000
	☐ CLAIMS-MADE ☒ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)
	☐ Owners & Contractors						300000
	GEN'L AGGREGATE LIMIT APPLIES PER:						MED EXP (Any one person)
	☐ POLICY ☐ PROJECT ☐ LOC						NONE
							PERSONAL & ADV INJURY
							2000000
							GENERAL AGGREGATE
							NONE
							PRODUCTS-COMP/OP AGG
							2000000
							Part Lgl Liab
							2000000
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea Accident)
	☐ ANY AUTO						
	☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS						BODILY INJURY (Per person)
	☐ HIRED AUTOS ☐ NON-OWNED AUTOS						
							BODILY INJURY (Per accident)
							PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB						EACH OCCURRENCE
	☐ EXCESS LIAB ☐ CLAIMS-MADE						
	☐ DED ☐ RETENTION						AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				OTHER
							E.L. EACH ACCIDENT
							E.L. DISEASE - EA EMPLOYEE
							E.L. DISEASE - POLICY LIMIT

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER IS INCLUDED AS AN ADDITIONAL INSURED WITH RESPECT TO LIABILITY CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS ARISING FROM USSSA ACTIVITIES AND MIDLAND SOFTBALL ASSOCIATION. SEE CERTIFICATE ADDENDUM.

CERTIFICATE HOLDER

CANCELLATION

CITY OF MIDLAND 300 NORTH LORAIN MIDLAND, TX 79071	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

AGENCY CUSTOMER ID: _____

LOC # _____

CERTIFICATE: 1729404 DATE ISSUED: 1/29/14

ACORDTM**ADDITIONAL REMARKS SCHEDULE**Page 1 of 1

AGENCY K & K INSURANCE GROUP, INC.		NAMED INSURED UNITED STATES SPECIALTY SPORTS ASSOCIATION, INC. 611 LINE DRIVE KISSIMMEE, FL 34744
POLICY NUMBER GL KRO0004003000		
CARRIER SEE ACORD 25	NAIC CODE	EFFECTIVE DATE: SEE ACORD 25

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

FIELD/FACILITY OWNER SHOWN AS THE CERTIFICATE HOLDER SHALL BE AN ADDITIONAL INSURED BUT ONLY WITH RESPECT TO LOSSES RESULTING FROM AMATEUR PLAY AND PRACTICE DURING USSSA SANCTIONED ACTIVITIES OCCURRING BETWEEN THE COVERAGE EFFECTIVE DATE LISTED BELOW AND THE POLICY EXPIRATION DATE.

COVERAGE EFFECTIVE DATE: 01/01/14

COVERAGE INCLUDES AMATEUR PLAY AND PRACTICE IN THE INSURED SPORT FOR:
CITY OF MIDLAND.



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council/City Manager

FROM: Tina Jauz/Community Services Director

SUBJECT: Consider a resolution authorizing the execution of a sports agreement with the Midland Junior Baseball Association, Incorporated, to administer programs, special events, and services related to baseball for men ages nineteen and younger.

Purpose:

Consider a resolution authorizing the execution of a sports agreement with the Midland Junior Baseball Association, Incorporated, to administer programs, special events, and services related to baseball for men ages nineteen and younger.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Maintenance of athletic facilities is carried in the current operating budget of the Parks Division. The City, if funds are available, is expected to match all sport association's funds for capital improvement projects, through the contract.

Discussion:

Through this annual sports agreement, the Midland Junior Baseball Association agrees to provide youth baseball programs to the citizens of Midland. The association handles advertisement, sign-ups and scheduling of seasonal competition and tournaments. City staff is responsible for the long-term maintenance and safe conditions of the sporting facilities.

This sports agreement will again require \$1 million liability insurance naming the City of Midland as an additional insured.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
SPORTS AGREEMENT WITH MIDLAND JUNIOR
BASEBALL ASSOCIATION, INCORPORATED, TO
ADMINISTER PROGRAMS, SPECIAL EVENTS AND
SERVICES RELATED TO BASEBALL FOR MEN AGES
NINETEEN AND YOUNGER**

WHEREAS, the City Council finds it to be in the best interest of the public to enter into an agreement with Midland Junior Baseball Association, Inc., to be the sponsoring organization responsible for administering its programs, special events and services related to baseball for men ages nineteen (19) and younger;

**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 sports agreement with Midland Junior Baseball Association, Inc. Said agreement shall be on file in the office of the City Secretary referenced by the date and number of this resolution.

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., 2014, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

MIDLAND JUNIOR BASEBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement, entered into and effective this 12th day of February, 2014, is by and between the City of Midland, Texas, a home rule municipal corporation ("City"), and Midland Junior Baseball Association, Inc., ("Association").

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association's programs, special events, organized sanctioned teams and other services related to baseball activities for young men ages Nineteen (19) and younger. The Association shall have the right to collect fees and income generated by Association's baseball activities for young men ages Nineteen (19) and younger. This Agreement does not preclude the City or the Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE I. DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by the City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.

- C. **Championship Field(s)** - seven (7) playing fields, as agreed by Association, the City Manager and the Parks and Recreation Advisory Board, reserved for Association's championship games or tournaments, comprised of Little League Field #1 at Beal Park, Little League Field #1 at Butler Park, Little League Field #1 at Hogan Park, Little League Field #1 at C.J.Kelly Park, Little League Field #1 at Reyes/Mashburn/Nelms Park, Little League Field #1 at Windlands Park and Simon Field at Hogan Park.
- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of the seven (7) Championship Fields, for the sole purpose of conducting games and practice sessions. Said Championship Field(s) may be enclosed by an approved fence and locked, when not in use by either

Association or City, so as to preserve the playing surface, provided all of the following requirements are met:

1. Selection of Championship Field(s) must be approved in writing, and in advance, by the City Manager;
2. If applicable, a proposed fence plan for said Championship Field(s) must be approved by the City Manager, with Association paying all costs associated with said fence;
3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field(s);
4. Association understands and agrees that the City retains an unlimited right of entry upon said Championship Field(s), as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and that City's allowance of the designation and locking of any Championship Field(s) in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field(s) or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field(s) is temporary and subject to the discretion of the

City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;

7. Association shall abide by all conditions and requirements as set out in this Agreement; and
8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.

E. Provide general field maintenance which will include:

1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
2. Fertilizing in April and September with a third application if feasible as determined by City;
3. Filling significant holes in fields;
4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable; and
5. Making major repairs to City-owned equipment and fixtures.

F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.

G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.

- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Provide maintenance personnel during one tournament. If more than one venue is used, Association will be responsible for supplying any needed manpower.
- L. Coordinate with Association regarding provision and permitting/licensing of vendors.
- M. Allow Association first priority, as appropriate, in the scheduling of Associations scheduled games and practice sessions. Appropriateness will be determined by City.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two weeks prior to the start of Association play, the Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s).
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.

- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, markers or goals;
 - 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 - 4. Dragging skinned infields for all games if applicable.
- F. If Association wishes to request that the City make a capital improvement, Association shall submit a request in writing on or before the 31st day of March, during the term of this Agreement, and accompany said request with at least a 50% monetary match. Association understands that the City's match of funds, labor, materials, or any combination thereof may not be available for capital improvements. All such requests shall be subject to the approval of the City Council. Requests submitted after the 31st day of March will not be considered.
- G. Submit any other request to the City in writing and no less than 15 days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.

- I. Appoint or elect one officer of Association, known as the “Facilities Director,” who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the “City Liaison.”
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property, i.e.: all-terrain vehicles, golf carts, line cutters, etc.
- M. Agree to pay electrical costs for field light use at a rate of \$10.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to the City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.

- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Insure that all vending operations are properly permitted by the City.
- S. Abide by all requirements and obligations as set out in this Agreement.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 12, 2014, through December 31, 2014. Thereafter, this Agreement may be extended upon agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by a resolution adopted by the Midland City Council.

ARTICLE V. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of

the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. The City does not have the right to control the means, methods, or details of Association’s work. The City does not have the power to direct the order in which Association’s work should be done. Association 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. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII. ANNUAL REPORTING

Association will provide City with an annual report by December 31st, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either 1) uses Park Property for the performance of the sport activity pursuant to this Agreement, 2) maintains equipment on any Playing Field, or 3) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection

with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name the City as an additional insured.

B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

"The City of Midland is included as an additional insured on all policies of insurance."

C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.

D. Premises. For purposes of this Agreement, “premises” shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.

E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

ARTICLE IX. INDEMNITY

ASSOCIATION WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY’S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY’S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, its agents or employees, or any subcontractor, arising out of, or resulting from Association’s use of, or activities on, the Agreement Premises, and Association will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney’s fees.

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (1) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be

excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and, (2) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association will operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

ARTICLE XIII. TERMINATION

A. **Default.** Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

B. **No Cause.** The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

C. **Removal of Equipment.** Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV. GENERAL PROVISIONS

A. **Waiver.** No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. **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 occurred in Midland County, Texas.

C. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

D. **Notice.** Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City:	City of Midland
	P.O. Box 1152
	Midland, Texas 79702
	Attention: City Manager

with copies to: City Attorney and
Director of Community Services and
Parks and Recreation Manager
at the same address

If to Association: Midland Junior Baseball Association, Inc.
P.O. Box 52101
Midland, Texas 79710
Todd Hullender, Commissioner

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

E. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

G. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

H. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

I. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

J. Ownership. Association understands and agrees that ownership of said park property remains with City throughout the term of this agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from park property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other park property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said park property shall be deemed to mean that Association shall have the right to control said park property during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, the Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and the Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE ASSOCIATION 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 ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

ASSOCIATION AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. ASSOCIATION ACKNOWLEDGES THAT IT

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

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

ARTICLE XVII. SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XVIII. NO THIRD PARTY BENEFICIARIES

The City's approval of this Agreement does not create a third party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY,

CITY'S EMPLOYEES, AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH ASSOCIATION HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY'S NEGLIGENCE.

ARTICLE XX. CONSIDERATION

The City and Association agree that this Agreement is supported by good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI. 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, Association or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Association will settle,

the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request 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 Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Association's failure to comply with the requirements herein shall perpetually bar Association's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Association agrees that the requirements of this entire Agreement are reasonable.

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Courtney Sharp, City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

MIDLAND JUNIOR BASEBALL
ASSOCIATION, INC.

By Todd Huller

Title President

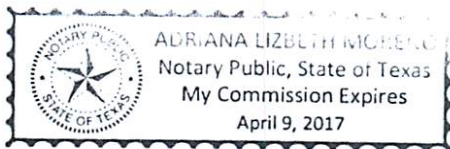
THE STATE OF TEXAS
COUNTY OF MIDLAND

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared Todd A. Hullender known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland Junior Baseball Association, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 27th day of January, 2014.

Adriana Lizbeth Moreno
Notary Public, State of Texas





CERTIFICATE OF LIABILITY INSURANCE

MIDLA03

OP ID: DC

DATE (MM/DD/YYYY)

01/21/14

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bollinger Sports & Leisure 101 JFK Parkway Short Hills, NJ 07078-5000 David Campanello	800-526-1379 973-921-2876	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Markel Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	FAX (A/C, No): NAIC # 38970
INSURED Midland Junior Baseball Assoc. Po Box 52101 Midland, TX 79710			

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Incl Participants ☒ Sexual Abuse/Mol GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	X		3602AH025506 \$1MIL\$2MIL	01/15/14 01/15/14	01/15/15 01/15/15	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB EXCESS LIAB DED ☐ RETENTION \$ ☐ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ If yes, describe under DESCRIPTION OF OPERATIONS below						EACH OCCURRENCE \$ AGGREGATE \$ WC STATUTORY LIMITS ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Accident Insurance			4102AH025505	01/15/14	01/15/15	Med Max : 100,000 Ded: \$250/Claim

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Coverage is provided under this policy only for sponsored/supervised activities of the named insured for which a premium has been paid. Waiver of Subrogation Applies. The City of Midland is included as an additional insured on all policies of insurance.

CERTIFICATE HOLDER**CANCELLATION**

CITY OF MIDLAND City of Midland Po Box 1152 Midland, TX 78701	MIDLAN9 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council/City Manager

FROM: Tina Jauz/Community Services Director

SUBJECT: Consider a resolution authorizing the execution of a sports agreement with the Midland Soccer Association, Incorporated, to administer programs, special events, and services related to soccer for adults and youth.

Purpose:

Consider a resolution authorizing the execution of a sports agreement with the Midland Soccer Association, Incorporated, to administer programs, special events, and services related to soccer for adults and youth.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Maintenance of athletic facilities is carried in current operating budget of the Parks Division. The City, if funds are available, is expected to match all sport association's funds for capital improvement projects, through the contract.

Discussion:

Through this annual sports agreement, the Midland Soccer Association agrees to provide youth soccer programs to the citizens of Midland. The association handles advertisement, sign-ups and scheduling of seasonal play and tournament. City staff is responsible for the long-term maintenance and safe conditions of the sporting facilities.

This sports agreement will again require \$1 million liability insurance naming the City of Midland as an additional insured.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
SPORTS AGREEMENT WITH MIDLAND SOCCER
ASSOCIATION, INCORPORATED, TO ADMINISTER
PROGRAMS, SPECIAL EVENTS AND SERVICES
RELATED TO SOCCER FOR ADULTS AND YOUTH**

WHEREAS, the City Council finds it to be in the best interest of the public to enter into an agreement with Midland Soccer Association, Inc., to be the sponsoring organization responsible for administering its programs, special events and services related to soccer for adults and youth;

**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 sports agreement with Midland Soccer Association, Inc. Said agreement shall be on file in the office of the City Secretary referenced by the date and number of this resolution.

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., 2014, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

MIDLAND SOCCER ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement, entered into and effective this 12th day of February, 2014, is by and between the City of Midland, Texas, a home rule municipal corporation ("City"), and Midland Soccer Association, Inc., ("Association").

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association's programs, special events, organized sanctioned teams and other services related to soccer for adults and youth. The Association shall have the right to collect fees and income generated by Association's soccer activities for adults and youth. This Agreement does not preclude the City or the Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE I. DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by the City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.
- C. **Championship Field(s)** - three (3) playing fields, as agreed by Association, the City Manager and the Parks and Recreation Advisory Board, reserved for Association's

championship games or tournaments, comprised of the three (3) youth soccer fields at Beal Park and one field for adults, as agreed by Association and the City Manager reserved for Association's championship games and tournaments.

- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of one adult Championship Fields and three (3) youth Championship Fields, for the sole purpose of conducting games and practice sessions. Said Championship Field(s) may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve the playing surface, provided all of the following requirements are met:
 - 1. Selection of Championship Field(s) must be approved in writing, and in advance, by the City Manager;

2. If applicable, a proposed fence plan for said Championship Field(s) must be approved by the City Manager, with Association paying all costs associated with said fence;
3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field(s);
4. Association understands and agrees that the City retains an unlimited right of entry upon said Championship Field(s), as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and that City's allowance of the designation and locking of any Championship Field(s) in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field(s) or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field(s) is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;
7. Association shall abide by all conditions and requirements as set out in this Agreement; and

8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.
- E. Provide general field maintenance which will include:
1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in fields;
 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable; and
 5. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.
- I. Respond to emergency maintenance requests on a priority basis as determined by City.

- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Provide maintenance personnel during one tournament. If more than one venue is used, Association will be responsible for supplying any needed manpower.
- L. Coordinate with Association regarding provision and permitting/licensing of vendors.
- M. Allow Association first priority, as appropriate, in the scheduling of Association's scheduled games and practice sessions. Appropriateness will be determined by City.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two weeks prior to the start of Association play, the Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s).
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.
- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.

- E. Prepare playing fields prior to games, including:
1. Marking or cutting any and all necessary lines on playing fields;
 2. Providing any and all necessary bases, markers or goals;
 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 4. Dragging skinned infields for all games if applicable.
- F. If Association wishes to request that the City make a capital improvement, Association shall submit a request in writing on or before the 31st day of March, during the term of this Agreement, and accompany said request with at least a 50% monetary match. Association understands that the City's match of funds, labor, materials, or any combination thereof may not be available for capital improvements. All such requests shall be subject to the approval of the City Council. Requests submitted after the 31st day of March will not be considered.
- G. Submit any other request to the City in writing and no less than 15 days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.
- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.

- I. Appoint or elect one officer of Association, known as the “Facilities Director,” who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the “City Liaison.”
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property, i.e.: all-terrain vehicles, golf carts, line cutters, etc.
- M. Agree to pay electrical costs for field light use at a rate of \$10.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to the City three (3) working days prior to application. Pesticides, herbicides or other chemicals may not be applied upon Park Property without prior approval of City.
- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.

- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Insure that all vending operations are properly permitted by the City.
- S. Abide by all requirements and obligations as set out in this Agreement.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 12, 2014, through December 31, 2014. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by a resolution adopted by the Midland City Council.

ARTICLE V. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of

the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. The City does not have the right to control the means, methods, or details of Association’s work. The City does not have the power to direct the order in which Association’s work should be done. Association 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. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII. ANNUAL REPORTING

Association will provide City with an annual report by the 31st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either 1) uses Park Property for the performance of the sport activity pursuant to this Agreement, 2) maintains equipment on any Playing Field, or 3) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection

with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name the City as an additional insured.

B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties agree that, prior to the execution of the Agreement, Association shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, language similar to the following endorsement:

"The City of Midland is included as an additional insured on all policies of insurance."

C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.

D. Premises. For purposes of this Agreement, “premises” shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.

E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

ARTICLE IX. INDEMNITY

ASSOCIATION WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY’S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY’S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, its agents or employees, or any subcontractor, arising out of, or resulting from Association’s use of, or activities on, the Agreement Premises, and Association will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney’s fees.

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (1) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be

excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and, (2) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association will operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

ARTICLE XIII. TERMINATION

A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

B. No Cause. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. 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. This Agreement shall be governed by the laws of the State of Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

D. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Community Services and
 Parks and Recreation Manager
 at the same address

If to
Association:

Midland Soccer Association, Inc.
1405 W. Illinois
Midland, Texas 79701
Roderick Strambler

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

E. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

G. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

H. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

I. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted

to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

J. Ownership. Association understands and agrees that ownership of said park property remains with City throughout the term of this Agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from park property other than by locking the designated Championship Field(s). Regardless of the designation and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other park property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said park property shall be deemed to mean that Association shall have the right to control said park property during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, the Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and the Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

**BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE
AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND**

INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE ASSOCIATION 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 ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

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

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

ARTICLE XVII. SOVEREIGN IMMUNITY

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

ARTICLE XVIII. NO THIRD PARTY BENEFICIARIES

The City's approval of this Agreement does not create a third party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ASSOCIATION HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES, AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH ASSOCIATION HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING

BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY'S NEGLIGENCE.

ARTICLE XX. CONSIDERATION

The City and Association agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by City and Association.

**ARTICLE XXI. 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, Association or its legal representative, shall give the City Manager 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 Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner

provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to request 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 Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Association's failure to comply with the requirements herein shall perpetually bar Association's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Association agrees that the requirements of this entire Agreement are reasonable.

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Courtney Sharp, City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

MIDLAND SOCCER ASSOCIATION, INC.

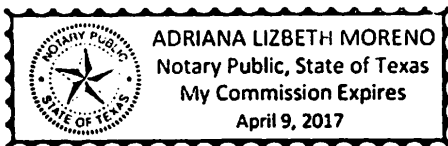
By Rodrick D. Strambler
Title President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared Rodrick D. Strambler known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland Soccer Association, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 22nd day of January, 2014.

Adriana Moreno
Notary Public, State of TEXAS





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/19/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	Pullen Insurance Services, Inc. 2560 River Park Plaza, Suite 300 Fort Worth, TX 76116	CONTACT NAME	Sports Division	
		PHONE	(817) 738-6100	FAX
		E-MAIL ADDRESS	contact@pullenins.com	
		PRODUCER CUSTOMER ID#	TXN	
INSURED	North Texas State Soccer Association 3803 Parkwood Boulevard, Suite 200 Frisco, TX 75034	INSURERS AFFORDING COVERAGE		NAIC #
		Insurer A:	National Casualty Company	11991
		Insurer B:	National Union Fire Insurance Company	19445
		Insurer C:		
		Insurer D:		
		Insurer E:		
		Insurer F:		

COVERAGES

CERTIFICATE NUMBER: 13107862

REVISION NUMBER: 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L INSRD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC	X		KRO 3713000	9/1/2013	9/1/2014	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE UNLIMITED PRODUCTS - COMPIOP AGG \$1,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS			KRO 3713000	9/1/2013	9/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
A	UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DEDUCTIBLE RETENTION \$			XKO 3713100	9/1/2013	9/1/2014	EACH OCCURRENCE \$5,000,000 AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under	Y/N	N/A				WC STATUTORY LIMITS E. L. EACH ACCIDENT E. L. DISEASE - EA EMPLOYEE E. L. DISEASE - POLICY LIMIT
B	PARTICIPANT ACCIDENT MEDICAL			SRG 9115346A	9/1/2013	9/1/2014	\$100,000 PER INJURY

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

This certificate is issued on behalf of North Texas State Soccer Association & Midland Soccer Association. Certificate Holder is Additional Insured as respects the operations of the Named Insured for sanctioned activities of the state association. Waiver of Subrogation in favor of the City of Midland. Certificate valid only for activities beginning 9/17/2013 and ending 8/31/2014.

CERTIFICATE HOLDER

City of Midland
300 North Loraine
Midland, TX 79701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/19/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Des Champs, Gregory and Hayes, Inc
1812 Manatee Ave., W.
Bradenton, FL 34205

CONTACT NAME:

PHONE (A/C, No, Ext): 941-748-1812

FAX (A/C, No):

E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE

NAIC #

www.deschampsgregory.com

INSURED
North Texas State Soccer
Association
1740 South I-35, Ste. 105
Carrollton TX 75006

INSURER A: National Casualty Company

INSURER B: Hartford Life & Accident Ins.

INSURER C:

INSURER D:

INSURER E:

INSURER F:

COVERAGES

CERTIFICATE NUMBER: 17677188

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR: WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Participant Legal GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC		6LKRO000003704700	9/1/2013	9/1/2014	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ None PRODUCTS - COM/OP AGG \$ 3,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS		6LKRO000003704700	9/1/2013	9/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
A	UMBRELLA LIAB ☐ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$		6LXKO000003704800	9/1/2013	9/1/2014	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐ N/A				WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Participant Accident		36-SB-204969	9/1/2013	9/1/2014	Participant \$5,000 max Accident \$400 ded.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

League: Midland Adult Soccer Association
Team: All Affiliated Teams - 300 N Lorraine, Midland, TX 79701
Certificate Holder is Additional Insured as pertains to sanctioned games/practices of the named insured
its affiliates, Leagues or Member Teams
The effective date of coverage for the team/league shown is the date they were accepted as a member of USASA.

CERTIFICATE HOLDER

All Affiliated Teams
City of Midland
300 N Lorraine
Midland TX 79701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Scott Lunsford



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council/City Manager

FROM: Tina Jauz/Community Services Director

SUBJECT: Consider a resolution authorizing the execution of a sports agreement with Midland United Girls Softball Association, Incorporated, to administer programs, special events, and services related to softball for girls.

Purpose:

Consider a resolution authorizing the execution of a sports agreement with Midland United Girls Softball Association, Incorporated, to administer programs, special events, and services related to softball for girls.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Maintenance of athletic facilities is carried in current operating budget of the Parks Division. The City, if funds are available, is expected to match all sport association's funds for capital improvement projects, through the contract.

Discussion:

Through this annual sports agreement, the Midland United Girls Softball Association agrees to provide youth softball programs to the citizens of Midland. The association handles advertisement, sign-ups and scheduling of seasonal play and tournament. City staff is responsible for the long-term maintenance and safe conditions of the sporting facilities.

This sports agreement will again require \$1 million liability insurance naming the City of Midland as an additional insured.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
SPORTS AGREEMENT WITH MIDLAND UNITED
GIRLS SOFTBALL ASSOCIATION, INCORPORATED
TO ADMINISTER PROGRAMS, SPECIAL EVENTS AND
SERVICES RELATED TO SOFTBALL FOR GIRLS**

WHEREAS, the City Council finds it to be in the best interest of the public to enter into an agreement with Midland United Girls Softball Association, Inc., to be the sponsoring organization responsible for administering its programs, special events and services related to softball for girls;

**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 sports agreement with Midland United Girls Softball Association, Inc. Said agreement shall be on file in the office of the City Secretary referenced by the date and number of this resolution.

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., 2014, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

MIDLAND UNITED GIRLS SOFTBALL ASSOCIATION, INCORPORATED
SPORTS AGREEMENT

This Agreement, entered into and effective this 12th day of February, 2014, is by and between the City of Midland, Texas, a home rule municipal corporation ("City"), and Midland United Girls Softball Association, Inc., ("Association").

PURPOSE

Association shall be the sponsoring organization responsible for administering the Association's programs, special events, organized sanctioned teams and other services related to softball for young women ages Eighteen (18) and younger. The Association shall have the right to collect fees and income generated by Association's activities for young women ages Eighteen (18) and younger. This Agreement does not preclude the City or the Association from soliciting and hosting national tournaments and collecting the proceeds therefrom. THIS AGREEMENT SHALL NOT BE EXECUTED BY ANY CITY PERSONNEL UNTIL THE COMMERCIAL GENERAL LIABILITY INSURANCE IS APPROVED BY THE CITY ATTORNEY'S OFFICE.

ARTICLE I. DEFINITIONS

- A. **Park Property** - any property owned by the City of Midland and designated or deemed by the City to be park property.
- B. **Playing Field** - any single area of park property which has been improved in any way so as to facilitate the performance of the sport activity conducted by Association pursuant to this Agreement.

- C. **Championship Field(s)** - nine (9) playing fields, as agreed by Association, the City Manager and the Parks and Recreation Advisory Board, reserved for Association's championship games or tournaments, comprised of the nine (9) fields within the Freddie Ezell Complex at Ulmer Park.
- D. **City Manager** - the City Manager of the City of Midland, Texas.
- E. **Director of Community Services** - the Director of Community Services for the City of Midland, Texas.

ARTICLE II. DUTIES OF CITY

City agrees to perform the following:

- A. Respond to calls for information concerning Association and make referrals to Association when necessary.
- B. Meet with Association upon its request.
- C. Review all requests for capital improvements which are made according to the procedures set out in this Agreement.
- D. Allow Association nonexclusive use of the nine (9) Championship Fields for the sole purpose of conducting games and practice sessions. Said Championship Field(s) may be enclosed by an approved fence and locked, when not in use by either Association or City, so as to preserve the playing surface, provided all of the following requirements are met:

1. Selection of Championship Field(s) must be approved in writing, and in advance, by the City Manager;
2. If applicable, a proposed fence plan for said Championship Field(s) must be approved by the City Manager, with Association paying all costs associated with said fence;
3. Association shall deposit with the Director of Community Services one (1) copy of any and all keys necessary to gain access to said Championship Field(s);
4. Association understands and agrees that the City retains an unlimited right of entry upon said Championship Field(s), as well as any other Park Property, at any time and for any purpose whatsoever;
5. Association understands and agrees that City owns all Park Property that is in any way effected by this Agreement, and that City's allowance of the designation and locking of any Championship Field(s) in no way conveys to Association or any other party any right of ownership whatsoever in either said Championship Field(s) or any other Park Property;
6. Association understands and agrees that the right to designate and lock any such Championship Field(s) is temporary and subject to the discretion of the City Manager, and in any event shall terminate with the expiration of this Agreement unless terminated earlier by the City Manager;

7. Association shall abide by all conditions and requirements as set out in this Agreement; and
 8. Association understands and agrees that placement of any lock on any Park Property so as to exclude the public without the express written approval of the City Manager constitutes grounds for immediate termination of this Agreement.
- E. Provide general field maintenance which will include:
1. Mowing of playing fields once a week during the growing season, adjustments may be made for tournaments;
 2. Fertilizing in April and September with a third application if feasible as determined by City;
 3. Filling significant holes in fields;
 4. Cutting necessary field lines prior to each Association season and prior to national tournaments if applicable; and
 5. Making major repairs to City-owned equipment and fixtures.
- F. Repair and maintain bleachers, water fountains, irrigation systems, lighting, fencing, roadways and parking areas as applicable.
- G. Provide water, electricity and sewer service for scheduled games, and electricity for scheduled practices taking place during the month preceding the start of the season.
- H. Provide all maintenance for trees and shrubs surrounding playing fields as applicable.

- I. Respond to emergency maintenance requests on a priority basis as determined by City.
- J. Apply fertilizer, herbicide, and seed purchased by Association and at Association's expense or oversee applications applied by Association's contractor. Any fertilizer or other chemicals or treatment must be approved by City.
- K. Provide maintenance personnel during one tournament. If more than one venue is used, Association will be responsible for supplying any needed manpower.
- L. Coordinate with Association regarding provision and permitting/licensing of vendors.
- M. Allow Association first priority, as appropriate, in the scheduling of Associations scheduled games and practice sessions. Appropriateness will be determined by City.

ARTICLE III. DUTIES OF ASSOCIATION

Association agrees to perform the following:

- A. Two weeks prior to the start of Association play, the Association shall furnish the Parks and Recreation Division of City a complete schedule of all games and practices to be played during the season, including all tournaments and special games. Such schedule shall be supplemented if changes occur during the season, with the supplement submitted to City two working days prior to the effected event(s).
- B. Furnish City a list showing the total number of individuals and teams registered with Association at the end of each season.
- C. Train all volunteers and assign volunteers to appropriate duties.

- D. Recruit, pay, and schedule all referees, score keepers, and game officials needed to conduct the games.
- E. Prepare playing fields prior to games, including:
 - 1. Marking or cutting any and all necessary lines on playing fields;
 - 2. Providing any and all necessary bases, markers or goals;
 - 3. Providing personnel, equipment and materials necessary to drag infields, foul lines or batter boxes if applicable; and
 - 4. Dragging skinned infields for all games if applicable.
- F. If Association wishes to request that the City make a capital improvement, Association shall submit a request in writing on or before the 31st day of March, during the term of this Agreement, and accompany said request with at least a 50% monetary match. Association understands that the City's match of funds, labor, materials, or any combination thereof may not be available for capital improvements. All such requests shall be subject to the approval of the City Council. Requests submitted after the 31st day of March will not be considered.
- G. Submit any other request to the City in writing and no less than 15 days before the subject of the request is needed. All such requests shall be subject to the approval of City and shall be responded to on a priority basis as determined by City.

- H. Hold an annual meeting with the Parks and Recreation Manager, or his or her designee, to review this Agreement and to make any necessary changes or adjustments.
- I. Appoint or elect one officer of Association, known as the “Facilities Director,” who shall be responsible for all communications with the Parks and Recreation Division with regard to facility maintenance and special events.
- J. Designate a Parks and Recreation Staff person to serve on the Association Board of Directors as a non-voting member known as the “City Liaison.”
- K. Agree to explore increased participation that is representative of all socio-economic levels throughout the City of Midland.
- L. Not allow any person under the age of seventeen (17) years to operate any power machinery on Park Property, i.e.: all-terrain vehicles, golf carts, line cutters, etc.
- M. Agree to pay electrical costs for field light use at a rate of \$10.00 per hour for all unscheduled events or practices that are held after season starts.
- N. Post an Association lightning policy on site at all locations and provide a lightning detector.
- O. Pesticides and herbicides will be applied only by a licensed applicator which is licensed by the Texas Department of Agriculture. Further, Association will supply labels and MSDS to the City three (3) working days prior to application. Pesticides,

herbicides or other chemicals may not be applied upon Park Property without prior approval of City.

- P. Notify City of intent to apply fertilizer three (3) working days prior to application and furnish to City labels and any application MSDS for fertilizer. Any fertilizer or other chemicals or treatment must be approved by City.
- Q. Association agrees to keep Park Property and surrounding area clean and orderly by picking up trash after Association's events and shall store equipment after season ends.
- R. Insure that all vending operations are properly permitted by the City.
- S. Abide by all requirements and obligations as set out in this Agreement.

ARTICLE IV. TERM OF AGREEMENT

The term of this Agreement shall extend from February 12, 2014, through December 31, 2014. Thereafter, this Agreement may be extended upon written agreement, by mutual consent, of the parties for a term of no longer than one (1) year. Any extension of this Agreement must be approved by a resolution adopted by the Midland City Council.

ARTICLE V. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Association shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Association shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons

performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Association, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Association. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. The City does not have the right to control the means, methods, or details of Association's work. The City does not have the power to direct the order in which Association's work should be done. Association 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. Association shall assume exclusive responsibility for the work. Association is entirely free to do the work in its own way.

ARTICLE VI. BOOKS AND RECORDS

If Association receives any money from City, Association shall keep records, including supporting documentation, of any expenditures made with this money. Association shall make these records and supporting documentation available for inspection and copying

by City, its officers or authorized agents. Association shall keep these records and documentation for at least three (3) years.

ARTICLE VII. ANNUAL REPORTING

Association will provide City with an annual report by the 31st day of December, during the term of this Agreement, stating the number of teams and players which participated during the reporting year, gross receipts collected, and capital improvements completed.

ARTICLE VIII. INSURANCE

A. General Liability. At all times during the term of this Agreement, including but not limited to any time where Association either 1) uses Park Property for the performance of the sport activity pursuant to this Agreement, 2) maintains equipment on any Playing Field, or 3) excludes the general public from any Championship Field, Association shall provide and keep in force commercial general liability insurance covering Association which names City as an additional insured with Association. Said insurance shall protect City and Association against any and all liability for death, injury, loss or damage arising out of, or connected with the condition, occupation, or use of the premises by Association, its employees, agents, contractors, licensees, invitees, guests, participants, assigns or other persons admitted by Association to the premises. In the event that Association maintains equipment on any Playing Field or other City property beyond the term of this Agreement, the insurance must also cover Association and City throughout the entire period of time that

Association maintains equipment on any Playing Field or other City property. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Association and approved by City and shall be paid for by Association. The insurance provided pursuant to this Section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect City and Association against liability to any employees or servants of Association and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the premises. The Commercial General Liability insurance shall be on a per occurrence basis and shall name the City as an additional insured.

B. Certificates of Insurance. Association shall furnish City with certificates of all insurance required by this Agreement. Association shall provide City with insurance certificate prior to the execution of this Agreement, or City will lock facilities down and no events or practices will take place until insurance is provided to the City Secretary's office. Association agrees that if it does not keep this insurance in full force and effect as required by this Article, City may notify Association of this failure, and if Association does not deliver City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, City may, at its option and with full disclosure to Association, take out and/or pay the premiums on the insurance needed to fulfill Association's obligations under the provisions of this Article. Upon demand from City, Association shall reimburse City the full amount of any insurance premiums paid by City pursuant to this paragraph. The parties

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

“The City of Midland is included as an additional insured on all policies of insurance.”

C. Notice. All insurance policies required by this Agreement must provide that City shall receive thirty (30) days prior written notice before any change or cancellation of the policy.

D. Premises. For purposes of this Agreement, “premises” shall encompass all property used by Association to conduct its activities including, but not limited to, real property owned by City, including but not limited to all park property, and personal property owned by Association which is located on City property.

E. Certification. Association certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

ARTICLE IX. INDEMNITY

ASSOCIATION WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY’S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER,

INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ASSOCIATION, its agents or employees, or any subcontractor, arising out of, or resulting from Association's use of, or activities on, the Agreement Premises, and Association will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

ASSOCIATION SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH ASSOCIATION OR ASSOCIATION'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE

EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND ASSOCIATION WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE X. NONDISCRIMINATION

Association, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (1) no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the premises; and, (2) in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sexual orientation, religious affiliation or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

ARTICLE XI. LAWS AND REGULATIONS

Association will operate and maintain the premises in compliance with all federal, state and local laws and regulations including but not limited to regulations with respect to access to people with disabilities promulgated pursuant to the Americans with Disabilities Act. Association shall comply with all ordinances of the City of Midland applicable to the

premises. Association shall comply with all orders and requirements imposed by the health, sanitation and police departments, for the correction, prevention and abatement of nuisances in, upon, or connected with the premises during the term of this Agreement. City makes no delegation of nor diminishment of its police powers pursuant to this Agreement.

ARTICLE XII. ASSIGNMENT

Association shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

ARTICLE XIII. TERMINATION

A. Default. Should either party default in the performance of any provision of this Agreement, and not correct the default within thirty (30) days after receipt of written notice from non-defaulting party, the non-defaulting party may declare this Agreement, and all rights and interests created by it, to be terminated. Upon non-defaulting party's electing to terminate, this Agreement shall cease and come to an end. Non-defaulting party may, in its discretion, allow defaulting party more than thirty (30) days to cure defaults if such time is, in the opinion of non-defaulting party, reasonably necessary.

B. No Cause. The City may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days written notice to the Association. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the

Agreement during the term of the Agreement without penalty to the City. The Association has no expectation and has received no guarantees that the Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

C. Removal of Equipment. Upon termination of this Agreement, Association shall have thirty (30) days to remove from City property all personal property owned by Association.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. 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 occurred in Midland County, Texas.

C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

D. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City: City of Midland
 P.O. Box 1152
 Midland, Texas 79702
 Attention: City Manager

with copies to: City Attorney and
 Director of Community Services and
 Parks and Recreation Manager
 at the same address

If to Midland United Girls Softball Association, Inc.
Association: P.O. Box 10574
 Midland, Texas 79702
 Scott Stone, President

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

E. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the

Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

G. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

H. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

I. Force Majeure. If either party is prohibited from performing its obligations under this Agreement due to war, civil commotion, act of God, governmental restrictions, regulations, fire, or other casualty or circumstances beyond the control of the party obligated or permitted to do or perform the same, it shall be relieved of its obligations to perform under this Agreement to the extent it is so prohibited.

J. Ownership. Association understands and agrees that ownership of said park property remains with City throughout the term of this agreement, that initiation of this Agreement conveys absolutely no right of ownership whatsoever to Association, and that Association does not have the right to exclude members of the public from park property other than by locking the designated Championship Field(s). Regardless of the designation

and/or locking of any Championship Field(s), Association shall not have the authority to evict, or to cause to be evicted, members of the public from any Championship Field(s) or any other park property. Any provisions in the Agreement which may appear to give Association any right of control or ownership of said park property shall be deemed to mean that Association shall have the right to control said park property during scheduled games and practice sessions only.

ARTICLE XV. SCHEDULING CONFLICTS

In the event of any conflict of scheduling of events, the Association agrees to work with all parties in a spirit of mutual cooperation. In the event any conflict cannot be so resolved, the Director of Community Services or her designee, shall make a final determination of scheduling and the Association agrees to be bound by that determination.

ARTICLE XVI. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, ASSOCIATION AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE ASSOCIATION SPECIFICALLY AGREES THAT IF THE ASSOCIATION 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 ASSOCIATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ASSOCIATION MIGHT OTHERWISE BE ENTITLED.

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

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

ARTICLE XVII. SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XVIII. NO THIRD PARTY BENEFICIARIES

The City's approval of this Agreement does not create a third party beneficiary. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other rights hereunder.

ARTICLE XIX. RELEASE

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

ARTICLE XX. CONSIDERATION

The City and Association agree that this Agreement is supported by good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by City and Association.

ARTICLE XXI. 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, Association or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Association will settle, the physical and mailing addresses of Association at the time and date the claim was presented and the physical and mailing addresses of Association for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Association relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Association that Association's notice is insufficient. City reserves the right to

request 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 Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Association's failure to comply with the requirements herein shall perpetually bar Association's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Association agrees that the requirements of this entire Agreement are reasonable.

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective the day and year set forth above.

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, City Secretary

Courtney Sharp, City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Community Services Director

MIDLAND UNITED GIRLS SOFTBALL
ASSOCIATION, INC.

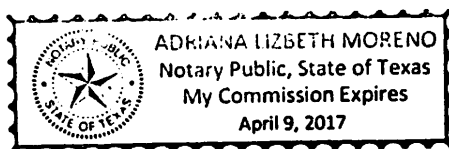
By [Signature]

Title York Commission

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared John S. Stone known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland United Girls Softball Association, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 22nd day of January, 2014.



Adriana Moreno
Notary Public, State of Texas



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/06/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER BOLLINGER, Inc. 101 JFK PARKWAY SHORT HILLS, NJ 07078 PHONE: 1-800-526-1379 FAX: 973-921-2876		CONTACT NAME: PHONE (A/C, No. Ext): 800-526-1379 FAX (A/C, No.): 973-921-2876 E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Market Insurance Company	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

INSURED
 Amateur Softball Association and Members of Texas ASA JO Indiv
 Reg Program
 Jack Aaron
 1925 Marshall Ave
 Waco, TX 76708

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Participants Liab GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	X		3602AH230069-13	01/01/2014	01/01/2015	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000* PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$5,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) Y/N ☐ If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				W/C STATU-TORY LIMITS ☐ OTH-ER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	OTHER Accident Medical Full Access			4102AH220317-14	01/01/2014	01/01/2015	Med Max: \$250,000 52-week Benefit Period. Deductible applies.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

COVERAGE UNDER THIS POLICY SHALL APPLY TO LIABILITY OF THE INSURED ARISING OUT OF THE ADMINISTRATION, PLAY OR PRACTICE OF AMATEUR SOFTBALL/BASEBALL, BUT ONLY FOR INCIDENTS INVOLVING BODILY INJURY, PERSONAL INJURY OR PROPERTY DAMAGE. CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED. THIS CERTIFICATE IS ISSUED ON BEHALF OF: MIDLAND UNITED GIRLS SOFTBALL

CERTIFICATE HOLDER

CANCELLATION

CITY OF MIDLAND TEXAS

P.O. BOX 1152
 MIDLAND, TEXAS 79702

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Wm Crisp

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City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: 02/11/2014

TO: City Council / City Manager

FROM: David Beard,

SUBJECT: Consider a resolution authorizing the execution of a Professional Service Agreement in the amount of \$99,825 with Dunaway Associates through the recently approved On-call Engineering Services program for the Conceptual Planning and initial studies required by TxDOT for the widening of Fairgrounds Rd. from Pecan Ave. to Loop 250. (District #2 – Love)

Purpose:

Consider a resolution authorizing the execution of a Professional Service Agreement in the amount of \$99,825 with Dunaway Associates through the recently approved On-call Engineering Services program for the Conceptual Planning and initial studies required by TxDOT for the widening of Fairgrounds Rd. from Pecan Ave. to Loop 250. (District #2 – Love)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The Fairgrounds Rd. (Pecan Ave. to Loop 250) widening project was allocated \$4,000,000 in the 2014 Certificate of Obligation. Therefore the sum of \$4,000,000 is hereby appropriated from the 2014 CO Street & Drainage (175) to the Fairgrounds Road Street Project (9080).

Discussion:

The scope of this project is to develop a conceptual plan and complete the initial studies required by TxDOT for the widening of Fairgrounds Rd. from Pecan Ave. to Loop 250. The engineering services include the conceptual plan, construction alternates, cost estimates, right-of-way recommendations, environmental studies, and initial public notifications meeting TxDOT criteria and City of Midland standards.

Funding for the project was allocated in the 2014 Certificates of Obligation. In addition, TxDOT will provide approximately \$2,500,000 towards the project. To expedite the project, Engineering Services staff is utilizing the On-call Engineering Services program (\$99,825) to complete the initial TxDOT project requirements. Once the initial requirements are satisfied, an RFQ will be advertised to select an Engineering firm to prepare construction drawings and manage the project. The Engineering and Construction will be paid from a combination of available funds in the Fairgrounds Road Street Project (9080) and TxDOT funds.

Attached is a project vicinity map.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH DUNAWAY ASSOCIATES, LP FOR ENGINEERING SERVICES IN CONNECTION WITH THE WIDENING OF FAIRGROUNDS ROAD FROM PINE AVENUE TO LOOP 250; APPROPRIATING FUNDS FOR SAID FAIRGROUNDS ROAD PROJECT IN THE AMOUNT OF \$4,000,000; AND AUTHORIZING PAYMENT FOR SAID PROFESSIONAL SERVICES IN THE AMOUNT OF \$99,825.00

WHEREAS, the City of Midland advertised a Request for Qualifications for professional services for engineering services in connection with the widening of Fairgrounds Road from Pine Avenue to Loop 250; and

WHEREAS, Dunaway Associates, LP has agreed to perform said professional services for an estimated \$99,825.00; and

WHEREAS, the City Council finds that Dunaway Associates, LP is qualified to perform said professional services; and

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

WHEREAS, the City Council finds that Dunaway Associates, LP provides professional services for a fair and reasonable price; and

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

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a

professional services agreement with Dunaway Associates, LP for said professional services. A copy said agreement is attached hereto as Exhibit “A” and incorporated herein for all legal purposes.

SECTION TWO. That the sum of \$4,000,000.00 is hereby appropriated from the 2014 CO Street & Drainage (175) to the Fairgrounds Road Street Project (9080).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payment to Dunaway Associates, LP, pursuant to the terms of said agreement, in an amount not to exceed \$99,825.00, from funds appropriated herein upon receipt of proper invoice or statement approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2014, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 12th day of February, 2014, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called “City,” and DUNAWAY ASSOCIATES, LP, hereinafter referred to as “Company.”

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Company shall provide engineering services (also referred to as the “services”) in connection with the extension and widening of Fairgrounds Road.

ARTICLE II. SERVICES TO BE PERFORMED

1. Company shall provide those services described in Exhibit “A”, which is attached hereto and incorporated herein for all legal purposes.
2. Company shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same types of projects. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit “A.”

ARTICLE III. FINANCIAL CONSIDERATIONS

City agrees to pay Company in an amount not to exceed **\$99,825.00** for the professional services described in Exhibit “A.” City agrees to pay Company in accordance with the Fee Schedule set forth in Exhibit “B”, which is attached hereto and incorporated herein for all legal purposes, upon presentation of a monthly invoice. The monthly invoice shall set forth all fees and costs. The City Manager must approve all additional expenses and reimbursable expenses in advance. The City shall pay every portion of the invoice that is not in dispute within 30 days; provided, however, all payments shall be in the City’s sole discretion.

ARTICLE IV. TERM

The term of this Agreement shall be from February 12, 2014, until the project is completed, unless the Agreement is terminated earlier as provided in Article V below.

ARTICLE V. TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party sixty (60) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice. In the event of termination of the Agreement under this Article, the Company shall be paid for all services performed up to the termination date.

ARTICLE VI. CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that any necessary engineering services shall be either self-performed or subcontracted by the Company.

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

All reports, information and other data ("instruments of service"), given to, prepared or assembled by Company under this Agreement, and any other related documents or items shall become the sole property of City and shall be delivered to City, without restriction, except that Company may make copies of any and all instruments of service for its files. The City shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of Company, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Company shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Company shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers,

agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Company, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Company. No person performing any of the work and services described hereunder by Company shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. Company shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Company’s work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.

ARTICLE IX. INSURANCE

Company shall at all times during the term of this Agreement maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Comprehensive General Liability (including Contractual liability):

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

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

Worker’s Compensation: Statutory limits

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

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

The Business Automobile Liability insurance provided by Company shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner

vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement.

All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the City as an additional insured. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the City.

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

"The City of Midland is included as an additional insured on all policies except for Worker's Compensation. The Company and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

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

Company shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured (except workers compensation).

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE COMPANY SPECIFICALLY AGREES THAT IF THE COMPANY BRINGS

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

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

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

ARTICLE XI. SOVEREIGN IMMUNITY

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

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

The City's approval of this Agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

ARTICLE XIII. RELEASE

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

**ARTICLE XIV.
GENERAL PROVISIONS**

A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

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

C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City:	City Manager's Office P.O. Box 1152 Midland, Texas 79702
-------------	--

If to Company:	Dunaway Associates, LP 4000 N. Big Spring St., Suite 101 Midland, Texas 79705
----------------	---

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

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

ARTICLE XV. NOTICE OF ALLEGED BREACH: STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Company or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Company relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Company that Company's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of

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

**ARTICLE XVI.
ASSIGNMENT**

Company shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

Company:
DUNAWAY ASSOCIATES, LP

By: _____

Title: _____

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____
_____ known to me to be the person whose name is subscribed to the foregoing
instrument and acknowledged to me that he executed the same for the purposes and
consideration therein expressed on behalf of DUNAWAY ASSOCIATES, LP.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of
_____, A.D., 2014.

Notary Public, State of Texas

Printed Name

My Commission Expires: _____

North Fairgrounds Road Widening Project

General Scope – Initial Phase

Project Description

The N Fairgrounds Rd. widening project involves widening approximately 1.3 miles of existing 2 lane roadway into 5-lane arterial with 100 foot right-of-way (ROW) from E Pecan Ave. to the SH Loop 250 frontage road. This project is being split into two phases, an initial phase and a completion phase. For the initial phase, Dunaway Associates will provide the following services:

- Project management;
- Initial conceptual design investigation; and
- Initial Environmental Documentation.

Initial Phase Tasks

Project management will include:

- Managing the initial phase;
- Developing a project schedule for both the initial and completion phase (project kick-off to letting);
- Five (5) progress meetings with CITY staff;
- One (1) meeting with the CITY council prior to the initial public meeting to present material for the initial public meeting;
- Attending and presenting an initial public meeting, to be held in March 2014;
- Coordination with TxDOT as required; and
- Monthly Invoicing.

Initial Conceptual Design Investigation will include:

- Acquisition of available as-built information, including utilities;
- Development of an exhibit with project location map and proposed typical section to be presented at the initial public meeting;
- Description of the purpose and need of the project as well as known project constraints;

- Preparation of initial public meeting notice, as well as related mailings; and
- Development of the project's three (3) alternatives, which will begin after the initial public meeting. The alternative alignments will be based on available GIS information and will include a plan view for each alternative. The three (3) alternatives to be investigated are:
 - Widening existing N Fairgrounds Rd. centered along the existing roadway alignment with equal ROW acquisition on both sides.
 - Widening existing N Fairgrounds Rd. with the majority of the widening to the east of the existing roadway to avoid as much as possible the need to acquire ROW from the adjoining Park and Country Club.
 - Widening existing N Fairgrounds Rd. with the majority of the widening to the east of the existing roadway to minimize the need to acquire ROW from the adjoining Park and Country Club. This alternative will include large parkways to facilitate ten (10) foot meandering trails on both sides of the roadway.

Initial Environmental Documentation will include:

- Data Collection
- Site Reconnaissance (including up to 2 offsite basins);
- Environmental Constraints Analysis
 - Description of the existing facility;
 - Social, Economic, and Environmental Effects investigation;
 - Constraints Map, Exhibits, and Attachments

The need for the following environmental services will be dependent on the outcome of the initial phase's environment findings and are not included in the current scope. If any of these services are needed, a request for contract amendment will be submitted:

- Historical Resource Survey;
- Endangered species presence/absence surveys;
- Air quality modeling; and
- Noise barrier analysis.

Deliverables for the Initial Phase

- Initial public meeting exhibit (location map, proposed typical section);
- Technical memo documenting the need and purpose for the project as well as known project constraints;
- Documentation of the initial public meeting and public comments;
- Three (3) alternative alignment exhibits (alternative alignment, proposed typical section, minimum ROW takings, property ownership); and
- Technical memos for the environmental investigation and documentation completed in this phase for incorporation into the final Environmental Document.



2014 Standard Hourly Rate Schedule

101	Administrative 1	75
102	Administrative 2	81
103	Administrative 3	92
105	Controller	150
106	Assistant Controller	100
107	Director of Information Services	165
108	Information Services	83
111	Business Development	110
200	Production Manager	105
201	Graduate Engineer 1	100
202	Graduate Engineer 2	105
203	Project Engineer 1	120
204	Project Engineer 2	150
206	Engineer Director	175
207	Sr. Engineer Director	220
209	Sr. Engineer Director	225
301	Instrument Operator	49
302	Party Chief	116
303	Survey Technician 1	82
304	Survey Technician 2	88
306	Surveyor-In-Training	95
308	Project Surveyor 2	140

310	Surveyor Director	180
403	Sr. Land Planner	160
404	Landscape Planner	90
405	Landscape Architect 2	135
406	Sr. Landscape Architect	185
407	Landscape Architect Director	220
408	Construction Project Representative	100
500	Environmental Scientist 1	105
501	Environmental Scientist 2	115
600	Intern	68
601	CADD Technician 1	79
602	CADD Technician 2	83
603	CADD Technician 3	89
604	Design Technician 1	103
605	Design Technician 2	113
608	Project Manager	125
609	Sr. Project Manager	160
610	Field Manager	105
611	Principal	245
612	Sr. Design Technician	185
613	Project Manager 2	140



ENGINEERING DIVISION

Fairgrounds Road Widening (Pecan Avenue - Loop 250)

On-Call Professional Service Agreement
with Dunaway Associates



Map by DDB 02/03/2014



DA No. P0012000

January 31, 2014

Mr. Jose Ortiz, P.E.
Engineering Services Director
City of Midland
P.O. Box 1152
Midland, Texas 79702

Reference: **North Fairgrounds Road Widening (E Pecan Ave. to the SH Loop 250)**

Mr. Ortiz:

With this letter please find our proposed scope and fee estimate for the North Fairgrounds Road project, covering initial conceptual design investigation and initial environmental documentation. Do not hesitate to call me if you have any questions or require additional information regarding this proposal.

Sincerely,

DUNAWAY ASSOCIATES, L.P.

A handwritten signature in blue ink, appearing to read "B. Baca", is written over the company name.

Brooks I. Baca, P.E.
Associate/Director of Midland Operations

Level of Effort Spreadsheet
TASK/HOUR BREAKDOWN
Design Services for
North Fairgrounds Road Widening Initial Phase

Task No.	Task Description	Total Expense Cost	Task Sub Total
1.0	Project Management	\$0	\$5,365
1.1	Mgmt and Admin	\$0	\$3,575
1.2	Project Schedule	\$0	\$1,790
2.0	Meetings	\$0	\$6,500
2.1	Meetings With City Staff (5)	\$0	\$2,500
2.2	Public Meetings (1)	\$0	\$2,000
2.3	City Council Presentations (1)	\$0	\$2,000
3.0	Conceptual Phase	\$0	\$40,720
3.1	Data Collection	\$0	\$3,610
3.2	Initial Public Meeting Exhibits	\$0	\$3,830
3.3	Conceptual Alternative Development (3)	\$0	\$33,280
4.0	Environmental	\$34,900	\$38,750
4.1	Initial Environmental Documentation.	\$34,900	\$38,750
5.0	Reproduction	\$5,000	\$5,000
Total		\$39,900	\$96,335

Subconsultant Admin 10% **\$3,490**

Total Project Cost **\$99,825**



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: 02/11/2013

TO: City Council / City Manager

FROM: David Beard,

SUBJECT: Consider a resolution authorizing City Staff to renew the Water / Wastewater / FH Taps project with TEC Excavation, Inc. for a term of 6 months in the amount of \$500,000 (City Wide)

Purpose:

Consider a resolution authorizing City Staff to renew the Water / Wastewater / FH Taps project with TEC Excavation, Inc. for a term of 6 months in the amount of \$500,000 (City Wide)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$500,000 is hereby appropriated from the Water and Sewer Fund (300) Engineering Division (80) from the other account (3990) to Water, Wastewater and Fire Hydrant Tap Project (9049).

Discussion:

TEC Excavation, Inc. was awarded the Water / Wastewater / Fire Hydrant Taps project at the June 25, 2013 Council Meeting and the notice to proceed was issued on July 22, 2013. The provisions of the contract allow for it to be renewed up to 2 addition terms. The first renewal was approved at the October 8, 2013 Council Meeting. As of January 31, the City has expended 77% of the total project funds and at the current rate of progress will likely expend all of the funds near the end of February.

During this contract term, the contractor has installed approximately 100 sewer and water taps and constructed several water and wastewater extensions, most notably the fire line upgrade at City Hall, a replacement water main in the alley east of the Lofts serving the three business in the Wall Street Bar & Grill building and Burbon Street building, and the water main improvements in connection with the new Susie's South 40 on Marienfeld St.

This has been a successful project, reducing the wait time for installation of taps to less than 30 days. In addition, the project has allowed the understaffed water and wastewater maintenance crews to concentrate on other tasks.

The contract (Item #12 - Special Conditions) allows the City upon written mutual agreement with the Contractor, to renew the contract up to 2 additional terms. Based on the success of this contract, City staff recommends renewing the Water, Wastewater and Fire Hydrant Taps project with TEC Excavation, Inc. in the amount of \$500,000 for a term of 6 months. This will be the second renewal.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE SECOND
RENEWAL OF THE CONTRACT WITH TEC
EXCAVATION, INC. FOR THE WATER,
WASTEWATER AND FIRE HYDRANT TAPS PROJECT
FOR ONE (1) ADDITIONAL SIX (6) MONTH TERM;
AND APPROPRIATING \$500,000 THEREFOR**

WHEREAS, the City Council previously authorized the execution of a contract with TEC Excavation, Inc. for the Water, Wastewater and Fire Hydrant Taps Project; and

WHEREAS, said contract was for an initial term of six (6) months, which could be renewed for two (2) additional six (6) month terms if agreed to by the parties; and

WHEREAS, the City Council previously authorized a renewal of said contract for one (1) additional six (6) month term; and

WHEREAS, the City Council finds it to be in the public interest to authorize a second renewal of said contract for one (1) additional six (6) month term;

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

SECTION ONE. That the City Manager, or his designee, is hereby authorized and directed to renew the contract with TEC Excavation, Inc. for the for the Water, Wastewater and Fire Hydrant Taps Project for one (1) additional six (6) month term.

SECTION TWO. That the City Manager, or his designee, is hereby authorized and directed to obtain written confirmation from TEC Excavation, Inc. that it agrees to and accepts one (1) additional six (6) month term under the same terms and conditions.

SECTION THREE. That the sum of \$500,000.00 is hereby appropriated from the Water and Sewer Fund (300) Engineering Division (80) from the other account (3990) to the W / WW / FH Tap Project (9049).

SECTION FOUR. That the City Treasurer is hereby authorized and directed to pay TEC Excavation, Inc., pursuant to the terms of said contract, from funds appropriated herein upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member

_____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2014, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

Project # U13-03-0000 (Water, Wastewater & Fire Hydrant Tap Project)

Project # U12-03-0000 (Water, Wastewater & Fire Hydrant Tap Project)				TEC EXCAVATION	
Water Improvements					
Item	Description	Quantity	Unit	Unit Price	Amount
1	8" C-900 DR 18	500	LF	\$45.00	\$22,500.00
2	6" C-900 DR 18	500	LF	\$40.00	\$20,000.00
3	4" C-900 DR 18	250	LF	\$35.00	\$8,750.00
4	6" DIP Pressure Class 150	250	EA	\$60.00	\$15,000.00
5	12" Tapping Sleeve	4	EA	\$2,250.00	\$9,000.00
6	10" Tapping Sleeve	4	EA	\$1,900.00	\$7,600.00
7	8" Tapping Sleeve	4	EA	\$1,750.00	\$7,000.00
8	6" Tapping Sleeve	10	EA	\$1,620.00	\$16,200.00
9	4" Tapping Sleeve	4	EA	\$1,570.00	\$6,280.00
10	8" Gate Valve (MJ X MJ/F)	10	EA	\$1,370.00	\$13,700.00
11	6" Gate Valve (MJ x MJ/F)	30	EA	\$980.00	\$29,400.00
12	4" Gate Valve (MJ x MJ/F)	10	EA	\$840.00	\$8,400.00
13	Fire Hydrant	10	EA	\$3,500.00	\$35,000.00
14	Ductile Iron Fittings	4	TN	\$5,970.00	\$23,880.00
15	8" Mechanical Joint Restraint	30	EA	\$200.00	\$6,000.00
16	6" Mechanical Joint Restraint	30	EA	\$190.00	\$5,700.00
17	4" Mechanical Joint Restraint	10	EA	\$180.00	\$1,800.00
18	12" Tapping Saddle	10	EA	\$440.00	\$4,400.00
19	10" Tapping Saddle	10	EA	\$430.00	\$4,300.00
20	8" Tapping Saddle	25	EA	\$310.00	\$7,750.00
21	6" Tapping Saddle	25	EA	\$290.00	\$7,250.00
22	4" Tapping Saddle	10	EA	\$330.00	\$3,300.00
23	1" Water Service Connection (0' - 5' Depth)	50	EA	\$950.00	\$47,500.00
24	1" Polyethylene Tubing (Including Trenching)	500	LF	\$8.00	\$4,000.00
25	2" Water Service Connection (0' - 5' Depth)	10	EA	\$1,510.00	\$15,100.00
26	2" Polyethylene Tubing (Including Trenching)	250	LF	\$11.00	\$2,750.00
27	Additional Depth (5'-15')	30	VF	\$35.00	\$1,050.00
		TOTAL WATER BID		\$333,610.00	
Wastewater Improvements					
Item	Description	Quantity	Unit	Unit Price	Amount
1	8" Wastewater main	250	LF	\$43.00	\$10,750.00
2	6" Wastewater main	250	LF	\$41.00	\$10,250.00
3	6" Wastewater Service Connection	10	EA	\$2,000.00	\$20,000.00
4	4" Wastewater Service Connection	50	EA	\$1,800.00	\$90,000.00
5	6" SDR 35 Wastewater Lateral & Trenching (0' - 5' Depth)	200	LF	\$43.00	\$8,600.00
6	4" SDR 35 Wastewater Lateral & Trenching (0' - 5' Depth)	1000	LF	\$40.00	\$40,000.00
7	Additional Depth of Trenching Including Trench Safety (Depth (5' - 15' Depth)	200	VF	\$150.00	\$30,000.00
8	Additional Depth of Trenching Including Trench Safety (greater than 15"Depth)	50	VF	\$150.00	\$7,500.00
		TOTAL WW BID		\$217,100.00	
Pavement Improvements					
Item	Description	Quantity	Unit	Unit Price	Amount
1	Base Rock Utility Cut Repair	5000	SF	\$4.00	\$20,000.00
2	Asphalt Utility Cut Repair	2000	SF	\$5.00	\$10,000.00
3	Concrete Utility Cut Repair	500	SF	\$12.00	\$6,000.00
4	Job Site Safety and Traffic Control (Arterial)	10	EA	\$2,000.00	\$20,000.00
5	Job Site Safety and Traffic Control (Collector and Local)	40	EA	\$1,250.00	\$50,000.00
6	Job Site Safety and Traffic Control (Alley and Easement)	80	EA	\$500.00	\$40,000.00
		TOTAL PVMT BID		\$146,000.00	
		TOTAL BASE BID:		\$696,710.00	

SPECIAL PROVISIONS

1. SCOPE OF WORK:

Included in this Project will be water mains and service taps, wastewater mains and service taps and fire hydrants including necessary backfill and pavement repair to be performed as outlined in the Plans and Specifications, to satisfactorily complete the work.

The Owner reserves the right to abandon, without obligation to the Contractor, any part of the project, or the entire project, at any time before the Contractor begins any construction work authorized by the Owner.

Standard Specifications for Construction of the City of Midland will govern street construction, except as modified by these Special Provisions.

2. TRAFFIC CONTROL:

All proposed traffic control shall be approved by the City where applicable. All traffic control plans shall be submitted 48 hours prior to starting the construction work. Traffic control for each phase of work must be approved prior to starting that work.

3. PAYMENT:

The Contractor will receive full payment from the Owner for each work order when the work order is 100% complete.

4. DETOURS:

The Contractor shall prosecute his work in such a manner as to create a minimum of interruption to traffic and pedestrian facilities and to the flow of vehicular and pedestrian traffic within the project area.

During the excavation of this project, it will be required that all excess material will be disposed of. Excess excavation will be disposed of at locations approved by the Engineer.

Site cleanup work shall be done for this project as soon as possible. No more than three calendar days shall elapse after completion of construction before the roadway and right-of-way is cleaned up to the satisfaction of the Engineer.

5. WASTE MATERIAL:

Excess material from excavation and other construction will become the property of the Contractor. Excess excavation will be disposed of at locations approved by the Engineer. No material shall be placed on private property or City property without the approval of the Engineer and the property owner.

6. PROPERTY AND RIGHT-OF-WAY ACCESS:

Access to adjacent property shall be maintained at all times unless otherwise directed by the Engineer. If the contractor will not be working in an area for a period of one week or more, special care should be taken to

address any unsafe conditions such as excavated areas or obstructions outside the worked area that could be tripping hazards, etc.

7. CONSTRUCTION SCHEDULE:

It shall be the responsibility of the Contractor to furnish the Construction Engineer, prior to construction, a schedule outlining the anticipated time each phase of construction will begin and be completed, including sufficient time being allowed for clean-up.

8. SAFETY RESTRICTIONS – WORK NEAR HIGH VOLTAGE LINES:

The following procedure will be followed regarding the subject item on this contract:

- 1) A warning sign painted yellow with black letters that are legible at twelve feet shall be placed inside and outside vehicles such as cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment or similar apparatus. The warning sign shall read as follows:

“WARNING – UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN SIX FEET OF HIGH VOLTAGE LINES”

- 2) Equipment that may be operated within ten feet of high voltage lines shall have an insulation cage-type of guard about the boom or arm, except back hoes or dippers, and insulator links on the lift hook connections.
- 3) When necessary to work within six feet of high voltage electric lines, notification shall be given to the power company of who will erect temporary mechanical barriers, de-energize the line, or raise or lower the line. The notifying department shall maintain an accurate log of all such calls to the Power Company, and shall record action taken in each case.
- 4) The Contractor is required to make arrangements with the Power Company for the temporary relocation or raising of high voltage lines at the Contractor’s sole cost and expense.
- 5) No person shall work within six feet of a high voltage line without protection having been taken as outlined in Paragraph (3).

9. EXAMINATION OF SITE:

Prospective bidders shall make a careful examination of the entire site of the project and shall make such explorations as may be necessary to determine the subsoil and/or water conditions to be encountered; improvements and obstructions which may be encountered; methods of providing ingress-egress to private as well as public property; methods of handling traffic during construction and maintenance of the entire project as well as any section thereof, protection of all existing structures both above and below ground; and how the plans fit the proposed project and especially if any discrepancies exist.

10. COMPLIANCE:

The said Contractor further agrees to comply with all applicable provisions of the laws and building and construction codes of the City of Midland and the State of Texas, and with any regulations for the protection of workers which may be promulgated by the Government, and shall protect such work with all necessary lights, barriers, safeguards, and warnings as provided for in said specifications and the Ordinance regulations.

11. INTENT OF THE PROPOSAL:

The intent of the proposal is to determine the low bidder based on the total of the quantities and unit prices. Once the low bidder is selected, the project will be awarded in the amount of \$500,000.

12. RENEWAL OF CONTRACT:

If the Owner and Contractor agree in writing, the contract may be renewed for up to two (2) additional 6 month terms.



City Council Agenda

Approved for Agenda:
J. Nichols
City Manager's Office

MEETING DATE: February 11, 2014

TO: City Council / City Manager

FROM: Holly McGrath Rosas, Interim Director of Utilities

SUBJECT: Consider a Resolution Authorizing a Six-Month Extension of the Right of Way License with Dawson Geophysical Company, for Seismic Testing Across City-Owned Property near the Water Pollution Control Plant.

Purpose:

Consider a resolution authorizing a six-month extension of the Right of Way License with Dawson Geophysical Company, for seismic testing across city-owned property Block 38-T2-S, Sections 4, 5, 8, 9 and 10, Midland County, Texas, near the Water Pollution Control Plant. Otherwise known as the Plant Farm where the City is permitted to dispose of sludge.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No Fiscal Impact

Discussion:

The City of Midland was approached by Dawson Geophysical Company requesting a six month extension to the original Right of Way contract effective October 8, 2013 ending April 8, 2014. They are requiring additional time to complete their seismic survey. Staff recommends approval of this item which will authorize the issuance of a six month extension to the original Right of Way license.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE SIX-MONTH RIGHT OF WAY LICENSE WITH DAWSON GEOPHYSICAL COMPANY, FOR SEISMIC TESTING ACROSS CITY-OWNED PROPERTY IN BLOCK 38-T2-S, SECTIONS 4, 5, 8, 9 AND 10, MIDLAND COUNTY, TEXAS, NEAR THE WATER POLLUTION CONTROL PLANT; SAID AMENDMENT WILL AUTHORIZE A SIX MONTH EXTENSION TO THE ORIGINAL RIGHT OF WAY LICENSE WHICH WAS EFFECTIVE OCTOBER 9, 2013 AND ENDING APRIL 8, 2014

WHEREAS, the City of Midland previously entered into a six-month right of way license with Dawson Geophysical Company, for seismic testing across City-owned property in Block 38-T2-S, Sections 4, 5, 8, 9 and 10, Midland County, Texas, near the Water Pollution Control Plant; and

WHEREAS, Dawson Geophysical Company is requesting a six month extension to the right of way license due to a scheduling conflict; and

WHEREAS, the City Council finds it to be in the public interest to amend the previous six-month right of way license with Dawson Geophysical Company to include the authorization of a six month extension;

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, an amendment to the right of way license with Dawson Geophysical Company to include the authorization of a six month extension, said amendment being 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., 2014, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Holly McGrath Rosas, Interim Director
of Utilities

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

**AMENDMENT TO THE TEMPORARY RIGHT-OF-WAY LICENSE
FOR SEISMOGRAPHIC SURVEY
BETWEEN DAWSON GEOPHYSICAL COMPANY
AND THE CITY OF MIDLAND**

THIS AMENDMENT is made and effective February 12, 2014, by and between the CITY OF MIDLAND ("City"), a home-rule municipality, and DAWSON GEOPHYSICAL COMPANY ("Licensee"), a Texas Corporation.

WHEREAS, the City and Licensee entered into that certain Temporary Right-of-Way License for Seismographic Survey dated October 9, 2013 (the "License"), which was approved by the Midland City Council; and

WHEREAS, the License has been in full force and effect since its effective date and has not been allowed to lapse; and

WHEREAS, the City and Licensee desire to make certain amendments to the License as set forth below;

W I T N E S S E T H:

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

- 1) Paragraph 2 of the License is hereby amended to read in its entirety as follows:

"This LICENSE shall be for a term commencing on October 9, 2013, the "Commencement Date," and ending on October 8, 2014, unless terminated earlier as provided hereafter.

Either party may terminate this LICENSE at any time and for any or no reason upon giving the other party written notice at least thirty (30) days in advance of such termination. The parties agree that it is in either party's sole discretion to terminate this LICENSE, without penalty, and that they have bargained for this flexibility.

Upon termination of this LICENSE, LICENSEE shall remove all equipment, including but not limited to listening/recording devise and vibroseis equipment associated with seismic testing. After removal of such equipment, the surface shall be restored at the expense of the LICENSEE to its original condition, or as close thereto as may be practical, subject to the approval of the CITY upon inspection by CITY'S City Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within ninety (90) days after the effective date of termination of this LICENSE."

- 2) The License, inclusive of this Amendment, is hereby ratified and affirmed by the City and Licensee, and the License shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

EXECUTED by the duly authorized officials as of the day and year first above written.

CITY OF MIDLAND

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Holly McGrath Rosas, Interim Director
of Utilities

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

DAWSON GEOPHYSICAL COMPANY

By: _____

Printed Name: _____

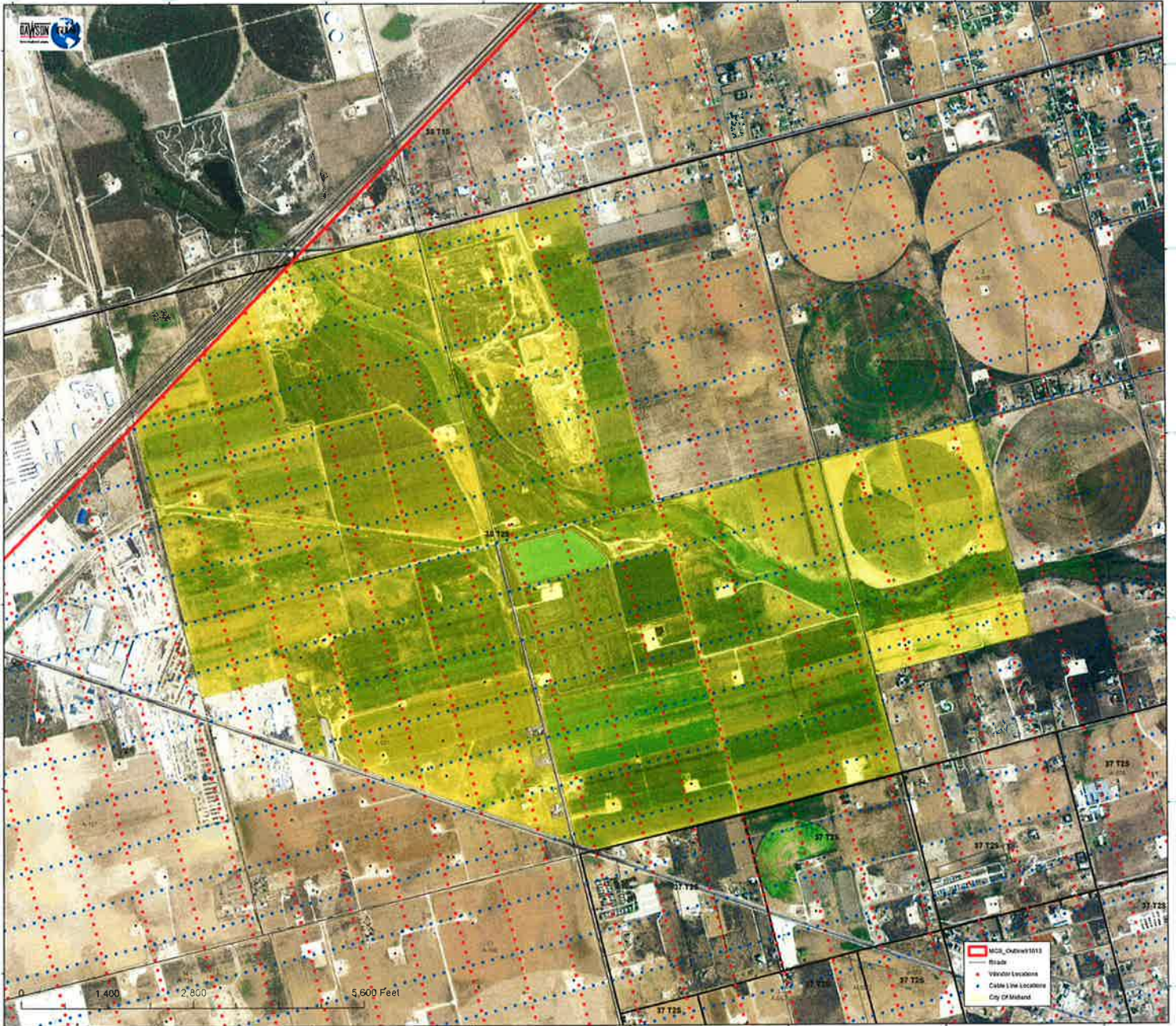
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he properly executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of DAWSON GEOPHYSICAL COMPANY.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2014.

Notary Public, State of Texas



State: TX
 County(s): Midland
 Projection: Lambert Conformal Conic Two Parallel
 Coordinate System: US State Plane
 Units: US Survey Feet
 Zone: TX Central
 Datum: NAD 83
 Ellipsoid: Clarke 1866



Midland City South 3D

104.36 Total Sq Miles
 66,792.94 Total Acres



PIONEER
 NATURAL REBUILDING CANADA INC.



Date: 9/18/2013

Exhibit "A"



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: February 11, 2014

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Ed Hernandez for a zone change from MH, Manufactured Home Dwelling District, and from LR-2, Local Retail District, to PD, Planned District for a Shopping Center, on Lots 1-12, Block 40, Belmont Addition, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of Rankin Hwy and W. Gist Avenue.) District – 2.

Purpose:

Consider an ordinance on second reading on a request by Ed Hernandez for a zone change from MH, Manufactured Home Dwelling District, and from LR-2, Local Retail District, to PD, Planned District for a Shopping Center.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located on the east side of Rankin Highway, between Gist and Stokes Avenues. A zone change is requested to allow the construction of a shopping center. The site plan and elevation drawings depict five buildings, including a Melrose clothing store. Following a favorable recommendation from the Planning and Zoning Commission, City Council approved this request on first reading on January 28, 2014. It is now appropriate to consider this ordinance on second and final reading.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-12, BLOCK 40, BELMONT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED MH, MANUFACTURED HOME DWELLING DISTRICT, IN PART, AND LR-2, LOCAL RETAIL DISTRICT, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF RANKIN HIGHWAY AND WEST GIST AVENUE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Shopping Center, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned MH, Manufactured Home Dwelling District, in part, and LR-2, Local Retail District, in part, and it shall be used as a Planned District for a Shopping Center, subject to the special conditions and restrictions

hereinafter set out, said property being described as follows:

Lots 1-12, Block 40, Belmont Addition, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the use and development of this property shall conform to the regulations of the LR-2, Local Retail District, except as stated below.
2. That the development shall conform to the conditions shown on Exhibits “A” “B”, which are attached hereto and incorporated herein.
3. That a minimum of 97 parking spaces shall be provided; however, the arrangement and locations of the parking spaces shown on Exhibit “A” shall be considered illustrative.
4. That a minimum six-foot-tall solid brick screening fence shall be constructed at the location shown on Exhibit “A”.
5. That the development shall meet all requirements of the Fire Department, Code Administration Division and Transportation Division.
6. That signage shall be in compliance with the Revised Outdoor Sign Regulations of the Midland City Code.
7. That landscaping shall be considered illustrative, and shall be in compliance with the Landscape Regulations of the Midland City Code.
8. That the dumpster locations shall be considered illustrative and shall be determined by the Solid Waste Department. Dumpster screening shall conform to the Site Plan Review Standards of the Midland City Code.

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

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

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not

affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2014; 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., 2014, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS ____ day of _____, A.D., 2014.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

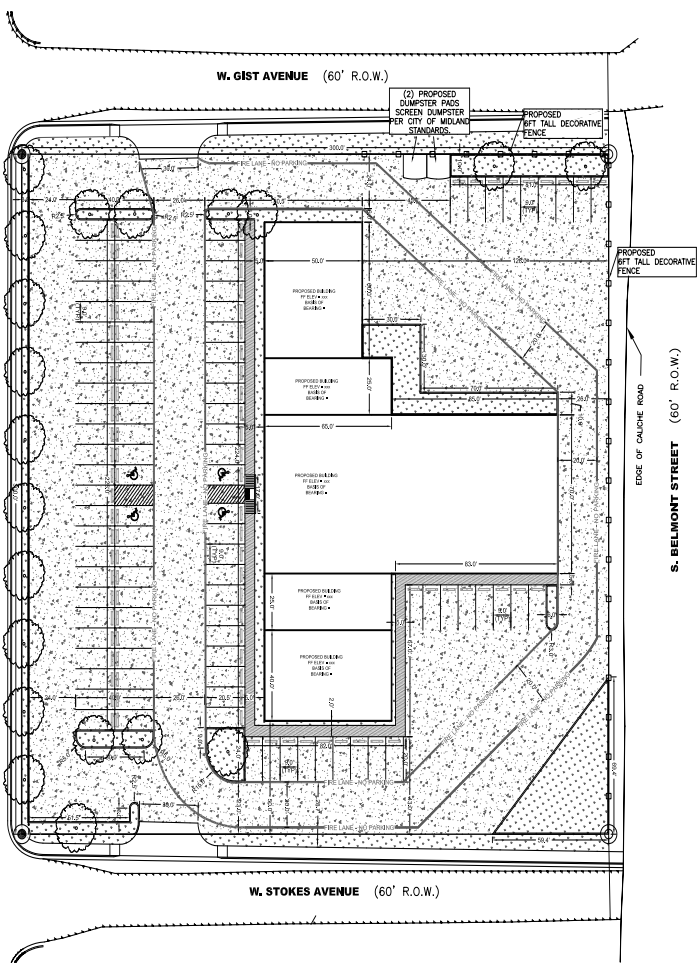
APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

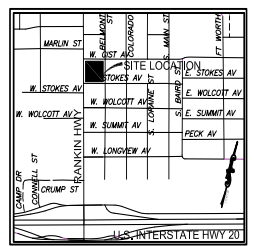
S. RANKIN HIGHWAY (VARIABLE R.O.W.)



THESE PLANS ARE SUBJECT TO REVIEW & APPROVAL BY JURISDICTIONAL ENTITIES

811

Know what's below.
Call before you dig.



INGRESS & EGRESS

- INGRESS & EGRESS BY DOUBLE DRIVEWAY ALONG W. STOKES AVENUE & W. GIST AVENUE.

SCREENING FENCE

A 6' TALL DECORATIVE BRICK FENCE IS CURRENTLY PROPOSED ALONG THE NORTH & EAST PROPERTY LINE. TYPICAL SCREENING WILL BE PROVIDED AROUND THE DUMPSTER LOCATIONS PER CITY OF MIDLAND STANDARDS.

DRAINAGE

AN ONSITE DETENTION BASIN WILL BE DESIGNED WITH AN OUTLET STRUCTURE WHICH DOES NOT INCREASE THE PRE-DEVELOPMENT FLOW RATE FOR THE ENTIRE PROJECT SITE.

LANDSCAPE

- PER CITY OF MIDLAND ORDINANCE, MINIMUM LANDSCAPE AREA = 10% OF LOT AREA.
- LANDSCAPING TO BE TURF GRASS.
- PROPOSED AREA: 90,000 S.F.
- BUILDING FOOTPRINT: 19,350 S.F.
- REQUIRED LANDSCAPE AREA: 7,065 S.F.
- PROVIDED LANDSCAPE AREA: 7,326 S.F.

TRASH ENCLOSURES

TRASH DUMPSTERS TO BE PLACED AS SHOWN. ENCLOSURES TO BE BUILT OF BRICK, AND WILL MATCH DESIGN OF SCREENING WALL. DUMPSTER DISPOSAL TO BE SERVICED BY OTHERS.

BUILDING SETBACKS

MINIMUM BUILDING SETBACK DISTANCES OF 15 FEET FROM PROPERTY LINES WILL BE OBSERVED.

PARKING SPACES

- REQUIRED
 - PER THE CITY OF MIDLAND'S PARKING REQUIREMENTS: 1 SPACE FOR EACH 200 S.F. OF FLOOR AREA. 19350 S.F. OF FLOOR AREA @ 1 SPACE PER 200 S.F. = 97 REQUIRED SPACES
- PROVIDED
 - 93 REGULAR PARKING
 - 4 HANDICAP PARKING
 - 97 TOTAL PARKING

TREE REQUIREMENTS

- 1 TREE FOR EVERY 15 PARKING SPACES
- 1 TREE PER 30 LINEAR FEET OF STREET FRONTAGE
- 97 PARKING SPACES: 07 TREES
- 1200' STREET FRONTAGE: 40 TREES
- TOTAL REQUIRED: 47 TREES
- TOTAL SHOWN: 20 TREES
- HALF OF THE REQUIRED TREES TO BE DONATED TO PARKS & RECREATION FUND.

BUILDING HEIGHTS

REFER TO ARCHITECT'S BUILDING ELEVATION PLAN.

FIRE PROTECTION

THE 20' WIDE MINIMUM FIRE LANE HAS BEEN PROVIDED AT THE FRONT OF ALL BUILDINGS. THE FIRE LANE WILL BE IDENTIFIED BY PAINTED STRIPES, CURBS, AND PERMANENT SIGNAGE PER THE CITY OF MIDLAND REQUIREMENTS AND IN ACCORDANCE WITH THE IFC, 2009. FIRE HYDRANT WILL BE PROVIDED AT CORNER OF RANKIN AND W. STOKES.

SIDEWALKS

- 5' SIDEWALK TO BE PLACED IN THE INTERIOR OF THE PROPERTY AS SHOWN.

SITE UTILITIES

A PUBLIC SEWER MAIN EXISTS NORTH OF GIST AVE. MUNICIPAL WATER SERVICE WILL BE ROUTED FROM BELMONT STREET.

BENCHMARK

COORDINATES, BEARINGS, DISTANCES AND AREAS SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM 1983.

NOTICE TO CONTRACTOR

- ALL DIMENSIONS SHOWN ARE TO FACE OF CURB UNLESS NOTED OTHERWISE.
- ALL PROPOSED SIDEWALKS ARE TO BE 5.0' UNLESS NOTED OTHERWISE.

SITE INFORMATION

TOTAL LAND AREA:	90,000 S.F. (2.06 AC)
CURRENT ZONING:	LR-20 MH
TOTAL PARKING PROVIDED:	97
HANDICAP PARKING PROVIDED:	4
HANDICAP PARKING REQUIRED:	4
LANDSCAPE PERCENTAGE:	0.10%

STANDARD ACCESSIBILITY REQUIREMENTS

PARKING:

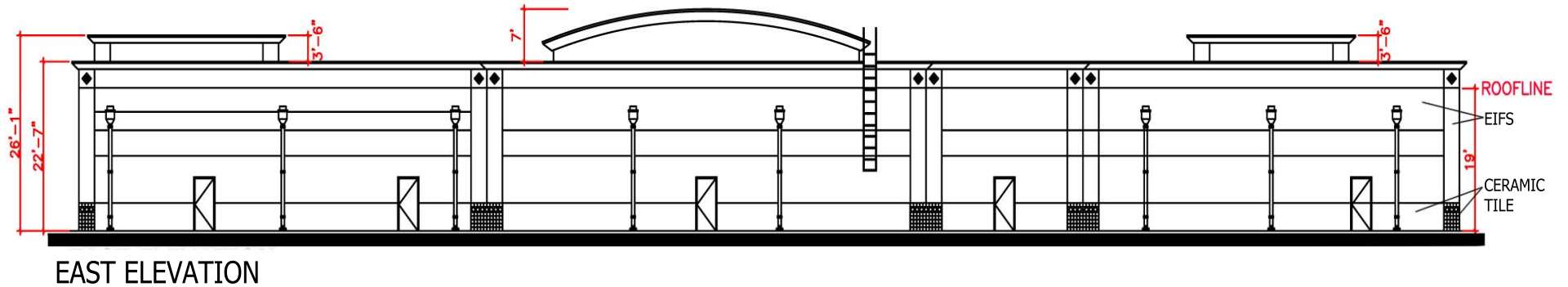
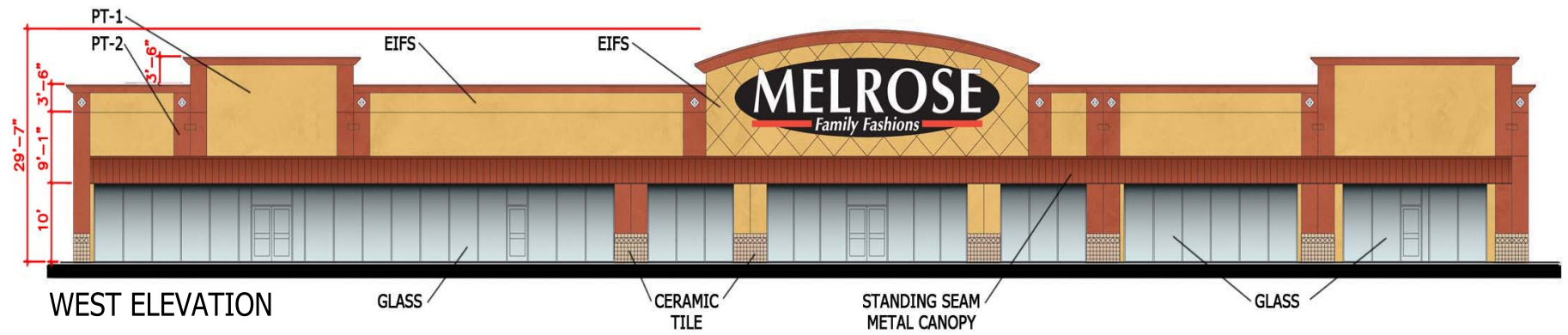
- ACCESSIBLE PARKING SPACES SHALL BE A MIN. 9' WIDE WITH A MAXIMUM SLOPE OF 2% (IN ALL DIRECTIONS)
- EACH ACCESSIBLE PARKING SPACE SHALL HAVE A VERTICALLY MOUNTED (OR SUPERIMPOSED) SIGN SHOWING THE SYMBOL OF ACCESSIBILITY. AT LEAST ONE SPACE MUST HAVE AN ADDITIONAL SIGN "VAN ACCESSIBLE" MOUNTED BELOW THE SYMBOL OF ACCESSIBILITY. SIGN SHALL BE LOCATED 5' MIN. ABOVE THE ADJACENT PAVED SURFACE TO BOTTOM OF TEXT.
- ALL ACCESSIBLES SERVING H.C. PARKING SPACES SHALL BE 9' WIDE MINIMUM AND 16' WIDE MINIMUM FOR VAN DESIGNATED SPACES. ALL BUILDINGS SHALL CONTAIN AT LEAST ONE VAN ACCESSIBLE SPACE.
- RAMPS EXCEEDING 6" IN RISE (EXCLUDING CURB RAMPS) SHALL HAVE HANDRAILS ON EACH SIDE AT BETWEEN 34" AND 38", AND EXTENDING 12" BEYOND THE TOP AND BOTTOM OF RAMP. HANDRAILS SHALL NOT OBSTRUCT THE CLEAR AREA REQUIRED FOR TOP AND BOTTOM LANDINGS SERVING THE RAMPS.
- RAMPS SHALL CONTAIN A TRUNCATED DOME SURFACE ARRANGED SO THAT WATER WILL NOT ACCUMULATE. COLOR OF RAMP FINDER MATERIALS (INCLUDING CONCRETE) SHALL HAVE A LIGHT AND REFLECTIVE VALUE AND MUST CONTRAST SIGNIFICANTLY TO DETACHMENT FROM ADJACENT SURFACES (OR PAINT STRIPE).
- BOTTOM LANDINGS FOR RAMPS SERVING REQUIRED EXITS SHALL BE 5'-0" LONG X 5'-0" WIDE MINIMUM.
- RAMPS SHALL NOT EXCEED A 1:12 SLOPE.
- SIDEWALKS AND ACCESSIBLE ROUTES:**
- SIDEWALKS MUST BE AT LEAST 36" WIDE.
- SIDEWALK CROSS SLOPE SHALL NOT EXCEED 1:50 (2%).
- LONGITUDINAL SLOPE OF ANY SIDEWALK (ACCESSIBLE ROUTE) SHALL NOT EXCEED 1:20 (5%).

SITE PLAN
BELMONT ADDITION
SOUTH RANKIN HIGHWAY
MIDLAND, TEXAS

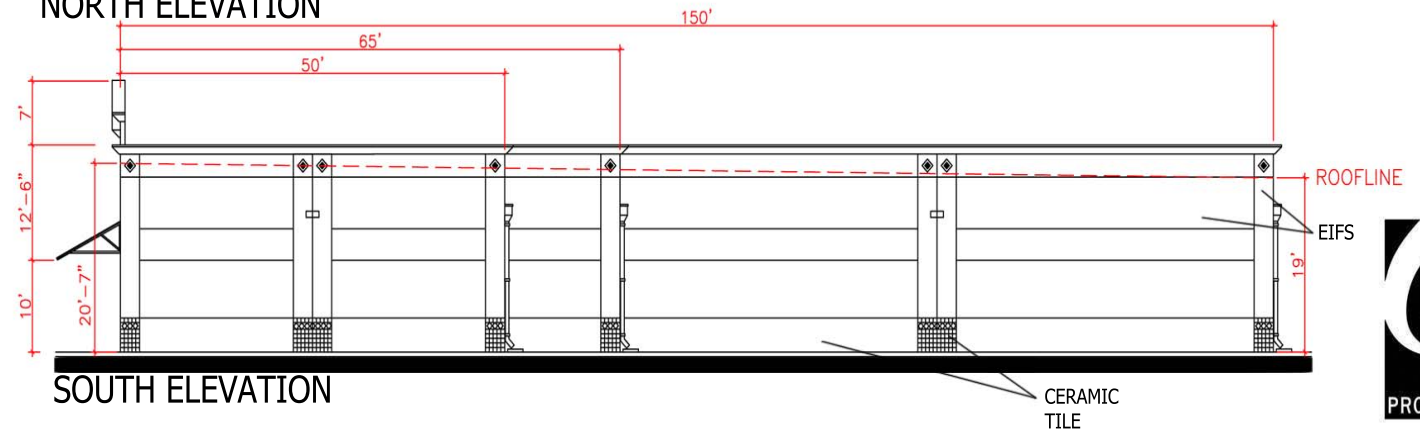
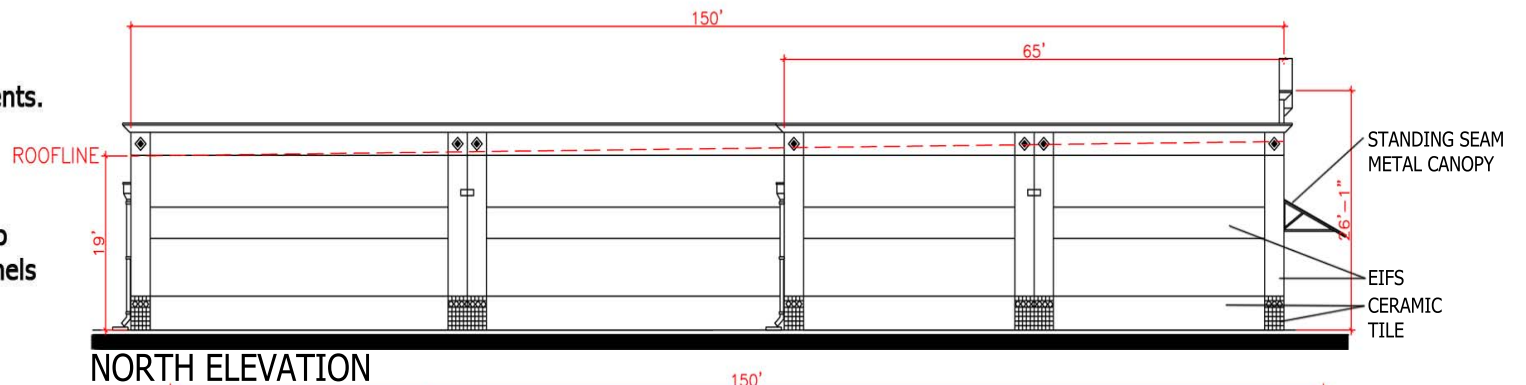
101315
11-18-2013

PROJECT NUMBER: 2013-0131

SHEET C1.0 OF 1



NOTE: Tilt wall concrete shell building with retail finish-out and site improvements. Roofing shall be Carlisle "Sure-Weld" single-ply 60 mil mechanically fastened roofing system or approved equal. Substrate shall be Carlisle "HP-H" polyiso (minimum R-21) rigid roof insulation panels or approved equal.



PT-1 SW6375 HONEYCOMB
PT-2 SW0008 CAJUN RED

PLANNING AND ZONING COMMISSION

January 6, 2014

CASE: Z-13-055, Ed Hernandez.

REQUEST: Hold a public hearing and consider a request for a zone change from MH, Manufactured Home Dwelling District, and from LR-2, Local Retail District, to PD, Planned District for a Shopping Center.

APPLICANT: Ed Hernandez.

OWNER: NBY Rankin Hwy Midland, LLC.

REPRESENTATIVE: West Company of Midland, Inc.

LEGAL DESCRIPTION: Lots 1-12, Block 40, Belmont Addition, City and County of Midland, Texas.

LOCATION: Generally located on the southeast corner of the intersection of Rankin Hwy and W. Gist Avenue.

CURRENT ZONING: MH, Manufactured Home Dwelling District, and LR-2, Local Retail District.

ASSOCIATED CASES: P-13-042, Belmont Addition, Section 18, and V-13-020, NBY Rankin Hwy, Midland, LLC.

DETAILS OF REQUEST:

1. This property, zoned both MH, Manufactured Home Dwelling District, and LR-2, Local Retail District, is located on the east side of Rankin Highway, west of Belmont Street, south of Gist Avenue, and north of Stokes Avenue. The property is currently vacant. The applicant wishes to develop a retail strip, including a Melrose clothing store, and has thus applied for this zone change to a PD, Planned District for Shopping Center, with the underlining zoning of LR-2, Local Retail District.

SURROUNDING ZONING AND LAND USE:

2. The property is located on the east side of Rankin Highway, west of Belmont Street, to the south of Gist Avenue, and to the north of Stokes Avenue. To the north is an LR-2, Local Retail District and an MH, Manufactured Home Dwelling District. To the east is a continuation of the Manufactured Home Dwelling District with several homes. A vacant PD, Planned District for Shopping Center, abuts the south. Across Rankin Highway to the west is a PD, Planned District for Shopping Center, which was recently rezoned to be used for a used car sales business, and an LR-2, Local Retail District, with a Dollar General store.

ANALYSIS:

3. This property is in the process of being replatted from the current 12 lot configuration to one lot. Additionally, the 20-foot alley is in the process of being vacated for the development. According to the Midland Master Plan 2025, retail uses are recommended to be generally located along major thoroughfares for high visibility (such as Rankin Highway). The Master Plan also recommends that the City protect optimal locations for retail and that a property should not develop as residential when it has characteristics of a retail location. Thus, this shopping center meets the guidelines of the Comprehensive Plan, and we find the zone change to be reasonable.

SITE PLAN:

The site plan, Exhibit A, provides the layout and information about the site. As shown, five buildings are proposed. The setbacks for the buildings follow the LR-2 District requirements. There will be a total of two means of ingress and egress to the property: a driveway off Stokes Avenue and a driveway off Gist Avenue. The interior roadway will include a fire lane in accordance with the Fire Department. A six-foot tall decorative masonry fence, specifically composed of brick, will be provided along the northeastern and eastern perimeter of the property to act as a buffer between this retail development and the adjacent Manufactured Home Dwelling District. Two dumpsters are provided on the northeastern corner of the property. The dumpsters will be enclosed and screened with brick, which will match the design of the screening wall. Dumpster locations will be considered illustrative. Landscaping will also be provided according to the City Code – landscaping shown on the plan will be considered illustrative. For parking, using the retail ratio of one space for every 200 square feet of floor area, a total of 97 parking spaces are required and provided. Parking shown on the plan will be considered illustrative.

Exhibit B depicts the elevation of the proposed building, which will be composed of glass, ceramic tile, and primarily of EIFS. The building height will be 22'-7"; 26'-1" to the first level parapet, and 29'-7" to the Melrose parapet.

STAFF RECOMMENDATION:

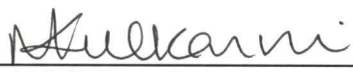
Staff recommends approval of the zone change from MH, Manufactured Home Dwelling District, and LR-2, Local Retail District, to PD, Planned District for a Shopping Center, subject to the following conditions:

- A. That the use and development of this property shall conform to the regulations of the LR-2, Local Retail District, except as stated below.
- B. That the proposed development shall conform to the conditions shown on Exhibits A and B.
- C. That a minimum of 97 parking spaces shall be provided; however, the arrangement and locations of the parking spaces shown on Exhibit A shall be considered illustrative.

- D. That a minimum six-foot tall solid brick screening fence shall be constructed at the location shown in Exhibit A.
- E. That the proposed development meets all requirements of the Fire Division, Code Administration Division, and Transportation Division.
- F. That signage shall be in compliance with the "Revised Outdoor Sign Regulations" of the Midland City Code.
- G. That landscaping shall be considered illustrative, and shall be in compliance with the "Landscape Regulations" of the Midland City Code.
- H. That the dumpster locations shall be considered illustrative and shall be determined by the Solid Waste Division. Dumpster screening shall conform to the "Site Plan Review Standards" of the Midland City Code.



Jim Compton
Acting Planning Division Manager
Department of Development Services



Madhuri Kulkarni, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A and B

Case Number: 213-655

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Ed Hernandez	(210) 424-8061
Applicant Name	(Phone/e-mail)
4629 Marco Drive, San Antonio, TX	78218
Address	Zip Code
NBY Rankin Hwy Midland, LLC	(210) 424-8061
Property Owner Name	(Phone/e-mail)
4629 Marco Drive, San Antonio, TX	78218
Address	Zip Code
West Company of Midland, Inc.	(432) 682-0588/jawtry@team-west.com
Representative Name	(Phone/e-mail)
110 W. Louisiana Ave., Ste. 110, Midland, TX	79701
Address	Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Being a replat of Lots 1-12, Block 40, Belmont Addition, City and County of Midland, Texas.

PRESENT ZONE: LR2 & MH REQUESTED ZONE: PDSC
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To vacate alley and combine all lots for a retail development.

Present Use of Property: none

Proposed Use of Property: retail development

How will zone change affect the public health, safety and welfare? public health, safety and welfare will not be affected, due to necessary measures taken for privacy and noise control.

Describe how conditions affecting the property have changed since present zoning designation: the property will change from residential to commercial retail

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ☐ Yes ☒ No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan:

Site Plan in digital format .pdf and .jpg:

☒
☒

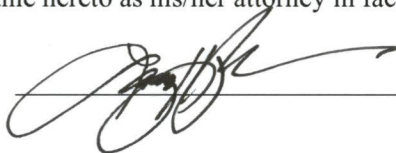
SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared
Larry H. Walker who, being by me duly sworn, upon oath says: That (s)he is
authorized by NBY Rankin Hwy Midland, the owner of the above described property, to fully
represent him/her in this application and that (s)he had the legal right, power and authority to sign said
owner's name hereto as his/her attorney in fact.



Authorized Agent (signature)

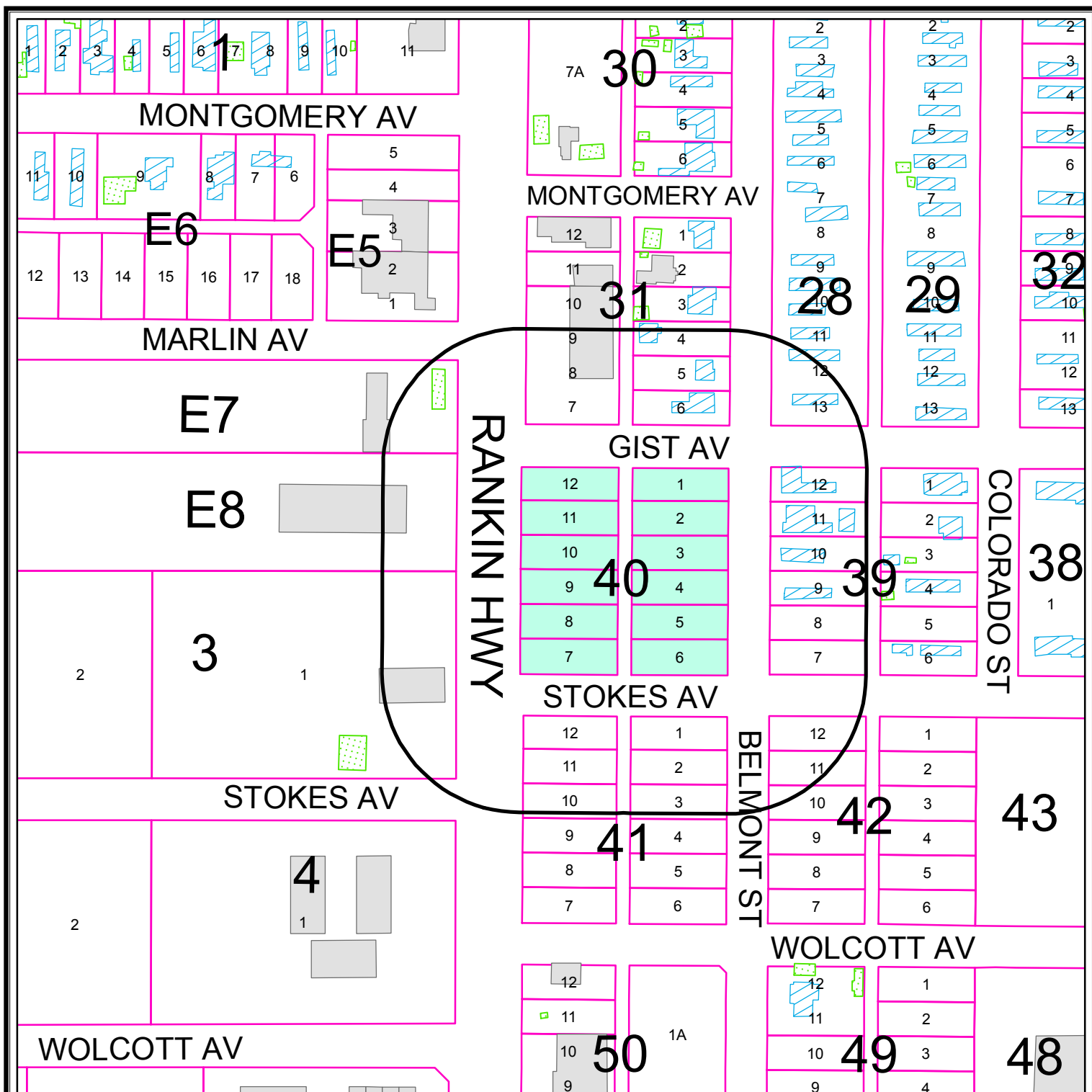
Subscribed and sworn to before me, this 26th day of November, 20 13, to certify which
witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>RS</u>	Date: <u>12/4/13</u>
Assigned: <u>MK</u>	
For: <u>P&Z</u>	On: <u>1/6/14</u>



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



PROPERTY OWNER NOTIFICATION MAP

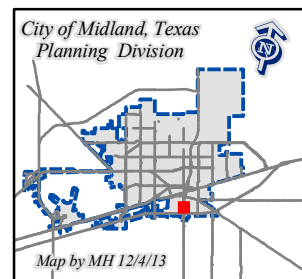
Z - 13 - 055

Scale: 1" = 200'

Consider a request for a zone change from MH, Manufacture Home District on Lots 1 – 6 and from LR-2, Local Retail District on Lots 7 – 12, to PD, Planned District for a Shopping Center, all out of Block 40, Belmont Addition, City and County of Midland, Texas.

LEGEND

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



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 THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, ZONING, OR OTHER DECISIONS SOLELY ON THE INFORMATION CONTAINED HEREIN





City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: 2/11/14

TO: City Council / City Manager

FROM: Steve Thorpe, Building Official

SUBJECT: Consider an ordinance adopting the 2012 International Building Code, with amendments; as the building code of the City of Midland.

Purpose:

Consider an ordinance adopting the 2012 International Building Code, with amendments; as the building code of the City of Midland.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

The proposed code and amendments have been on file in the office of the City Secretary since December 5, 2013. No comments regarding the adoption of this code and amendments have been received. This exceeds the minimum thirty (30) day public review and comment period required prior to City Council taking action to adopt the new code.

The 2012 edition of the International Building Code and the proposed amendments regulate the design, construction and inspection of building construction except one and two family dwellings within the city. The currently adopted code is the 2009 edition. The model codes are published in three-year cycles. Therefore this code is the most current available.

An effective date of April 1, 2014 is proposed. This will provide adequate time for notification to architects, engineers, designers, contractors and suppliers of any new requirements.

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 1, "BUILDING CODE", OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, AND ADOPTING THE 2012 INTERNATIONAL BUILDING CODE AS THE BUILDING CODE OF THE CITY OF MIDLAND, TEXAS, FOR THE PURPOSE OF REGULATING THE CONSTRUCTION, ALTERATION, REPAIR, EQUIPMENT, USE AND OCCUPANCY, LOCATION, MAINTENANCE, REMOVAL AND DEMOLITION OF BUILDINGS AND STRUCTURES OR ANY APPURTENANCE CONNECTED OR ATTACHED TO SUCH BUILDING OR STRUCTURE; PROVIDING FOR THE INSPECTION OF SAID BUILDINGS OR STRUCTURES, PROVIDING FOR THE ISSUANCE OF PERMITS FOR THE CONSTRUCTION, ALTERATION, REPAIR, EQUIPMENT, USE AND OCCUPANCY, REMOVAL AND DEMOLITION OF SAID BUILDINGS OR STRUCTURES AND COLLECTION OF INSPECTION FEES THEREFOR; ESTABLISHING MINIMUM FLOOR ELEVATIONS FOR CERTAIN STRUCTURES; REQUIRING CASH DEPOSITS TO INSURE SITE CLEARANCE AFTER REMOVAL OR DEMOLITION OF STRUCTURES; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF TWO THOUSAND (\$2000.00) DOLLARS; AND ESTABLISHING AN EFFECTIVE DATE OF APRIL 1, 2014; AND ORDERING PUBLICATION

WHEREAS, by Ordinance No. 8805, adopted July 13, 2010, the City Council adopted the 2009 Edition of the International Building Code as the Building Code of the City of Midland; and

WHEREAS, several changes and amendments to the International Building Code have been approved by the International Code Council, Inc., and incorporated into the 2012 International Building Code; and

WHEREAS, the Council has heretofore on November 26, 2013, approved the 2012 International Building Code as a public record in order that same be filed as a public record in the office of the City Secretary; and

WHEREAS, the Council finds it to be in the public interest to update the building regulations of the City to be more in line with currently accepted building practice;

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

SECTION ONE. That Title IV, "Building Regulations", Chapter 1, "Building Code", of the City Code of the City of Midland, Texas, is hereby amended to hereafter read as follows:

4-1-1. Purpose.

The purpose of this Chapter is to provide minimum standards, provisions and requirements for safe construction, alteration, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings, or structures within the City. All such buildings and structures hereafter constructed, altered, repaired, equipped, used and occupied, removed or demolished within the corporate limits of the City shall conform to the requirements of this Chapter and to the specifications, rules and regulations herein contained. (Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8667, § 1, 9-9-2008)

4-1-2. Code adopted.

The specifications, rules and regulations entitled 2012 International Building Code together with appendices A,B,C and G as promulgated and published by the International Code Council, Inc, are hereby adopted as the Building Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

4-1-3. Changes and additions to adopted building code.

Notwithstanding any provisions of this Chapter or said adopted Building Code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows, to wit:

101.1 Title. These regulations shall be known as the Building Code of the City of Midland, hereinafter referred to as "this code."

101.4.4 Property Maintenance. Delete Section 101.4.4 in its entirety.

103.2 Appointment. Delete 103.2 as written and substitute following:

103.2 Appointment. The Building Official, Assistant Building Official, Inspectors and other personnel shall be appointed in accordance with the personnel policies of the City and shall be subject to all personnel rules and regulations of the City of Midland.

105.1.1 Annual Permit. Delete 105.1.1 as written and substitute following:

105.1.1 Fence Permit Required. A building permit shall be obtained prior to the erection or construction of any fence or wall to be located within the front yard or the side yard adjacent to a street (public or private) of any lot or tract, as such yard is required by Title XI, Chapter 1, Zoning, of the Midland City Code.

105.1.2 Annual Permit Records. Delete 105.1.2 in its entirety.

105.2 Work exempt from permit. Delete the following numbers from the exemptions:

105.2 Delete no. 1, 2, and 6.

105.8 Add a new Section 105.8 as follows:

105.8 Contractor's Responsibilities:

(a) It shall be the duty of every contractor or builder, who is engaged in the construction, erection, alteration or repair of buildings or structures, residential or commercial, subject to the provisions of this Code, to give good and sufficient bond in the sum of ten thousand dollars (\$10,000.00) to be approved by the City Attorney, conditioned to conform to the Building Regulations of this Section, and other ordinances and laws of the City of Midland in reference to buildings and related construction and site requirements. The bond herein required shall include the bonds required for early clearance procedures as required by Section 9 of this Title and Chapter and with the sidewalk, driveway and curb bond required by this Code with no increase in amounts.

(b) No building permit shall be issued by the Building Official unless and until a bond as herein provided has been tendered to and approved by the Building Official by the person or firm requesting such permit.

(c) Nothing in this Code shall prevent a homeowner from maintaining, altering or adding to his home within his own property boundaries provided such work is done by himself for the exclusive benefit of his family. Such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees.

105.8.1 Add a new Section 105.8.1 as follows:

105.8.1 Construction Site Debris. It shall be the responsibility of each permit holder to make provisions for containment of building materials, construction debris, and all other trash and debris generated within the property boundaries. The particular method, which may include but is not limited to refuse containers, roll-offs, fenced areas or other types of wire enclosures, shall be specified by the applicant prior to obtaining a building permit. The applicant may specify City of Midland container service if available, provided it is a container assigned for use at the particular job site. Said container may only be used for materials for which it is suitable, as determined by the City Sanitation Division or as specified by Title 8, Chapter 6 of the Midland City Code. Blowing trash, paper, building material packaging, and other construction site related debris, allowed to collect or accumulate outside the property boundaries for which a permit has been issued, in other than an approved container, shall constitute a violation of this section of the City of Midland Code. Such violations shall be subject to enforcement provisions as provided for in the Building Code, including stop work order, revocation of permit and fine.

109.2 Schedule of Permit Fees. Add to the end of section the following, "See Fee Schedule Ordinance 8818. "

109.6 Refunds. Delete section 109.6 as written and substitute the following: Refunds shall be in accordance with Fee Schedule Ordinance 8818.

113.4 Add a new Section 113.4 as follows:

113.4 Terms of Office. Members of the Board shall serve four (4) year terms beginning and ending on September 30, of the appropriate years. The terms of office of the Board members shall be staggered so that no more than 1/3 of the Board is appointed or replaced in any 12-month period. The City Council may from time to time appoint members for terms of lesser duration than four (4) years when necessary in order to comply with the terms of this Code Section or to fill the remainder of an unexpired term. A member may be removed from office by the City Council for any reason. If a Board member is absent for more than 25% of the duly called meetings in any period of 12 consecutive months or absent for more than two (2) duly called meetings in any period of 12 consecutive months, whichever is greater, for any reason other than a medical reason which prevents the member's attendance, that member shall be disqualified and automatically removed from serving as a Board member. The term "duly called meetings" includes all meetings of the Board and all meetings of subcommittees of the Board on which the member serves.

1101.2 DESIGN. Amend Section 1101.2 Design to read as follows:

1101.2 DESIGN. Buildings and facilities shall be designed and constructed to be accessible in accordance with the Texas Accessibility Standards, pursuant to Article 9102, Texas Civil Statutes, as promulgated by the Texas Department of Licensing and Regulation.

3308.1.2 Add new Section 3308.1.2 as follows:

3308.1.2. Insurance Required. The person or persons in Section 3308.1 desiring to use streets or public property for the storage or handling of equipment shall provide the City with an owner's, landlord's, and tenant's liability policy of insurance naming the City as the named insured, with limits of not less than five hundred thousand dollars (\$500,000.00) bodily injury and one hundred thousand dollars (\$100,000.00) property damage, protecting the City from liability that is or may be imposed on it as owner of such street, sidewalk, or other public property under the laws of this State on account of or in any way arising out of any such use of such public streets, sidewalks or other public property, such insurance policy to remain in force and effect until such time as the use of such public property by such persons has ceased.

3308.1.3 Add new Section 3308.1.3 as follows:

3308.1.3 Street/Sidewalk Permit. Building permits shall not include permission to occupy any part of the public street, sidewalks or alleys with building materials or equipment without first obtaining a permit for the use of public streets, sidewalks or alleys from the Building Official before operations have commenced. The fee for said permit shall be per the Fee Schedule Ordinance 8818. The permit for street, sidewalk or alley occupancy shall be only for the duration of construction or such lesser time

as the Building Official may determine.

3308.1.4 Add new Section 3308.1.4 as follows:

3308.1.4 Waiver. Up to one-third (1/3) of the width of the street right of way adjacent to the property on which the building being erected and for which a permit has been issued may be occupied in connection with the building construction provided that the free flow of traffic is not significantly impeded. If the street in front of the property adjoining such building is to be used for similarly limited storage, a due waiver of claim against the applicable governing authority for damages on account of such use, issued by the owner of such property, must be filed with the Building Official before such use shall be allowed.

3308.1.5 Add new Section 3308.1.5 as follows:

3308.1.5 Street Repair - Special Permit Requirements

(a) When any application is made pursuant to the provisions of Section 105 of this Code for a permit for the construction, enlargement or alteration of any building or structure, the owner, authorized agent or contractor applying for such permit shall, as a condition to the granting of such permit, pay to the City the fee specified in subsection (b) hereof to cover the unusual wear and tear to public streets, alleys and/or sidewalks growing out of the construction activities performed by said applicant or anyone in any way under his or its supervision and direction, including the use, movement, parking, loading and/or placement of cranes and other heavy construction equipment and vehicles or trailers laden with construction materials.

(b) The fee specified in subsection (a) above shall be per the Fee Schedule Ordinance.

(c) In addition to the above, any damaged or deteriorated concrete, curb, gutter and paved sidewalk areas abutting the property of the construction site and associated with the project will be replaced or put in new condition by the applicant prior to issuance of final approval of the project by the Building Official.

(d) All proceeds from the special fee set out in subsection (b) above shall be credited to the Street Improvement Fund.

4-1-4. Site Requirements.

The following site requirements shall be satisfied or committed prior to a building permit being issued for any new construction or substantial addition to the development or redevelopment of a new parcel of land.

(A) Sidewalk construction and permits therefor required:

1. Sidewalks required. Sidewalks shall be constructed within all street rights of way adjacent to all tracts or lots at the time of their INITIAL DEVELOPMENT to the full length of the property line of the lot or tract involved. Sidewalks shall be constructed within all street rights of way adjacent to all lots or tracts, which were initially developed without sidewalks

when SUBSEQUENT DEVELOPMENT exceeds 25% of the existing floor area and also exceeds one thousand (1,000) square feet in floor area. On properties situated at the corner of intersections, sidewalks are required both on the front and side along the full length of the tract or lot involved on which development is being made and such sidewalks shall be connected to the street pavement, if existing, at all street intersections. Sidewalks will be located and constructed as specified in Section 9-4-1 of the City Code. No such sidewalks shall be constructed until a permit approved by the Director of Development Services of the City has been secured, as provided for in Title IX, "Public Ways and Property", Chapter 4, "Sidewalks, Driveways and Curbs", of the Midland City Code. If sidewalks, in good condition, exist adjacent to the developed property, newly constructed sidewalks must provide connections thereto.

The Building Official of the City shall not issue any final electrical or gas clearance or certificate of occupancy and completion until all sidewalks required to be constructed have been finally completed and approved by the Director of Development Services of the City, except pursuant to Section 4-1-9 of the Midland City Code.

2. Exception. Where either side of a street, between two (2) intersecting streets, is seventy-five percent (75%) or more developed and has no existing sidewalks, then no sidewalks shall be required in the remaining undeveloped portion. This exception shall also apply to cul-de-sacs which are seventy-five percent (75%) or more developed and have no existing sidewalks.

(B) Parking and loading areas:

1. Barriers required along streets and alleys. Where an off-street parking, loading or vehicle storage area is to be paved or modifications to such area are to be made adjacent to a public street or alley, the paved area shall not project into the public right of way unless a curb, multiple wheel stops, or other effective barrier(s) shall be erected to prevent parked or stored vehicles from encroaching into said right of way, except in one and two family developments. However, if existing conditions would make such a restriction unreasonably difficult to satisfy, the City Manager may issue a permit for an encroachment into the right of way of a street when he determines that the following conditions will be met:

(a) The encroachment will not create a traffic hazard and adequate space for pedestrian traffic will be maintained.

(b) Barriers as specified above are provided to prevent encroachment beyond the line authorized by the permit.

(c) The permit conditions of Section 10-1-10(A)5.(a)(1) are met.

Parking provided by encroachment into a public right-of-way shall not be considered off-street parking in determining satisfaction of any requirement for such parking.

2. Access to alleys. Where required or non-required parking spaces and loading spaces are permitted which depend upon an alley for access, the abutting property shall have a permanent opening of not more than twenty-five (25) feet (25) per separately owned parcel. All additional access shall be granted by joint alley use agreement authorized by the City Manager. Such agreement shall provide for a fee to the per the Fee Schedule Ordinance 8818 and shall be revocable by the City Manager upon his determination that the access must be revoked or impaired to accommodate some other public purpose. Such agreement shall be effective for one year from the date of issuance and shall automatically renew from year to year upon payment of the prescribed fee, as said fee may be amended from time to time, unless said agreement is earlier revoked as provided for herein above.

3. Parking, Loading Areas, and Traffic Patterns. A building permit shall be required for any new parking area or change in the arrangement of an existing parking area. Where any structure is to be built or improved, the permit may be considered part of the building permit for the structure. In applying for such permit, the applicant shall provide a site plan showing the location and arrangement of the parking areas, to include parking areas, aisles, driveways and abutting street paving, with locations of nearby median openings and street intersections. A permit shall not be given by the Building Official for the construction of any building or parking area where said building or parking area is to be changed and such change will affect or change the traffic pattern entering and exiting the property where such building or parking area is located, unless and until the Director of Development Services reviews such traffic patterns and makes appropriate recommendations as to the proper control of such traffic to provide safe entry to and exit from the abutting rights of way and to provide that the traffic capacity of the abutting rights of way is retained. The recommendations of the Director of Development Services shall be in accordance with all City Ordinances and City engineering specifications concerning traffic control and the use of the public rights of way, and such recommendations shall include the location, size and construction of entryways and exit ways along the rights of way abutting such property. All such recommendations of the Director of Development Services shall be conditions of the permit issued by the Building Official.

(C) Creation of a building site:

1. No permit for the construction of a building or buildings upon any tract or parcel of land shall be issued until a building site, building tract or building lot has been created by complying with one of the following conditions:

(a) The lot or tract is represented as a separate lot or tract on a plat of record, properly approved by the Planning and Zoning Commission and filed in the Plat Records of Midland County, Texas.

(b) The site, plot or tract is all or part of a site plan officially approved by the Planning and Zoning Commission or City Council, which site plan provides all utility and drainage easements, alleys, street and other public improvements necessary to meet the normal requirements for platting including the designation of building areas and access provisions, and such easements, alleys and streets have been required

and properly dedicated and the necessary public improvements provided.

(D) Refuse collection: Where dedicated alleys are not conveniently located for refuse service to a lot or tract, a building permit shall not be issued for such lot or tract until a plan for locations of refuse collection within the property and a guarantee of access to such locations has been submitted by the permit applicant or property owner and found satisfactory by the Utilities Director or his designated representative. Except upon specific permission of the Utilities Director, locations adjacent to public streets shall not be acceptable.

(E) Site plan review: In the event that Section 11-2-5(B) of this Code shall be applicable to the proposed development of a lot, no building permit shall be issued until approval of the site plan required by said Section 11-2-5(B)8 is obtained. (Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8667, § 1, 9-9-2008)

4-1-5. Exceptions.

Notwithstanding the provisions of Section 4-1-4, if it is shown to the satisfaction of the City Council that any of the requirements of said Section 4-1-4, if complied with, would work a hardship on the developer and that the requirement would not be in the best interest and general welfare of the public, the said City Council may make exception to, or grant variances from such requirements. Provided further that the Planning and Zoning Commission, in its review of subdivision plats, shall have the authority to waive the requirements for sidewalk construction adjacent to one or both sides of cul-de-sac or short loop streets only, in areas zoned for one-family or two-family dwellings. (Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8667, § 1, 9-9-2008)

4-1-6. Minimum floor elevation.

The finished first floor elevation of any residential building or structure hereafter constructed in the City shall be not less than twelve inches (12") above the grade established by the City for the top of the street curb at its lowest point abutting the lot or tract on which such building or structure is constructed. However, if a driveway, walkway or any other facility for ingress or egress is constructed on a lot or tract, for which the standard curb must be removed or lowered, the finished first floor elevation must be at least twelve inches (12") above the highest point of the top of the curb adjacent to the constructed driveway, walkway, ingress or egress. The condition that results in the highest floor elevation will govern the final first floor elevation. (Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8667, § 1, 9-9-2008)

4-1-7. Minimum mobile home anchoring standards, flood prone areas.

The following requirements shall be applicable to mobile homes placed within any special flood hazard area, as is shown on the current Department of Housing and Urban Development Flood Hazard Boundary Map for Midland, Texas, a copy of which is on file in the office of the City Secretary, and these requirements shall be in addition to any other requirements found in the adopted International Building Code:

(A) Over-the-top ties shall be provided at each of the four (4) corners of the mobile home, with two (2) additional ties per side at intermediate locations and mobile homes less than fifty feet (50') long requiring one (1) additional tie per side.

(B) Frame ties shall be provided at each corner of the mobile home with five (5) additional ties per side at intermediate points and mobile homes less than fifty feet (50') long requiring four (4) additional ties per side.

(C) All components of the anchoring system shall be capable of carrying a force of four thousand eight hundred (4,800) pounds.

(Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8667, § 1, 9-9-2008)

4-1-8. Early clearance procedure.

(A) Upon application from a contractor or appropriate party, the Building Official shall issue an early clearance permit for the connection of gas and electric utility service to a new residential structure and gas and electric utility connection and occupancy of a new commercial structure prior to the issuance of the certificate of occupancy and completion if the following conditions are met:

1. All facilities necessary for the connection of and distribution of utility service must be completed in conformity with the applicable Codes.

2. The applicant for such early clearance permit shall have on file with the Building Official a bond in the amount of ten thousand dollars (\$10,000) for all structures in a form approved by the City Attorney and collectable in the event the contractor either allows a residential structure to be occupied prior to the issuance of a certificate of occupancy and completion or fails to obtain a certificate of occupancy and completion for a commercial structure in a timely manner. Such bond shall be combined with the general contractor's bond required by Section 105.8 of the Building Code as amended by Section 4-1-3 of this Title and Chapter with no increase in amounts.

(B) In the event an applicant for an early clearance permit receives the same and shall subsequently violate its terms, or if one otherwise violates the requirements regarding obtaining a certificate of occupancy and completion, that applicant shall not be allowed any further building permits or early clearance permits until the permitted structure is brought into full Code compliance and issued a certificate of occupancy and completion.

(C) An early clearance permit shall be issued for one hundred eighty (180) days for commercial units and for ninety (90) days for residential units. Commercial unit permits may be renewed by the City Manager once for ninety (90) days upon showing of extenuating circumstances. On the expiration of the early clearance permit, the Building Official shall inspect the structure for its eligibility for issuance of a certificate of occupancy and completion. Should the building fail to qualify for a certificate of occupancy and completion, it must be vacated immediately.

(D) For purposes of this Section, the term "occupy" or "occupied" shall mean any use by or possession of a structure affected by this Section, including the mere use for storage of furniture, by any person other than the builder. This term shall also include any use by the builder other than for construction and building purposes.

(E) **Manufactured Home Skirting Deposit:** For any location and installation of a manufactured home as a fixed dwelling, where compliance with the use regulations

pertaining to such location in an "MH", Manufactured Home Dwelling District, is required, the owner of said manufactured home may make application to the Building Official for a certificate of completion of the installation prior to the installation of a continuous skirt with vents as required, provided the location and installation of said manufactured home according to all other applicable provisions of the Zoning Code and all construction codes has been completed, and provided further, the owner posts a deposit per the Fee Schedule Ordinance 8818. A forfeiture of the deposit shall occur in the event that a continuous skirt with vents has not been installed as required prior to the expiration of a period of thirty (30) days from the date of issuance of a certificate of completion. If prior to the expiration of said thirty (30) day period, the owner requests an inspection of the completed installation of a continuous skirt with vents and upon inspection the Building Official or his representative determines that the requirement for said skirt has been satisfied, the owner shall be entitled to a full refund of the deposit. However, in the event that the deposit is forfeited, the owner of the manufactured home is in no way released from the requirement of having continuous skirting installed. Any occupancy of a manufactured home which does not have the required continuous skirt with vents after the expiration of the thirty (30) day period shall constitute a violation of this Code.

(Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8667, § 1, 9-9-2008)

4-1-9. Street improvement fee.

(A) In addition to the building permit fees required by the City Building Code, and the City Residential Code, a separate street improvement fee shall be paid to the in accordance with the Fee Schedule Ordinance 8818. This fee applies to all new construction, additions, alterations and remodels. All proceeds from the street improvement fee shall be deposited in one budget account. The account shall be designated as the "Street Repair Improvement and New Street and Sidewalk Installation Fund." The fee is assessed at the time a building permit is issued by the City.

The purpose of the fund is to cover a portion of the unusual wear and tear to public streets, alleys and/or sidewalks growing out of construction activity and to cover a portion of the construction costs of unpaved public streets, (including curb and gutters), alleys and/or sidewalks.

This section is adopted under Section 395.081 of the Texas Local Government Code. The City of Midland will benefit from allowing the landowner to connect to the capital improvements while promoting the health, safety, and public welfare and providing for efficient and well-planned urban growth and development. All repairs or construction improvements adjoin or are within 11 miles of the developed property. The 11 miles is the specified distance required by Section 395.081.

(B) Any person wishing to appeal the payment of this fee may do so. Any person may appeal to the City Manager, or his designee, prior to paying the fee or after paying the fee. If a person wishes to appeal after payment of the fee, the person shall appeal to the City Manager, or his designee, in writing within ten calendar days of paying the fee. The City Manager, or his designee, shall provide a full and meaningful review process. The City Manager, or his designee, shall provide a fair opportunity for people to challenge the accuracy and legal validity of their fee obligation. The City Manager, or his designee, shall also provide a clear and certain remedy for any erroneous or unlawful fee collection to ensure that the opportunity to contest the fee

is a meaningful one. Options that the City Manager, or his designee, shall consider in providing a clear and certain remedy are a refund of any excess fee paid, as well as other factors such as ensuring that a person may continue the operation of his or her business. Any person may appeal to the City Manager, or his designee, if the person believes that he or she cannot afford the fees. The person may seek an exemption from all or part of the fee. The City shall not file criminal charges against any person if the street improvement fee is not paid. The City shall not file criminal charges against a person in an attempt to collect the Street Improvement fee.

The City Manager, or his designee, shall make his decision within ten days of receiving the appeal in writing. The City Manager, or his designee, shall ensure that a person has all rights under Section 395.081 of the Texas Local Government Code. A person shall incur no financial hardship by exercising his or her right to appeal.

(C) The purpose of this fee is to regulate the application and granting of building permits for members of the public that request such permits, and needed streets, alleys, and sidewalks to serve the community. Said fees shall not be demanded from the public by financial penalties, loss of livelihood, or damage to a business. Individuals who pay the fee will benefit in no less a way from the completion of public streets, alleys, and sidewalks, than any other member of the public. The expense of maintaining and installing public streets, alleys, and sidewalks, greatly outweighs whatever secondary revenue is collected through the generation of this permit fee.

(D) The City Council members of the CDBG Committee may prepare a schedule of unpaved public streets, alleys, and sidewalks for review by the City Council in January and June of each year. The Council may review said schedule and authorize and direct the installation and/or rehabilitation of paved public streets, alleys, or sidewalks on selected public property that meets the criteria of subsection (a) above. (Ord. No. 8393, §§ 2--6, 4-11-2006; Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8666, §§ 3--6, 9-9-2008)

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

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

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2000.00).

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

SECTION SIX. This ordinance shall become effective April 1, 2014.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2014; 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., 2014, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2014.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Steven Thorpe, Building Official

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

Building Code Amendments

Chapter 1 BUILDING CODE*

4-1-1. Purpose.

The purpose of this Chapter is to provide minimum standards, provisions and requirements for safe construction, alteration, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings, or structures within the City. All such buildings and structures hereafter constructed, altered, repaired, equipped, used and occupied, removed or demolished within the corporate limits of the City shall conform to the requirements of this Chapter and to the specifications, rules and regulations herein contained.

(Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8667, § 1, 9-9-2008)

4-1-2. Code adopted.

The specifications, rules and regulations entitled 2012 International Building Code together with appendices A,B,C and G as promulgated and published by the International Code Council, Inc, are hereby adopted as the Building Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

4-1-3. Changes and additions to adopted building code.

Notwithstanding any provisions of this Chapter or said adopted Building Code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows, to wit:

101.1 Title. These regulations shall be known as the Building Code of the City of Midland, hereinafter referred to as "this code."

101.4.4 Property Maintenance. Delete Section **101.4.4** in its entirety.

103.2 Appointment. Delete 103.2 as written and substitute following:

103.2 Appointment. The Building Official, Assistant Building Official, Inspectors and other personnel shall be appointed in accordance with the personnel policies of the City and shall be subject to all personnel rules and regulations of the City of Midland.

105.1.1 Annual Permit. Delete 105.1.1 as written and substitute following:

105.1.1 Fence Permit Required. A building permit shall be obtained prior to the erection or construction of any fence or wall to be located within the front yard or the side yard adjacent to a street (public or private) of any lot or tract, as such yard is required by Title XI, Chapter 1, Zoning, of the Midland City Code.

105.1.2 Annual Permit Records. Delete 105.1.2 in its entirety.

105.2 Work Exempt from Permit. Delete the following numbers from the exemptions:

105.2 Delete no. 1, 2, and 6.

105.8 Add a new Section 105.8 as follows:

105.8 Contractor's Responsibilities:

(a) It shall be the duty of every contractor or builder, who is engaged in the construction, erection, alteration or repair of buildings or structures, residential or commercial, subject to the provisions of this Code, to give good and sufficient bond in the sum of ten thousand dollars (\$10,000.00) to be approved by the City Attorney, conditioned to conform to the Building Regulations of this Section, and other ordinances and laws of the City of Midland in reference to buildings and related construction and site requirements. The bond herein required shall include the bonds required for early clearance procedures as required by Section 9 of this Title and Chapter and with the sidewalk, driveway and curb bond required by this Code with no increase in amounts.

(b) No building permit shall be issued by the Building Official unless and until a bond as herein provided has been tendered to and approved by the Building Official by the person or firm requesting such permit.

(c) Nothing in this Code shall prevent a homeowner from maintaining, altering or adding to his home within his own property boundaries provided such work is done by himself for the exclusive benefit of his family. Such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees therefore.

105.8.1 Add a new Section 105.8.1 as follows:

105.8.1 Construction Site Debris. It shall be the responsibility of each permit holder to make provisions for containment of building materials, construction debris, and all other trash and debris generated within the property boundaries. The particular method, which may include but is not limited to refuse containers, roll-offs, fenced areas or other types of wire enclosures, shall be specified by the applicant prior to obtaining a building permit. The applicant may specify City of Midland container service if available, provided it is a container assigned for use

at the particular job site. Said container may only be used for materials for which it is suitable, as determined by the City Sanitation Division or as specified by Title 8, Chapter 6 of the Midland City Code. Blowing trash, paper, building material packaging, and other construction site related debris, allowed to collect or accumulate outside the property boundaries for which a permit has been issued, in other than an approved container, shall constitute a violation of this section of the City of Midland Code. Such violations shall be subject to enforcement provisions as provided for in the Building Code, including stop work order, revocation of permit and fine.

109.2 Schedule of Permit Fees. : add to the end of section the following, "See Fee Schedule Ordinance 8818. "

109.6 Refunds. Delete section 109.6 as written and substitute the following: Refunds shall be in accordance with Fee Schedule Ordinance 8818.

113.4 Add a new Section-113.4 as follows:-

113.4 Terms of Office. Members of the Board shall serve four (4) year terms beginning and ending on September 30, of the appropriate years. The terms of office of the Board members shall be staggered so that no more than 1/3 of the Board is appointed or replaced in any 12-month period. The City Council may from time to time appoint members for terms of lesser duration than four (4) years when necessary in order to comply with the terms of this Code Section or to fill the remainder of an unexpired term. A member may be removed from office by the City Council for any reason. If a Board member is absent for more than 25% of the duly called meetings in any period of 12 consecutive months or absent for more than two (2) duly called meetings in any period of 12 consecutive months, whichever is greater, for any reason other than a medical reason which prevents the member's attendance, that member shall be disqualified and automatically removed from serving as a Board member. The term "duly called meetings" includes all meetings of the Board and all meetings of subcommittees of the Board on which the member serves.

1101.2 Design. Amend Section 1101.2 Design to read as follows:

1101.2 Design. Buildings and facilities shall be designed and constructed to be accessible in accordance with the Texas Accessibility Standards, pursuant to Article 9102, Texas Civil Statutes, as promulgated by the Texas Department of Licensing and Regulation.

3308.1.2 Add new Section 3308.1.2 as follows:

3308.1.2. Insurance Required. The person or persons in Section 3308.1 desiring to use streets or public property for the storage or handling of equipment shall provide the City with an owner's, landlord's, and tenant's liability policy of insurance naming the City as the named insured, with limits of not less than five

hundred thousand dollars (\$500,000.00) bodily injury and one hundred thousand dollars (\$100,000.00) property damage, protecting the City from liability that is or may be imposed on it as owner of such street, sidewalk, or other public property under the laws of this State on account of or in any way arising out of any such use of such public streets, sidewalks or other public property, such insurance policy to remain in force and effect until such time as the use of such public property by such persons has ceased.

3308.1.3 Add new Section 3308.1.3 as follows:

3308.1.3 Street/Sidewalk Permit. Building permits shall not include permission to occupy any part of the public street, sidewalks or alleys with building materials or equipment without first obtaining a permit for the use of public streets, sidewalks or alleys from the Building Official before operations have commenced. The fee for said permit shall be per the Fee Schedule Ordinance 8818. The permit for street, sidewalk or alley occupancy shall be only for the duration of construction or such lesser time as the Building Official may determine.

3308.1.4 Add new Section 3308.1.4 as follows:

3308.1.4 Waiver. Up to one-third (1/3) of the width of the street right of way adjacent to the property on which the building being erected and for which a permit has been issued may be occupied in connection with the building construction provided that the free flow of traffic is not significantly impeded. If the street in front of the property adjoining such building is to be used for similarly limited storage, a due waiver of claim against the applicable governing authority for damages on account of such use, issued by the owner of such property, must be filed with the Building Official before such use shall be allowed.

3308.1.5 Add new Section 3308.1.5 as follows:

3308.1.5 Street Repair - Special Permit Requirements

(a) When any application is made pursuant to the provisions of Section 105 of this Code for a permit for the construction, enlargement or alteration of any building or structure, the owner, authorized agent or contractor applying for such permit shall, as a condition to the granting of such permit, pay to the City the fee specified in subsection (b) hereof to cover the unusual wear and tear to public streets, alleys and/or sidewalks growing out of the construction activities performed by said applicant or anyone in any way under his or its supervision and direction, including the use, movement, parking, loading and/or placement of cranes and other heavy construction equipment and vehicles or trailers laden with construction materials.

(b) The fee specified in subsection (a) above shall be per the Fee Schedule Ordinance.

(c) In addition to the above, any damaged or deteriorated concrete, curb, gutter and paved sidewalk areas abutting the property of the construction site and associated with the project will be replaced or put in new condition by the

applicant prior to issuance of final approval of the project by the Building Official.

(d) All proceeds from the special fee set out in subsection (b) above shall be credited to the Street Improvement Fund.

4-1-4. Site requirements.

The following site requirements shall be satisfied or committed prior to a building permit being issued for any new construction or substantial addition to the development or redevelopment of a new parcel of land.

(A) *Sidewalk construction and permits therefor required:*

1. *Sidewalks required.* Sidewalks shall be constructed within all street rights of way adjacent to all tracts or lots at the time of their INITIAL DEVELOPMENT to the full length of the property line of the lot or tract involved. Sidewalks shall be constructed within all street rights of way adjacent to all lots or tracts, which were initially developed without sidewalks when SUBSEQUENT DEVELOPMENT exceeds 25% of the existing floor area and also exceeds one thousand (1,000) square feet in floor area. On properties situated at the corner of intersections, sidewalks are required both on the front and side along the full length of the tract or lot involved on which development is being made and such sidewalks shall be connected to the street pavement, if existing, at all street intersections. Sidewalks will be located and constructed as specified in Section 9-4-1 of the City Code. No such sidewalks shall be constructed until a permit approved by the Director of Development Services of the City has been secured, as provided for in Title IX, "Public Ways and Property", Chapter 4, "Sidewalks, Driveways and Curbs", of the Midland City Code. If sidewalks, in good condition, exist adjacent to the developed property, newly constructed sidewalks must provide connections thereto.

The Building Official of the City shall not issue any final electrical or gas clearance or certificate of occupancy and completion until all sidewalks required to be constructed have been finally completed and approved by the Director of Development Services of the City, except pursuant to Section 4-1-9 of the Midland City Code.

2. *Exception.* Where either side of a street, between two (2) intersecting streets, is seventy-five percent (75%) or more developed and has no existing sidewalks, then no sidewalks shall be required in the remaining undeveloped portion. This exception shall also apply to cul-de-sacs which are seventy-five percent (75%) or more developed and have no existing sidewalks.

(B) *Parking and loading areas:*

1. *Barriers required along streets and alleys.* Where an off-street parking, loading or vehicle storage area is to be paved or modifications to such area are to be made adjacent to a public street or alley, the paved area shall not project into the public right of way unless a curb, multiple wheel stops, or other effective barrier(s) shall be erected to prevent parked or stored vehicles from encroaching into said right of way, except in one and two family developments. However, if existing conditions would make such a restriction unreasonably difficult to satisfy, the City Manager may issue a permit for an encroachment into the right of way of a street when he determines that the following conditions will be met:

(a) The encroachment will not create a traffic hazard and adequate space for pedestrian traffic will be maintained.

(b) Barriers as specified above are provided to prevent encroachment beyond the line authorized by the permit.

(c) The permit conditions of Section 10-1-10(A)5.(a)(1) are met.

Parking provided by encroachment into a public right-of-way shall not be considered off-street parking in determining satisfaction of any requirement for such parking.

2. *Access to alleys.* Where required or non-required parking spaces and loading spaces are permitted which depend upon an alley for access, the abutting property shall have a permanent opening of not more than twenty-five (25) feet (25) per separately owned parcel. All additional access shall be granted by joint alley use agreement authorized by the City Manager. Such agreement shall provide for a fee to the per the Fee Schedule Ordinance 8818 and shall be revocable by the City Manager upon his determination that the access must be revoked or impaired to accommodate some other public purpose. Such agreement shall be effective for one year from the date of issuance and shall automatically renew from year to year upon payment of the prescribed fee, as said fee may be amended from time to time, unless said agreement is earlier revoked as provided for herein above.

3. *Parking, Loading Areas, and Traffic Patterns.* A building permit shall be required for any new parking area or change in the arrangement of an existing parking area. Where any structure is to be built or improved, the permit may be considered part of the building permit for the structure. In applying for such permit, the applicant shall provide a site plan showing the location and arrangement of the parking areas, to include parking areas, aisles, driveways and abutting street paving, with locations of nearby median openings and street intersections. A permit shall not be given by the Building Official for the construction of any building or parking area where said building or parking area is to be changed and such change will affect or change the traffic pattern entering and exiting the property where such building or parking area is located, unless and until the Director of Development Services reviews such traffic patterns and makes appropriate recommendations as to the proper control of such traffic to provide safe entry to and exit from the abutting rights of way and to provide that the traffic capacity of the abutting rights of way is retained. The recommendations of the Director of Development Services shall be in accordance with all City Ordinances and City engineering specifications concerning traffic control and the use of the public rights of way, and such recommendations shall include the location, size and construction of entryways and exit ways along the rights of way abutting such property. All such recommendations of the Director of Development Services shall be conditions of the permit issued by the Building Official.

(C) *Creation of a building site:*

1. No permit for the construction of a building or buildings upon any tract or parcel of land shall be issued until a building site, building tract or building lot has been created by complying with one of the following conditions:

(a) The lot or tract is represented as a separate lot or tract on a plat of record, properly approved by the Planning and Zoning Commission and filed in the Plat Records of Midland County, Texas.

(b) The site, plot or tract is all or part of a site plan officially approved by the Planning and Zoning Commission or City Council, which site plan provides all utility and drainage easements, alleys, street and other public improvements necessary to meet the normal

requirements for platting including the designation of building areas and access provisions, and such easements, alleys and streets have been required and properly dedicated and the necessary public improvements provided.

(D) *Refuse collection*: Where dedicated alleys are not conveniently located for refuse service to a lot or tract, a building permit shall not be issued for such lot or tract until a plan for locations of refuse collection within the property and a guarantee of access to such locations has been submitted by the permit applicant or property owner and found satisfactory by the Utilities Director or his designated representative. Except upon specific permission of the Utilities Director, locations adjacent to public streets shall not be acceptable.

(E) *Site plan review*: In the event that Section 11-2-5(B) of this Code shall be applicable to the proposed development of a lot, no building permit shall be issued until approval of the site plan required by said Section 11-2-5(B)8 is obtained.

(Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8667, § 1, 9-9-2008)

4-1-5. Exceptions.

Notwithstanding the provisions of Section 4-1-4, if it is shown to the satisfaction of the City Council that any of the requirements of said Section 4-1-4, if complied with, would work a hardship on the developer and that the requirement would not be in the best interest and general welfare of the public, the said City Council may make exception to, or grant variances from such requirements. Provided further that the Planning and Zoning Commission, in its review of subdivision plats, shall have the authority to waive the requirements for sidewalk construction adjacent to one or both sides of cul-de-sac or short loop streets only, in areas zoned for one-family or two-family dwellings.

(Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8667, § 1, 9-9-2008)

4-1-6. Minimum floor elevation.

The finished first floor elevation of any residential building or structure hereafter constructed in the City shall be not less than twelve inches (12") above the grade established by the City for the top of the street curb at its lowest point abutting the lot or tract on which such building or structure is constructed. However, if a driveway, walkway or any other facility for ingress or egress is constructed on a lot or tract, for which the standard curb must be removed or lowered, the finished first floor elevation must be at least twelve inches (12") above the highest point of the top of the curb adjacent to the constructed driveway, walkway, ingress or egress. The condition that results in the highest floor elevation will govern the final first floor elevation.

(Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8667, § 1, 9-9-2008)

4-1-7. Minimum mobile home anchoring standards, floodprone areas.

The following requirements shall be applicable to mobile homes placed within any special flood hazard area, as is shown on the current Department of Housing and Urban Development Flood Hazard Boundary Map for Midland, Texas, a copy of which is on file in the office of the City Secretary, and these requirements shall be in addition to any other requirements found in the adopted International Building Code:

- (A) Over-the-top ties shall be provided at each of the four (4) corners of the mobile home, with two (2) additional ties per side at intermediate locations and mobile homes less than fifty feet (50') long requiring one (1) additional tie per side.
- (B) Frame ties shall be provided at each corner of the mobile home with five (5) additional ties per side at intermediate points and mobile homes less than fifty feet (50') long requiring four (4) additional ties per side.
- (C) All components of the anchoring system shall be capable of carrying a force of four thousand eight hundred (4,800) pounds.
- (Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8667, § 1, 9-9-2008)

4-1-8. Early clearance procedure.

(A) Upon application from a contractor or appropriate party, the Building Official shall issue an early clearance permit for the connection of gas and electric utility service to a new residential structure and gas and electric utility connection and occupancy of a new commercial structure prior to the issuance of the certificate of occupancy and completion if the following conditions are met:

1. All facilities necessary for the connection of and distribution of utility service must be completed in conformity with the applicable Codes.
2. The applicant for such early clearance permit shall have on file with the Building Official a bond in the amount of ten thousand dollars (\$10,000) for all structures in a form approved by the City Attorney and collectable in the event the contractor either allows a residential structure to be occupied prior to the issuance of a certificate of occupancy and completion or fails to obtain a certificate of occupancy and completion for a commercial structure in a timely manner. Such bond shall be combined with the general contractor's bond required by Section 105.8 of the Building Code as amended by Section 4-1-3 of this Title and Chapter with no increase in amounts.

(B) In the event an applicant for an early clearance permit receives the same and shall subsequently violate its terms, or if one otherwise violates the requirements regarding obtaining a certificate of occupancy and completion, that applicant shall not be allowed any further building permits or early clearance permits until the permitted structure is brought into full Code compliance and issued a certificate of occupancy and completion.

(C) An early clearance permit shall be issued for one hundred eighty (180) days for commercial units and for ninety (90) days for residential units. Commercial unit permits may be renewed by the City Manager once for ninety (90) days upon showing of extenuating circumstances. On the expiration of the early clearance permit, the Building Official shall inspect the structure for its eligibility for issuance of a certificate of occupancy and completion. Should the building fail to qualify for a certificate of occupancy and completion, it must be vacated immediately.

(D) For purposes of this Section, the term "occupy" or "occupied" shall mean any use by or possession of a structure affected by this Section, including the mere use for storage of furniture, by any person other than the builder. This term shall also include any use by the builder other than for construction and building purposes.

(E) Manufactured Home Skirting Deposit: For any location and installation of a manufactured home as a fixed dwelling, where compliance with the use regulations pertaining to such location in an "MH", Manufactured Home Dwelling District, is required, the owner of said manufactured home may make application to the Building

Official for a certificate of completion of the installation prior to the installation of a continuous skirt with vents as required, provided the location and installation of said manufactured home according to all other applicable provisions of the Zoning Code and all construction codes has been completed, and provided further, the owner posts a deposit per the Fee Schedule Ordinance 8818. A forfeiture of the deposit shall occur in the event that a continuous skirt with vents has not been installed as required prior to the expiration of a period of thirty (30) days from the date of issuance of a certificate of completion. If prior to the expiration of said thirty (30) day period, the owner requests an inspection of the completed installation of a continuous skirt with vents and upon inspection the Building Official or his representative determines that the requirement for said skirt has been satisfied, the owner shall be entitled to a full refund of the deposit. However, in the event that the deposit is forfeited, the owner of the manufactured home is in no way released from the requirement of having continuous skirting installed. Any occupancy of a manufactured home which does not have the required continuous skirt with vents after the expiration of the thirty (30) day period shall constitute a violation of this Code.

(Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8667, § 1, 9-9-2008)

4-1-9. Street improvement fee.

(A) In addition to the building permit fees required by the City Building Code, and the City Residential Code, a separate street improvement fee shall be paid to the in accordance with the Fee Schedule Ordinance 8818. This fee applies to all new construction, additions, alterations and remodels. All proceeds from the street improvement fee shall be deposited in one budget account. The account shall be designated as the "Street Repair Improvement and New Street and Sidewalk Installation Fund." The fee is assessed at the time a building permit is issued by the City.

The purpose of the fund is to cover a portion of the unusual wear and tear to public streets, alleys and/or sidewalks growing out of construction activity and to cover a portion of the construction costs of unpaved public streets, (including curb and gutters), alleys and/or sidewalks.

This section is adopted under Section 395.081 of the Texas Local Government Code. The City of Midland will benefit from allowing the landowner to connect to the capital improvements while promoting the health, safety, and public welfare and providing for efficient and well-planned urban growth and development. All repairs or construction improvements adjoin or are within 11 miles of the developed property. The 11 miles is the specified distance required by Section 395.081.

(B) Any person wishing to appeal the payment of this fee may do so. Any person may appeal to the City Manager, or his designee, prior to paying the fee or after paying the fee. If a person wishes to appeal after payment of the fee, the person shall appeal to the City Manager, or his designee, in writing within ten calendar days of paying the fee. The City Manager, or his designee, shall provide a full and meaningful review process. The City Manager, or his designee, shall provide a fair opportunity for people to challenge the accuracy and legal validity of their fee obligation. The City Manager, or his designee, shall also provide a clear and certain remedy for any erroneous or unlawful fee collection to ensure that the opportunity to contest the fee is a meaningful one. Options that the City Manager, or his designee, shall consider in providing a clear and certain remedy are a

refund of any excess fee paid, as well as other factors such as ensuring that a person may continue the operation of his or her business. Any person may appeal to the City Manager, or his designee, if the person believes that he or she cannot afford the fees. The person may seek an exemption from all or part of the fee. The City shall not file criminal charges against any person if the street improvement fee is not paid. The City shall not file criminal charges against a person in an attempt to collect the Street Improvement fee. The City Manager, or his designee, shall make his decision within ten days of receiving the appeal in writing. The City Manager, or his designee, shall ensure that a person has all rights under Section 395.081 of the Texas Local Government Code. A person shall incur no financial hardship by exercising his or her right to appeal.

(C) The purpose of this fee is to regulate the application and granting of building permits for members of the public that request such permits, and needed streets, alleys, and sidewalks to serve the community. Said fees shall not be demanded from the public by financial penalties, loss of livelihood, or damage to a business. Individuals who pay the fee will benefit in no less a way from the completion of public streets, alleys, and sidewalks, than any other member of the public. The expense of maintaining and installing public streets, alleys, and sidewalks, greatly outweighs whatever secondary revenue is collected through the generation of this permit fee.

(D) The City Council members of the CDBG Committee **may** prepare a schedule of unpaved public streets, alleys, and sidewalks for review by the City Council in January and June of each year. The Council may review said schedule and authorize and direct the installation and/or rehabilitation of paved public streets, alleys, or sidewalks on selected public property that meets the criteria of subsection (a) above.

(Ord. No. 8393, §§ 2--6, 4-11-2006; Ord. No. 8609, § 1, 2-12-2008; Ord. No. 8666, §§ 3--6, 9-9-2008)



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: 2/11/14

TO: City Council / City Manager

FROM: Steve Thorpe, Building Official

SUBJECT: Consider an ordinance adopting the 2012 International Plumbing Code, with amendments; as the plumbing code of the City of Midland.

Purpose:

Consider an ordinance adopting the 2012 International Plumbing Code, with amendments; as the plumbing code of the City of Midland.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

none

Discussion:

The proposed code and amendments have been on file in the office of the City Secretary since November 27, 2013. No comments regarding the adoption of this code and amendments have been received. This exceeds the minimum thirty (30) day public review and comment period required prior to City Council taking action to adopt the new code.

The 2012 edition of the International Plumbing Code and the proposed amendments regulate the design, construction and inspection of plumbing systems except in one and two family dwellings within the city. The currently adopted code is the 2009 edition. The model codes are published in three-year cycles. Therefore this code is the most current available.

An effective date of April 1, 2014 is proposed. This will provide adequate time for notification to architects, engineers, designers, contractors and suppliers of any new requirements.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 3, "PLUMBING CODE", OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, AND ADOPTING THE 2012 INTERNATIONAL PLUMBING CODE AS THE PLUMBING CODE OF THE CITY OF MIDLAND FOR THE PURPOSE OF REGULATING THE INSTALLATION, ALTERATION, AND MAINTENANCE OF ALL PIPING AND PLUMBING WITHIN THE CORPORATE LIMITS OF THE CITY OF MIDLAND; PROVIDING FOR THE INSPECTION OF SAID PIPING AND PLUMBING; PROVIDING FOR THE ISSUANCE OF PERMITS FOR THE INSTALLATION OF SAID PIPING AND THE COLLECTION OF INSPECTION FEES THEREFOR; PROVIDING FOR THE BONDING OF PERSONS ENGAGED IN THE BUSINESS OF INSTALLING, REPAIRING AND MAINTAINING SAID PIPING OR PLUMBING; PROVIDING FOR APPEALS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2000.00); ESTABLISHING AN EFFECTIVE DATE OF APRIL 1, 2014; AND ORDERING PUBLICATION

WHEREAS, by Ordinance No. 8827, adopted August 10, 2010, the City Council adopted the 2009 Edition of the International Plumbing Code as the Plumbing Code of the City of Midland; and

WHEREAS, several changes and amendments have been made to the International Plumbing Code of 2012 and are incorporated into the 2012 International Plumbing Code; and

WHEREAS, the Council has heretofore on November 26, 2013 approved the 2012 International Plumbing Code as a public record in order that same be filed as a public record in the office of the City Secretary; and

WHEREAS, the City Council of the City of Midland finds it to be in the public interest to update the Plumbing Code regulations of the City of Midland to be in line with currently accepted practices;

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

SECTION ONE. That Title IV, "Building Regulations", Chapter 3, "Plumbing Code", of the City Code of the City of Midland, Texas, is hereby amended to hereafter read as follows:

4-3-1. Purpose.

The purpose of this Chapter is to provide minimum standards provisions and requirements for safe installation of plumbing and piping in the City. All such plumbing and piping hereafter installed, replaced, maintained or repaired within the corporate limits of the City shall conform to the requirements of this Chapter and to the specifications, rules and regulations herein.

4-3-2. Code adopted.

The specifications, rules and regulations entitled " 2012 International Plumbing Code, together with appendices B, C, D, E and F, as promulgated and published by the International Code Council, Inc, are hereby adopted as the Plumbing Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

4-3-3. Changes and additions to adopted plumbing code.

Notwithstanding any revisions of this Chapter or said adopted "Plumbing Code" to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows:

101.1 Title. Amend Section 101.1 to read as follows:

101.1 Title. These regulations shall be known as the International Plumbing Code of the City of Midland hereinafter referred to as "this code."

106.1.1 Irrigators and home owners. Add new Section 106.1.1 to read as follows:

106.1.1. Irrigators and Home Owners.

(A) Notwithstanding any provisions of this Code to the contrary, any "licensed irrigator" or "licensed installer", as defined in Tex. Water Code § 34.001, shall be allowed to make connections to private or public raw or potable water supply or water supply systems. However, any such person desiring to make such connection shall be subject to the same regulations, requirements and penalties imposed by this Code upon master plumbers doing like work, and any work shall conform to the specifications, rules and regulations contained herein. Any such connection shall be considered to be "plumbing" as defined in Section 202 herein.

(B) Nothing in this Code shall prevent a homeowner from extending, replacing, altering or repairing a plumbing system within his own property boundaries providing such work is done by himself and is used exclusively by him or his family. Such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be

construed as exempting any such property owner from obtaining a permit and paying the required fees.

106.2 Add new exemption 3 to read as follows:

106.2 Exempt Work.

3. Repair of routine under slab water leaks may be made without obtaining a permit or an inspection.

106.4.1 Add new Section 106.4.1 to read as follows:

106.4.1 Bond Required. Before any person shall engage in the business of plumbing in the City, he shall first obtain the required State license and deposit with the City a good and sufficient bond in the sum of Ten Thousand Dollars (\$10,000.00) to be approved by the City Attorney, or provide proof of insurance in the amount of \$300,000.00 in accordance with Sec. 15(b) of the State of Texas Plumbing License Law. Said bond shall be conditioned that the person engaged in the plumbing business will faithfully observe all the laws pertaining to plumbing, drain laying, blasting and excavating; further, that the City shall be indemnified and saved harmless from all claims arising from accidents and damage of any character whatsoever caused by the negligence of such person engaged in the plumbing business, or by their agents or employees and that such person will maintain in a safe condition for a period of one (1) year all ditches and excavations which may be opened in the performance of any plumbing work, and further that all dirt and other material excavated will be replaced in a good condition with similar materials. Where such excavation is made in an unpaved street, or any street paved with chert or macadam the word "street" as herein used, shall apply to sidewalks, curbs, gutters and street paving.

106.6.2 Fee Schedule. Amend Section 106.6.2 to read as follows: The fees for all plumbing work shall be as indicated in the Fee Schedule Ordinance 8818.

106.6.3 Fee Refunds. Delete Section 106.6.3 in its entirety and insert the following:

106.6.3 Refunds shall be in accordance with Fee Schedule Ordinance 8818.

108.4 Violation Penalties. Delete Section 108.4 in its entirety.

108.5 Stop Work Orders. Amend Section 108.5 to read as follows:

108.5 Stop Work Orders. Upon notice from the code official, work on any plumbing system that is being done contrary to the provisions of this code or in a dangerous or unsafe manner shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is

directed to perform to remove a violation or unsafe condition, shall be liable to a fine in accordance with Section Four of this Ordinance [Ord. No. 8369].

109 Means of Appeal.

109.1 Application for appeal. Amend to read as follows:

109.1 Application for appeal. Any person shall have the right to appeal a decision of the code official to the board of appeals, per the International Building Code section 113.

Delete sections 109.2- 109.7

305.4.1 Sewer Depth. Amend Section 305.4.1 to read as follows:

305.4.1 Sewer Depth. Building sewers shall be a minimum of twelve inches (12") below grade.

312.2 Drainage and Vent Water Test. Amend Section 312.2 to read as follows:

312.2 Drainage and Vent Water Test. A water test shall be applied to the drainage system either in its entirety or in sections. If applied to the entire section, all openings in the piping shall be tightly closed, except the highest opening, and the system shall be filled with water to point of overflow. If the system is tested in sections, each opening shall be tightly plugged except the highest openings of the section under test, and each section shall be filled with water, but no section shall be tested with less than a three foot (3') head of water. In testing successive sections, at least the upper three feet (3') of the next proceeding section shall be tested so that no joint or pipe in the building, except the uppermost three feet (3') of the system, shall have been submitted to a test of less than a three foot (3') head of water. The water shall be kept in the system, or in the portion under test, for at least fifteen (15) minutes before inspection starts. The system shall then be tight at all points.

312.6 Gravity Sewer Tests. Amend Section 312.6 to read as follows:

312.6 Gravity Sewer Tests. Gravity sewer tests shall consist of plugging the end of the building sewer at the point of connection with the public sewer, filling the building sewer with water, testing with not less than three feet (3') head of water and maintaining such pressure for fifteen (15) minutes.

605.3. Water Service Pipe. Add new Section 605.3. Exception to read as follows:

605.3. Exception. Fire Suppression Laterals. Fire suppression laterals shall be ductile iron water pipe, conforming with ANSI/AWWA C151/A21.51-96.

Table 605.3 Water Service Pipe. Add the following footnotes to Table 605.3.

Footnote 1. Copper or copper-alloy tubing shall be minimum Type "L" for underground water supply systems.

Footnote 2. Plastic water pipe used for water service shall terminate thirty-six inches (36") from the water meter. The water service pipe shall be connected to the

water meter with not less than thirty six inches (36") of minimum Type "L" copper.

Table 605.4 Water Distribution Pipe. Add the following footnote to Table 605.4.

Footnote 1. Copper or copper-alloy tubing shall be minimum Type "L" when used under slabs.

608.1.1 Backflow Ordinance. Add new Section 608.1.1 to read as follows:

608.1.1 Backflow Ordinance. All potable water supply systems shall conform to Title VIII, Chapter 9, of the Midland City Code (Ordinance No. 7605) for purposes of cross connection and backflow prevention.

Table 608.1 Application of Backflow Preventers. Add the following footnote to Table 608.1

Footnote 1. The potable water supply to lawn irrigation systems shall be protected against backflow by one of the following testable devices: pressure vacuum breaker, double check valve, reduced pressure principal backflow preventer (RPZ).

904.1 Roof Extension. Amend Section 904.1 to read as follows:

904.1 Roof Extension. All open vent pipes that extend through a roof shall be terminated at least twelve inches (12") above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extensions shall be run at least seven feet (7') above the roof. 1003.1.1 Sewer Sampling Outlet. In any occupancy required to have a grease interceptor or separator, a sewer sampling outlet shall be provided at an accessible point downstream from the building and any additional traps, interceptors, or separators required for the pretreatment. A clean out, which meets the location requirements above, may serve as a sampling outlet.

1003.1.1 Sewer Sampling Outlet. Add new Section 1003.1.1 to read as follows:

1003.1.1 Sewer Sampling Outlet. In any occupancy required to have a grease interceptor or separator, a sewer sampling outlet shall be provided at an accessible point downstream from the building and any additional traps, interceptors, or separators required for the pretreatment. A clean out, which meets the location requirements above, may serve as a sampling outlet.

1003.10.1 Midland Health Department. Add new Section 1003.10.1 to read as follows:

1003.10.1 Midland Health Department. Interceptors shall be maintained in accordance with City of Midland Health Department regulations.

4-3-4. Appeals.

Whenever the owner of a building or structure or its duly authorized agent, or the applicant for a plumbing permit is aggrieved by any order or decision of the Plumbing Inspector or the Building Official made in connection with their administration of this Chapter, he may appeal such decision or order to the Board of Appeals (provided for in the Building Code of the City),

and said Board shall proceed to hear and decide any such appeals in the same manner as it now hears appeals from decisions made under said Building Code, and said Board of Appeals shall have the same power and authority over appeals from the Plumbing Code and the same rules and regulations shall apply as are fully set out in said Building Code. (Ord. No. 8369, § 1, 1-10-2006)

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict. However, if there is any conflict between this ordinance and Ordinance No. 8818, then in that event Ordinance No. 8818 shall control and take precedence over this ordinance.

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

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2000.00).

SECTION FIVE. This ordinance shall become effective April 1, 2014.

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., 2014; 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., 2014, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2014.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Steve Thorpe, Building Official

APPROVED ONLY AS TO FORM

Keith Stretcher, City Attorney

Plumbing Code Amendments

4-3-2. Code adopted.

The specifications, rules and regulations entitled " **2012** International Plumbing Code, together with appendices B, C, D, E **and** F, as promulgated and published by the International Code Council, Inc, are hereby adopted as the Plumbing Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

4-3-3. Changes and additions to adopted plumbing code.

Notwithstanding any revisions of this Chapter or said adopted "Plumbing Code" to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows:

101.1 Title. Amend Section 101.1 to read as follows:

101.1 Title. These regulations shall be known as the International Plumbing Code of the City of Midland hereinafter referred to as "this code."

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106.1.1. Irrigators and Home Owners.

(A) Notwithstanding any provisions of this Code to the contrary, any "licensed irrigator" or "licensed installer", as defined in Tex. Water Code § 34.001, shall be allowed to make connections to private or public raw or potable water supply or water supply systems. However, any such person desiring to make such connection shall be subject to the same regulations, requirements and penalties imposed by this Code upon master plumbers doing like work, and any work shall conform to the specifications, rules and regulations contained herein. Any such connection shall be considered to be "plumbing" as defined in Section 202 herein.

(B) Nothing in this Code shall prevent a homeowner from extending, replacing, altering or repairing a plumbing system within his own property boundaries providing such work is done by himself and is used exclusively by him or his family. Such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees therefor.

106.2 Add new exemption 3 to read as follows:

106.2 Exempt Work.

3. Repair of routine under slab water leaks may be made without obtaining a permit or an inspection.

106.4.1 Add new Section 106.4.1 to read as follows:

106.4.1 Bond Required. Before any person shall engage in the business of plumbing in the City, he shall first obtain the required State license and deposit with the City a good and sufficient bond in the sum of Ten Thousand Dollars (\$10,000.00) to be approved by the City Attorney, or provide proof of insurance in the amount of \$300,000.00 in accordance with Sec. 15(b) of the State of Texas Plumbing License Law. Said bond shall be conditioned that the person engaged in the plumbing business will faithfully observe all the laws pertaining to plumbing, drain laying, blasting and excavating; further, that the City shall be indemnified and saved harmless from all claims arising from accidents and damage of any character whatsoever caused by the negligence of such person engaged in the plumbing business, or by their agents or employees and that such person will maintain in a safe condition for a period of one (1) year all ditches and excavations which may be opened in the performance of any plumbing work, and further that all dirt and other material excavated will be replaced in a good condition with similar materials. Where such excavation is made in an unpaved street, or any street paved with chert or macadam the word "street" as herein used, shall apply to sidewalks, curbs, gutters and street paving.

106.6.2 Fee Schedule. Amend Section 106.6.2 to read as follows: The fees for all plumbing work shall be as indicated in the Fee Schedule Ordinance 8818

106.6.3 Fee Refunds. Delete Section 106.6.3 in its entirety and insert the following:
106.6.3 Refunds shall be in accordance with Fee Schedule Ordinance 8818.

108.4 Violation Penalties. Delete Section 108.4 in its entirety.

108.5 Stop Work Orders. Amend Section 108.5 to read as follows:

108.5 Stop Work Orders. Upon notice from the code official, work on any plumbing system that is being done contrary to the provisions of this code or in a dangerous or unsafe manner shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine in accordance with Section Four of this Ordinance [Ord. No. 8369].

109.1 Application for appeal. Amend to read as follows:

109.1 Application for appeal. Any person shall have the right to appeal a decision of the code official to the board of appeals, per the International Building Code section 113.

Delete sections 109.2- 109.7

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305.4.1 Sewer Depth. Building sewers shall be a minimum of twelve inches (12") below grade.

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312.2 Drainage and Vent Water Test. A water test shall be applied to the drainage system either in its entirety or in sections. If applied to the entire section, all openings in the piping shall be tightly closed, except the highest opening, and the system shall be filled with water to point of overflow. If the system is tested in sections, each opening shall be tightly plugged except the highest openings of the section under test, and each section shall be filled with water, but no section shall be tested with less than a three foot (3') head of water. In testing successive sections, at least the upper three feet (3') of the next proceeding section shall be tested so that no joint or pipe in the building, except the uppermost three feet (3') of the system, shall have been submitted to a test of less than a three foot (3') head of water. The water shall be kept in the system, or in the portion under test, for at least fifteen (15) minutes before inspection starts. The system shall then be tight at all points.

312.6 Gravity Sewer Tests. Amend Section 312.6 to read as follows:

312.6 Gravity Sewer Tests. Gravity sewer tests shall consist of plugging the end of the building sewer at the point of connection with the public sewer, filling the building sewer with water, testing with not less than three feet (3') head of water and maintaining such pressure for fifteen (15) minutes.

605.3. Water Service Pipe. Add new Section 605.3. Exception to read as follows:

605.3. Exception. Fire Suppression Laterals. Fire suppression laterals shall be ductile iron water pipe, conforming with ANSI/AWWA C151/A21.51-96.

Table 605.3 Water Service Pipe. Add the following footnotes to Table 605.3.

Footnote 1. Copper or copper-alloy tubing shall be minimum Type "L" for underground water supply systems.

Footnote 2. Plastic water pipe used for water service shall terminate thirty-six inches (36") from the water meter. The water service pipe shall be connected to the water meter with not less than thirty six inches (36") of minimum Type "L" copper.

Table 605.4 Water Distribution Pipe. Add the following footnote to Table 605.4.

Footnote 1. Copper or copper-alloy tubing shall be minimum Type "L" when used under slabs.

608.1.1 Backflow Ordinance. Add new Section 608.1.1 to read as follows:

608.1.1 Backflow Ordinance. All potable water supply systems shall conform to Title VIII, Chapter 9, of the Midland City Code (Ordinance No. 7605) for purposes of cross connection and backflow prevention.

Table 608.1 Application of Backflow Preventers. Add the following footnote to Table 608.1

Footnote 1. The potable water supply to lawn irrigation systems shall be protected against backflow by one of the following testable devices: pressure vacuum breaker, double check valve, reduced pressure principal backflow preventer (RPZ).

904.1 Roof Extension. Amend Section 904.1 to read as follows:

904.1 Roof Extension. All open vent pipes that extend through a roof shall be terminated at least twelve inches (12") above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extensions shall be run at least seven feet (7') above the roof.

1003.1.1 Sewer Sampling Outlet. Add new Section 1003.1.1 to read as follows:

1003.1.1 Sewer Sampling Outlet. In any occupancy required to have a grease interceptor or separator, a sewer sampling outlet shall be provided at an accessible point downstream from the building and any additional traps, interceptors, or separators required for the pretreatment. A clean out, which meets the location requirements above, may serve as a sampling outlet.

1003.10.1 Midland Health Department. Add new Section 1003.10.1 to read as follows:

1003.10.1 Midland Health Department. Interceptors shall be maintained in accordance with City of Midland Health Department regulations.

4-3-4. Appeals.

Whenever the owner of a building or structure or its duly authorized agent, or the applicant for a plumbing permit is aggrieved by any order or decision of the Plumbing Inspector or the Building Official made in connection with their administration of this Chapter, he may appeal such decision or order to the Board of Appeals (provided for in the Building Code of the City), and said Board shall proceed to hear and decide any such appeals in the same manner as it now hears appeals from decisions made under said Building Code, and said Board of Appeals shall have the same power and authority over appeals from the Plumbing Code and the same rules and regulations shall apply as are fully set out in said Building Code.

(Ord. No. 8369, § 1, 1-10-2006)



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: 2/11/14

TO: City Council / City Manager

FROM: Steve Thorpe, Building Official

SUBJECT: Consider an ordinance adopting the 2012 International Fuel Gas Code, with amendments; as the gas code of the City of Midland.

Purpose:

Consider an ordinance adopting the 2012 International Fuel Gas Code, with amendments; as the gas code of the City of Midland.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

none

Discussion:

The proposed code and amendments have been on file in the office of the City Secretary since November 27, 2013. No comments regarding the adoption of this code and amendments have been received. This exceeds the minimum thirty (30) day public review and comment period required prior to City Council taking action to adopt the new code.

The 2012 edition of the International Fuel Gas Code and the proposed amendments regulate the design, construction and inspection of fuel gas systems except in one and two family dwellings within the city. The currently adopted code is the 2009 edition. The model codes are published in three-year cycles. Therefore this code is the most current available.

An effective date of April 1, 2014 is proposed. This will provide adequate time for notification to architects, engineers, designers, contractors and suppliers of any new requirements.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 4, "GAS CODE", OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, AND ADOPTING THE 2012 INTERNATIONAL FUEL GAS CODE AS THE GAS CODE OF THE CITY OF MIDLAND; PROVIDING MINIMUM STANDARDS, PROVISIONS AND REQUIREMENTS FOR GAS PIPING AND APPLIANCES; PROVIDING FOR THE ISSUANCE OF PERMITS FOR THE INSTALLATION OF SAID PIPING AND APPLIANCES AND THE COLLECTION OF INSPECTION FEES THEREFOR; PROVIDING FOR BONDING OF PERSONS ENGAGED IN THE BUSINESS OF INSTALLING, REPAIRING AND MAINTAINING SAID PIPING AND APPLIANCES; REGULATING USE OF EXISTING PIPING AND APPLIANCES; PROVIDING FOR CERTIFICATES OF APPROVAL FOR PIPING WORK; PROVIDING FOR APPEALS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ESTABLISHING AN EFFECTIVE DATE OF APRIL 1, 2014; AND ORDERING PUBLICATION

WHEREAS, by Ordinance No. 8826, adopted August 10, 2010, the City Council adopted the 2009 Edition of the International Fuel Gas Code as the Gas Code of the City of Midland; and

WHEREAS, several changes and amendments to the International Fuel Gas Code have been approved by the International Code Council, and incorporated into the 2009 International Fuel Gas Code; and

WHEREAS, the Council has heretofore on November 26, 2013, approved the 2012 International Fuel Gas Code, as a public record in order that same be filed as a public record in the office of the City Secretary; and

WHEREAS, the City Council of the City of Midland finds it to be in the public interest to update the Gas Code regulations of the City of Midland to be more in line with currently accepted practices;

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

SECTION ONE. That Title IV, "Building Regulations", Chapter 4, "Gas Code", of the City Code of the City of Midland, Texas, is hereby amended to hereafter read as follows:

4-4-1. Purpose.

The purpose of this Chapter is to provide safe installation of consumer's gas piping and safe gas installation of consumer appliances. All such gas piping and gas appliances installed, replaced, maintained or repaired within the corporate limits of the City shall conform to the requirements of this Chapter and to the specifications, rules and regulations herein.

4-4-2. Code adopted.

The specifications, rules and regulations entitled 2012 International Fuel Gas Code together with appendices A,B,C and D as promulgated and published by the International Code Council, Inc, are hereby adopted as the Gas Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

4-4-3. Changes and additions to adopted gas code.

Notwithstanding any revisions in this chapter or said adopted "Gas Code" to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following Sections and provisions thereof shall hereafter read as follows to wit:

101.1 Title. Amend Section 101.1 to read as follows:

101.1 Title. These regulations shall be known as the Gas Code of the City of Midland, hereinafter referred to as "this code".

106.1.1 Bond and License. Add new Section 106.1.1 as follows:

106.1.1 Bond and License.

(a) No person shall engage in or work at the installation, extension or alteration of consumer's gas piping or gas appliances until he has executed and delivered to the Building Official a good and sufficient bond in favor of the City in the penal sum of ten thousand dollars (\$10,000.00) with corporate surety, conditioned for the faithful performance of all such work, entered upon or contracted for, in strict accordance and compliance with the provisions of this Chapter. The bond herein required shall be for a period of not less than twelve (12) months and shall be on forms provided by the City Building Official. This bond, in form and substance as herein required, shall be given by such person to cover all such work as shall be done during the term of the bond. In lieu of said bond, the City shall accept proof of insurance in the amount of \$300,000.00 in accordance with Sec. 15.(b) of the State of Texas Plumbing License Law.

(b) Upon approval of said bond, the person desiring to do such work shall be a master plumber properly licensed by the Texas State Board of Plumbing Examiners, or in the case of liquefied petroleum gas piping installations, such person shall be licensed by the Railroad Commission of Texas.

(c) Nothing in this Code shall prevent a homeowner from installing or repairing his own appliances or installing, extending, replacing, altering or repairing gas piping within his own property boundaries providing such work is done by himself and is used exclusively by him or his family. A homeowner shall not be required to obtain a bond or a license; however, such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees.

106.6.2 Fee Schedule. Amend Section 106.6.2 to read as follows: The fees for all gas systems work shall be as indicated in the Fee Schedule Ordinance 8818

106.6.3 Fee Refunds. Delete 106.6.3 as written and substitute the following:
Refunds- Refunds shall be in accordance with Fee Schedule Ordinance 8818

108.4 Violation Penalties. Delete Section 108.4 in its entirety.

108.5 Stop Work Orders. Amend Section 108.5 to read as follows:

108.5 Stop Work Orders. Upon notice from the code official that work is being done contrary to the provisions of this code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine in accordance with Section Four of this ordinance [Ord. No. 8371].

109.1 Application for appeal. Amend to read as follows:

109.1 Application for appeal. Any person shall have the right to appeal a decision of the code official to the board of appeals, per the International Building Code section 113.

Delete sections 109.2- 109.7

309.2 Connections. Amend Section 309.2 to read as follows:

309.2 Connections. All electrical connections between gas appliances and the building wiring shall conform to the National Electrical Code and to Title IV, Chapter 2, of the Midland City Code.

403.6 Plastic pipe, tubing, and fittings. Amend Section 403.6 to read as follows:

403.6. Plastic pipe, tubing, and fittings. Plastic pipe, tubing, and fittings shall be used outside underground only, and shall conform with ASTM D 2513. Pipe shall be marked "gas" and ASTM D 2513. Plastic pipe may be connected at the end of the thirty-six inch (36") metallic pipe service line and extended to within thirty-six inches (36") of the building where it shall be connected to metallic pipe and riser. The manufacturer's recommendations for the joining of plastic pipe shall be observed. See Section 404.8 for requirements of protection against corrosion.

406.4 Test pressure measurement. Amend Section 406.4 to read as follows:

406.4 Test pressure measurement. Test pressure shall be measured with an ouncegauge, manometer or with a mercury gauge designed and calibrated to read, recorder indicate a pressure loss due to leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made.

406.4.1 Test pressure. Amend Section 406.4.1 to read as follows:

406.4.1 Test Pressure. Low pressure (not in excess of 0.5 psi (3.5kPa) gas piping shall withstand a pressure of not less than 1 1/2 times the proposed maximum working pressure, but not less than 5.88 psi (40.5kPa), ninety (90) ounces, or twelve inches(12") of mercury for a period of not less than ten (10) minutes without showing anydrop in pressure. Higher pressure piping (2 psi gas) shall withstand a pressure of atleast 10 psi (68.8kPa) or twenty inches (20") of mercury for a period of not less than ten (10) minutes without showing any drop in pressure.

409.1.4 Service Line Shutoff Valve. Add new Section 409.1.4 to read as follows:

409.1.4 Service Line Shutoff Valve. An approved shutoff valve shall be installed above ground outside on the service line at the building entrance on all new gas line installations and on all replaced gas lines.

(Ord. No. 8371, § 1, 1-10-2006)

4-4-4. Use of existing piping and appliances.

Notwithstanding any provision in this Chapter to the contrary, consumer's piping or appliances installed prior to the adoption of this Chapter or piping or appliances installed to supply other than natural gas may be converted to natural gas, if the Inspector finds, upon inspection and proper tests, that such piping or appliances will render reasonably satisfactory gas service to the consumer and will not in any way endanger life or property; otherwise, such piping shall be altered or replaced in whole or in part, to conform with the requirements of this Chapter.

4-4-5. Non-liability of city.

This Chapter shall not be construed as imposing on the City any liability or responsibility for damages to any person injured by any defect thereof, nor shall the City or any official or employee thereof, be held as assuming any such liability or responsibility by reason of the inspection authorized hereunder or the certificate of approval issued by the Inspector. By approving the Ordinance the City is not waiving its right of sovereign immunity. The City is retaining its immunity. THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

4-4-6. Appeals.

Whenever the owner of a building or structure or his duly authorized agent, or the applicant for any permit required by this Chapter, is aggrieved by any order or decision of the Gas Inspector or the Building Official made in connection with their administration of this Chapter, he may appeal such decision or order to the Board of Appeals (provided for in the Building Code of the City) and said Board shall proceed to hear and decide any such appeals in the same manner as it now hears appeals from decisions made under said Building Code,

and said Board of Appeals shall have the same power and authority over appeals from the Gas Code and the same rules and regulations shall apply as are fully set out in the Building Code.(Ord. No. 8371, § 1, 1-10-2006)

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

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

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2000.00).

SECTION FIVE. This ordinance shall become effective April 1, 2014.

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., 2014; 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., 2014, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2014.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Steve Thorpe, Building Official

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

Chapter 4 Gas Code

4-4-2. Code adopted.

The specifications, rules and regulations entitled 2012 International Fuel Gas Code together with appendices A,B,C and D as promulgated and published by the International Code Council, Inc, are hereby adopted as the Gas Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

4-4-3. Changes and additions to adopted gas code.

Notwithstanding any revisions in this chapter or said adopted "Gas Code" to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following Sections and provisions thereof shall hereafter read as follows to wit:

101.1 Title. Amend Section 101.1 to read as follows:

101.1 Title. These regulations shall be known as the Gas Code of the City of Midland, hereinafter referred to as "this code".

106.1.1 Bond and License. Add new Section 106.1.1 as follows:

106.1.1 Bond and License.

(a) No person shall engage in or work at the installation, extension or alteration of consumer's gas piping or gas appliances until he has executed and delivered to the Building Official a good and sufficient bond in favor of the City in the penal sum of ten thousand dollars (\$10,000.00) with corporate surety, conditioned for the faithful performance of all such work, entered upon or contracted for, in strict accordance and compliance with the provisions of this Chapter. The bond herein required shall be for a period of not less than twelve (12) months and shall be on forms provided by the City Building Official. This bond, in form and substance as herein required, shall be given by such person to cover all such work as shall be done during the term of the bond. In lieu of said bond, the City shall accept proof of insurance in the amount of \$300,000.00 in accordance with Sec. 15.(b) of the State of Texas Plumbing License Law.

(b) Upon approval of said bond, the person desiring to do such work shall be a master plumber properly licensed by the Texas State Board of Plumbing Examiners, or in the case of liquefied petroleum gas piping installations, such person shall be licensed by the Railroad Commission of Texas.

(c) Nothing in this Code shall prevent a homeowner from installing or repairing his own appliances or installing, extending, replacing, altering or repairing gas piping within his own property boundaries providing such work is done by himself and is used exclusively by him or his family. A homeowner shall not be required to obtain a bond or a license; however, such privilege does not convey

the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees therefor.

106.6.2 Fee Schedule. Amend Section 106.6.2 to read as follows: The fees for all gas systems work shall be as indicated in the Fee Schedule Ordinance 8818

106.6.3-Fee Refunds. Delete 106.6.3 as written and substitute the following:
Refunds- Refunds shall be in accordance with Fee Schedule Ordinance 8818

108.4 Violation Penalties. Delete Section 108.4 in its entirety.

108.5 Stop Work Orders. Amend Section 108.5 to read as follows:

108.5 Stop Work Orders. Upon notice from the code official that work is being done contrary to the provisions of this code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine in accordance with Section Four of this ordinance [Ord. No. 8371].

109.1 Application for appeal. Amend to read as follows:

109.1 Application for appeal. Any person shall have the right to appeal a decision of the code official to the board of appeals, per the International Building Code section 113.

Delete sections 109.2- 109.7

309.2 Connections. Amend Section 309.2 to read as follows:

309.2 Connections. All electrical connections between gas appliances and the building wiring shall conform to the National Electrical Code and to Title IV, Chapter 2, of the Midland City Code.

403.6 Plastic pipe, tubing, and fittings. Amend Section 403.6 to read as follows:

403.6. Plastic pipe, tubing, and fittings. Plastic pipe, tubing, and fittings shall be used outside underground only, and shall conform with ASTM D 2513. Pipe shall be marked "gas" and ASTM D 2513. Plastic pipe may be connected at the end of the thirty-six inch (36") metallic pipe service line and extended to within thirty-six inches (36") of the building where it shall be connected to metallic pipe and riser. The manufacturer's recommendations for the joining of plastic pipe shall be observed. See Section 404.8 for requirements of protection against corrosion.

406.4 Test pressure measurement. Amend Section 406.4 to read as follows:

406.4 Test pressure measurement. Test pressure shall be measured with an ounce gauge, manometer or with a mercury gauge designed and calibrated to read, record or indicate a pressure loss due to leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made.

406.4.1 Test pressure. Amend Section 406.4.1 to read as follows:

406.4.1 Test Pressure. Low pressure (not in excess of 0.5 psi (3.5kPa) gas piping shall withstand a pressure of not less than 1 1/2 times the proposed maximum working pressure, but not less than 5.88 psi (40.5kPa), ninety (90) ounces, or twelve inches (12") of mercury for a period of not less than ten (10) minutes without showing any drop in pressure. Higher pressure piping (2 psi gas) shall withstand a pressure of at least 10 psi (68.8kPa) or twenty inches (20") of mercury for a period of not less than ten (10) minutes without showing any drop in pressure.

409.1.4 Service Line Shutoff Valve. Add new Section 409.1.4 to read as follows:

409.1.4 Service Line Shutoff Valve. An approved shutoff valve shall be installed above ground outside on the service line at the building entrance on all new gas line installations and on all replaced gas lines.
(Ord. No. 8371, § 1, 1-10-2006)

4-4-6. Appeals.

Whenever the owner of a building or structure or his duly authorized agent, or the applicant for any permit required by this Chapter, is aggrieved by any order or decision of the Gas Inspector or the Building Official made in connection with their administration of this Chapter, he may appeal such decision or order to the Board of Appeals (provided for in the Building Code of the City) and said Board shall proceed to hear and decide any such appeals in the same manner as it now hears appeals from decisions made under said Building Code, and said Board of Appeals shall have the same power and authority over appeals from the Gas Code and the same rules and regulations shall apply as are fully set out in the Building Code.

(Ord. No. 8371, § 1, 1-10-2006)



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: 2/11/14

TO: City Council / City Manager

FROM: Steve Thorpe, Building Official

SUBJECT: Consider an ordinance adopting the 2012 International Mechanical Code, with amendments; as the mechanical code of the City of Midland.

Purpose:

Consider an ordinance adopting the 2012 International Mechanical Code, with amendments; as the mechanical code of the City of Midland.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

none

Discussion:

The proposed code and amendments have been on file in the office of the City Secretary since November 27, 2013. No comments regarding the adoption of this code and amendments have been received. This exceeds the minimum thirty (30) day public review and comment period required prior to City Council taking action to adopt the new code.

The 2012 edition of the International Mechanical Code and the proposed amendments regulate the design, construction and inspection of mechanical systems except in one and two family dwellings within the city. The currently adopted code is the 2009 edition. The model codes are published in three-year cycles. Therefore this code is the most current available.

An effective date of April 1, 2014 is proposed. This will provide adequate time for notification to architects, engineers, designers, contractors and suppliers of any new requirements.

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 10, "MECHANICAL CODE", OF THE CITY CODE OF MIDLAND, TEXAS, AND ADOPTING THE 2012 INTERNATIONAL MECHANICAL CODE AS THE MECHANICAL CODE OF THE CITY OF MIDLAND FOR THE PURPOSE OF PROVIDING MINIMUM STANDARDS, PROVISIONS AND REQUIREMENTS FOR SAFE INSTALLATION AND MAINTENANCE OF MECHANICAL SYSTEMS WITHIN THE CORPORATE LIMITS OF THE CITY OF MIDLAND, TEXAS; PROVIDING FOR THE INSPECTION OF SAID MECHANICAL SYSTEMS; PROVIDING FOR THE ISSUANCE OF PERMITS FOR THE INSTALLATION OF SAID MECHANICAL SYSTEMS AND THE COLLECTION OF INSPECTION FEES THEREFOR; PROVIDING FOR APPEALS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2000.00); ESTABLISHING AN EFFECTIVE DATE OF APRIL 1, 2014; AND ORDERING PUBLICATION

WHEREAS, by Ordinance No. 8806, adopted July 13, 2010, the City Council adopted the 2009 Edition of the International Mechanical Code as the Mechanical Code for the City of Midland; and

WHEREAS, several changes and amendments to the International Mechanical Code have been approved by the International Code Council, Inc., and incorporated into the 2012 International Mechanical Code; and

WHEREAS, the Council has heretofore on November 26, 2013, approved the 2012 International Mechanical Code as a public record in order that same be filed as a public record in the office of the City Secretary; and

WHEREAS, the City Council finds it to be in the public interest to update the Mechanical Code so as to incorporate new techniques and materials;

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

SECTION ONE. That Title IV, "Building Regulations", Chapter 10, "Mechanical

Code", of the City Code of Midland, Texas, is hereby amended to hereafter read as follows:

4-10-1. Purpose.

The purpose of this Chapter is to provide minimum standards, revisions and requirements for safe installation of mechanical systems within the City. All such mechanical systems hereafter installed, replaced, maintained or repaired within the corporate limits of the City shall conform to the requirements of this Chapter and to the specifications, rules and regulations herein.

4-10-2. Code adopted.

The specifications, rules and regulations entitled 2012 International Mechanical Code together with appendix A, as promulgated and published by the International Code Council, Inc, are hereby adopted as the Mechanical Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

4-10-3. Changes and additions to adopted mechanical code.

Notwithstanding any provisions of this Chapter or said adopted "Mechanical Code" to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows:

101.1 Title. Amend Section 101.1 to read as follows:

101.1 Title. These regulations shall be known as the Mechanical Code of the City of Midland, hereinafter referred to as "this code".

106.1.1 Homeowners Permit. Add new Section 106.1.1 to read as follows:

106.1.1 Homeowners Permit. Nothing in this Code shall prevent a homeowner from extending, replacing, altering or repairing mechanical equipment within his own property boundaries providing such work is done by himself and is used exclusively by him or his family. A homeowner shall not be required to obtain a bond or a license; however, such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees.

106.5.2 Fee Schedule. Amend Section 106.5.2 to read as follows: The fees for all gas systems work shall be as indicated in the Fee Schedule Ordinance 8818.

108.4 Violation Penalties. Delete Section 108.4 in its entirety.

108.5 Stop Work Orders. Amend Section 108.5 to read as follows:

108.5 Stop Work Orders. Upon notice from the code official that mechanical work is being done contrary to the provisions of this code or in a dangerous manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system after having been served with a stop work order,

except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine in accordance with Section Four of this ordinance [Ord. No. 8370].

109.1 Application for appeal. Amend to read as follows:

109.1 Application for appeal. Any person shall have the right to appeal a decision of the code official to the board of appeals, per the International Building Code section 113.

Delete sections 109.2- 109.7

4-10-4. Appeals.

Whenever the owner of a building or structure, or its duly authorized agent or the applicant for a mechanical permit is aggrieved by any order or decision of the Mechanical Inspector or the Mechanical Official made in connection with his administration of this Chapter, he may appeal such decision or order to the Board of Appeals (provided for in the Building Code of the City), and said Board shall proceed to hear and decide any such appeals in the same manner as it now hears appeals from decisions made under said Building Code. Said Board of Appeals shall have the same power and authority over appeals from the Mechanical Code and the same rules and regulations shall apply as are full set out in said Building Code. (Ord. No. 8370, § 1, 1-10-2006)

4-10-5. Non-liability of city.

This Chapter shall not be construed as imposing upon the City any liability or responsibility for damages to any person injured by any defect thereof, nor shall the City or any official or employee thereof, be held as assuming any such liability or responsibility by reason of the inspection authorized hereunder or the certificate of approval issued by the Inspector. By approving this ordinance the City is not waiving its right of sovereign immunity. The City is retaining its immunity. THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

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

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

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

SECTION FIVE. This ordinance shall become effective April 1, 2014.

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., 2014; 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., 2014, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2014.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Steve Thorpe, Building Official

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

Mechanical Code Amendments

4-10-2. Code adopted.

The specifications, rules and regulations entitled 2012 International Mechanical Code together with appendix A, as promulgated and published by the International Code Council, Inc, are hereby adopted as the Mechanical Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

4-10-3. Changes and additions to adopted mechanical code.

Notwithstanding any provisions of this Chapter or said adopted "Mechanical Code" to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows:

101.1 Title. Amend Section 101.1 to read as follows:

101.1 Title. These regulations shall be known as the Mechanical Code of the City of Midland, hereinafter referred to as "this code".

106.1.1 Homeowners Permit. Add new Section 106.1.1 to read as follows:

106.1.1 Homeowners Permit. Nothing in this Code shall prevent a homeowner from extending, replacing, altering or repairing mechanical equipment within his own property boundaries providing such work is done by himself and is used exclusively by him or his family. A homeowner shall not be required to obtain a bond or a license; however, such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees therefor.

106.5.2 Fee Schedule. Amend Section 106.5.2 to read as follows: The fees for all gas systems work shall be as indicated in the Fee Schedule Ordinance 8818

106.5.3 Fee Refunds. . Delete 106.5.3 as written and substitute the following:
Refunds- Refunds shall be in accordance with Fee Schedule Ordinance 8818.

108.4 Violation Penalties. Delete Section 108.4 in its entirety.

108.5 Stop Work Orders. Amend Section 108.5 to read as follows:

108.5 Stop Work Orders. Upon notice from the code official that mechanical work is being done contrary to the provisions of this code or in a dangerous manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine in accordance with Section Four of this ordinance [Ord. No. 8370].

109.1 Application for appeal. Amend to read as follows:

109.1 Application for appeal. Any person shall have the right to appeal a decision of the code official to the board of appeals, per the International Building Code section 113.

Delete sections 109.2- 109.7

4-10-4. Appeals.

Whenever the owner of a building or structure, or its duly authorized agent or the applicant for a mechanical permit is aggrieved by any order or decision of the Mechanical Inspector or the Mechanical Official made in connection with his administration of this Chapter, he may appeal such decision or order to the Board of Appeals (provided for in the Building Code of the City), and said Board shall proceed to hear and decide any such appeals in the same manner as it now hears appeals from decisions made under said Building Code. Said Board of Appeals shall have the same power and authority over appeals from the Mechanical Code and the same rules and regulations shall apply as are full set out in said Building Code.

(Ord. No. 8370, § 1, 1-10-2006)



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: 2/11/14

TO: City Council / City Manager

FROM: Steve Thorpe, Building Official

SUBJECT: Consider an ordinance adopting the 2012 International Residential Code, with amendments; as the residential code of the City of Midland.

Purpose:

Consider an ordinance adopting the 2012 International Residential Code, with amendments; as the residential code of the City of Midland.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

none

Discussion:

The proposed code and amendments have been on file in the office of the City Secretary since November 27, 2013. No comments regarding the adoption of this code and amendments have been received. This exceeds the minimum thirty (30) day public review and comment period required prior to City Council taking action to adopt the new code.

The 2012 edition of the International Residential Code and the proposed amendments regulate the design, construction and inspection of building construction and plumbing, mechanical, fuel gas and electrical systems in one and two family dwellings within the city. The currently adopted code is the 2009 edition. The model codes are published in three-year cycles. Therefore this code is the most current available.

An effective date of April 1, 2014 is proposed. This will provide adequate time for notification to architects, engineers, designers, contractors and suppliers of any new requirements.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 11, "RESIDENTIAL CODE", OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, AND ADOPTING THE 2012 EDITION OF THE INTERNATIONAL RESIDENTIAL CODE, AS THE RESIDENTIAL BUILDING CODE FOR THE CITY OF MIDLAND, TEXAS, FOR THE PURPOSE OF REGULATING AND CONTROLLING THE DESIGN, CONSTRUCTION, QUALITY OF MATERIALS, ERECTION, INSTALLATION, ALTERATION, REPAIR, LOCATION, RELOCATION, REPLACEMENT, ADDITION TO, USE OR MAINTENANCE OF ONE-AND TWO-FAMILY DWELLINGS AND TOWNHOUSES IN THE CITY OF MIDLAND, TEXAS, PROVIDING FOR THE ISSUANCE OF PERMITS, THE REVIEW OF PLANS, THE INSPECTION OF FOOTINGS AND FOUNDATIONS AND FRAMING, THE COLLECTION OF INSPECTION FEES THEREFOR; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE OF APRIL 1, 2014

WHEREAS, by Senate Bill 365 of the 77th Regular Session (2001), the Texas Legislature adopted the International Residential Code as the municipal residential building code for the State of Texas; and

WHEREAS, by Ordinance No. 8841, adopted September 28, 2010, the City Council adopted the 2003 Edition of the International Residential Code as the Residential Code for the City of Midland; and

WHEREAS, the Council has heretofore on November 26, 2013, approved the 2012 International Residential Code as a public record in order that same be filed as a public record in the office of the City Secretary; and

WHEREAS, the Council finds it to be in the public interest to update the residential building regulations of the City to be more in line with currently accepted building practice;

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

SECTION ONE. That Title IV, “Building Regulations” Chapter 11, “Residential Code”, of the City Code of the City of Midland, Texas, is hereby amended to read as follows:

4-11-1. Purpose.

The purpose of this Chapter is for regulating and controlling the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of one-and two-family dwellings and townhouses within the City. All such buildings and structures hereafter constructed, altered, repaired, located, relocated, or added to shall conform to the requirements of this Chapter and to the specifications, rules and regulations herein contained.

4-11-2. Code adopted.

The specifications, rules and regulations entitled 2012 International Residential Code together with appendices A,B,C, D, E, J, N, P and Q, as promulgated and published by the International Code Council, Inc, are hereby adopted as the Residential Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

4-11-3. Changes and additions to adopted residential code.

Notwithstanding any provisions of this Chapter or said adopted Residential Code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows, to wit:

R101.1 Title. Amend Section R101.1 to read as follows:

R101.1 Title. These provisions shall be known as the Residential Code for One-and Two-Family Dwellings of the City of Midland, and shall be cited as such and will be referred to herein as "this code".

R103.2 Appointment. Amend Section 103.2 to read as follows:

R103.2. Appointment. The Building Official, Assistant Building Official, Inspectors and other personnel shall be appointed in accordance with the personnel policies of the City and shall be subject to all personnel rules and regulations of the City of Midland.

R105.2 Work Exempt From Permit. Amend Section 105.2 to read as follows:

R105.2. Work Exempt From Permit. Delete the following:

Building: No.'s 1, 2, 3, 4, 5.

Add the following:

#11. Tree forts or other play structures supported partially or entirely by a tree.

R105.8 Contractor’s Responsibilities. Amend Section 105.8 to read as follows:

R105.8 Contractor’s Responsibilities:

(a) It shall be the duty of every contractor or builder, who is engaged in the construction, erection, alteration or repair of residential buildings or structures, subject to the provisions of this Code, to give good and sufficient bond in the sum of ten thousand dollars (\$10,000.00) to be approved by the City Attorney, conditioned to conform to the Building Regulations of this Section, and other ordinances and laws of the City of Midland in reference to buildings and related construction and site requirements. The bond herein required shall include the bonds required for early clearance procedures as required by Section 9 of this Title and Chapter and with the sidewalk, driveway and curb bond required by this Code with no increase in amounts.

(b) No building permit shall be issued by the Building Official unless and until a bond as herein provided has been tendered to and approved by the Building Official by the person or firm requesting such permit.

(c) Nothing in this Code shall prevent a homeowner from maintaining, altering or adding to his home within his own property boundaries provided such work is done by himself for the exclusive benefit of his family. Such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees.

R108.2 Schedule of Permit Fees. Amend Section 108.2 to read as follows: The fees for all gas systems work shall be as indicated in the Fee Schedule Ordinance 8818.

R112.1 General- Delete section R112.1 and replace with the following: Application for appeal. A person shall have the right to appeal a decision of the code official to the board of appeals, per International Building Code section 113. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The application shall be filed on a form obtained from the code official within 20 days after the notice was served.

Delete sections R112.2- 112.4 in their entirety.

TABLE R301.2 (1) Climatic and Geographic Design Criteria. Amend TABLE R301.2 (1) to read as follows:

Ground Snow Load	3.5 PSF
Basic Wind Speed	90 MPH
<u>Topographic effects</u>	<u>No</u>
Seismic Design Category	A
Weathering	Moderate
Frost Line Depth	12 inches
Termite	Moderate to Heavy
Decay (DELETE)	Slight to Moderate (DELETE)
<u>Winter Design Temp</u>	<u>21 degrees F</u>
Ice Barrier Underlayment Required	No
Flood Hazards	Adoption Date NFIP 09/27/91
	Current FIRM 09/15/05
Air Freezing Index	1500 or less
Mean annual Temp	65 F

Delete section R313 Automatic Fire Sprinkler systems in its entirety.

Delete Chapter 11- Energy Efficiency in its entirety. Title 4 Chapter 12 Energy Code shall be the Energy Code for the city.

G2417.4 (406.4) Test Pressure Measurement. Amend Section G2417.4 to read as follows:

G2417.4 (406.4) Test Pressure Measurement. Test pressure shall be measured with an ounce gauge, manometer or with a mercury gauge designed and calibrated to read, record or indicate a pressure loss due to leakage during the test period. The source of pressure shall be isolated before the pressure tests are made.

G2417.4.1 (406.4.1) Test Pressure. Amend Section G2417.4.1(406.4.1) to read as follows:

G2417.4.1 (406.4.1) Test Pressure. Low pressure (not in excess of 0.5 psi) gas piping shall withstand a pressure of not less than 1 1/2 times the proposed maximum working pressure, but not less than 5.88 psi, ninety (90) ounces, or twelve inches (12") of mercury for a period of not less than ten (10) minutes without showing any drop in pressure. Higher pressure piping (2-psi gas) shall withstand a pressure of at least 10 psi or twenty inches (20") of mercury for a period of not less than ten (10) minutes without showing any drop in pressure.

G2420.1.4 (409.1.4) Service Line Shutoff Valve. Add new Section G2420.1.4(409.1.4) to read as follows:

G2420.1.4 (409.1.4) Service Line Shutoff Valve. An approved shutoff valve shall be installed above ground outside on the service line at the building entrance on all new gas line installations and on all replaced gas lines.

P2503.4 Building Sewer Testing. Amend Section P2503.4 to read as follows:

P2503.4 Building Sewer Testing. Building sewer tests shall consist of plugging the end of the building sewer at the point of connection with the public sewer, filling the building sewer with water, testing with not less than three feet (3') head of water and maintaining such pressure for fifteen (15) minutes.

P2902.1.1 Backflow Ordinance. Add new Section 2902.1.1 to read as follows:

P2902.1.1 Backflow Ordinance. All potable water supply systems shall conform to Title VIII, Chapter 9, of the Midland City Code (Ordinance No. 7605) for purposes of cross connection and backflow prevention.

TableP2905.4 Water Service, Pipe. Add the following footnotes to Table P 2905.4

Footnote 1. Copper or copper-alloy tubing shall be minimum Type "L" for underground water supply systems.

Footnote 2. Plastic water pipe used for water service shall terminate thirty-six inches (36") from the water meter. The water service pipe shall be connected to the water meter with not less than thirty-six inches (36") of minimum Type "L" copper.

P2905.20 Underground Joints. Add a new Section P2905.20 to read as follows:

P2904.20 Underground Joints. For purposes of repair only, joints in polybutylene (PB) plastic pipe or tubing underground or under a concrete floor slab shall be installed using heat fusion, in accordance with the manufacturer's installation instructions. Joints in copper pipe or tubing installed in a concrete floor slab or under a concrete floor slab on grade shall be installed using wrought-copper fittings and brazed joints.

P3103.1 Roof Extension. Amend Section P3103.1 to read as follows:

P3103.1 Roof Extension. All open vent pipes that extend through a roof shall be terminated at least twelve inches (12") above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extensions shall be run at least seven feet (7') above the roof.

4-11-4. Appeals.

Whenever the owner of a building or structure or its duly authorized agent, or the applicant for a building permit is aggrieved by any order or decision of the Building Official made in connection with their administration of this Chapter, he may appeal such decision or order to the Board of Appeals (provided for in the Building code of the City), and said Board shall proceed to hear and decide any such appeals in the same manner as it now hears appeals from decisions made under said Building Code, and said Board of Appeals shall have the same power and authority over appeals from the Residential Code and the same rules and regulations shall apply as are fully set out in said Building Code.

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

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

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars(\$2000.00).

SECTION FIVE. This ordinance shall become effective April 1, 2014.

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., 2014; 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., 2014, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2014.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Steve Thorpe, Building Official

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

Residential Code Amendments

4-11-2. Code adopted.

The specifications, rules and regulations entitled 2012 International Residential Code together with appendices A,B,C, D, E, J, N, P and Q, as promulgated and published by the International Code Council, Inc, are hereby adopted as the Residential Code as fully as if copied at length in this Chapter and are hereby incorporated herein by reference and made a part of this Chapter.

4-11-3. Changes and additions to adopted residential code.

Notwithstanding any provisions of this Chapter or said adopted Residential Code to the contrary, the latter is adopted with certain changes, additions and deletions thereto so that the following sections and provisions thereof shall hereafter read as follows, to wit:

R101.1 Title. Amend Section R101.1 to read as follows:

R101.1 Title. These provisions shall be known as the Residential Code for One-and Two-Family Dwellings of the City of Midland, and shall be cited as such and will be referred to herein as "this code".

R103.2 Appointment. Amend Section 103.2 to read as follows:

R103.2. Appointment. The Building Official, Assistant Building Official, Inspectors and other personnel shall be appointed in accordance with the personnel policies of the City and shall be subject to all personnel rules and regulations of the City of Midland.

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Building: No.'s 1, 2, 3, 4, 5.

Add the following:

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(a) It shall be the duty of every contractor or builder, who is engaged in the construction, erection, alteration or repair of residential buildings or structures, subject to the provisions of this Code, to give good and sufficient bond in the sum of ten thousand dollars (\$10,000.00) to be

approved by the City Attorney, conditioned to conform to the Building Regulations of this Section, and other ordinances and laws of the City of Midland in reference to buildings and related construction and site requirements. The bond herein required shall include the bonds required for early clearance procedures as required by Section 9 of this Title and Chapter and with the sidewalk, driveway and curb bond required by this Code with no increase in amounts.

(b) No building permit shall be issued by the Building Official unless and until a bond as herein provided has been tendered to and approved by the Building Official by the person or firm requesting such permit.

(c) Nothing in this Code shall prevent a homeowner from maintaining, altering or adding to his home within his own property boundaries provided such work is done by himself for the exclusive benefit of his family. Such privilege does not convey the right to violate any of the provisions of this Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees therefore.

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R112.1 General- **Delete section R112.1 and replace with the following: Application for appeal. A person shall have the right to appeal a decision of the code official to the board of appeals, per International Building Code section 113. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The application shall be filed on a form obtained from the code official within 20 days after the notice was served.**

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TABLE INSET:

Ground Snow Load	3.5 PSF
Basic Wind Speed	90 MPH
Topographic effects	No
Seismic Design Category	A
Weathering	Moderate

Frost Line Depth	12 inches
Termite	Moderate to Heavy
Decay (DELETE)	Slight to Moderate (DELETE)
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Flood Hazards	Adoption Date NFIP 09/27/91
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P2503.4 Building Sewer Testing. Building sewer tests shall consist of plugging the end of the building sewer at the point of connection with the public sewer, filling the building sewer with water, testing with not less than three feet (3') head of water and maintaining such pressure for fifteen (15) minutes.

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P2902.1.1 Backflow Ordinance. All potable water supply systems shall conform to Title VIII, Chapter 9, of the Midland City Code (Ordinance No. 7605) for purposes of cross connection and backflow prevention.

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Footnote 1. Copper or copper-alloy tubing shall be minimum Type "L" for underground water supply systems.

Footnote 2. Plastic water pipe used for water service shall terminate thirty-six inches (36") from the water meter. The water service pipe shall be connected to the water meter with not less than thirty-six inches (36") of minimum Type "L" copper.

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P2904.20 Underground Joints. For purposes of repair only, joints in polybutylene (PB) plastic pipe or tubing underground or under a concrete floor slab shall be installed using heat fusion, in accordance with the manufacturer's installation instructions. Joints in copper pipe or tubing installed in a concrete floor slab or under a concrete floor slab on grade shall be installed using wrought-copper fittings and brazed joints.

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P3103.1 Roof Extension. All open vent pipes that extend through a roof shall be terminated at least twelve inches (12") above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extensions shall be run at least seven feet (7') above the roof.

4-11-4. Appeals.

Whenever the owner of a building or structure or its duly authorized agent, or the applicant for a building permit is aggrieved by any order or decision of the Building Official made in connection with their administration of this Chapter, he may appeal such decision or order to the Board of Appeals (provided for in the Building code of the City), and said Board shall proceed to hear and decide any such appeals in the same manner as it now hears appeals from decisions made under said Building Code, and said Board of Appeals shall have the same power and authority over appeals from the Residential Code and the same rules and regulations shall apply as are fully set out in said Building Code.



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: February 11, 2014

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Stonehawk Capital Partners for a zone change from O-1, Office District, and from PD, Planned District for Housing Development, to a Planned District for Housing Development, on Lot 2, Block 2, Pavilion Park, Section 1, and on Lot 3, Block 2, Pavilion Park, Section 2, City and County of Midland, Texas. (Generally located near the southeast corner of the intersection of N. Big Spring Street and Pavilion Parkway.) – District 1.

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Stonehawk Capital Partners for a zone change from O-1, Office District, and from PD, Planned District for Housing Development, to a Planned District for Housing Development.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located on the southeast corner of the intersection of N. Big Spring Street and Pavilion Parkway. The currently vacant property includes two lots which are zoned O-1, Office District, and PD, Planned District for Housing Development, respectively. The applicants wish to rezone the property in two stages: first, to rezone both lots to a Planned District, and then, at a later date, to submit site

plans and elevations for consideration in the same manner as a zone change. The applicants wish to combine both lots, as well as to vacate an alley in between the two lots, vacate another alley abutting the southern boundary, and to vacate 30 feet of Lamesa Road. Thus, along with the vacation, the property will also have to be replatted. The applicants will likely propose 14 three-story apartments yielding 336 units and a one-story club house with a swimming pool at 20.3 units an acre. According to the Midland Master Plan 2025, apartments or high density residential development should be adjacent to a major collector or arterial roadway, and this site meets this condition. Staff has reviewed a preliminary version of the site plan, and the layout and design appear reasonable. The Planning and Zoning Commission voted unanimously for approval at the January 21, 2014 meeting, and staff concurs.

Attachments:

Application

Maps

January 21, 2014 P&Z Staff Report

Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 2, BLOCK 2, PAVILION PARK, SECTION 1, AND LOT 3, BLOCK 2, PAVILION PARK, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED O-1, OFFICE DISTRICT, IN PART, AND PD, PLANNED DISTRICT FOR HOUSING DEVELOPMENT, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED NEAR THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND PAVILION PARKWAY); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned O-1, Office District, in part, and PD, Planned District for a Housing Development, in part, and it shall be used as a Planned District for a Housing Development, subject to the special conditions and

restrictions hereinafter set out, said property being described as follows:

Lot 2, Block 2, Pavilion Park, Section 1, and Lot 3, Block 2, Pavilion Park, Section 2, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the use and development of this property shall conform to the regulations of the MF-1, Multiple-Family Dwelling District, except that a maximum density of 21 units per acre is allowed.
2. That a site plan must be approved in the same manner as a zone change prior to the issuance of a building permit and prior to any development.

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

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

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

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

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish

the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2014; 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., 2014, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS ____ day of _____, A.D., 2014.

Jerry F. Morales, Mayor

ATTEST:

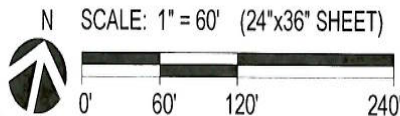
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney



JAN - 9 2014

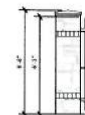
EXHIBIT A

SITE PLAN

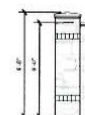
PRELIMINARY ARCHITECTURAL SITE PLAN

CASE NO. 2-13-056

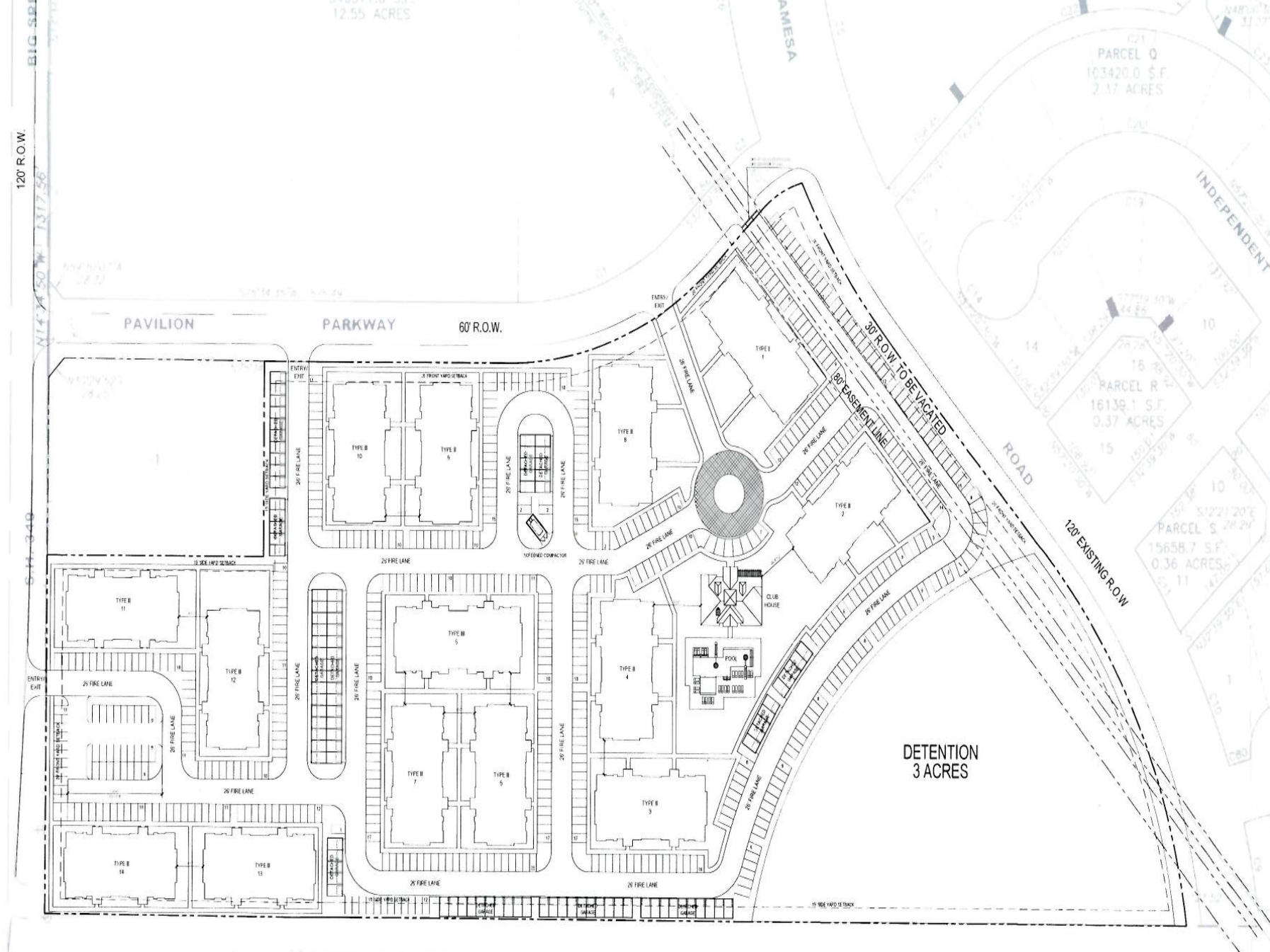
C1	3
TOTALS	
PROJECT DATA:	
ACREAGE:	
DENSITY:	
LANDSCAPE REGULATIONS:	
LANDSCAPED AREA REQUIRED:	
(10% OF LOT AREA MINIMUM)	
LANDSCAPED AREA PROVIDED:	
TREES REQUIRED:	
(1 PER 30' OF STREET FRONTAGE)	
TREES TO BE PROVIDED:	
PARKING:	
GENERAL NOTES:	
1. THIS PLAN SHALL COMPLY WITH ALL CITY, COUNTY, AND STATE REQUIREMENTS.	
2. COMPACTOR SCREEN SHALL BE INSTALLED AT ALL ENTRANCES AND EXITS.	
3. THIS PLAN SHALL COMPLY WITH ALL CITY, COUNTY, AND STATE REQUIREMENTS.	
4. A PHOTO METRIC PLAN SHALL BE SUBMITTED WITH THE FINAL PLAN.	
5. THE CLUBHOUSE SHALL BE BUILT WITHIN THE DETENTION AREA.	
6. IN LOCATIONS WHERE THE DETENTION AREA IS CLOSE TO A STREET OR ROAD, THE DETENTION AREA SHALL BE FENCED AND GATED.	
LEGAL DESCRIPTION:	
PARCEL 1: LOT TWO (2), BLOCK TWO, TEXAS ACCORDING TO THE PLAT RECORDS OF MIDLAND COUNTY, TEXAS.	
PARCEL 2: LOT THREE (3), BLOCK TWO, TEXAS ACCORDING TO THE PLAT RECORDS OF MIDLAND COUNTY, TEXAS.	
AND TO BE VACATED FOR THE DETENTION AREA.	
APPLICANT INFORMATION:	
STONEHAWK CAPITAL PARTNERS, L.P.	
3699 MCKINNEY AVE., #507	
DALLAS, TX 75204	



(A) F



(B) F



C1	3
TOTALS	
PROJECT DATA:	
ACREAGE:	
DENSITY:	
LANDSCAPE REGULATIONS:	
LANDSCAPED AREA REQUIRED:	
(10% OF LOT AREA MINIMUM)	
LANDSCAPED AREA PROVIDED:	
TREES REQUIRED:	
(1 PER 30' OF STREET FRONTAGE)	
TREES TO BE PROVIDED:	
PARKING:	
GENERAL NOTES:	
1. THIS PLAN SHALL COMPLY WITH ALL CITY, COUNTY, AND STATE REQUIREMENTS.	
2. COMPACTOR SCREEN SHALL BE INSTALLED AT ALL ENTRANCES AND EXITS.	
3. THIS PLAN SHALL COMPLY WITH ALL CITY, COUNTY, AND STATE REQUIREMENTS.	
4. A PHOTO METRIC PLAN SHALL BE SUBMITTED WITH THE FINAL PLAN.	
5. THE CLUBHOUSE SHALL BE BUILT WITHIN THE DETENTION AREA.	
6. IN LOCATIONS WHERE THE DETENTION AREA IS CLOSE TO A STREET OR ROAD, THE DETENTION AREA SHALL BE FENCED AND GATED.	
LEGAL DESCRIPTION:	
PARCEL 1: LOT TWO (2), BLOCK TWO, TEXAS ACCORDING TO THE PLAT RECORDS OF MIDLAND COUNTY, TEXAS.	
PARCEL 2: LOT THREE (3), BLOCK TWO, TEXAS ACCORDING TO THE PLAT RECORDS OF MIDLAND COUNTY, TEXAS.	
AND TO BE VACATED FOR THE DETENTION AREA.	
APPLICANT INFORMATION:	
STONEHAWK CAPITAL PARTNERS, L.P.	
3699 MCKINNEY AVE., #507	
DALLAS, TX 75204	



BLDG TYPE 1 - FRONT & REAR ELEVATION



BLDG TYPE 2 - FRONT & REAR ELEVATION



BLDG TYPE 3 - FRONT & REAR ELEVATION

SCALE: 3/16" = 1'-0" (24"x36" SHEET)

RECEIVED
JAN - 9 2014
CITY OF MIDLAND
PLANNING DEPARTMENT

EXHIBIT B

CASE NO. 2-13-056
A411

PAVILION PARK
STONEHAWK CAPITAL PARTNERS

1/9/2014

MIDLAND, TX

HPA#13657



HUMPHREYS & PARTNERS ARCHITECTS L.P.

5339 Alpha Road, Suite 300 Dallas, TX 75240 (972) 701-9636 (972) 701-9639
www.humphreys.com marketing@humphreys.com
DALLAS CHARLOTTE IRVINE LAS VEGAS NEW ORLEANS NORFOLK ORLANDO PHOENIX

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only. Revisions may occur due to further investigation from
regulatory authorities and building code analysis. Dimensions
shown are of a strategic intent only. Refer to surveys and civil
drawings for technical information and measurements.



SIDING
COMPOSITION SHINGLES

BOARD AND BATTEN

STUCCO

STONE

BLDG TYPE 2 - FRONT & REAR ELEVATION

DEC 1-2 2013

EXHIBIT C

A421

CASE NO. Z-130220

SCALE: 3/16" = 1'-0" (24"x36" SHEET)



GENERAL NOTES:

1. THE COLORS SHOWN ON THIS ELEVATION ARE FOR ILLUSTRATIVE PURPOSES ONLY, BUT IN GENERAL REFLECT THE INTENT OF THE APPLICANT.
2. THE BUILDINGS SHALL HAVE A MAXIMUM HEIGHT, MEASURED TO THE TOP OF THE RIDGE, OF 55'-0".
3. EXACT MATERIAL PERCENTAGE SPECIFICATION SHALL BE SHOWN AT THE TIME OF PERMIT REVIEW.

PAVILION PARK
STONEHAWK CAPITAL PARTNERS

12/10/2013

MIDLAND, TX

HPA#13657



HUMPHREYS & PARTNERS ARCHITECTS L.P.

8339 Alpha Road, Suite 300 Dallas, TX 75240 (972) 701-9636 (972) 701-9639
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Architectural conceptual site plans are for feasibility purpose only. Revisions may occur due to further investigation from regulatory authorities and building code analysis. Dimensions shown are of a strategic intent only. Refer to surveys and civil drawings for technical information and measurements.

PLANNING AND ZONING COMMISSION

January 21, 2014

CASE: Z-13-056, Stonehawk Capital Partners.

REQUEST: Hold a public hearing and consider a request for a zone change from O-1, Office District, and from PD, Planned District for Housing Development, to a Planned District for Housing Development.

APPLICANT: Stonehawk Capital Partners.

OWNER: Pavilion Midland, LLC.

LEGAL DESCRIPTION: On Lot 2, Block 2, Pavilion Park, Section 1, and on Lot 3, Block 2, Pavilion Park, Section 2, City and County of Midland, Texas.

LOCATION: Generally located near the southeast corner of the intersection of N. Big Spring Street and Pavilion Parkway.

CURRENT ZONING: O-1, Office District, and PD, Planned District for Housing Development.

ASSOCIATED CASES: P-14-002, Pavilion Park, Section 9.

DETAILS OF REQUEST:

1. This property is located on the east side of N. Big Spring Street, and on the south side of Pavilion Parkway. The currently vacant property includes two lots which are zoned O-1, Office District, and PD, Planned District for Housing Development, respectively. The applicant wishes to rezone the property to a PD, Planned District for Housing Development, for apartment development.

SURROUNDING ZONING AND LAND USE:

2. The zoning to the north includes an LR-2, Local Retail District, and an O-1, Office District. To the east is a 1F-3, One-Family Dwelling District, the Pavilion Park, Section 2 subdivision. A vacant AE, Agriculture-Estate District, abuts to the south, as well as a PD, Planned District for Industrial District, with several storage units. Finally, to the west across Big Spring Street is an AE District with single-family residences.

ANALYSIS:

3. The O-1, Office District, lot on the west was platted as part of Pavilion Park, Section 1, in 1984, and the PD, Planned District for Housing Development, lot on the east was platted as part of Pavilion Park, Section 2, in 1986. The alley dedicated between the two lots will have to be vacated. The applicants are also requesting to vacate the alley on the southern boundary and to vacate 30 feet of Lamesa Road on the east. Thus, the two lots will also have to be replatted

as part of the process. The zoning on the two lots as well as the surrounding area was approved in 1985. The PD was subject to the MF-1 District regulations. In this request, the applicants are proposing 14 three-story apartments yielding 336 units and a one-story club house with a swimming pool. The proposed density is 20.3 units an acre, whereas only 16 dwelling units an acre are allowed by right. The request, then, is to rezone the O-1 District and the PD, Planned District for Housing Development, to a Planned District for Housing Development, subject to the MF-1 District regulations. According to the Midland Master Plan 2025, apartments or high density residential development, should be adjacent to a major collector or arterial roadway. In this case, the apartments are adjacent to Big Spring Street, a major arterial and state highway. Due to the several variables included in this request, including the vacation, the applicants would like to proceed with this rezoning in two stages: first, to rezone the tract as a Planned District, and then, after the approval of the vacation, to adopt the site plan in the same manner as a zone change. Staff has reviewed a preliminary version of the site plan, and the layout and design appears reasonable. Thus, we find the zone change to be reasonable.

STAFF RECOMMENDATION:

Staff recommends approval of the zone change from O-1, Office District, and from PD, Planned District for Housing Development, to a Planned District for Housing Development, subject to the following conditions:

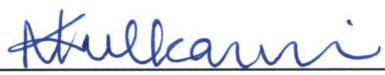
- A. That the use and development of this property shall conform to the regulations of the MF-1 District, except that the maximum density of 21 units per acre is allowed.
- B. That a site plan must be approved in the same manner as a zone change prior to the issuance of a building permit and prior to any development.
- C. That the right-of-way vacations discussed in Paragraph 3 above are approved by City Council.
- D. That this property shall be replatted into a single lot following approval of the zone change and the right-of-way vacations by City Council.



Jim Compton
Planning Division Manager
Department of Development Services

Attachments:

Application
Maps



Madhuri Kulkarni, City Planner
Department of Development Services

Case Number:

2-13-056

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: StoneHawk Capital Partners
Address: 3699 McKinney Ave #587 (714-686-7242) bwoideck@stonehawkcapital.com
Street Address Dallas TX 75204 (Phone/e-mail)
City State Zip Code (att: 714-686-7242)

Property Owner: Pavilion Midland LLC
Address: 18 Marzanita Ave (415-999-0560) (775-737-8767)
Street Address San Francisco CA 94118 (Phone/e-mail)
City State Zip Code

Street address and Legal Description of Planned District (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description:

Lot 3, Block 2 and Lot 2, Block 2 in Pavilion Park Addition
Current PD Classification: PDHD (lot 3), O1 (Lot 2)

Requested PD Classification: PDHD (Amended)
(List by tracts if more than one zoning district is requested)

Reason for amendment request: Increase approved unit density

Describe how conditions affecting the property have changed since it was designated its present zone: Best and Highest use has shifted to a higher density multifamily use

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? Yes ☒ No

FEES:

Single, Planned District amendment: **\$550**. Multiple, PD proposal: add **\$75** per district.

SUBMITTALS:

16 copies of the PD site plan (FOLDED): _____

Site Plan in digital format .pdf and .jpg: _____

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

Property Owner (signature): CR, ITS MANAGER MEMBER Date: 11/19/13

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

Brian Woidneck who, being by me duly sworn, upon oath says: That (s)he is authorized by Chris Kawaja, 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.

BW
Authorized Agent (signature)

Subscribed and sworn to before me, this 21 day of November, 20 13, to certify which witness my hand and seal of office.

Cheryl Schenk
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

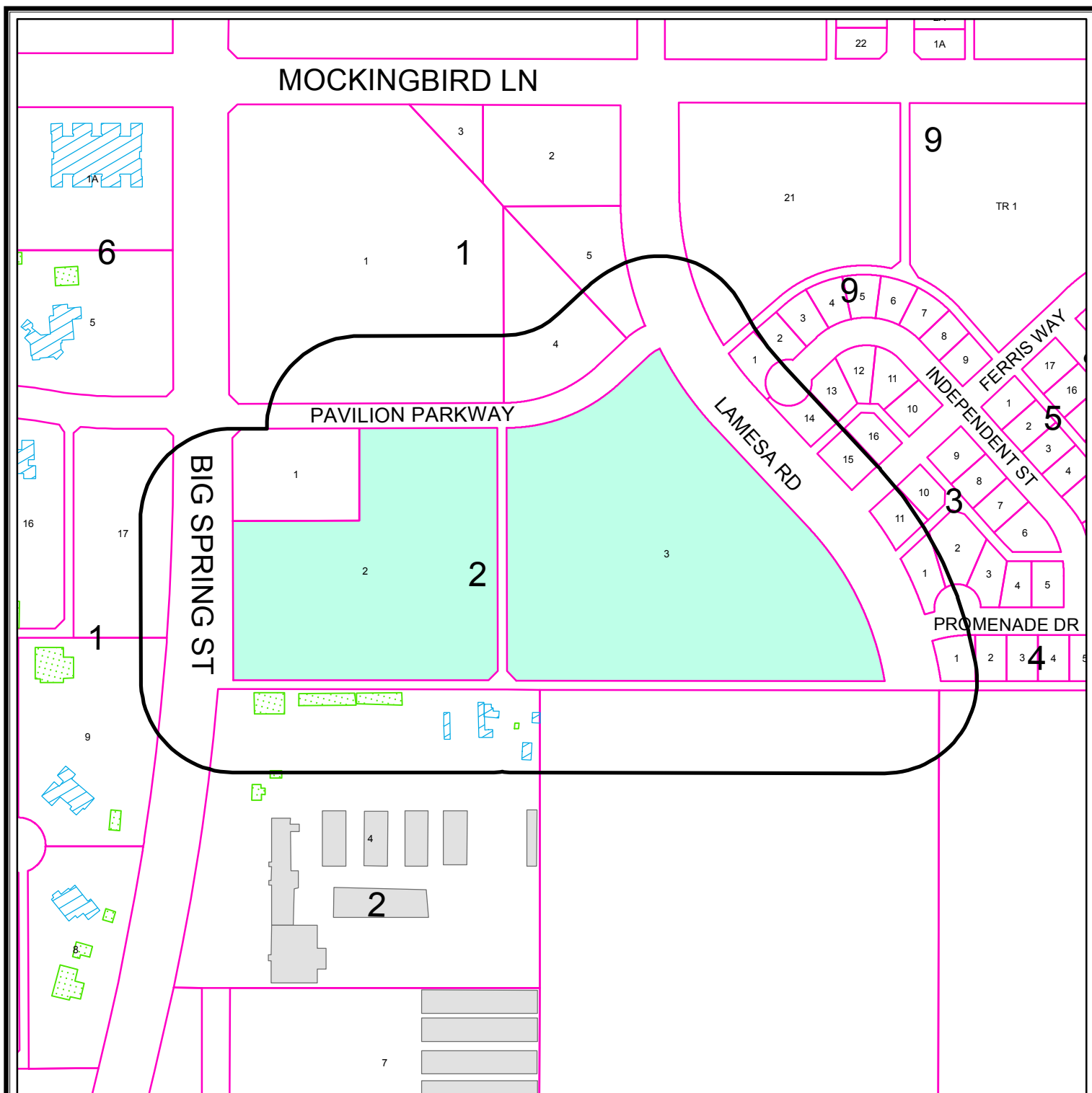
FOR OFFICE USE ONLY

Rec'd By: _____ Date: _____

Assigned: MR

For: Pt 2 On: 1/21/14

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



PROPERTY OWNER NOTIFICATION MAP

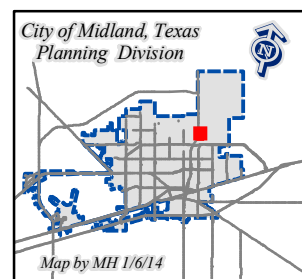
Z - 13 - 056

Scale: 1" = 300'

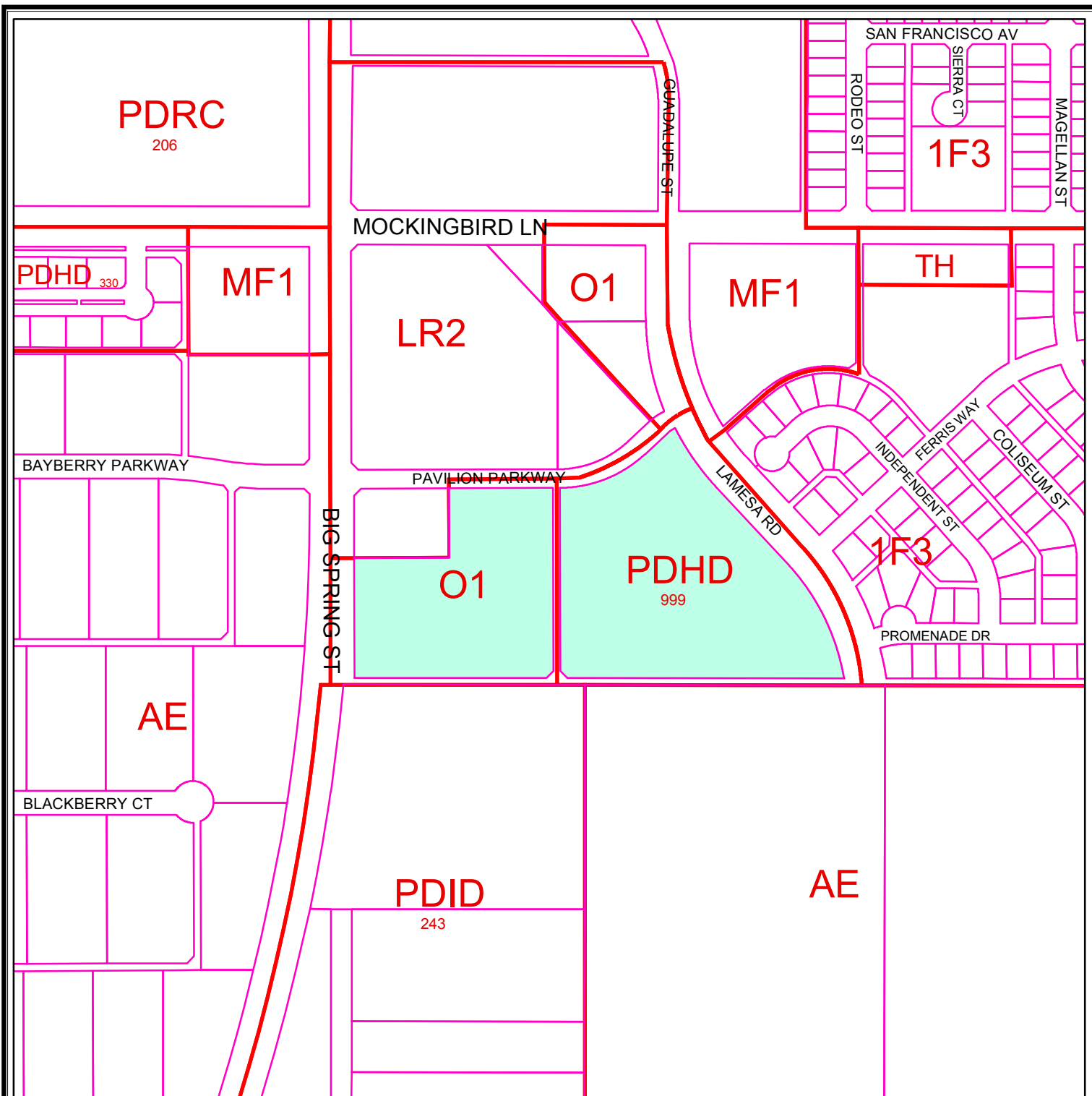
Consider a request for a zone change from O-1, Office District, to PD, Planned District for a Housing Development on Lot 2, Block 2, Pavilion Park, Section 1; and from PD, Planned District for a Housing Development to an Amended Planned District on Lot 3, Block 2, Pavilion Park, Section 2 City and County 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 - 13 - 056

Scale: 1" = 400'

Consider a request for a zone change from O-1, Office District, to PD, Planned District for a Housing Development on Lot 2, Block 2, Pavilion Park, Section 1; and from PD, Planned District for a Housing Development to an Amended Planned District on Lot 3, Block 2, Pavilion Park, Section 2 City and County of Midland, Texas.

LEGEND

ZONING

PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: February 11, 2014

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Bobby Cox Co. for a zone change from PD, Planned District for a Transition District, to an Amended Planned District, on Lots 2A and 3A, Block 7, ClayDesta Plaza, Section 4, City and County of Midland, Texas. (Generally located near the northwest corner of the intersection of W. Wadley Avenue and Desta Drive.) – District 3.

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Bobby Cox Co. for a zone change from PD, Planned District for a Transition District, to an Amended Planned District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property, Texas Burger, is located on the northwest corner of Wadley Avenue and Desta Drive. The applicant wishes to demolish the existing building and construct a larger Texas Burger on two lots. To do so, the applicant must replat and rezone the property from PD, Planned District for Transition District, adopted with a site plan, to an Amended Planned District. The subject property was initially zoned as a Transition District with an underlying zoning of NS, Neighborhood Service District, to ensure that it was compatible with the surrounding office development, and to provide a transition between the more restrictive office development to the west, north, and east,

and other development to the south. A drive-through restaurant (Texas Burger) and an indoor commercial amusement area (Mr. Gatti's) were permitted within the Planned District. To maintain compatibility with the development in the area and to yield appropriate and limited retail uses, staff supports the rezoning to an Amended Planned District, with the exception of a restaurant with a drive-through window, without an associated site plan. The Planning and Zoning Commission voted unanimously for approval at the January 21, 2014 meeting, and staff concurs.

Attachments:

Application

Maps

January 21, 2014 P&Z Staff Report

Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 2A AND 3A, BLOCK 7, CLAYDESTA PLAZA, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A TRANSITION DISTRICT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED NEAR THE NORTHWEST CORNER OF THE INTERSECTION OF WEST WADLEY AVENUE AND DESTA DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an Amended Planned District, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

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

Lots 2A and 3A, Block 7, Claydesta Plaza, Section 4, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the use and development of this property shall conform to the regulations of the NS, Neighborhood Service District; provided, however, that a restaurant with a drive-through service window shall be allowed.
2. That City of Midland Ordinance No. 7596 is hereby repealed.

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

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

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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2014; 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., 2014, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2014.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

PLANNING AND ZONING COMMISSION

January 21, 2014

CASE: Z-13-060, Bobby Cox Co.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Transition District, to an Amended Planned District.

APPLICANT: Landgraf, Crutcher, & Associates.

OWNER: Bobby Cox Co.

REPRESENTATIVE: Landgraf, Crutcher, & Associates.

LEGAL DESCRIPTION: Lots 2A and 3A, Block 7, ClayDesta Plaza, Section 4, City and County of Midland, Texas.

LOCATION: Generally located near the northwest corner of the intersection of W. Wadley Avenue and Desta Drive.

CURRENT ZONING: PD, Planned District for Transition District.

DETAILS OF REQUEST:

1. The applicant's property is located on the north side of Wadley Avenue and on the west side of Desta Drive. The applicant wishes to demolish the existing Texas Burger restaurant and build a larger one on the two lots, and in order to do so, must replat and rezone the property. The current zoning of the property is a PD, Planned District for a Transition District, adopted with an approved site plan. The proposed expansion would violate the site plan. Upon agreement with the applicant and the staff, the property is proposed to be rezoned to an Amended Planned District.

SURROUNDING ZONING AND LAND USE:

2. This applicant's property is currently within a PD, Planned District for a Transition District. To the west is a continuation of this Transition District, location of Mr. Gatti's Pizza. Further west is a PD, Planned District for Office District, for the Petroleum Center. To the north is the Chevron Texaco Building within a PD, Planned District for Office District. The Cattle Baron's restaurant and the Claydesta Center are within a PD, Planned District for Mixed Use, across Desta Drive to the east. Finally, to the south across Wadley Avenue are several PD, Planned District for Shopping Centers and an O-1, Office District.

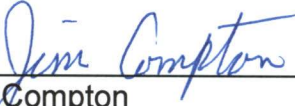
ANALYSIS:

3. The property was replatted as Claydesta Plaza, Section 4, in March 1997. The property will have to be replatted as one lot for the future development. The area was initially zoned as a PD, Planned District for Transition District, with an underlining zoning of NS, Neighborhood Service District, in January 1996. The basis for the PD zoning rather than an LR-1 or LR-2, Local Retail District, was to ensure that any development in the area was compatible with the surrounding office development, and to help ensure that the integrity of the surrounding development was not compromised through retail districts uses. The Transition District was established to provide a transition between the more restrictive office districts to the west, north, and east, and the less restrictive shopping center to the south. Additionally, it was created to allow for a restaurant with a drive-through and for an indoor commercial amusement use which are both not permitted in the NS District. The NS District is more restrictive than an LR-1 District, which could potentially yield, for example, gasoline self-service pumps, which would not be appropriate in this area. Limited retail and personal service stores, as permitted in the NS District, however, are more appropriate. Thus, with this zone change, the Planned District will be amended to continue to limit the type of retail on the property with the underlining Neighborhood Service District, with the exception, again, to allow for a restaurant with a drive-through. Staff supports the Amended Planned District zoning, but will not require a site plan. For these reasons, we find the zone change request to be reasonable.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from PD, Planned District for Transition District, to Amended Planned District, subject to the following conditions:

- A. That the use and development of this property shall conform to the regulations of the NS, Neighborhood Service District, with the addition of a restaurant with a drive-through service window.
- B. That Ordinance 7596 is hereby repealed.



Jim Compton
Planning Division Manager
Department of Development Services



Madhuri Kulkarni, City Planner
Department of Development Services

Attachments:

Application
Maps

Case Number. 213-060

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

<u>LCA</u> Applicant Name	<u>432-332-5058</u> (Phone/e-mail)
<u>521 N. Texas</u> Address	<u>Odessa, Texas 79761</u> Zip Code
<u>Bobby Cox Co.</u> Property Owner Name	<u>817-377-6200</u> (Phone/e-mail)
<u>4055 International Plaza</u> <u>Ft. Worth, Texas</u> Address	<u>76109</u> Zip Code
<u>LCA</u> (George Thomley - Representative Name <u>get@lcaodessa.com</u>)	<u>432-332-5058</u> (Phone/e-mail)
<u>521 N. Texas</u> <u>dek @ lcaodessa.com</u> Address <u>↑ Dow Kelly</u>	<u>Odessa, Texas 79761</u> Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a Metes and Bounds Description. Describe by tracts if more than one zoning district is requested): LOTS 2A & 3A CLAYDESTA PLAZA SECTION 4 ↳ BLOCK 7

Reason for requesting a zone change: TO ELIMINATE THE "PDTD" AND FOLLOW PD
PRESENT ZONE: PDTD REQUESTED ZONE Amended PD
PD LR-2
(List by tracts if more than one zoning district is requested)

Present Use of Property: RESTAURANT

Proposed Use of Property: RESTAURANT

How will zone change affect the public health, safety and welfare? THIS ZONE CHANGE WILL NOT AFFECT THE PUBLIC HEALTH, SAFETY AND WELFARE.

Describe how conditions affecting the property have changed since it was designated its present zone: _____

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

George E. Thornley
 Authorized Agent (signature)

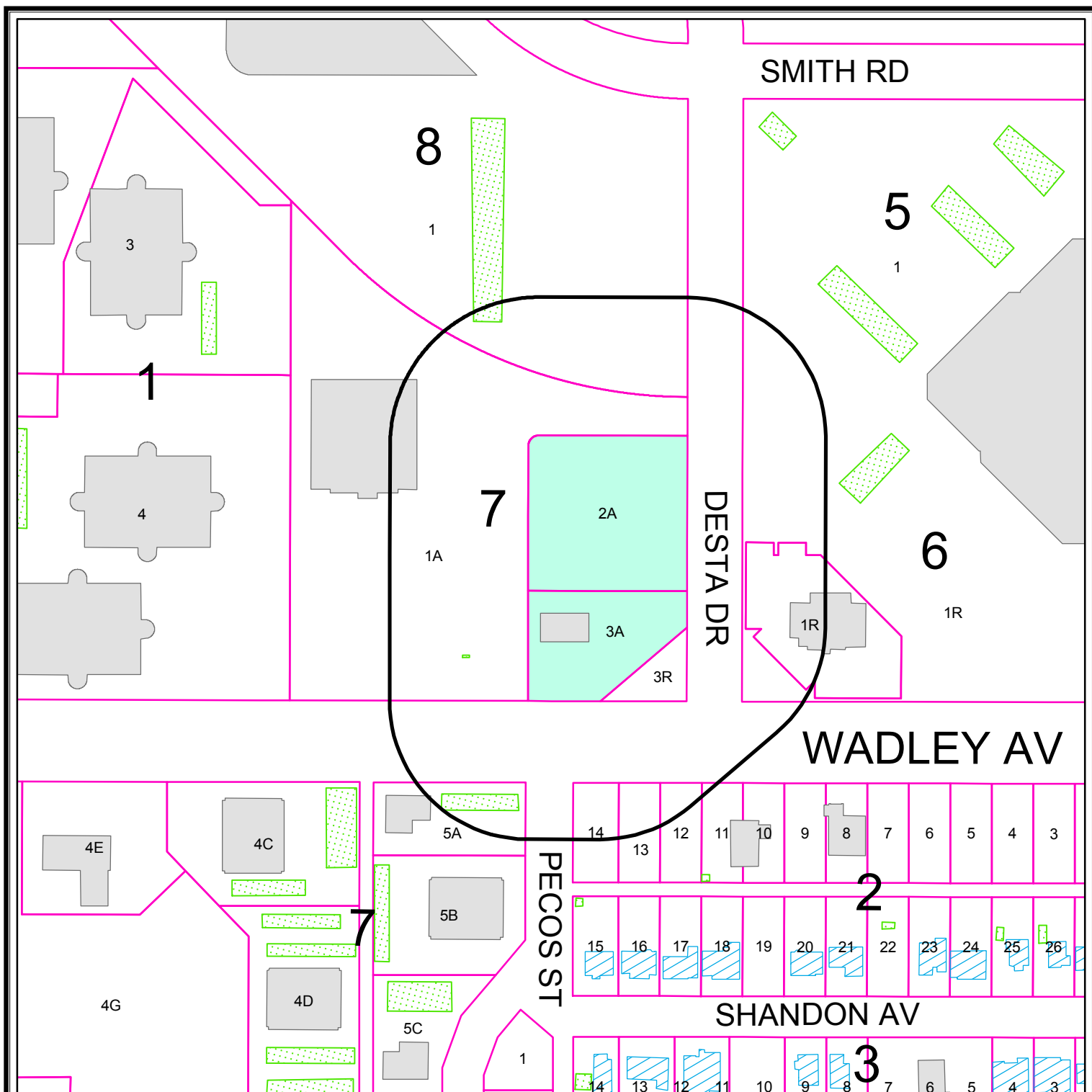
Subscribed and sworn to before me, by the said George E. Thornley, this 20th day of December, 2013, to certify which witness my hand and seal of office.

Shani Dawson
 Notary Public, Midland County, Texas

FOR OFFICE USE ONLY	
Rec'd By: <u>RS</u>	Date: <u>12/20/13</u>
Assigned: <u>MK</u>	
For: <u>P&Z</u>	On: <u>1/21/14</u>



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



PROPERTY OWNER NOTIFICATION MAP

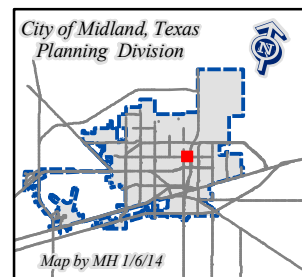
Z - 13 - 060

Scale: 1" = 200'

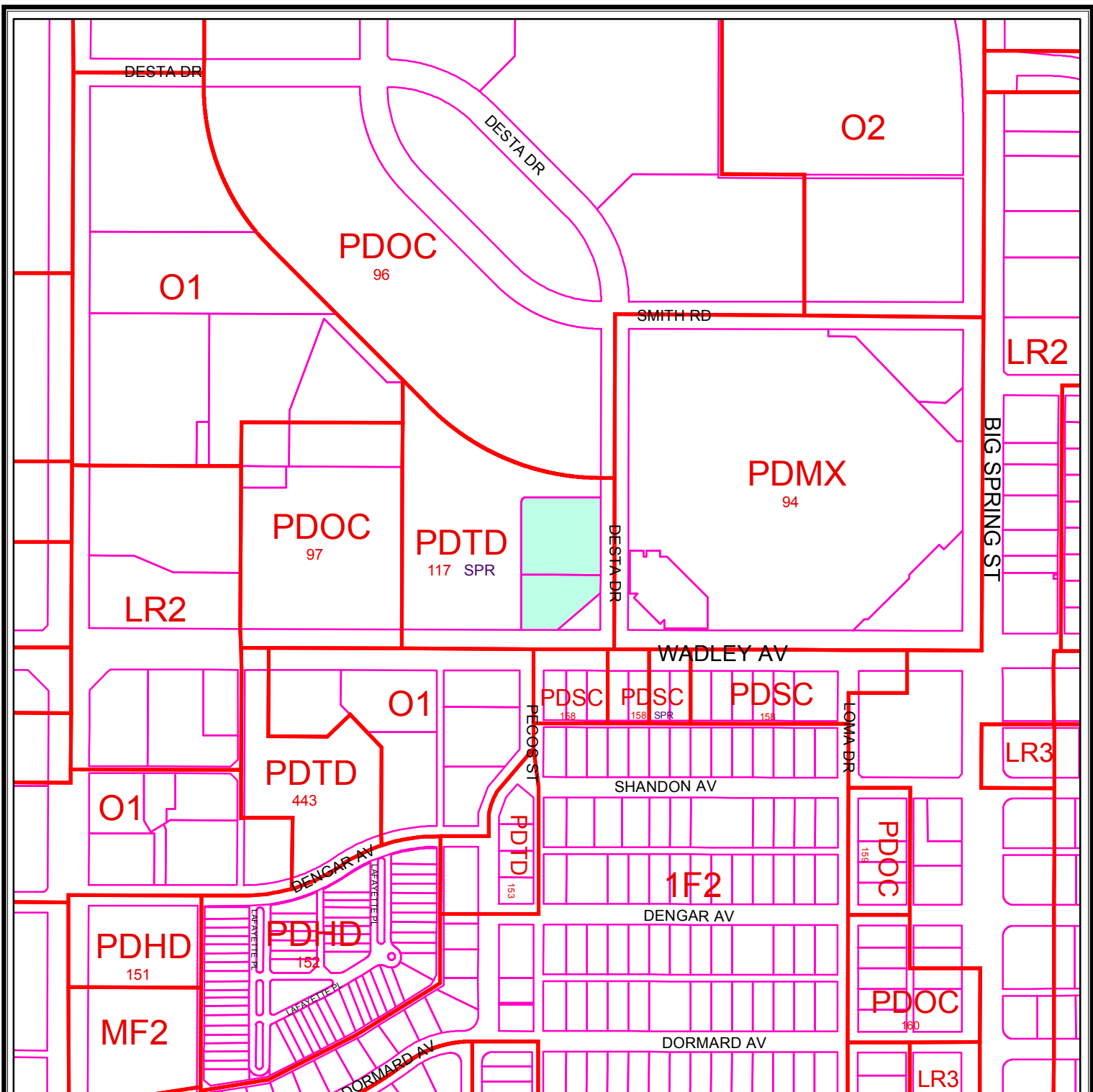
Consider a request for a zone change from PD, Planned District for a Transition District to an Amended Planned District on Lots 2A and 3A, Block 7; ClayDesta Plaza, Section 4 City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

Z - 13 - 060

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Transition District to an Amended Planned District on Lots 2A and 3A, Block 7; ClayDesta Plaza, Section 4 City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: February 11, 2014

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Planning Division Manager

SUBJECT: Hold a public hearing at 10:36 a.m. and consider an ordinance on a City-initiated request for a street name change of Guadalupe Street to Stonebridge Drive adjacent to Lots 14 & 15, Block 2 and Lot 1, Block 3, Adobe Meadows, Section 2 and to Lot 13A, Block 2 and Lot 2A, Block 3, Adobe Meadows, Section 6; and for a street name change of Lamesa Road to Stonebridge Drive adjacent to Lots 2, 4 & 5, Block 1, Lot 3, Block 2, Lots 1 & 11, Block 3, Lot 1, Block 4, and Lots 1, 14, 15 & 21, Block 9, Pavilion Park, Section 2, City and County of Midland, Texas. (Generally located on the north and south sides of E. Mockingbird Lane, east side of N. Big Spring Street. – District 1.)

Purpose:

Hold a public hearing at 10:36 a.m. and consider an ordinance on a City-initiated request for a street name change of Guadalupe Street to Stonebridge Drive adjacent to Lots 14 & 15, Block 2 and Lot 1, Block 3, Adobe Meadows, Section 2 and to Lot 13A, Block 2 and Lot 2A, Block 3, Adobe Meadows, Section 6; and for a street name change of Lamesa Road to Stonebridge Drive adjacent to Lots 2, 4 & 5, Block 1, Lot 3, Block 2, Lots 1 & 11, Block 3, Lot 1, Block 4, and Lots 1, 14, 15 & 21, Block 9, Pavilion Park, Section 2, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City for processing this application.

Discussion:

This is a request by City staff to change the name of Guadalupe Street and Lamesa Road to Stonebridge Drive. The other Guadalupe Street is located on the west side of Midland; in the Los Patios neighborhood. The western street already has lots with addresses, whereas the eastern street has no assigned addresses yet. Staff is requesting to change the name of a segment of Lamesa Road because with the approval of the Stonebridge Preliminary Plat, it was determined that Lamesa Road should terminate at Loop 250 and this segment does not line up with the rest of Lamesa Road. Staff has sent out letters of notice to all affected property owners along both street segments. No comments have been received from the public.

Attachments: Maps,

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE NAME OF THE GUADALUPE STREET TO “STONEBRIDGE DRIVE” ADJACENT TO LOTS 14 AND 15, BLOCK 2, AND LOT 1, BLOCK 3, ADOBE MEADOWS, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, AND TO LOT 13A, BLOCK 2, AND LOT 2A, BLOCK 3, ADOBE MEADOWS, SECTION 6, CITY AND COUNTY OF MIDLAND, TEXAS; CHANGING THE NAME OF LAMESA ROAD TO “STONEBRIDGE DRIVE” ADJACENT TO LOTS 2, 4 AND 5, BLOCK 1, LOT 3, BLOCK 2, LOTS 1 AND 11, BLOCK 3, LOT 1, BLOCK 4, AND LOTS 1, 14, 15 AND 21, BLOCK 9, PAVILION PARK, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS; SAID STREETS ARE GENERALLY LOCATED ON THE NORTH AND SOUTH SIDES OF EAST MOCKINGBIRD LANE, EAST OF NORTH BIG SPRING STREET; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND DIRECTING THE CITY SECRETARY TO SEND THE MIDLAND EMERGENCY COMMUNICATIONS DISTRICT A CERTIFIED COPY OF THIS ORDINANCE

WHEREAS, the City Council finds it to be in the public interest to rename certain public streets located in the City of Midland, Texas;

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

SECTION ONE. That the following name changes are hereby approved and adopted for the following public streets:

- 1) That Guadalupe Street is hereby renamed “Stonebridge Drive” adjacent to Lots 14 and 15, Block 2, and Lot 1, Block 3, Adobe Meadows, Section 2, and to Lot 13A, Block 2, and Lot 2A, Block 3, Adobe Meadows, Section 6, City and County of Midland, Texas.
- 2) That Lamesa Road is hereby renamed “Stonebridge Drive” adjacent to Lots 2, 4 and 5, Block 1, Lot 3, Block 2, Lots 1 and 11, Block 3, Lot 1, Block 4, and Lots 1, 14, 15 and 21, Block 9, Pavilion Park, Section 2, City and County of Midland, Texas.

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

expressly repealed.

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

SECTION FOUR. The City Secretary is hereby authorized and directed to send a certified copy of this ordinance to the Midland Emergency Communications District.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2014; 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., 2014, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2014.

Jerry F. Morales, Mayor

ATTEST:

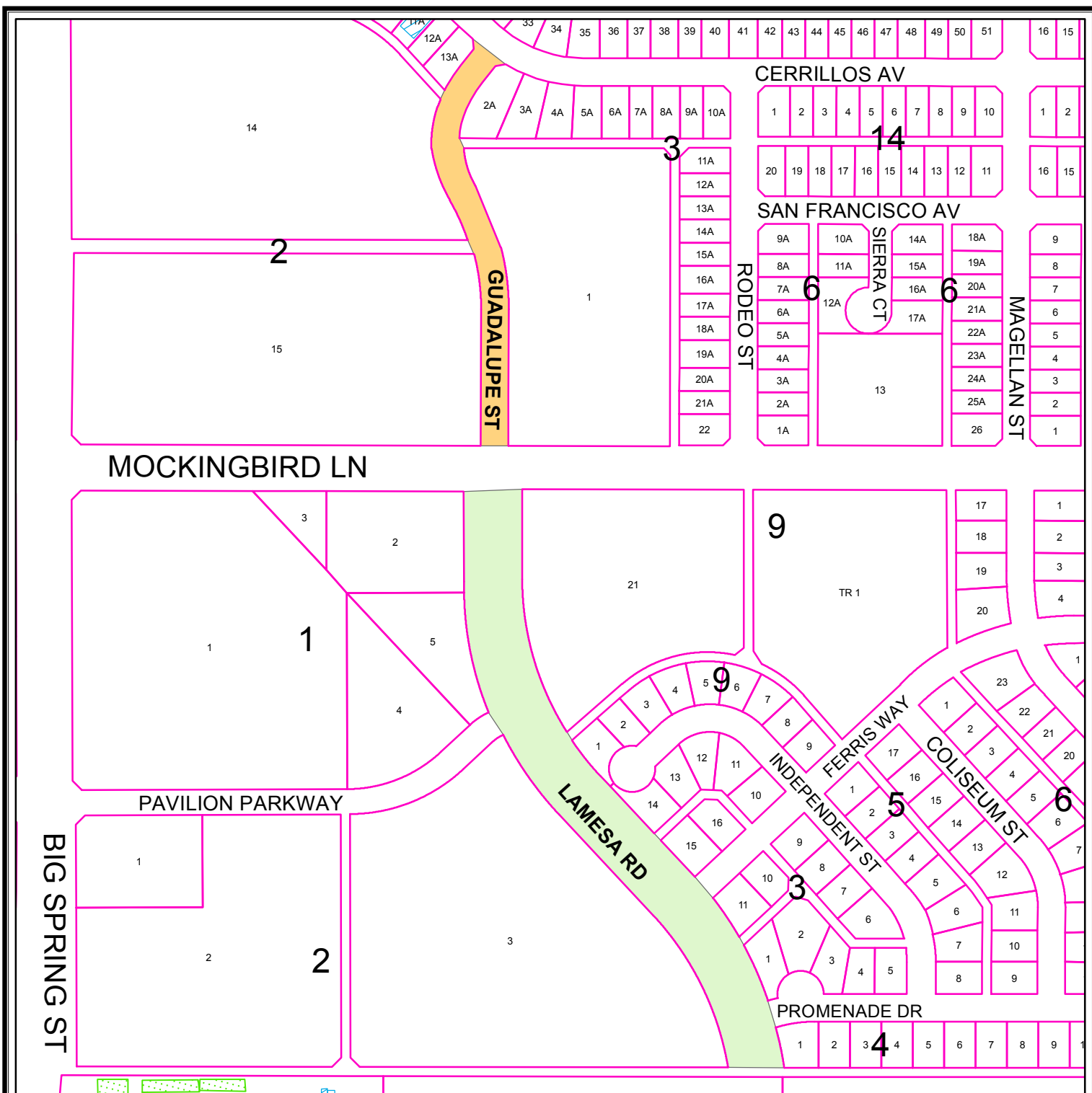
Amy Turner, City Secretary

APPROVED AS TO FORM:

Robert Patrick, Assistant to the City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney



LOCATION MAP

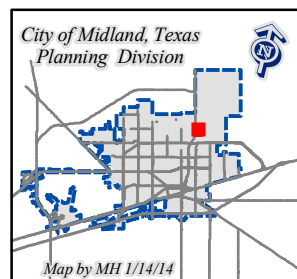
M - 13 - 022

Scale: 1" = 300'

Consider a City-initiated request for a street name change of Guadalupe Street to Stonebridge Drive adjacent to Lots 14 & 15, Block 2 and Lot 1, Block 3, Adobe Meadows, Section 2 and to Lot 13A, Block 2 and Lot 2A, Block 3, Adobe Meadows, Section 6; and for a street name change of Lamesa Road to Stonebridge Drive adjacent to Lots 2, 4 & 5, Block 1, Lot 3, Block 2, Lots 1 & 11, Block 3, Lot 1, Block 4, and Lots 1, 14, 15 & 21, Block 9, Pavilion Park, Section 2, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: February 11, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Pam Simecka, Director of Finance

SUBJECT: First Reading – Final Fiscal Year 2013 Budget Amendment

Purpose:

Final reconciliation of expenditure budget amounts for Fiscal Year 2013 budget.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

Reduce Fiscal Year 2013 General Fund budget and approve budgets for other minor governmental funds as provided in the attachment.

Discussion:

The General Fund expenditure budget for the year ended September 30, 2013, is being reduced by \$208,106. Forty two divisions were under budget by \$215,569 and three divisions were over budget by \$7,463.

Total General Fund expenditures were \$104,272,452 and total General Fund revenues were \$99,610,135 resulting in a net decrease to the General Fund of \$4,662,317. The General Fund Balance at September 30, 2013, was \$45,262,066 as compared to \$49,924,382 at September 30, 2012.

Appropriations to other Funds that were under budget are Unclaimed Property Fund by \$467 and Hotel/Motel by \$107,358.

Funds that require additional budget authority are General Fund Construction Fund by \$1,408,830, Linebery Property Maintenance by \$61,150, Police Leose by \$14,520, Police Special Purpose Federal by \$294,170, Police Special Purpose State by \$57,570, TIRZ#1 by \$383,020 and Municipal Court Technology by \$88,110.

ORDINANCE NO. _____

**AN ORDINANCE MAKING CERTAIN TRANSFERS IN
VARIOUS FUNDS OF THE 2012-2013 FISCAL YEAR
BUDGET AND MAKING CERTAIN BUDGET
AMENDMENTS; AND ORDERING RECORDATION**

WHEREAS, expenditures in certain divisions of several departments exceeded the original estimates in the various funds of the budget for the 2012-2013 fiscal year; and

WHEREAS, expenditures in certain divisions of these same departments have been less than originally estimated in various funds of said budget; and

WHEREAS, the Council finds it to be in the public interest to approve the transfer of budget allocations within such departments and divisions of each particular fund to more accurately reflect the actual operations and to amend the 2012-2013 budget as necessary to meet unforeseen conditions which could not by reasonably diligent thought and attention have been included in the original budget for the 2012-2013 fiscal year;

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

THAT in accordance with Texas Local Government Code Section 102.009, the official municipal budget for the fiscal year 2012-2013 is hereby amended by increasing and decreasing amounts appropriated from the following sources and by increasing and decreasing certain expenditure classifications in accordance with the Budget Schedule for Fiscal Year Ending September 30, 2013:

Decreasing Budget Authority

General Fund (001) Unappropriated Fund Balance (5650). \$208,106.00;
Unclaimed Property Fund (002) Unappropriated Fund Balance (5650). . . \$467.00;
Hotel/Motel Fund (090) Unappropriated Fund Balance (5650).....\$107,358.00;

Increasing Budget Authority

General Construction Fund (005) Unappropriated Fund Balance
(5650).....\$1,408,830.00;

Lineberry Facilities Maintenance Fund (007) Unappropriated Fund Balance (5650)
. \$61,150.00;
Police LEOSE Fund (008) Unappropriated Fund Balance (5650). \$14,520.00;
Police Special Purpose Fund - Fed (070) Unappropriated Fund Balance (5650)
. \$294,170.00;
Police Special Purpose Fund - State (071) Unappropriated Fund Balance (5650)
. \$57,570.00;
TIRZ #1 Fund (087) Unappropriated Fund Balance (5650). \$383,020.00;
Municipal Court Technology Fund (092) Unappropriated Fund Balance (5650)
. \$88,110.00;

Said Schedule is on file with the office of the City Secretary referenced by the date and number of this Ordinance.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2014; 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., 2014, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2014.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Pam Simecka, Director of Finance

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

2012-2013 SUMMARY BUDGET ADJUSTMENT REPORT BY DIVISION				
Unit Name	Actual Expense	Current Expense Budget(29,2)	Adjustment	Adjusted Budget
Legislative Total	48,878	48,988	12	49,000
City Manager Total	985,042	986,373	(1,079)	985,294
Public Communications Total	153,364	154,573	(1,003)	153,570
Downtown Development Total	145,190	145,900	(610)	145,290
Municipal Court Total	1,967,907	1,971,990	(3,737)	1,968,253
Legal Total	1,084,684	1,087,417	(2,527)	1,084,890
City Secretary Total	321,417	323,109	(1,411)	321,698
Human Resources Total	443,023	444,489	(1,224)	443,265
Employee Health & Wellness Total	204,983	205,857	(719)	205,138
Information Systems Admin Total	935,226	928,010	7,440	935,450
Communications Total	1,774,912	1,778,530	(3,365)	1,775,165
Information Systems Total	3,459,458	3,463,773	(3,981)	3,459,792
Communications Maintenance Total	504,874	505,986	(878)	505,108
Accounting Total	1,745,071	1,748,465	(3,151)	1,745,314
Investment Total	101,217	101,690	(384)	101,306
Purchasing Total	401,838	404,120	(2,089)	402,031
Facilities Services Total	1,234,000	1,235,164	(936)	1,234,228
Risk Management Total	210,382	211,345	(801)	210,544
Internal Audit Total	145,564	146,579	(855)	145,724
Tax	359,171	359,510	(330)	359,180
Planning & Development Total	685,459	688,177	(2,504)	685,673
Community Development Total	285,406	286,356	(765)	285,591
Code Administration Total	1,847,136	1,851,443	(4,039)	1,847,404
Gis Administration Total	500,410	502,521	(1,924)	500,597
Engineering Services Totals	1,211,138	1,213,851	(2,388)	1,211,463
Transportation Total	6,514,105	6,522,736	(8,121)	6,514,615
Parks & Recreation Total	6,346,565	6,427,036	(79,889)	6,347,147
Animal Services Totals	1,019,923	1,023,449	(3,153)	1,020,296
Martin Luther King Jr Comm Ctr Total	684,782	686,535	(1,312)	685,223
Health & Senior Services Total	1,878,405	1,882,468	(3,643)	1,878,825
Vclg Program Total	56,398	57,341	(869)	56,472
Airport Police Total	1,653,350	1,655,083	(1,592)	1,653,491
CVE Commercial Vehicle Enforcement	98,780	99,037	(67)	98,970
Special Operations - Step Total	12,902	12,919	11	12,930
Police Administration Total	1,493,854	1,498,237	(4,002)	1,494,235
Support Services Bureau Total	3,057,492	3,064,257	(6,273)	3,057,984
Field Operations Bureau Total	12,645,626	12,658,919	(12,949)	12,645,970
Investigative Services Bureau Total	5,119,610	5,132,390	(12,467)	5,119,923
Fire Training	17,394,138	17,417,379	(22,729)	17,394,650
Fire Training Totals	514,038	515,771	(1,510)	514,261
Fire Prevention Total	1,057,618	1,060,294	(2,429)	1,057,865
Emergency Medical Service Total	1,920,527	1,923,786	(2,981)	1,920,805
Airport Fire Division Total	1,796,777	1,801,916	(4,931)	1,796,985
Emergency Management Total	56,846	57,883	(913)	56,970
Nondepartmental	2,585,872	2,591,202	(5,039)	2,586,163
Transfers Out	17,609,089	17,609,089	0	17,609,089
Total General Fund	104,272,447	104,491,943	(208,106)	104,283,837
Unclaimed Property Fund	(467)	0	(467)	(467)
General Construction Fund	1,408,830		1,408,830	1,408,830
Linebery Property Maint	61,150	0	61,150	61,150
Police Leose Total	14,485	0	14,520	14,520
Police Special Purpose Federal	294,153	0	294,170	294,170
Police Special Purpose State	57,539	0	57,570	57,570
TIRZ #1 Total	383,000	0	383,020	383,020
Hotel/Motel Fund	2,787,090	2,894,594	(107,358)	2,787,236
Municipal Court Technology Total	88,073	0	88,110	88,110



DATE: February 5, 2014

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Texas Department of Housing and Community Affairs – Housing Tax Credits

Mr. Colby Denison with Denison Development and Construction, Incorporated has requested to address the Council regarding Housing Tax Credits from the Texas Department of Housing and Community Affairs for a development in Midland. I believe Mr. Denison has discussed this project with some Council Members.

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

KS/lo



City of Midland
Office Memorandum

DATE: 2/11/2014

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider an ordinance amending the official Municipal Budget for Fiscal Year 2013-2014 in order to provide additional funds to Midland Downtown Management District for a Fourth of July event in downtown Midland; the additional funding provided will help promote tourism in the City of Midland.

In 2012 the City of Midland granted \$25,000 to the Midland Chamber of Commerce to bring back a Fourth of July event to the downtown. In 2013 the City wanted to expand the fireworks so \$50,000 was put towards the event through the Downtown Midland Management District (DMMD) who used \$25,000 of their subgrant money from Fiscal Year 2012-2013 and \$25,000 from the prior fiscal year.

The grant application deadline for Fiscal Year 2013-2014 was in late February 2013 and DMMD did not know at that point to request extra funds for the Star Spangled Salute. They were granted \$50,000 for Fiscal Year 2013-2014 of which \$25,000 has been set aside for the event. Therefore, DMMD is requesting an additional \$25,000 for the 2014 Star Spangled Salute Event to be held in downtown Midland on July 4, 2014.

The subject ordinance authorizes a budget amendment in order to provide additional funding to DMMD.

ORDINANCE NO.

AN ORDINANCE AMENDING THE OFFICIAL MUNICIPAL BUDGET FOR FISCAL YEAR 2013-2014 IN ORDER TO PROVIDE ADDITIONAL FUNDS TO THE DOWNTOWN MIDLAND MANAGEMENT DISTRICT FOR A FOURTH OF JULY EVENT IN DOWNTOWN MIDLAND; THE ADDITIONAL FUNDING PROVIDED WILL HELP PROMOTE TOURISM IN THE CITY OF MIDLAND; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE DOWNTOWN MIDLAND MANAGEMENT DISTRICT

WHEREAS, the City Council approved funding for the Downtown Midland Management District during the fiscal year 2013-2014 budget process in the amount of \$50,000.00, and due to the City of Midland working in partnership with the Midland Convention and Visitors Bureau to continue the annual Fourth of July event in downtown Midland, there is an additional request of \$25,000.00 for this fiscal year; and

WHEREAS, funds in the amount of \$25,000.00 to the Downtown Midland Management District for a Fourth of July event in downtown Midland will allow for the promotion of tourism in the City of Midland; and

WHEREAS, the additional funding provided which is not spent by the Downtown Midland Management District will revert back to the Hotel/Motel Fund at the end of this fiscal year; and

WHEREAS, the Council finds it to be in the public interest to amend the official municipal budget for fiscal year 2013-2014 in order to provide additional funding to the Downtown Midland Management District, as necessary to meet unforeseen conditions which could not by reasonably diligent thought and attention have been included in the original budget for the 2013-2014 fiscal year;

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

THAT in accordance with Texas Local Government Code Section 102.009, the official municipal budget for fiscal year 2013-2014 as approved by Ordinance No. 9175 is hereby amended by appropriating \$25,000.00 from the Hotel/Motel (090) Unappropriated

Fund Balance (5650) to Hotel/Motel Fund (090) Administration (005) Hotel/Motel (0690) Miscellaneous (6990) budget account.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2014; 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., 2014, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2014.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: February 11, 2014

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Planning Division Manager

SUBJECT: Consider a motion appealing the Building Official's denial of a sign permit application by Alamo Heights Baptist Church located on 1305 N. Midland Drive. (Generally located on the southwest corner of the intersection of Princeton Avenue and Midland Drive.) – District 4.

Purpose:

Consider a motion appealing the Building Official's denial of a sign permit application by Alamo Heights Baptist Church located on 1305 N. Midland Drive.

Recommended City Council Action

☐ Approve ☒ Deny ☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Alamo Heights Baptist Church is located on 1305 N. Midland Drive, on the southwest corner of Princeton Avenue and Midland Drive, within a 1F-1, One-Family Dwelling District. The applicant recently requested a sign permit for an Electronic Message Center (EMC) sign. According to the Revised Outdoor Sign Regulations of the Midland City Code (11-7a-7), an EMC sign within the AE-MF-2 Districts is limited to 24 square feet in area. The sign requested is 36 square feet, exceeding the limit by 50%. The sign was subsequently denied by the Building Official as it did not comply with the City Sign Code. This item is being placed on the City Council agenda in order for the property owner to appeal the Building Official's decision. If the Council chooses to allow the proposed sign, then direction should be given to the Building Official to issue the requested sign permit.

However, the applicant has not presented any evidence that the Building Official's decision constitutes a hardship. Therefore, staff supports the Building Official's ruling.

Attachments:

Application
Maps
Exhibit A

Alamo Heights Baptist Church

January 21, 2014

City Planner Madhuri Kulkarni
City of Midland, Texas

CC: Steve Thorpe—Building Official
Midland Code Administration

RE: Application for Sign Permit
Alamo Heights Baptist Church

Greetings:

First we express appreciation that the leadership of our city is concerned with maintaining its beauty by planning and constructive regulation to keep it a place we can have pride in. It is refreshing to know that our streets and especially in our residential areas won't become like "the Las Vegas strip" due to excessive and thoughtless signing.

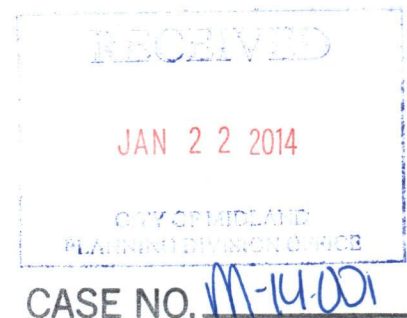
You are aware, of course, that in the digital age in which we live that churches, businesses, schools and other entities use the electronic signs for valid purposes. On the page we've included you will see how churches across our city have joined the 21st century. Midland has long been a city that recognized the value of our places of worship as a significant part of building the moral fiber of our community.

We noticed that these churches have constructed signs that were proportional to the size of their plants and properties as well as their need for messaging. In the case of Alamo Heights Baptist Church we would certainly want to use a sign that is proportional and effective. We had noticed that the base of the existing approved sign is greater than the width of the sign we hoped to attach. It seemed to us that the sign we seek to erect is of that size. It also seems prudent to have messaging that was easy to read at normal speed limits rather than having to slow down because the print was too small. As you are, we, too are concerned about the welfare and safety of the residential area that surrounds our church property. We would use the sign to advertise events and programs that would be helpful to neighbors and passersby. Included is a new Saturday night contemporary service that would appeal to many of the petroleum industry workers and others who can't attend on Sunday. It would also make neighborhood children and youth aware of events that would help them develop into productive citizens.

In lieu of the fact that we, as well as you, have our city's best interest at heart; we respectfully request that you consider our request for an exception to erect this sign. Thank you for your thoughtful consideration of this matter.

Sincerely,

The Christian families who are
Alamo Heights Baptist Church



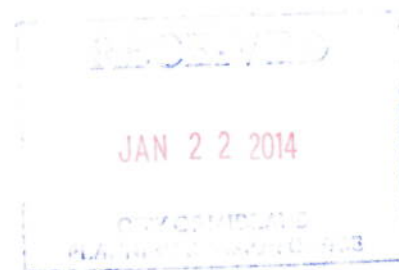


EXHIBIT A

CASE NO. M-14001



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: February 11, 2014

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Planning Division Manager

SUBJECT: Consider an ordinance on a request by NBY Rankin Hwy, Midland, LLC for the vacation of the 0.14-acre north/south alley between Lots 1 thru 12, Block 40, Belmont Addition, City and County of Midland, Texas. (Generally located on the east side of Rankin Hwy, between W. Gist Avenue and W. Stokes Avenue.) – District 2.

Purpose:

Consider an ordinance on a request by NBY Rankin Hwy, Midland, LLC for the vacation of the 0.14-acre north/south alley between Lots 1 thru 12, Block 40, Belmont Addition, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

We have received a preliminary plat of Belmont Addition, Section 18, located on the east side of Rankin Highway, between Gist and Stokes Avenues, approved on the January 6, 2014, Planning and Zoning Commission meeting. This replat will combine 12 vacant lots into one lot for retail development. A zone change is also scheduled on the February 11, 2014 City Council agenda. In combining the 12 lots, the applicant also desires to include land which is currently dedicated as an alley. We have contacted the franchised utility companies, and four indicated they had no objection to this proposal. Oncor Electric has a Three Phase Overhead Primary Line, and AT&T has two copper cables in the alley. Additionally, a water line also runs through the alley. Each of these utilities will need to be

relocated at the applicant's expense. According to the Midland Central Appraisal District, the appraised land value, for taxation purposes, of the 0.14-acre right-of-way, valued at \$2.00 per square foot, is \$12,196. Staff recommends approval of this request, conditioned upon the submittal of this amount and the relocation of the water line and the utility lines.

Attachments:

Application

Maps

Exhibits A and B

Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.14-ACRE NORTH/SOUTH ALLEY ADJACENT TO LOTS 1-12, BLOCK 40, BELMONT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF RANKIN HIGHWAY, BETWEEN WEST GIST AVENUE AND WEST STOKES AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$12,196.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.14-acre north/south alley adjacent to Lots 1-12, Block 40, Belmont 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 \$12,196.00, as shown in Exhibit "C" attached hereto and incorporated herein by reference; and

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

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

SECTION ONE. That the 0.14-acre north/south alley adjacent to Lots 1-12, Block 40, Belmont Addition, City and County of Midland, Texas, as described in Exhibits "A" and "B" attached hereto and made a part hereof for all legal purposes, 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 this Ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of \$12,196.00.

SECTION THREE. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2014; 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., 2014, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2014.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

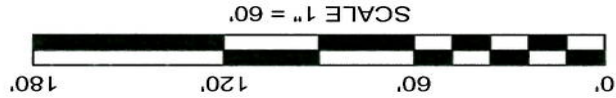
WEST COMPANY
OF MIDLAND, INC.

LINDSAY McDONALD TEXAS R.P.L.S. No. 6434
FIRM NO. 100682-00
DATE SURVEYED OCTOBER 24, 2013
ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2184
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0865 - FAX (432) 687-0868

EXHIBIT A



I HEREBY CERTIFY THAT THIS PLAT WAS MADE FROM NOTES TAKEN IN THE FIELD IN A BONA FIDE SURVEY MADE UNDER MY SUPERVISION.



COORDINATES, BEARINGS, DISTANCES AND AREAS SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM 1983.

NOTICE:

W. STOKES AVENUE (60' R.O.W.)

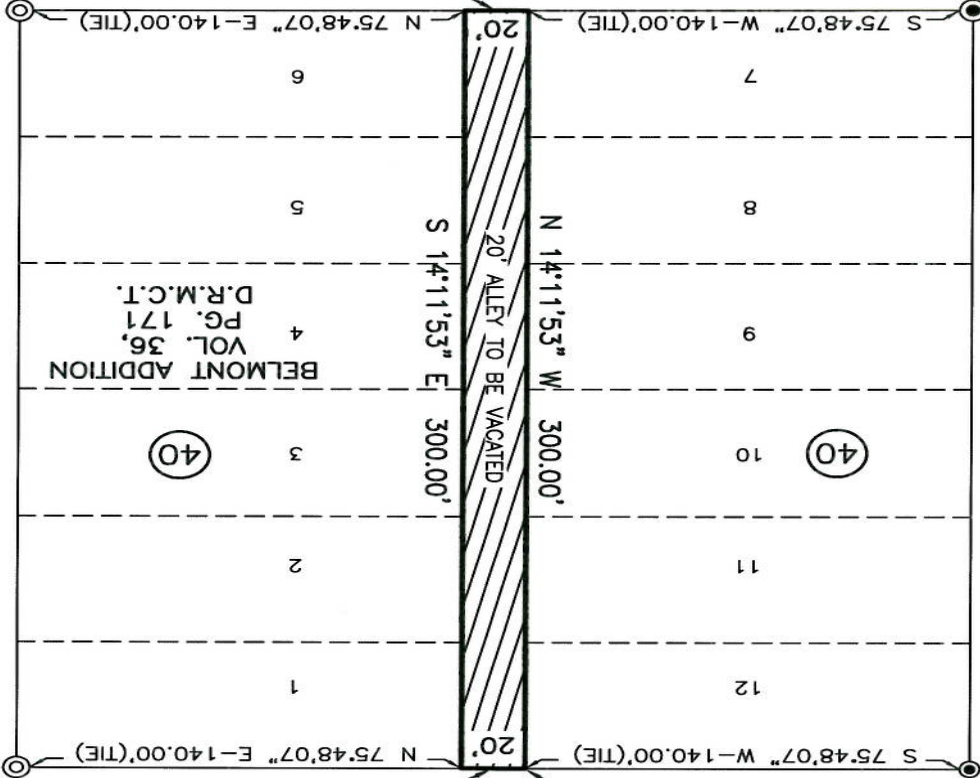
Fnd. 1/2" I.R. w/yellow cap marked "Howell"

S. BELMONT STREET (60' R.O.W.)

S. RANKIN HIGHWAY (36' R.O.W.)

W. GIST AVENUE (60' R.O.W.)

20' ALLEY VACATION
0.14 ACRES
OUT OF BLOCK 40,
BELMONT ADDITION,
MIDLAND, TEXAS



P.O.B. N: 10,687,685.20 E: 1,756,385.16
N 75°48'07" E 20.0'
S 75°48'07" E 20.0'

S 75°48'07" W-140.00'(TIE)
N 75°48'07" E-140.00'(TIE)

BELMONT ADDITION
VOL. 36,
PG. 171
D.R.M.C.T.

(40)

(40)

**20' ALLEY VACATION
0.14 ACRES
OUT OF BLOCK 40,
BELMONT ADDITION,
MIDLAND, TEXAS**

LEGAL DESCRIPTION of a 20 foot wide alley way to be vacated out of Block 40, Belmont Addition, an Addition to the City of Midland, Texas, as recorded in Vol. 36, Pg. 171, Deed Records of Midland County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at (N: 10,687,685.20 E: 1,756,385.18) the Northwest corner of this tract and the Northeast corner of Lot 12, Block 40, Said Belmont Addition, and being in the South line of West Gist Avenue, a 60 foot wide right-of-way, from which point a 1/2 inch Iron rod with red plastic cap marked "West Co. Midland" set for the Northwest corner of said Lot 12 and the Northwest corner of said Block 40, bears S 75°48'07" W a distance of 140.00 feet;

THENCE N 75°48'07" E with the North line of said 20 foot wide alley way, the North line of said Block 40, and the South right-of-way line of said West Gist Avenue, a distance of 20.00 feet to the Northeast corner of this tract, the Northeast corner of said 20 foot wide alley way, and the Northwest corner of Lot 1, Block 40, said Belmont Addition, from which point a 1/2 inch Iron rod with yellow cap marked "Howell" bears N 75°48'07" E a distance of 140.00 feet;

THENCE S 14°11'53" E with the East line of said 20 foot wide alley way and the west Lot lines of Lots 1-6, Block 40, said Belmont Addition, a distance of 300.00 feet to the Southeast corner of this tract, the Southeast corner of said 20 foot wide alley way, the Southwest corner of said Lot 6, and being in the South line of said Block 40 and the North right-of-way line of West Stokes Avenue, a 60 foot wide right-of-way, from which point a 1/2 inch Iron rod with yellow cap marked "Howell" bears N 75°48'07" E a distance of 140.00 feet;

THENCE S 75°48'07" W with the South line of said 20 foot wide alley way, the South line of said Block 40, and the North line of said West Stokes Avenue, a distance of 20.00 feet to the Southwest corner of this tract, the Southwest corner of said 20 foot wide alley way, and the Southeast corner of Lot 7, Block 40, said Belmont Addition, from which point a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for the Southwest corner of said Lot 7 and the Southwest corner of said Block 40 bears S 75°48'07" W a distance of 140.00 feet;

THENCE N 14°11'53" W with the West line of said 20 foot wide alley way and the East line of Lots 7-12, Block 40, said Belmont Addition, a distance of 300.00 feet to the POINT OF BEGINNING, subject tract contains a total of 0.14 acres of land.

NOTICE:

COORDINATES, BEARINGS, DISTANCES AND AREAS SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM 1983.

I HEREBY CERTIFY THAT THIS PLAT WAS MADE FROM NOTES TAKEN IN THE FIELD IN A BONA FIDE SURVEY MADE UNDER MY SUPERVISION.

Lindsay McDonald 11-8-13
LINDSAY McDONALD TEXAS R.P.L.S. No. 6434
FIRM NO. 100682-00
DATE SURVEYED OCTOBER 24, 2013

ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2184
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0865 - FAX (432) 687-0868



WEST COMPANY

OF MIDLAND, INC.

EXHIBIT B

SHEET 2/2

CASE NO. Y-13-020



Office of the City Manager

January 31, 2014

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.14-acre north/south alley adjacent to Lots 1-12, Block 40, Belmont 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 \$12,196.00. The property can be vacated and recorded in the Midland County Clerk's office when the City of Midland has received this amount from the adjoining property owner(s).

Very truly yours,

Courtney Sharp
City Manager

Exhibit "C"

L:\Ordinances\Planning\Vacate & Abandon\2014\Belmont Addition - Appraisal Letter.wpd

Case Number: V-13-020

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:
20' Alley, 0.14 acres out of Block 40, Belmont Addition, Midland, Texas
- II. Reason for Request: To create one large lot for retail development out of Lots 1-12, Block 40, Belmont Addition, Midland, Texas
- 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:
Alley to be vacated is not in use for transportation and all utilities in alley will be re-routed

IV. REQUIRED ITEMS:

1. Applicant(s) Information:

Name: NBY Rankin Hwy, Midland, LLC

Address: 4629 Marco Drive Phone: (210) 424-8061
Street
San Antonio TX 78218
City State Zip Code

2. Sealed metes and bounds description of property to be vacated (included on the map) and total square feet of vacation. Include ownership, legal-and deed information for adjacent property owners.

3. Application Fee: **\$300.00**

Required items attached? Date Received: 1. ____ 2. ____ 3. ____

The City of Midland will take no action on this request, until items 1-3 are received.

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

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

VI. Policies:

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.
 - b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signature of applicant: 

Date: 11/18/2013

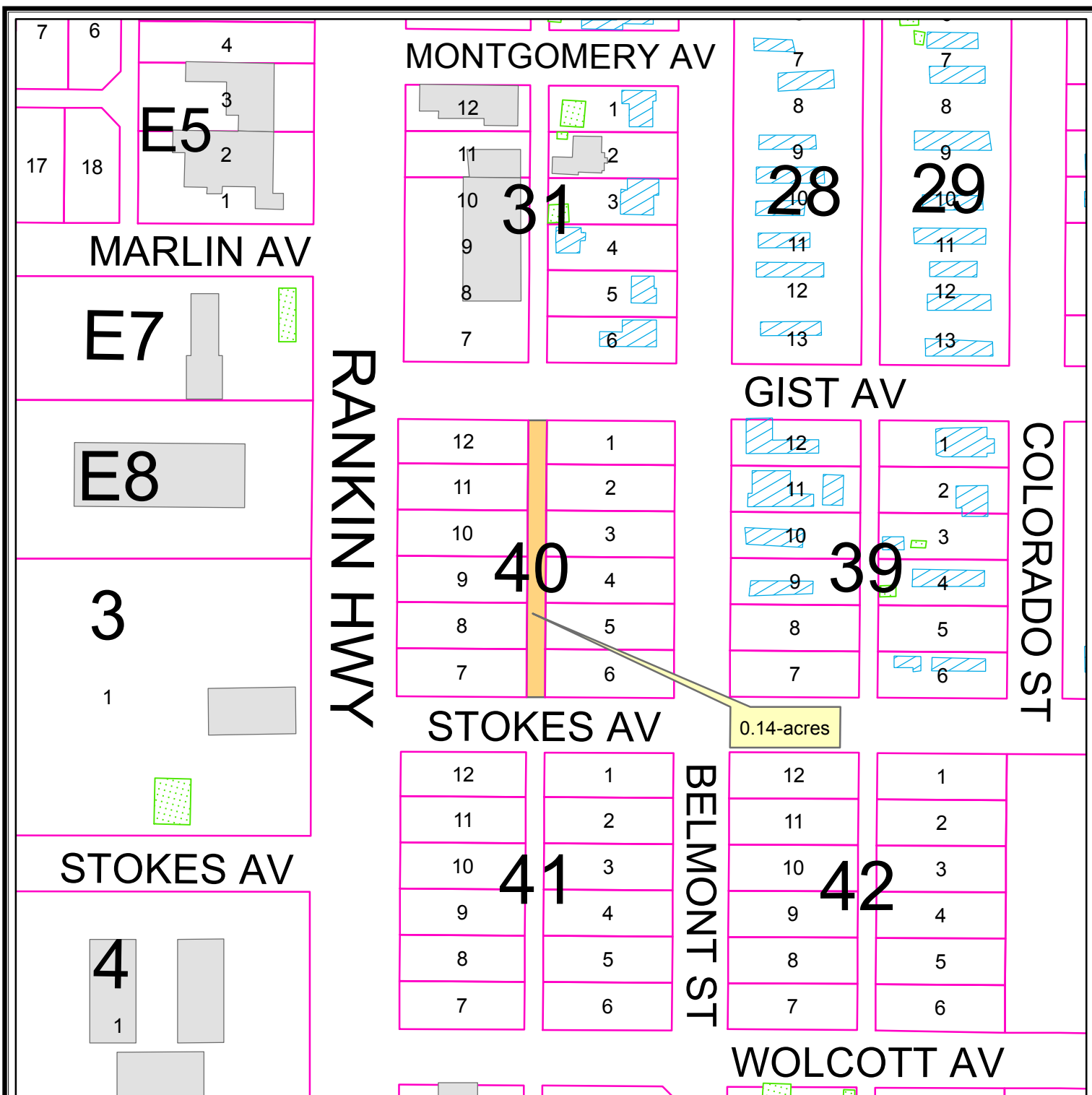
Signature of Other Affected Property Owners: _____

Date: _____

_____, _____
_____, _____
_____, _____

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

FOR OFFICE USE ONLY	
Rec'd. By: <u>RS</u>	Date: <u>1/20/14</u>
Assigned: <u>MR</u>	
For: <u>CC</u>	On: <u>2/11/14</u>



LOCATION MAP

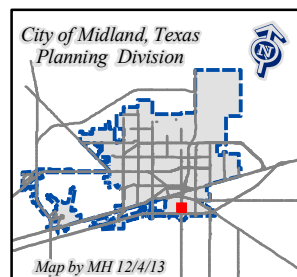
V - 13 - 020

Scale: 1" = 150'

Consider a request for the vacation of the 0.14-acre north/south alley adjacent to Lots 1 thru 12, Block 40, Belmont Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



© THE CITY OF MIDLAND - 2013
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PROFESSIONAL TOOL IN PERMITTING, ENGINEERING, OR OTHER DECISION SOLELY ON THE INFORMATION CONTAINED HEREIN.



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 2/11/2014

TO: City Council/City Manager

FROM: Downtown Development Director, Genora C. Young

SUBJECT: Consider a motion determining evidence of financial backing for TEXAS 301 VENTURES, L.L.C with reference to the **AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND TEXAS 301 VENTURES, L. L. C.**

Purpose:

Consider a motion determining evidence of financial backing for the **AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND TEXAS 301 VENTURES, L.L.C.** The decision will also determine whether the project moves forward under the current **AGREEMENT** or if the **AGREEMENT** is null and void due to default by the developer, Texas 301 Ventures, L. L. C., in which case, the City would retain ownership of the Building of the Southwest, without further obligations as cited in **SECTION 2. CITY'S RESPONSIBILITIES AND OBLIGATIONS** of the **AGREEMENT**. Explanation is included herein under **Discussion**.

Recommended City Council Action

☐ Approve ☐ Deny X Directional / Information

Fiscal Impact:

Discussion:

Brief History:

October 22, 2013, City Council meeting – City Council passed **RESOLUTION 2013-381 APPROVING THE EXTENSION OF TEXAS 301 VENTURES, L. L. C. 'S PROVISION OF FINANCING DEADLINE: AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH TEXAS 301 VENTURES, L. L. C. REGARDING THE CITY OF MIDLAND'S ACCEPTANCE OF LOTS 7 AND 8, BLOCK 35, ORIGINAL TOWN, CITY OF AND COUNTY OF MIDLAND, TEXAS (COMMONLY KNOWN AS THE BUILDING OF THE SOUTHWEST AND LOCATED AT 310 WEST TEXAS AVENUE); AUTHORIZING THE ACCEPTANCE OF SAID PROPERTY; DIRECTING THE CITY MANAGER TO OBTAIN A DEED FROM THE OWNER OF SAID PROPERTY; AUTHORIZING THE CITY MANAGER TO NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY**

FOR THE ACCEPTANCE OF SAID PROPERTY; AUTHORIZING PAYMENT FOR CLOSING COSTS; AND ORDERING RECORDATION

This third deadline extension by City Council included 1) Evidence of adequate financial backing from November 22, 2013 to February 1, 2014 and 2) Fuel Hotel groundbreaking from November 29, 2013 to March 1, 2014.

Monday, February 3, 2014, City staff determined that Texas 301 Ventures L. L. C. to be in default of the **AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND TEXAS 301 VENTURES, L. L. C.** based upon **SECTION 1. DEVELOPER'S RESPONSIBILITIES AND OBLIGATIONS, D. Evidence of Adequate financial backing of the individual or entity building the Fuel Hotel must be provided to City by February 1, 2014. This evidence shall include current documentation from a bank or other lending institution stating that they are providing a specific funding level to support the hotel project without disclaimers, caveats, or exceptions.** The actual deadline fell on a Saturday and the deadline was extended to Monday, February 3, 2014.

The document presented on Monday, February 3, 2014 to Genora Young, Downtown Development Director is a Pre-loan Application that states in the third paragraph under **TWIN PIER CAPITAL'S INTENT: Acknowledging this Letter affirms all conditions and indicates best efforts as to condition submission and loan term agreement. This is an expression of our interest to lend you money and not a commitment to lend you money. The final approval of your loan request will be a written commitment to you subject to the submission of all requested documents, the appraisal and our underwriting analysis.**

Based upon the language within the presented Pre-loan Application **"...This is an expression of our interest to lend you money and not a commitment to lend you money"** and the **AGREEMENT, "Evidence of adequate financial backing...must be provided to City by February 1, 2014. This evidence shall include current documentation from a bank or other lending institution stating that they are providing a specific funding level to support the hotel project without disclaimers, caveats, or exceptions"** the required documentation had not been presented by the deadline, **"without disclaimers, caveats, or exceptions"**.

If City Council agrees with staff's determination that the provided Pre-loan Application is not evidence of financial backing and the developer is in default of the **AGREEMENT**, the City of Midland retains ownership of the Building of the Southwest. The City of Midland is released of all obligations including but not limited to **SECTION 2. CITY'S RESPONSIBILITIES AND OBLIGATIONS** of the **AGREEMENT**.

Should City Council opt to accept the document provided as evidence of financial backing, the next deadline for the Fuel Hotel Project is March 1, 2014, Groundbreaking and is clarified as follows **SECTION 1. DEVELOPER'S RESPONSIBILITIES, E. *The Fuel Hotel project will break ground by March 1, 2014. "Break ground" shall be defined as the initiation of continued, sustained, and meaningful construction toward the completion of the project. Construction work shall be performed by licensed, bonded contractors who have a formal agreement with the property owner to***

perform their specific work. The performance of minor tasks that do not substantially lead toward the completion of the project or tasks performed by individuals who are not part of the contracted construction team will not satisfy the requirement that the project break ground.

Attachments:

- RESOLUTION NO. 2013-381
 - AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND TEXAS 3-1 VENTURES, L. L. C. – EXHIBIT A
 - LEASE AGREEMENT – EXHIBIT A
- Copies of Emails between Patrick Cordero/Sagar Kumar and Genora Young

RESOLUTION NO. 2013-381

RESOLUTION APPROVING THE EXTENSION OF TEXAS 301 VENTURES, L.L.C.'S PROVISION OF FINANCING DEADLINE; AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH TEXAS 301 VENTURES, L.L.C. REGARDING THE CITY OF MIDLAND'S ACCEPTANCE OF LOTS 7 AND 8, BLOCK 35, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (COMMONLY KNOWN AS THE BUILDING OF THE SOUTHWEST AND LOCATED AT 310 WEST TEXAS AVENUE); AUTHORIZING THE ACCEPTANCE OF SAID PROPERTY; DIRECTING THE CITY MANAGER TO OBTAIN A DEED FROM THE OWNER OF SAID PROPERTY; AUTHORIZING THE CITY MANAGER TO NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY FOR THE ACCEPTANCE OF SAID PROPERTY; AUTHORIZING PAYMENT FOR CLOSING COSTS; AND ORDERING RECORDATION

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to execute an agreement with the Texas 301 Ventures, L.L.C. regarding the terms and conditions of the City of Midland's acceptance of Lots 7 and 8, Block 35, Original Town, City and County of Midland, Texas;

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

SECTION ONE. That the City Council hereby approves the extension of Texas 301 Ventures, L.L.C.'s provision of financing deadline to not later than November 22, 2013.

SECTION TWO. That the City Manager is hereby authorized and directed to execute an agreement with Texas 301 Ventures, L.L.C. regarding the terms and conditions of the City of Midland's acceptance of Lots 7 and 8, Block 35, Original Town, City and County of Midland, Texas. A copy of said agreement is attached hereto and incorporated herein as Exhibit "A". The City Manager is hereby authorized and directed to negotiate and execute a parking lease agreement with Texas 301 Ventures, L.L.C. regarding the City of Midland's acceptance of said property.

SECTION THREE. That the City Council hereby authorizes the acceptance of the owner's dedication of Lots 7 and 8, Block 35, Original Town, City and County of Midland,

Texas, to the City of Midland.

SECTION FOUR. That the City Manager is hereby authorized and directed to obtain a deed from the owner which dedicates said property to the City of Midland.

SECTION FIVE. That the City Manager is hereby authorized and directed to negotiate, execute and file all documents necessary for the City of Midland's acceptance of said property.

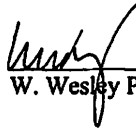
SECTION SIX. That the City Treasurer is hereby authorized and directed to pay all closing costs related to said dedication from funds available in the Fiscal Year 2012-2013 General Fund (001) Nondepartmental (150) Nondepartmental (0150) Miscellaneous (6990) budget upon receipt of proper invoice or statement therefor executed by the City Manager.

SECTION SEVEN. That the City Secretary is hereby authorized and directed to file the deed for said property in the Deed Records of Midland County, Texas.

On motion of Council member James, seconded by Council member Love, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the 22nd day of October, A.D., 2013, by the following vote:

Council members voting "AYE": Love, Morales, Trost, Perry, James, Sparks

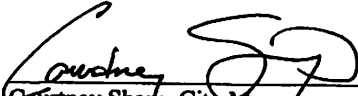
Council members voting "NAY": None


W. Wesley Perry, Mayor

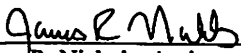
ATTEST:


Amy M. Turner, City Secretary

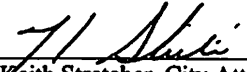
RECOMMENDED AND APPROVED:


Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:


James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:


Keith Stretcher, City Attorney

**AGREEMENT BETWEEN
THE CITY OF MIDLAND, TEXAS AND 301 VENTURES, L.L.C**

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This Agreement is made this the ____ day of _____ 2013, but effective as of July 12, 2013, by and between the City of Midland, a Home Rule Municipal Corporation of the State of Texas, hereinafter called "City", acting herein by and through its City Manager and Mahendra Patel, Managing Member of 301 Ventures, L.L.C. and or Assigns hereinafter called "Developer."

WHEREAS, The City in an effort to revitalize downtown Midland, has undertaken steps to create an environment for business investment in this area;

WHEREAS, Developer wishes to invest in the Midland downtown area and has approached the City for assistance in obtaining parking for a project known as the "Fuel Hotel" which would raze one dilapidated building and rehabilitate another of the dilapidated buildings in the downtown district;

WHEREAS, Since the Fuel Hotel Project has the potential to revitalize downtown Midland, the City has agreed to the provision of parking for the project;

NOW, THEREFORE, in consideration of the premises and of the terms, provisions and mutual covenants and promises herein contained, it is mutually agreed by and between both City and Developer as follows:

SECTION 1. DEVELOPER'S RESPONSIBILITIES AND OBLIGATIONS

A. The Fuel Hotel will be developed to include the following amenities:

1. Room amenities

- Each room to have a separate sitting room
- 42" LCD cable television
- Free Wi-Fi
- Rain-shower heads
- Archive bath products
- Wood-panel floors and shutters
- Coffee maker
- Iron and ironing board
- Hair dryer

- Full size kitchen with full size fridge and dishwasher
- King and queen size pillow top beds

2. Hotel amenities

- 142-room all-suite hotel
- Room sizes varying from 500 square feet to 800 square feet
- Lounge and exercise room on every floor
- Bar and lounge with specialty drinks and ice cold beer selections in lobby
- Café and full-service restaurant
- Luxurious spa
- 24-hour fitness center
- 24-hour business center (fax/copy/print)
- 24-hour concierge accommodations and local recommendations
- Valet or self-parking garage

- B. The property known as the “Building of the Southwest” and associated land (304 W. Texas Ave, Midland) will be deeded to the City by October 22, 2013 with the specific intention that such property will be razed by the City.**
- C. The Fuel Hotel project will secure all required permits by October 3, 2013.**
- D. Evidence of adequate financial backing of the individual or entity building the Fuel Hotel must be provided to City by February 1, 2014. This evidence shall include current documentation from a bank or other lending institution stating that they are providing a specific funding level to support the hotel project without disclaimers, caveats, or exceptions.**
- E. The Fuel Hotel project will break ground by March 1, 2014. “Break ground” shall be defined as the initiation of continued, sustained, and meaningful construction toward the completion of the project. Construction work shall be performed by licensed, bonded contractors who have a formal agreement with the property owner to perform their specific work. The performance of minor tasks that do not substantially lead toward the completion of the project or tasks performed by individuals who are not part of the contracted construction team will not satisfy the requirement that the project break ground.**
- F. The Fuel Hotel project must secure Certificates of Occupancy (C of O’s) from the City within 24 months of the date of ground breaking. Prior to the issuance of Certificates of**

Occupancy, the Developer will obtain all Specific Use Permits necessary for the operation of the Fuel Hotel or restaurant in said hotel.

SECTION 2. CITIES RESPONSIBILITIES AND OBLIGATIONS

- A. Developer will be provided adequate parking spaces within one block of any property corner of the proposed Fuel hotel to be located in the property known as "Western United Life Building" at 310 W. Texas Ave, Midland, Texas and in a parking facility, if one is developed within reasonable proximity to the hotel. Parking space quantity will be based on City of Midland code requirements, and for the entire hotel is currently estimated to be 210 parking spaces. As part of the total parking necessary to accommodate the hotel, a minimum of 10 parking spaces will be provided on the Building of the Southwest site at the time the hotel opens. If a full service restaurant/bar/eatery is included with the hotel and remains in continuous operation, the parking necessary to meet the calculated needs of the eatery will be provided on the Building of the Southwest site, up to the parking limits of the site. A restaurant/bar/eatery will be defined as a business operation within the proposed Fuel Hotel where the cooking, assembling, and/or preparation of food and/or beverage primarily for on-premise consumption occurs. Selling commercially pre-packaged items which require not cooking, assembly, and/or preparation and which may be purchased off-premise will not qualify the business as a restaurant/bar/eatery. Food and/or beverage service shall constitute the primary element of the business for it to qualify as a restaurant/bar/eatery. The business shall provide on-premise seating for patrons in a quantity and manner that complies with all applicable City code requirements, to qualify as a restaurant/bar/eatery. In addition, the business facility shall be no less than 1,200 contiguous square feet and produce monthly gross receipts for the food and beverage service of not less than \$15,000 to qualify as a restaurant/bar/eatery.
- B. The Building of the Southwest, after its donation to the City and prior to the issuance of the Certificate of Occupancy to the Fuel Hotel project will be razed by the City and a parking lot developed on the site for the use by the Fuel Hotel as previously described in Paragraph 2A.
- C. Parking will be provided through a 49-year lease with 2, 10 year extensions, a copy of which is attached hereto as Exhibit "A" and made a part of this agreement The first 20 years of the lease will be at no cost to the developer as long as the developed property remains in active use as a development which is acceptable to the City as defined later in this agreement. For the remainder of the lease, the parking shall be provided at the full value of comparable parking in downtown Midland as long as the developed property

remains in active use as a development which is acceptable to the City. The City shall maintain the right to reevaluate the comparable value of parking in Midland upon which to base an adjustment to the parking lease rate, but shall do so no more frequently than once per calendar year.

- D. The Building of the Southwest site will not be developed in a manner that competes with the allowed usage of the Fuel Hotel project. The City shall make the final determination on what types of uses and developments will be considered as competing with the Fuel Hotel project.

SECTION 3. MISCELLANEOUS PROVISIONS

- A. Should the Fuel Hotel project usage change over the life of the lease, any additional parking necessitated by the change in usage will be negotiated with the City regarding price and term, but only if the new use remains acceptable to the City.
- B. Should the project usage change over the life of the lease to one that is not deemed acceptable by the City, or if the room/hotel amenities are not provided as noted in item 3, the developer shall have 90 days to address/cure the issue(s). After the 90-day period, if the identified issues have not been corrected to the satisfaction of the City, the obligation to provide parking to any degree and for no cost shall be considered null and void.
- C. Acceptable redevelopment uses of the former Western United Life building include:
- a. Hotel
 - b. High density residential complex
 - c. Other uses as acceptable to City
- D. If the project developer does not satisfy any of the obligations noted herein, the City's requirement to provide parking in any form shall be null and void. However, the City will maintain responsibility to raze the Building of the Southwest.
- E. Once this agreement begins the City will consider granting an extension of time to the timelines set out in Section if it is the result of:
- 1. Delays caused primarily by CITY, its agents or employees, or those claiming under agreement with or grant from CITY;
 - 2. Delays caused by any Act of God or terrorism.

SECTION 4. ASSIGNMENT

Neither this agreement nor any duties or obligations may be assigned by the Developer

to a nonrelated third party without the prior written consent of the City. In the event of an assignment by the Developer to which the City has consented, the assignee or the assignees' legal representative must agree in writing with the City to personally assume, perform, and be bound by all the provisions of this agreement.

SECTION 5. AMENDMENT

This agreement may be amended by the mutual agreement of the parties to it, in a writing to be attached to and incorporated in this agreement.

SECTION 6. SUCCESSORS AND ASSIGNS

Subject to the provisions regarding assignment, this agreement is binding on and inures to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

SECTION 7. NOTICE

All communications required by this Agreement between the City and Developer shall be addressed to the City Manager of the City of Midland with copies to the Downtown Development Director, and to Mahendra Patel or his assigns for the Developer.

SECTION 8. GOVERNING LAW

This agreement, and the rights and duties of the parties under it, are governed by the laws of the State of Texas

SECTION 9. COMPLIANCE WITH LAWS

It is understood and agreed that in the event any provision of this Agreement is inconsistent with the requirements of the Texas Municipal Code, or any other applicable State law, the requirements of the law will control, however the parties agree to make every attempt to have such provision amended to comply with such law.

SECTION 10. SOVEREIGN IMMUNITY

By executing this agreement the CITY is not waiving its right of sovereign immunity. The CITY is retaining its immunity from suit. The CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

SECTION 11 NO THIRD PARTY BENEFICIARIES

The CITY's approval of this agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

SECTION 12. RELEASE

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

SECTION 13. WAIVER

No waiver by CITY of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement

SECTION 14. SEVERABILITY.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

SECTION 15. USE OF LANGUAGE

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

SECTION 16. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

SECTION 17. ENTIRE AGREEMENT

This agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting this subject matter.

IN WITNESS WHEREOF, the parties have hereunto set their hands in duplicate originals, in the City of Midland, Midland County, Texas, on this _____ day of _____, 2013.

CITY OF MIDLAND

By: _____
Courtney Sharp, City Manager

ATTEST:

, City Secretary

301 Ventures, L.L.C.

By: _____
Mahendra Patel, Managing Member

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2013, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter called "Lessor" and the Texas 301 Ventures, L.L.C., hereinafter called "Lessee,"

WITNESSETH:

The said Lessor does, by these presents, lease unto this said Lessee, who hereby agrees to take for the term hereof, the approximately 210 parking spaces in the following described properties located in Midland, Midland County, Texas:

See Attached Exhibits "1" ("Building of the Southwest Site") and Exhibit "2" (Property Location to be determined)

on a 24-hour a day basis, subject to the hereinafter described terms and conditions:

1. The term of this lease shall be for a period of forty-nine (49) years commencing on the date that the Certificate of Occupancy is granted to the Fuel Hotel project more specifically defined in that certain Agreement by and between the City of Midland and Texas 301 Ventures, L.L.C. dated _____, which this Lease is a part of (the "Agreement") and terminating 588 months from the date of commencement.

2. For the first 20 years (240 months) of this lease, the Lessor will not be responsible for any payment for the use of the parking spaces delineated herein according to the terms and conditions set out in the Agreement. Thereafter, Lessor will be responsible for payment of the parking spaces at a value to be determined by using comparable parking rates in downtown Midland so long as the developed property remains in an active use which is acceptable to the City which the term "acceptable" is more fully defined in the Agreement. The City shall maintain the right to reevaluate the comparable value of parking in downtown Midland upon which to base an adjustment to the parking lease rate and make said adjustment, but shall do so no more frequently than once per calendar year.

EXHIBIT A

3. As part of the total parking necessary to accommodate the Fuel Hotel, a minimum of 10 parking spaces will be provided on the Building of the Southwest site, as described in Exhibit "1," at the time the hotel opens. If a full service restaurant/bar/eatery is included with the hotel and remains in continuous operation, the parking necessary to meet the calculated needs of the eatery will be provided on the Building of the Southwest site, up to the parking limits of the site. The definition of full service restaurant/bar/eatery is more particularly described in the Agreement.

4. Lessor shall be eligible for two (2) additional 10-year extensions to the lease which may be exercised within 5 years of the expiration of the original lease or extension at a rate to be determined by using the process described in Paragraph 2 above.

5. If a conflict should arise between this Lease and the Agreement, the Agreements terms and conditions will hold.

6. LESSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND LESSOR AND ALL OF LESSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSEE, its agents or employees, or any subcontractor, arising out of, or resulting from, Lessee's use of, or activities on, the agreement premises, and Lessee will be required to pay any judgment with costs which may be obtained against Lessor or any of its officer, agents or employees, including reasonable attorney's fees.

LESSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LESSOR AND ALL OF LESSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSOR, LESSOR'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LESSEE OR LESSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND LESSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LESSOR OR ANY OF LESSOR'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

EXECUTED on the day and year first above written.

CITY OF MIDLAND, TEXAS (Lessor)

Attest:

Courtney Sharp, City Manager

City Secretary

Texas 301 Ventures, L.L.C. (Lessee)

Mahendra Patel, Managing Member

Genora Young

From: Genora Young
Sent: Wednesday, January 29, 2014 12:36 PM
To: Patrick Cordero (patrick@creditfirmc.com); Mike Patel (mppatel44@gmail.com)
Subject: Follow-up

Good afternoon,

Thank you for providing the update for the TIRZ Board yesterday afternoon. You will be notified as soon as the Project Review Committee sets a meeting date.

I also wanted to follow-up regarding the February 1, 2014 Proof of Financing deadline. I will be in the office for the rest of the week, with the exception of a meeting at 4:30 p.m. today. You can reach me by telephone, email or text messaging.

Thank you.

Genora

Genora C. Young, PCED
Director, Downtown Development

City of Midland
300 N. Loraine, Suite 510
P. O. Box 1152
Midland, TX 79702

(432) 685-7263 Office
(432) 260-5362 Cell



Genora Young

From: Patrick Cordero <patrick@creditfirminc.com>
Sent: Wednesday, January 29, 2014 2:19 PM
To: Genora Young
Subject: FW: Loan approval
Attachments: Midland, TX_Fuel Hotel Conversion_Patel LOI 1-22-2014(1).pdf

Genora

Here is the Financing Letter.

Patrick



Patrick H. Cordero, Jr.
319 N. Grant, Suite 105
Odessa, Texas 79761

1309 N. Big Spring
Midland, Texas 79701

432.847.4838 direct dial and fax

From: Sagar Kumar [<mailto:sagarmkumar@aol.com>]
Sent: Wednesday, January 29, 2014 1:51 PM
To: Patrick Cordero; Mahendra Patel
Subject: Loan approval

Please send to Genora

Sagar Kumar
323-708-8803

Please excuse spelling errors. Sent from My BlackBerry Q10.



Underwriting / Staff Findings

Lender: Twin Pier Capital, LLC or an affiliated entity
Primary Borrower: Patel, Mahendra (Mike) or an affiliated entity
Guarantor(s): Patel, Mahendra (Mike)
Application Date: 1/20/2014
Subject Prop: 310 West Texas Ave, Midland, Texas, 79701
Property Type: Office Building Conversion to Boutique Hotel
Recommendation: **APPROVED/COMPILE**
Expiration: 1/24/2014
Lien Position: First Trust Deed
Rate: 8.75%
Extensions Options: Two 1 year extension options for 50 BPS each
Term: 36 months with 2x, 1-year extension options (3/1/1)
Origination Fee: 4%
Exit Fee: 1%
Interest Feature: No Prepayment Penalty & Interest Only Payments
Underwriting: Mr. Andrew Yim
Occupancy: Investment Property
Current Underwriting Value: \$15,500,000.00
Future Improved Value: \$25,000,000 (upon stabilization)
Loan Amount: \$8,500,000.00
Loan to Value (LTV): 55% (Loan to As-Is Value)
Loan to Value (ARV): 35% (Loan to Finished Value)
Term (Months): 36 months
Type: Non-Institutional, Private Lender
Proposed Docs: Friday, February 14th, 2014
Proposed Funding Date: Monday, February 17th, 2014

TWIN PIER CAPITAL'S INTENT:

Will extend to the above referenced loan applicant a loan secured by a first deed of trust not to exceed \$1,300,000. The specific and final terms of this loan are subject to review, approval and acceptance of outstanding documents, due diligence and underwriting of exhibits described below:

Notes: There is **NO** three day right of rescission. There will be a cancellation fee of \$2,500 if borrower elects to unilaterally cancel this transaction after the loan documents have been signed. Where applicable, borrower shall be responsible for any fees unpaid due to their unilateral cancellation of the loan after loan documents have been signed. Said fees will be equal to those described in fee disclosures and papers found and acknowledged by the borrower in the official loan papers.

Acknowledging this Letter affirms all conditions and indicates best efforts as to condition submission and loan term agreement. This is an expression of our interest to lend you money and not a commitment to lend you money. The final approval of your loan request will be a written commitment to you subject to the submission of all requested documents, the appraisal and our underwriting analysis.

Required underwriting documents:

- Full 1003 Loan Application
- Statement of Information
- Business License and Permits
- Copy of CUP and entitlements
- Access to bulk download working blueprints
- Market Study / STR Report
- Advise: What will vesting be?
- If vesting is an LLC we need the LLC Entity Formation Documents
 - Operating Agreement
 - Letter of Good Standing
 - Articles of Organization
- Appraisal, if available
- Preliminary Title Report, if available
- Evidence of a current Hazard Insurance policy. Agent's contact info.
- Evidence of Current Liquidity (January Bank Statement)
- Copy of Driver's License and Social Security Card

By: _____

By: _____

It's: _____

It's: _____

Date: _____

Date: _____

Genora Young

From: Genora Young
Sent: Wednesday, January 29, 2014 11:20 PM
To: 'Patrick Cordero'
Subject: RE: Loan approval

Patrick,

I received the document, but there is no signature on it.

From: Patrick Cordero [<mailto:patrick@creditfirminc.com>]
Sent: Wednesday, January 29, 2014 2:19 PM
To: Genora Young
Subject: FW: Loan approval

Genora

Here is the Financing Letter.

Patrick



Patrick H. Cordero, Jr.
319 N. Grant, Suite 105
Odessa, Texas 79761

1309 N. Big Spring
Midland, Texas 79701

432.847.4838 direct dial and fax

From: Sagar Kumar [<mailto:sagarmkumar@aol.com>]
Sent: Wednesday, January 29, 2014 1:51 PM
To: Patrick Cordero; Mahendra Patel
Subject: Loan approval

Please send to Genora

Sagar Kumar
323-708-8803

Please excuse spelling errors. Sent from My BlackBerry Q10.

Genora Young

From: Genora Young
Sent: Friday, January 31, 2014 4:15 PM
To: 'Patrick Cordero'
Cc: Courtney Sharp (csharp@midlandtexas.gov); Mike Patel (mppatel44@gmail.com); Jim Nichols (jnichols@midlandtexas.gov); Pam Simecka
Subject: RE: Loan approval

Patrick,

The document provided, even if signed does not satisfy the City's requirement for proof of financing; however, a Letter of Credit or a signed and executed Loan Agreement will be acceptable.

Thank you.

Genora

Genora C. Young, PCED
Director, Downtown Development

City of Midland
300 N. Loraine, Suite 510
P. O. Box 1152
Midland, TX 79702

(432) 685-7263 Office
(432) 260-5362 Cell



From: Patrick Cordero [<mailto:patrick@creditfirminc.com>]
Sent: Wednesday, January 29, 2014 2:19 PM
To: Genora Young
Subject: FW: Loan approval

Genora

Here is the Financing Letter.

Patrick



Patrick H. Cordero, Jr.
319 N. Grant, Suite 105
Odessa, Texas 79761

1309 N. Big Spring
Midland, Texas 79701

432.847.4838 direct dial and fax

From: Sagar Kumar [<mailto:sagarmkumar@aol.com>]
Sent: Wednesday, January 29, 2014 1:51 PM
To: Patrick Cordero; Mahendra Patel
Subject: Loan approval

Please send to Genora

Sagar Kumar
323-708-8803

Please excuse spelling errors. Sent from My BlackBerry Q10.

Genora Young

From: Genora Young
Sent: Monday, February 03, 2014 1:19 PM
To: Patrick Cordero (patrick@creditfirm.com); Mike Patel (mppatel44@gmail.com)
Cc: Courtney Sharp (csharp@midlandtexas.gov); Jim Nichols (jnichols@midlandtexas.gov); Pam Simecka
Subject: FW: Loan approval

Importance: High

Tracking:

Recipient

Read

Patrick Cordero (patrick@creditfirm.com)

Mike Patel (mppatel44@gmail.com)

Courtney Sharp (csharp@midlandtexas.gov)

Read: 2/3/2014 1:19 PM

Jim Nichols (jnichols@midlandtexas.gov)

Read: 2/3/2014 1:40 PM

Pam Simecka

Read: 2/3/2014 1:19 PM

Patrick,

Per the email below and our telephone conversation on Friday, close of business today is the deadline for Proof of Financing for the Hotel Fuel Contract because February 1, 2014 was a Saturday. Acceptable documentation is a Letter of Credit or an executed copy of a Loan Agreement. I will be in the office all day today.

Thank you.

Genora

Genora C. Young, PCED
Director, Downtown Development

City of Midland
300 N. Loraine, Suite 510
P. O. Box 1152
Midland, TX 79702

(432) 685-7263 Office
(432) 260-5362 Cell



Genora Young

From: Patrick Cordero <patrick@creditfirminc.com>
Sent: Monday, February 03, 2014 4:43 PM
To: Genora Young
Subject: RE: Loan approval
Attachments: Midland TX_FUEL HOTEL_PATEL_LOI Revised Loan Amount.pdf

Genora

Here is the signed agreement for financing.

Patrick



Patrick H. Cordero, Jr.
319 N. Grant, Suite 105
Odessa, Texas 79761

1309 N. Big Spring
Midland, Texas 79701

432.847.4838 direct dial and fax

From: Genora Young [<mailto:gyoung@midlandtexas.gov>]
Sent: Friday, January 31, 2014 4:15 PM
To: Patrick Cordero
Cc: Courtney Sharp; Mike Patel (mppatel44@gmail.com); Jim Nichols; Pam Simecka
Subject: RE: Loan approval

Patrick,

The document provided, even if signed does not satisfy the City's requirement for proof of financing; however, a Letter of Credit or a signed and executed Loan Agreement will be acceptable.

Thank you.

Genora

Genora C. Young, PCED
Director, Downtown Development

City of Midland
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Sent: Wednesday, January 29, 2014 2:19 PM

To: Genora Young

Subject: FW: Loan approval

Genora

Here is the Financing Letter.

Patrick



Patrick H. Cordero, Jr.
319 N. Grant, Suite 105
Odessa, Texas 79761

1309 N. Big Spring
Midland, Texas 79701

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Sent: Wednesday, January 29, 2014 1:51 PM

To: Patrick Cordero; Mahendra Patel

Subject: Loan approval

Please send to Genora

Sagar Kumar
323-708-8803

Please excuse spelling errors. Sent from My BlackBerry Q10.



Underwriting / Staff Findings

Lender: Twin Pier Capital, LLC or an affiliated entity
Primary Borrower: Patel, Mahendra, BANKHEAD LLC or an affiliated entity
Guarantor(s): Patel, Mahendra
Application Date: 1/20/2014
Subject Prop: 310 West Texas Ave, Midland, Texas, 79701
Property Type: Office Building Conversion to Boutique Hotel
Recommendation: APPROVED/COMPILE
Expiration: 2/10/2014
Lien Position: First Trust Deed
Rate: 8.99%
Extensions Options: Two 1-year extension options for 50 BPS each
Term: 36 months with 2x, 1-year extension options (3/1/1)
Origination Fee: 4%
Exit Fee: 1%
Interest Feature: No Prepayment Penalty & Interest Only Payments
Underwriting: Mr. Yim
Occupancy: Non Owner User, Investment Property
Current Underwriting Value: \$15,500,000.00
Future Improved Value: \$25,500,000.00 (upon stabilization)
Loan Amount: \$10,000,000.00
Loan to Value (LTV): 65% max (Loan to As-Is Value)
Loan to Value (ARV): 40% (Loan to Finished Value)
Term (Months): 36 months
Type: Non-Institutional, Private Lender
Proposed Docs: Thursday, February 27th, 2014
Proposed Funding Date: Friday, February 28th, 2014

TWIN PIER CAPITAL'S INTENT:

Will extend to the above referenced loan applicant a loan secured by a first deed of trust not to exceed \$10,000,000 or 65% of the as-is value. The specific and final terms of this loan are subject to review, approval and acceptance of outstanding documents, due diligence and underwriting of exhibits described below:

Notes: There is **NO** three day right of rescission. There will be a cancellation fee of \$2,500 if borrower elects to unilaterally cancel this transaction after the loan documents have been signed. Where applicable, borrower shall be responsible for any fees unpaid due to their unilateral cancellation of the loan after loan documents have been signed. Said fees will be equal to those described in fee disclosures and papers found and acknowledged by the borrower in the official loan papers.

Acknowledging this Letter affirms all conditions and indicates best efforts as to condition submission and loan term agreement. This is an expression of our interest to lend you money and not a commitment to lend you money. The final approval of your loan request will be a written commitment to you subject to the submission of all requested documents, the appraisal and our underwriting analysis.

Required underwriting documents:

- Full 1003 Loan Application
- Statement of Information
- Business License and Permits
- Copy of CUP and entitlements
- Access to bulk download working blueprints
- Market Study / STR Report
- Advise: What will vesting be?
- If vesting is an LLC we need the LLC Entity Formation Documents
 - Operating Agreement
 - Letter of Good Standing
 - Articles of Organization
- Appraisal, if available
- Preliminary Title Report, if available
- Evidence of a current Hazard Insurance policy. Agent's contact info.
- Evidence of Current Liquidity (January Bank Statement)
- Copy of Driver's License and Social Security Card

By: _____
It's: _____

Date: _____

By: Andrew Yim
It's: Managing Partner
[Signature]
Date: 2-1-14



Underwriting / Staff Findings

Lender: Twin Pier Capital, LLC or an affiliated entity
Primary Borrower: Patel, Mahendra (Mike) or an affiliated entity
Guarantor(s): Patel, Mahendra (Mike)
Application Date: 1/20/2014
Subject Prop: 310 West Texas Ave, Midland, Texas, 79701
Property Type: Office Building Conversion to Boutique Hotel
Recommendation: APPROVED/COMPILE
Expiration: 1/24/2014
Lien Position: First Trust Deed
Rate: 8.75%
Extensions Options: Two 1 year extension options for 50 BPS each
Term: 36 months with 2x, 1-year extension options (3/1/1)
Origination Fee: 4%
Exit Fee: 1%
Interest Feature: No Prepayment Penalty & Interest Only Payments
Underwriting: Mr. Andrew Yim
Occupancy: Investment Property
Current Underwriting Value: \$15,500,000.00
Future Improved Value: \$25,000,000 (upon stabilization)
Loan Amount: \$8,500,000.00
Loan to Value (LTV): 55% (Loan to As-Is Value)
Loan to Value (ARV): 35% (Loan to Finished Value)
Term (Months): 36 months
Type: Non-Institutional, Private Lender
Proposed Docs: Friday, February 14th, 2014
Proposed Funding Date: Monday, February 17th, 2014

TWIN PIER CAPITAL'S INTENT:

Will extend to the above referenced loan applicant a loan secured by a first deed of trust not to exceed \$1,300,000. The specific and final terms of this loan are subject to review, approval and acceptance of outstanding documents, due diligence and underwriting of exhibits described below:

Notes: There is NO three day right of rescission. There will be a cancellation fee of \$2,500 if borrower elects to unilaterally cancel this transaction after the loan documents have been signed. Where applicable, borrower shall be responsible for any fees unpaid due to their unilateral cancellation of the loan after loan documents have been signed. Said fees will be equal to those described in fee disclosures and papers found and acknowledged by the borrower in the official loan papers.

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 - Operating Agreement
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 - Articles of Organization
- Appraisal, if available
- Preliminary Title Report, if available
- Evidence of a current Hazard Insurance policy. Agent's contact info.
- Evidence of Current Liquidity (January Bank Statement)
- Copy of Driver's License and Social Security Card

By: _____

It's: _____

Date: _____

By: ANDREW YIM

It's: MANAGING PARTNER

Date: 2-1-14

Genora Young

From: Patrick Cordero <patrick@creditfirminc.com>
Sent: Monday, February 03, 2014 5:10 PM
To: Genora Young
Subject: RE: Loan approval
Attachments: Midland TX_FUEL HOTEL_PATEL_LOI Revised Loan Amount2pdf.pdf; Midland TX_FUEL HOTEL_PATEL_LOI Revised Loan Amount.pdf

Genora

Here is the loan agreement again.

Patrick



Patrick H. Cordero, Jr.
319 N. Grant, Suite 105
Odessa, Texas 79761

1309 N. Big Spring
Midland, Texas 79701

432.847.4838 direct dial and fax

From: Genora Young [<mailto:gyoung@midlandtexas.gov>]
Sent: Monday, February 03, 2014 1:19 PM
To: Patrick Cordero (patrick@creditfirminc.com); Mike Patel (mppatel44@gmail.com)
Cc: Courtney Sharp; Jim Nichols; Pam Simecka
Subject: FW: Loan approval
Importance: High

Patrick,

Per the email below and our telephone conversation on Friday, close of business today is the deadline for Proof of Financing for the Hotel Fuel Contract because February 1, 2014 was a Saturday. Acceptable documentation is a Letter of Credit or an executed copy of a Loan Agreement. I will be in the office all day today.

Thank you.

Genora

Genora C. Young, PCED
Director, Downtown Development

City of Midland

300 N. Loraine, Suite 510
P. O. Box 1152
Midland, TX 79702

(432) 685-7263 Office
(432) 260-5362 Cell



From: Genora Young
Sent: Friday, January 31, 2014 4:15 PM
To: 'Patrick Cordero'
Cc: Courtney Sharp (csharp@midlandtexas.gov); Mike Patel (mppatel44@gmail.com); Jim Nichols (jnichols@midlandtexas.gov); Pam Simecka
Subject: RE: Loan approval

Patrick,

The document provided, even if signed does not satisfy the City's requirement for proof of financing; however, a Letter of Credit or a signed and executed Loan Agreement will be acceptable.

Thank you.

Genora

Genora C. Young, PCED
Director, Downtown Development

City of Midland
300 N. Loraine, Suite 510
P. O. Box 1152
Midland, TX 79702

(432) 685-7263 Office
(432) 260-5362 Cell



From: Patrick Cordero [<mailto:patrick@creditfirminc.com>]
Sent: Wednesday, January 29, 2014 2:19 PM
To: Genora Young
Subject: FW: Loan approval

Genora

Here is the Financing Letter.

Patrick



Patrick H. Cordero, Jr.
319 N. Grant, Suite 105
Odessa, Texas 79761

1309 N. Big Spring
Midland, Texas 79701

432.847.4838 direct dial and fax

From: Sagar Kumar [<mailto:sagarmkumar@aol.com>]
Sent: Wednesday, January 29, 2014 1:51 PM
To: Patrick Cordero; Mahendra Patel
Subject: Loan approval

Please send to Genora

Sagar Kumar
323-708-8803

Please excuse spelling errors. Sent from My BlackBerry Q10.



Underwriting / Staff Findings

Lender: Twin Pier Capital, LLC or an affiliated entity
 Primary Borrower: Patel, Mahendra, BANGHEAD LLC or an affiliated entity
 Guarantor(s): Patel, Mahendra
 Application Date: 1/20/2014
 Subject Prop: 310 West Texas Ave, Midland, Texas, 79701
 Property Type: Office Building Conversion to Boutique Hotel
 Recommendation: APPROVED/COMPLETE
 Expiration: 2/10/2014
 Lien Position: First Trust Deed
 Rate: 8.99%
 Extensions Options: Two 1-year extension options for 50 BPS each
 Term: 36 months with 2x, 1-year extension options (3/2/1)
 Origination Fee: 4%
 Exit Fee: 2%
 Interest Feature: No Prepayment Penalty & Interest Only Payments
 Underwriting: Mr. Yim
 Occupancy: Non Owner User, Investment Property
 Current Underwriting Value: \$15,500,000.00
 Future Improved Value: \$25,500,000.00 (upon stabilization)
 Loan Amount: \$10,000,000.00
 Loan to Value (LTV): 65% max (Loan to As-is Value)
 Loan to Value (ARV): 40% (Loan to Finished Value)
 Term (Months): 36 months
 Type: Non-Institutional, Private Lender
 Proposed Docs: Thursday, February 27th, 2014
 Proposed Funding Date: Friday, February 28th, 2014

TWIN PIER CAPITAL'S INTENT:

Will extend to the above referenced loan applicant a loan secured by a first deed of trust not to exceed \$10,000,000 or 65% of the as-is value. The specific and final terms of this loan are subject to review, approval and acceptance of outstanding documents, due diligence and underwriting of exhibits described below:

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Required underwriting documents:

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- Statement of Information
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- Market Study / STR Report
- Advise: What will vesting be?
- If vesting is an LLC we need the LLC Entity Formation Documents
 - o Operating Agreement
 - o Letter of Good Standing
 - o Articles of Organization
- Appraisal, if available
- Preliminary Title Report, if available
- Evidence of a current Hazard Insurance policy. Agent's contact info.
- Evidence of Current Liquidity (January Bank Statement)
- Copy of Driver's License and Social Security Card

By: ABAR KUNAR
 is: Managing Member

Date: 2-3-14

By: Andrew Yim
 is: Managing Partner

Date: 2-1-14



Underwriting / Staff Findings

Lender: Twin Pier Capital, LLC or an affiliated entity
Primary Borrower: Patel, Mahendra, BANKHEAD LLC or an affiliated entity
Guarantor(s): Patel, Mahendra
Application Date: 1/20/2014
Subject Prop: 310 West Texas Ave, Midland, Texas, 79701
Property Type: Office Building Conversion to Boutique Hotel
Recommendation: APPROVED/COMPILE
Expiration: 2/10/2014
Lien Position: First Trust Deed
Rate: 8.99%
Extensions Options: Two 1-year extension options for 50 BPS each
Term: 36 months with 2x, 1-year extension options (3/1/1)
Origination Fee: 4%
Exit Fee: 1%
Interest Feature: No Prepayment Penalty & Interest Only Payments
Underwriting: Mr. Yim
Occupancy: Non Owner User, Investment Property
Current Underwriting Value: \$15,500,000.00
Future Improved Value: \$25,500,000.00 (upon stabilization)
Loan Amount: \$10,000,000.00
Loan to Value (LTV): 65% max (Loan to As-Is Value)
Loan to Value (ARV): 40% (Loan to Finished Value)
Term (Months): 36 months
Type: Non-Institutional, Private Lender
Proposed Docs: Thursday, February 27th, 2014
Proposed Funding Date: Friday, February 28th, 2014

TWIN PIER CAPITAL'S INTENT:

Will extend to the above referenced loan applicant a loan secured by a first deed of trust not to exceed \$10,000,000 or 65% of the as-is value. The specific and final terms of this loan are subject to review, approval and acceptance of outstanding documents, due diligence and underwriting of exhibits described below:

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Required underwriting documents:

- Full 1003 Loan Application
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- Business License and Permits
- Copy of CUP and entitlements
- Access to bulk download working blueprints
- Market Study / STR Report
- Advise: What will vesting be?
- If vesting is an LLC we need the LLC Entity Formation Documents
 - Operating Agreement
 - Letter of Good Standing
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- Appraisal, if available
- Preliminary Title Report, if available
- Evidence of a current Hazard Insurance policy. Agent's contact info.
- Evidence of Current Liquidity (January Bank Statement)
- Copy of Driver's License and Social Security Card

By: _____

It's: _____

Date: _____

By: Andrew Yim
It's: Managing Partner
Date: 2-1-14



Underwriting / Staff Findings

Lender: Twin Pier Capital, LLC or an affiliated entity
Primary Borrower: Patel, Mahendra (Mike) or an affiliated entity
Guarantor(s): Patel, Mahendra (Mike)
Application Date: 1/20/2014
Subject Prop: 310 West Texas Ave, Midland, Texas, 79701
Property Type: Office Building Conversion to Boutique Hotel
Recommendation: APPROVED/COMPILE
Expiration: 1/24/2014
Lien Position: First Trust Deed
Rate: 8.75%
Extensions Options: Two 1 year extension options for 50 BPS each
Term: 36 months with 2x, 1-year extension options (3/1/1)
Origination Fee: 4%
Exit Fee: 1%
Interest Feature: No Prepayment Penalty & Interest Only Payments
Underwriting: Mr. Andrew Yim
Occupancy: Investment Property
Current Underwriting Value: \$15,500,000.00
Future Improved Value: \$25,000,000 (upon stabilization)
Loan Amount: \$8,500,000.00
Loan to Value (LTV): 55% (Loan to As-Is Value)
Loan to Value (ARV): 35% (Loan to Finished Value)
Term (Months): 36 months
Type: Non-Institutional, Private Lender
Proposed Docs: Friday, February 14th, 2014
Proposed Funding Date: Monday, February 17th, 2014

TWIN PIER CAPITAL'S INTENT:

Will extend to the above referenced loan applicant a loan secured by a first deed of trust not to exceed \$1,300,000. The specific and final terms of this loan are subject to review, approval and acceptance of outstanding documents, due diligence and underwriting of exhibits described below:

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- Statement of Information
- Business License and Permits
- Copy of CUP and entitlements
- Access to bulk download working blueprints
- Market Study / STR Report
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 - Letter of Good Standing
 - Articles of Organization
- Appraisal, if available
- Preliminary Title Report, if available
- Evidence of a current Hazard Insurance policy. Agent's contact info.
- Evidence of Current Liquidity (January Bank Statement)
- Copy of Driver's License and Social Security Card

By: _____

It's: _____

Date: _____

By: ANDREW YIM

It's: MANAGING PARTNER

Date: 2-1-14



Underwriting / Staff Findings

Lender: Twin Pier Capital, LLC or an affiliated entity
Primary Borrower: Patel, Mahendra (Mike) or an affiliated entity
Guarantor(s): Patel, Mahendra (Mike)
Application Date: 1/20/2014
Subject Prop: 310 West Texas Ave, Midland, Texas, 79701
Property Type: Office Building Conversion to Boutique Hotel
Recommendation: APPROVED/COMPLETE
Expiration: 1/24/2014
Lien Position: First Trust Deed
Rate: 8.75%
Extensions Options: Two 1 year extension options for 50 BPS each
Term: 36 months with 2x, 1-year extension options (3/1/1)
Origination Fee: 4%
Exit Fee: 1%
Interest Feature: No Prepayment Penalty & Interest Only Payments
Underwriting: Mr. Andrew Yim
Occupancy: Investment Property
Current Underwriting Value: \$13,500,000.00
Future Improved Value: \$25,000,000 (upon stabilization)
Loan Amount: ~~\$8,500,000.00~~ \$9,700,000.
Loan to Value (LTV): 55% (Loan to As-Is Value)
Loan to Value (ARV): 35% (Loan to Finished Value)
Term (Months): 36 months
Type: Non-Institutional, Private Lender
Proposed Docs: Friday, February 24th, 2014
Proposed Funding Date: Monday, February 17th, 2014

TWIN PIER CAPITAL'S INTENT:

Will extend to the above referenced loan applicant a loan secured by a first deed of trust not to exceed \$13,500,000. The specific and final terms of this loan are subject to review, approval and acceptance of outstanding documents, due diligence and underwriting of exhibits described below:

Notes: There is NO three day right of rescission. There will be a cancellation fee of \$2,500 if borrower elects to unilaterally cancel this transaction after the loan documents have been signed. Where applicable, borrower shall be responsible for any fees unpaid due to their unilateral cancellation of the loan after loan documents have been signed. Said fees will be equal to those described in fee disclosures and papers found and acknowledged by the borrower in the official loan papers.

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Required underwriting documents:

- Full 2009 Loan Application
- Statement of Information
- Business License and Permits
- Copy of CUP and entitlements
- Access to bulk download working blueprints
- Market Study / STR Report
- Advise: What will vesting be?
- If vesting is an LLC we need the LLC Entity Formation Documents
 - o Operating Agreement
 - o Letter of Good Standing
 - o Articles of Organization
- Appraisal, if available
- Preliminary TIBS Report, if available
- Evidence of a current Hazard Insurance policy. Agent's contact info.
- Evidence of Current Liquidity (January Bank Statement)
- Copy of Driver's License and Social Security Card

By: Sagar Kumar
It's: managing member

Date: 1-23-14

By: Andrew Yim
It's: Managing Partner
Date: 2/11/14

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: February 7, 2014

To: The Honorable Mayor Morales 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 February 11, 2014. Remaining expirations and vacancies are listed below:

ANIMAL SERVICES ADVISORY COMMISSION – Two terms expired on September 30, 2013.

BUILDING CODES REVIEW COMMITTEE – Nine terms expiring on December 31, 2013.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – Two vacancies for Alternate terms expired on September 30, 2007 and two terms expired on September 30, 2013.

HOUSING AUTHORITY COMMISSION – Two terms expired in October, 2013.

MIDLAND CENTER ADVISORY BOARD – One term expired on September 30, 2013.

MIDLAND DEVELOPMENT CORPORATION – One term expired on January 14, 2014

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011 and five terms expired on November 30, 2013.

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, 2014.

MIDLAND HOUSING FINANCE CORPORATION – One vacancy expired on September 30, 2010, two terms expired on September 30, 2011 and two terms expired on September 30, 2012.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD – Two terms expired on September 30, 2012 and three terms expired on September 30, 2013.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico), one term expired on September 30, 2012 (Fort Stockton), and one term expired on September 30, 2013 (Kermit).

PLANNING AND ZONING COMMISSION- One vacancy term will expire on September 30, 2015.

TAX INCREMENT REINVESTMENT ZONE BOARD –Two terms expired on March 20, 2010 and one vacancy for County term will expire on March 20, 2014. (Four City representatives, two Hospital representatives and two County representatives.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- Two terms expiring on September 13, 2013, one vacancy for Alternate term expired on September 30, 2006, one vacancy for Alternate term expired September 30, 2009.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

February 11, 2014

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>
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
Taylor Spalla	01/28*	Sept 30 2014	Sept 30 2020
John Trischitti III	09/13*	Sept 30 2014	Sept 30 2020
Jerry Walton	11/09	Sept 30 2015	Sept 30 2015
Kelly "Bo" Cockerell	09/13*	Sept 30 2015	Sept 30 2018
Nellwyn Barnett	09/13*	Sept 30 2015	Sept 30 2021
Gregory F. Baiano	09/10	Sept 30 2016	Sept 30 2016
John T. Echols	09/10	Sept 30 2016	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2016	Sept 30 2016
Vicki L. Hurt	09/13	Sept 30 2016	Sept 30 2019

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
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2017	Sept 30 2017
Molly S. Clark	11/13	Sept 30 2017	Sept 30 2021
Laura Clodfelter	11/13	Sept 30 2017	Sept 30 2021
Robert "Robin" Donnelly	11/13	Sept 30 2017	Sept 30 2021

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Nellwyn Barnett	09/13*	Sept 30 2014	Sept 30 2018
Avery I. Pullin	02/13*	Sept 30 2015	Sept 30 2017
Reggie Lawrence	09/10*	Sept 30 2014	Sept 30 2014
Tim Bryson	11/11	Sept 30 2015	Sept 30 2015
Thomas Johnston	11/13	Sept 30 2015	Sept 30 2017

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>	<u>Position</u>
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013	1
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021	4
Don Woodward (At Large)	11/11*	Sept 30 2016	Sept 30 2020	5
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018	3
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018	2

ALTERNATES:

Vacancy	Sept 30 2007	Any
Vacancy	Sept 30 2007	Any

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Annabell Ramirez	09/12	Sept 30 2014	Sept 30 2016
Brian Smith	09/12	Sept 30 2014	Sept 30 2016
Jan Artley	09/13	Sept 30 2015	Sept 30 2017
Ellen K. Ramsey	09/13	Sept 30 2015	Sept 30 2015
Karmen Hendrix Bryant	02/12*	Sept 30 2015	Sept 30 2017
Garrett Merket	11/13	Sept 30 2015	Sept 30 2017
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
Dennis Bade	09/12	Oct 2014	Oct 2016
Norma Duran	11/08*	Oct 2014	Oct 2014
James A. Blischke	01/10	Oct 2015	Oct 2015

ALTERNATES:

Edward Mayberry	11/13	Oct 2016	Oct 2019
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JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	11/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Vicky Hailey	(CC)	01/13*	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2016	Sept 30 2016
Brent Blackburn	(City)	09/09*	Sept 30 2016	Sept 30 2016

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>
Wes Perry	11/13	Dec 31 2015

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Robert Rendall	01/09*	Jan 14 2014	Jan 14 2017
Michael Trost	02/11*	Jan 14 2016	Jan 14 2019
Cary J. Love	12/09	Jan 14 2016	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2016	Jan 14 2019
Brent Hillaird	01/14	Jan 14 2017	Jan 14 2020

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

Appt Date

Wes Perry
Gary Harris
Wayne Merritt

05/12
05/12
05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014

* Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date

Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015
Rebecca Bell	09/12	Sept 30 2014	Sept 30 2016

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Russell Richards (Petroleum Eng.)	09/12	Sept 30 2015	Sept 30 2018
Perry Dan Taylor (Real Estate)	09/12	Sept 30 2015	Sept 30 2018
Paul Brown (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017
David Rosen (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017
Lance Friday (Real Estate)	09/12*	Sept 30 2016	Sept 30 2019

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>
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014
Katey Howard	09/12*	Sept 30 2014	Sept 30 2020
Amanda McCann	11/11*	Sept 30 2015	Sept 30 2018
Edward Mayberry	09/12	Sept 30 2015	Sept 30 2018
Cynthia Savage	09/13	Sept 30 2016	Sept 30 2019
Bart Hotchkiss	09/13	Sept 30 2016	Sept 30 2019
Ty Sisco	11/13	Sept 30 2016	Sept 30 2019
Charles A. Spence	01/10*	Sept 30 2016	Sept 30 2016

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
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Frankie Rolfe (Kermit)	09/12	Sept 30 2013

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Larry Gill (Abilene)	10/10	Sept 30 2014
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2014
Jim Little (Big Spring)	09/03	Sept 30 2014
Don Bethel (Lamesa)	02/91	Sept 30 2014
Henry Cutbirth (Monahans)	09/05	Sept 30 2014
Willie Taylor (Odessa)	02/00	Sept 30 2014
Gloria Pena (Odessa)	03/03*	Sept 30 2014
Barbara Graff (Odessa)	06/10*	Sept 30 2014
Isabelle Blanchard (Pecos)	10/10	Sept 30 2014
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2014
Lex Hinds (Seminole)	10/08	Sept 30 2014
John Rogotzke (Snyder)	01/12	Sept 30 2014
Glenn Wortham (Sweetwater)	10/07	Sept 30 2014
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2014
Larry Fry (Roswell, NM)	09/00	Sept 30 2014

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)

(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2014	June 2014
Larry Edgerton	07/10*	June 2015	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)

(Membership - 3; No designated terms. Mayor appoints.)

	<u>Appt. Date</u>
Scott Dufford	01/14
Hugh A. "Andy" Shaffer	09/05
John B. Love III	01/14

PLANNING AND ZONING COMMISSION(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy-Becky Ferguson	01/14*	Sept 30 2015	Sept 30 2018
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Warren Ivey	10/12*	Sept 30 2014	Sept 30 2020
Kevin Wilton	09/08*	Sept 30 2015	Sept 30 2017
Karen York	10/10*	Sept 30 2015	Sept 30 2021
Brad Bullock	07/13*	Sept 30 2015	Sept 30 2021
Jane Wolf	03/09*	Sept 30 2016	Sept 30 2016
Chase Gardaphe	01/14*	Sept 30 2016	Sept 30 2022
Joshua Sparks	01/14*	Sept 30 2014	Sept 30 2020
<u>ALTERNATES:</u>			
Arthur B. Hobbs	09/13	Sept 30 2015	Sept 30 2017
Reggie Lawrence	09/13	Sept 30 2015	Sept 30 2017

SPACEPORT DEVELOPMENT CORPORATION

(Membership – 7, Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Expires</u>
Robert Donnelly (County)	01/14	Jun 1 2015	Jun 1 2017
John T. Echols (County)	01/14	Jun 1 2015	Jun 1 2017
John B. Love III (City)	01/14	Jun 1 2015	Jun 1 2017
Jerry Morales (City)	01/14	Jun 1 2015	Jun 1 2017
Harry Spannaus (County)	01/14	Jun 1 2015	Jun 1 2017
W. Jeffrey Sparks (City)	01/14	Jun 1 2015	Jun 1 2017
Michael B. Trost (City)	01/14	Jun 1 2015	Jun 1 2017
Marv Esterly (Liaison)	01/14	Jun 1 2015	Jun 1 2017

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)

* Indicates appointment to an unexpired term.

(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>
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
Vacant-Michael Blonkvist (City)	09/12*	Mar 20 2014	Mar 20 2020
Pete Hulder (Hospital)	03/10	Mar 20 2016	Mar 20 2016
John L. Kennedy (City)	10/09*	Mar 20 2015	Mar 20 2018
Link Grimes (City)	12/12*	Mar 20 2015	Mar 20 2021
Charlene McBride (College)	12/12	Mar 20 2016	Mar 20 2019
Steve Castle (College)	04/13*	Mar 20 2015	Mar 20 2021
Russell Meyer (Hospital)	12/12	Mar 20 2016	Mar 20 2019
Brad Barnett	11/13*	Mar 20 2015	Mar 20 2020
Ken Burgess (City)	10/12*	Mar 20 2016	Mar 20 2019
John James (City)	11/13*	Mar 20 2015	Mar 20 2021

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>
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015
Scott Young	09/12*	Sept 30 2013	Sept 30 2017
Todd Byars	02/08*	Sept 30 2014	Sept 30 2014
Annabel Holguin	11/13	Sept 30 2015	Sept 30 2017
Greg Turner	11/13	Sept 30 2014	Sept 30 2018

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Lewis Hassler	11/13	Sept 30 2015	Sept 30 2018
John Ory	11/13	Sept 30 2015	Sept 30 2018

ANIMAL SERVICES ADVISORY COMMISSION
(Advisory)
Membership - 6; Terms - 4 Years)

SPECIAL COMPOSITION REQUIREMENTS: 1 Licensed Veterinarian, 1 County or Municipal Official, 1 Employee of an Animal Welfare Org., 1 Animal Shelter Employee, 2 Citizens

MEMBER	TERM EXPIRE SEPT. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 2)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Dr. Tom Green (Veterinarian)	Yes	50%	1	Yes		
Paul O'Neill	Yes	100%	2	Yes	685-7422	
Molly S. Clark	No	0%	0	Yes		
Laura Clodfelter	No	0%	0	Yes		
Robert "Robin" Donnelly	No					
Kelly Spencer	No					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

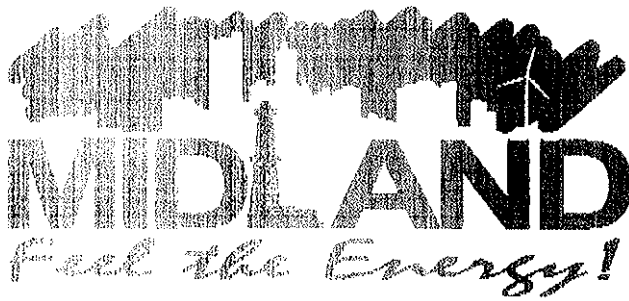
BUILDING CODES REVIEW COMMITTEE
(Membership – 9; Terms – 2 Years)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE DEC. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
James Rigger	Yes			No		NOT MEETINGS
Chris Repman	Yes			No		
John Cooper	Yes			No		
Bill Routh	Yes			No		
Tom Woodruff	Yes			No		
Ron Ainsworth	Yes			No		
Walter Pate	Yes			No		
Robert Harrington	Yes			No		
Jerry Morales	Yes			No		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Lewis Hassler	Only this board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Lewis Hassler
Address: 2304 Loop40
City: _____ State: Texas Zip: 79706
(City) (State) (Zip)

Date: 8/13/2013
Phone: 432-254-1311 (Home)
432-617-6544 (Business)
Email: lewis.hassler@stateenergy.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 3 years.

Are you a graduate of Midland High? ☐ Yes ☒ No

Occupation: Operations Supervisor Alamos Energy

Professional and/or Community Activities:

Leadership Midland, have participated in supporting local non profit groups as well as leadership Odeasa

What is your personal vision for the City?

To see Midland continue to grow, prosper and provide a safe living environment for all citizens.

Please specify any time constraints you may have.

NONE

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov/)

(1) Name of Board/Commission:

Building Codes Review

Zoning Board committee

Parks and Recreation

Please tell us why you are interested in serving on this board or commission.

I want to serve my community and learn more about the Permian Basin region,

What contribution would you most like to make?

Just to make a difference and give back to community.

Additional pertinent information or references:

Stephanie Merila Midland Chamber

Paul Reynolds Atmos Energy

Cody Childers Nabors Energy co

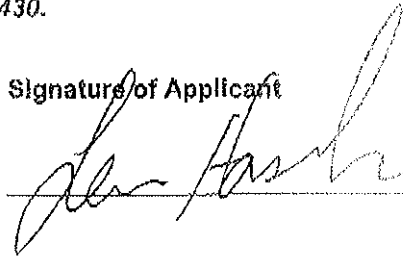
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax.

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS
(Decision Making)
Membership - 7; Terms - 4 Years expiring 2-2-2-1)

SPECIAL COMPOSITION REQUIREMENTS: 1 Plumbing/Mechanical Industry, 1 Electrical Contracting, 1 Architect, 1 Engineer/Superintendent of Construction, 3 Any Categories, 2 Alternate members from any category. RESIDENT OF CITY.

MEMBER	TERM EXPIRE SEPT. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 0)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Richard D. Dunham	Yes			No		NO MEETINGS
Greg Turner	Yes			Yes		
Chris Repman	No 09/14					
Jay K. Bradford	No 09/14					
Don Woodward (At-Large)	No 09/16					
<u>ALTERNATES:</u>						
Vacancy						
Vacancy						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

HOUSING AUTHORITY COMMISSION
(Membership - 5; Terms - 2 Years expiring 2 even & 3 odds)

SPECIAL COMPOSITION REQUIREMENTS: No member may be an officer or employee of the City of Midland

MEMBER	TERM EXPIRE OCT 2013?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 9)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Carla Repman	Yes	89%	8	No		
Gregory Maes	Yes	50%	4	Yes		
James A. Blishke	Yes	89%	8	Yes		8/22/13 *Mr. Blishke called and want to serve again
Dennis Bade	No 09/14	67%	6			
Norma Duran	No 09/15	50%	4			
<u>ALTERNATE:</u>						
Edward Mayberry						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Paul Culver	One other board	
Hazel Lamar	Only this board	

2013-021



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Paul Culver
Address: 4603 Pleasant Dr
Midland TX 79703
(City) (State) (Zip)

Date: 8/22/2013
Phone: 432 697-2881 (Home)
432 934-1021 (Business)
Email: paul.culver@yahoo.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁴ years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Realtor

Professional and/or Community Activities:

I have been involved in real estate and mortgage lending for the past twenty five years. Three of those years I worked for the Texas Department of Housing and Community Affairs and have overseen many city projects aiding the low-income and elderly with regards to housing.

What is your personal vision for the City?

I would love to see Midland continue to grow but with housing opportunities for young new professionals as well as low-income and elderly citizens. I have been in Midland for four years but grew up here and think its a great city.

Please specify any time constraints you may have.

None that would interfere with board duties.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Housing Authority Commission

Please tell us why you are interested in serving on this board or commission.

I have experience with the inner working of housing authorities and would love to provide input.

What contribution would you most like to make?

To use my experience in anyway possible to promote housing.

Additional pertinent information or references:

Worked in HUD's HOME program in planning and grant administration.

(2) Name of Board/Commission:

Midland Housing Finance Commission

What contribution would you most like to make?

Again, to use my experience working with cities and their housing authorities to promote housing.

Additional pertinent information or references:

Experience with TDHCA HOME Program.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Digitally signed by Paul Culver

DN: cn=Paul Culver, o, ou, email=paul.culver@yahoo.com, c=US

Date: 2013.08.22 18:46:19 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)



**APPLICATION FOR CITY OF MIDLAND
BOARDS/COMMISSIONS/COMMITTEES**

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: HAZEL LAMAR

Address: 700 W. Scharbauer Drive #218
MIDLAND, TX 79705

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 15 years.

Professional and/or Community Activities:

Date: 8-14-2013

Phone: 432-222-1189 (Home)

(Business)

Email: _____

Are you a graduate of Midland High? ☐ yes ☒ no

Occupation: Dis able

What is your personal vision for the City?

To make things better. To find ways
to make things better

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

The Housing Authority of the city of
Midland

Please tell us why you are interested in serving on this board or commission.

I am a resident within the Housing
Authority and it's required.

I would like to do what ever I can to make it better

What contribution would you most like to make?

I would like to do what ever I can to make it better

Additional pertinent information or references:

(2) Name of Board/Commission:

The Housing Authority of the City of Midland

What contribution would you most like to make?

Listen to Ideas and come up with the better best one.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Hazel L. Mason

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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

MIDLAND CENTER ADVISORY BOARD
 (Advisory & Decision Making)
 Membership - 7; Terms - 3 Years expiring 3-2-2)
 Ex-Officio members: City Manager & Exec. Director of Chamber of Commerce

SPECIAL COMPOSITION REQUIREMENTS: Resident citizen, taxpayer & qualified voter of City.

MEMBER	TERM EXPIRE SEPT. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 3)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Charles Spence (CC)	Yes	33%	1	Yes		
Brent Blackburn	Yes	67%	2	Yes		
Lorri Lyon West (City)	Yes	33%	1	Yes		
Tracy Bacon (CC)	No 09/14	67%	2			
Vickey Hailey (CC)	No 09/14	67%	2			
Patricia Blackwell (City)	No 09/14	100%	3			
Paula Mitchell (City)	No 09/14	100%	3			
Jerry Morales (Liaison Officer)						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Monty D. Biggs	One other board	
Delma Eckert	One other board	
Heather Massey	One other board	
Rachel Stone	One other board	
Melissa Wicker	Only this board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Monty D Biggs

Address: 7 Bentley Ct

Midland TX 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 7 years.

Professional and/or Community Activities:

Member of PBLA, AAPL, State Bar of Texas. Volunteer with local Cub Scout Pack, Indian Princess.

Date: 10/22/2013

Phone: 432-599-0881 (Home)

432-686-1828 (Business)

Email: mbiggs@callon.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Landman/Attorney

What is your personal vision for the City?

To ensure the citizens of Midland continue to have a safe and pleasant community in which to live.

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Center Advisory Board

Please tell us why you are interested in serving on this board or commission.

To guarantee that Midland continues to have a first-class venue that can attract a wide variety of events and activities.

What contribution would you most like to make?

I would like to make sure any funds spent are spent wisely and efficiently.

Additional pertinent information or references:

(2) Name of Board/Commission:

Midland Football-Soccer and Baseball Complex Development Corporation

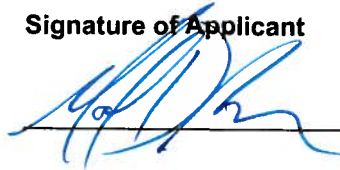
What contribution would you most like to make?

I would like to make sure any funds spent are spent wisely and efficiently.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



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**City of Midland
City Secretary's Office
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[Print Application](#)



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Delma Eckert

Address: 4704 Mimosa Ct

Midland TX 79707
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁸ years.

Professional and/or Community Activities:

UTPB Alumni

Stonegate Fellowship

PTA at Carver Elementary School

What is your personal vision for the City?

I would like to see a city with growth that accommodates the needs of young families so that citizens will have a community that serves their needs and also attract a family oriented community.

Please specify any time constraints you may have.

I have a full time job but it is flexible.

Date: 9/3/2013

Phone: 4325708972 (Home)

4325708972 (Business)

Email: delma.eckert@yahoo.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Administrative Manager

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

The development and growth of Midland is important to me and my family.

What contribution would you most like to make?

I would like to voice opinions and concerns of city development as shared by other young professional families.

Additional pertinent information or references:

(2) Name of Board/Commission:

Midland Center Advisory Board

What contribution would you most like to make?

Through my employment I understand issues regarding employment of personnel and operating budgets.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Delma Eckert

Digitally signed by Delma Eckert
DN: cn=Delma Eckert, o, ou,
email=delma.eckert@yahoo.com, c=US
Date: 2013.09.03 11:10:54 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

2013-018



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Heather Massey

Address: 400 W. Illinois Suite 1630

Midland TX 79701

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ² years.

Professional and/or Community Activities:

Leadership Midland Graduate 2013 MAAS Committee

Just obtained my Texas Real Estate License

Young Professionals of Midland Member

What is your personal vision for the City?

Continued growth and development especially in the downtown area.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

City Development Advisory Board

Please tell us why you are interested in serving on this board or commission.

If feel it best ties into my vision for the development and continued growth in Midland.

Date: 8/19/2013

Phone: 4325590058 (Home)

4326874414 (Business)

Email: hjmassey@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Executive Assistant to Scooter Brown

What contribution would you most like to make?

Help shape the development of Midland, buy attracting new businesses & revitalizing the downtown area.

Additional pertinent information or references:

Scooter Brown 432-687-4414

Stephanie Martin 432-934-4734

(2) Name of Board/Commission:

Midland Center Advisory Board

What contribution would you most like to make?

Help the Midland Center expand with the changing community. Making sure it has up to date facilities, technology etc.

Additional pertinent information or references:

Brad Barnett (Midland Center)

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Heather Massey

Digitally signed by Heather Massey
DN: cn=Heather Massey, o=Haley Properties, ou=Haley
Properties, email=hmassey@haleyproperties.com, c=US
Date: 2013.08.19 12:03:18 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

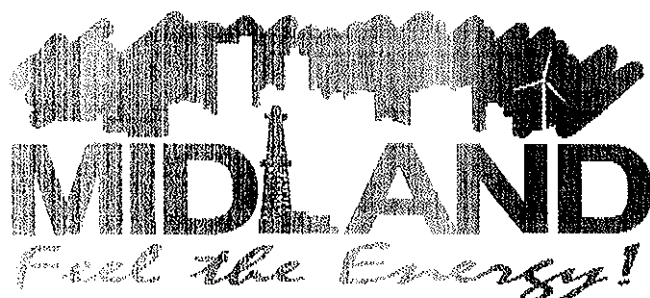
PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Rachel L. Stone

Address: 1902 N. Pecos

Midland, TX 79705

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁴⁷ years.

Professional and/or Community Activities:

Former: MISD Education Foundation, MISD Headstart Board, MC BAC Advisory Board, MC Coppell Learning Facility Advisory Board

Current: Midland Recording Library for the Blind, Midland CVB Advisory Board, SHARE Board, American Diabetes Assoc

Date: 8/17/2013

Phone: 432-657-1805 (Home)

432-652-2060 (Business)

Email: rls@midlandhcc.com

Are you a graduate of Midland HS? ☐ yes ☒ no

Occupation: President/CEO

What is your personal vision for the City?

With our robust economy many changes have come to our city. This includes many new faces with diverse backgrounds. I would like to see Midland embrace the many cultures and showcase them. While we do not have the big attractions of the bigger cities, Midland has a lot to offer. One way is to offer downtown events where we can showcase the many cultures that make Midland.

Please specify any time constraints you may have.

3rd Monday of the month (11:30am-1:30pm)

2nd & 3rd Tuesday of the month (Noon-1:00pm)

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Hotel/Motel Advisory Board

Midland Center Advisory Board

Please tell us why you are interested in serving on this board or commission.

Both of these advisory board play a big role in promoting the arts & events in our community. I have over 20 years of event planning experience and I believe that my experience will bring a different prospect when decisions are being made.

What contribution would you most like to make?

A perspective from an event planner, especially when it is a non-profit organization.

Additional pertinent information or references:

Jami Owen, MISD Education Foundation Exec Dir: (432) 689-1982

Billy Castaneda, Standard Sales, Co.: (432) 550-2380

Simone Rivas, KWES: (432) 349-7047

(2) Name of Board/Commission:

Midland Center Advisory Board

What contribution would you most like to make?**Additional pertinent information or references:**

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Signature of Applicant



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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit by Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Melissa Wicker

Address: 2302 Lockheed

Midland TX 79701

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 33 years.

Professional and/or Community Activities:

Board Member of Midland Chamber of Commerce, Board Member of Safe Place, Advisory Board Member of Junior League of Midland, Member of Midland Housing Trust Committee, and Member of the Midland Housing Committee

Date: 9/9/2013

Phone: 432-687-6789 (Home)

432-689-0000 (Business)

Email: mwicker@primewestcorp.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Mortgage Loan Officer / President of Permian Basin

What is your personal vision for the City?

My vision is to see the city continue to grow. The City of Midland has provided my family and I many opportunities through the years I would like to see those opportunities continue for our current residence and future residence.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Center Advisory Board

Please tell us why you are interested in serving on this board or commission.

I would like to be involved with the Midland Center to continue the legacy that the center has provided to our city and see the growth or expansion of the facility for our community.

What contribution would you most like to make?

I would like to contribute my time and knowledge of the city to help maintain growth for the Midland Center.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Melissa Wicker

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application

MIDLAND DEVELOPMENT CORPORATION
(Membership - 5; Terms -3 Years)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE JAN. 2014?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 19)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Robert Rendall, Chairman	Yes	79%	15	Yes		
Brent Hilliard	No 01/17					
Gary Douglas	No 01/16	100%	19			
Michael Trost	No 01/16	95%	18			
Cary J. Love	No 01/16	79%	15			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Thomas Johnston	One other board	
Reggie Lawrence	One other board	



APPLICATION FOR CITY BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Thomas Johnston

Address: 6208 Sequoia

Midland TX 79707

(City)

(State)

(Zip)

Date: 11/11/13

Phone: 432-934-3333 (Home)

432-688-8200 (Business)

Email: realestateranch@aol.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

Are you a graduate of Midland 101? ☒ yes ☐ no

I have lived in Midland 8 years.

Occupation: Real Estate Broker

Professional and/or Community Activities:

Director
Permian Basin Builder Association, Leadership Midland, Permian
Basin Realtors - Director, Ducks Unlimited

What is your personal vision for the City?

Structured Growth + New Ideas into Midland

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

City Development + Advisory
MDC

Please tell us why you are interested in serving on this board or commission.

I have time + expertise in these areas coupled w/ a desire
to serve

What contribution would you most like to make?

I'm very vocal + want to see my City grow properly

Additional pertinent information or references:

Warren York + Carolyn Arnold, Street Doss

(2) Name of Board/Commission:

Permian Basin Builders Association
Permian Basin Realtors Association
Leadership Midland

What contribution would you most like to make?

Sound Advice to the Board from a Real Estate/Developer outlook

Additional pertinent information or references:

I have a strong need to serve.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Reggie Lawrence

Address: 4721 Timber Lane

Midland Tx 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 10 years.

Professional and/or Community Activities:

City of Midland - City Development Advisory Committee; Attend Stonegate Church; Permian Basin Petroleum Association

Date: 7/16/2013

Phone: 432.770.0881 (Home)

432.580.7332 (Business)

Email: reggie@winchandwrench.com

Are you a graduate of Midland 101? ☒ yes ☐ no

Occupation: Self Employed - Oilfield Service

What is your personal vision for the City?

The city of Midland is a great place to live. Leadership is required to fulfill the goals of the city and I would like to play a part in helping the current goals to thrive and for new and innovative avenues of community development to be set in place.

Please specify any time constraints you may have.

I am typically able to adjust my time accordingly.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Planning and Zoning Commission

Please tell us why you are interested in serving on this board or commission.

Owning a business has extreme challenges. I have seen and met those challenges through my own experience for many years.

Location, staffing, budgets, compliance are all obstacles that I, along with other business leaders face every day. I believe that I can

bring good experience in assisting new business meet their goals.

What contribution would you most like to make?

Becoming an available leader in our community that communicates with others, the need for vision into the next 50 years of Midland's growth. To that end, without proper planning, we have a disconnected community with staunch boundaries. It is my goal to place myself in a position to bring people together, rather than create boundaries.

Additional pertinent information or references:

(2) Name of Board/Commission:

Midland Development Corporation

What contribution would you most like to make?

For many of the same reasons as mentioned above, planning is paramount. Through this board, I can help business achieve their goals, and also promote the welfare and outlook of Midland's expansion.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Reggie Lawrence

Digitally signed by Reggie Lawrence
DN: cn=Reggie Lawrence, o=WW - Signature PDF, ou,
email=reggie@winchandwrench.com, c=US
Date: 2013.07.16 10:52:14 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

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MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION

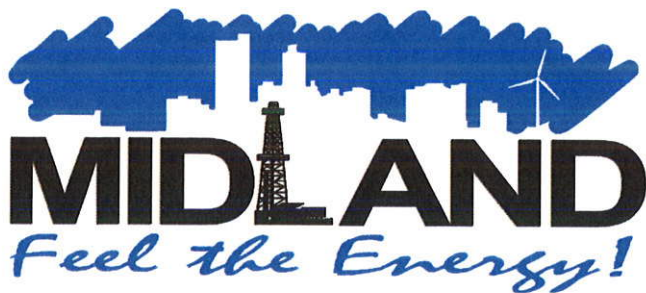
**Decision Making
(Membership - 7; Terms - 2)**

SPECIAL COMPOSITION REQUIREMENTS: Resident of City.

MEMBER	TERM EXPIRE NOV. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Ken Marks, Vice Pres.	Yes			No		
James G. Smith	Yes			No		
Wesley D. Bownds	Yes			No		
John James	Yes			No		
Mike Thompson	Yes			Yes		8/13/13 Mr. Thompson called wants to serve again.
Tim Bryson	Yes			Yes		8/22/13 Mr. Bryson called wants to serve again.
Rick Davis (MISD Resp.)	Yes			Yes		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Brad Barnett	One other board	
Monty D. Biggs	One other board	
Kelly "Bo" Cockerell	One other board	
Joe Guerra, Jr	One other board	
Michael Harris	One other board	
Joel Hawkins	Only this board	
John Ory	One other board	
John Trischitti III	One other board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Brad Barnett

Address: 5101 North A St. #342

Midland 79705

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁸ years.

Professional and/or Community Activities:

Member of the TxAVF (Texas Association of Venues & Facilities) & IFMA (International Facility Managers Association.)

Teaching and supply preaching at Fannin Terrance Baptist Church. Former Moderator for the Basin Baptist Network.

Leadership Midland (Class of 2013)

What is your personal vision for the City?

For our community to continue to grow while retaining our west Texas, family friendly feel. To work to be proactive to be able to handle our growth. It's critical that we continue to grow our quality of life and not just the size of our city.

Please specify any time constraints you may have.

Schedule is generally flexible.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Tax Increment Reinvestment Zone Board

Please tell us why you are interested in serving on this board or commission.

A passion for seeing downtown Midland revitalized.

Date: 8/13/2013

Phone: 432-599-1390 (cell) (Home)

432-682-6234 (Business)

Email: brad@themidlandcenter.com

Are you a graduate of Midland 101? ☒ yes ☐ no

Occupation: Vice President (Facility Manger) Midland Center

What contribution would you most like to make?

Assist in shaping the future of downtown Midland (the heart and soul of our community.)

Additional pertinent information or references:

Reference: Chamber of Commerce President & CEO Bobby Burns

(2) Name of Board/Commission:

Midland Football-Soccer and Baseball Complex Development Corporation

What contribution would you most like to make?

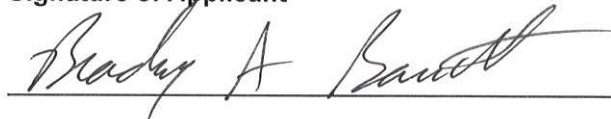
Work to continue to promote this amazing facility we have. Background in facility management gives me an clear understanding of needs for our sports facility.

Additional pertinent information or references:

Reference: Monty Hoppel

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Signature of Applicant



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PO Box 1152

Midland, TX 79702

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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Monty D Biggs

Address: 7 Bentley Ct

Midland TX 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 7 years.

Professional and/or Community Activities:

Member of PBLA, AAPL, State Bar of Texas. Volunteer with local Cub Scout Pack, Indian Princess.

Date: 10/22/2013

Phone: 432-599-0881 (Home)

432-686-1828 (Business)

Email: mbiggs@callon.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Landman/Attorney

What is your personal vision for the City?

To ensure the citizens of Midland continue to have a safe and pleasant community in which to live.

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Center Advisory Board

Please tell us why you are interested in serving on this board or commission.

To guarantee that Midland continues to have a first-class venue that can attract a wide variety of events and activities.

What contribution would you most like to make?

I would like to make sure any funds spent are spent wisely and efficiently.

Additional pertinent information or references:

(2) Name of Board/Commission:

Midland Football-Soccer and Baseball Complex Development Corporation

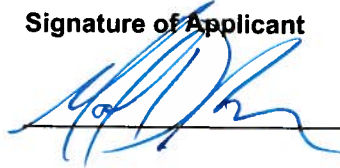
What contribution would you most like to make?

I would like to make sure any funds spent are spent wisely and efficiently.

Additional pertinent information or references:

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Signature of Applicant



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**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Kelly "Bo" Cockerell

Address: 8312 E County Rd 85 Unit A

Midland TX 79706

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 7 **years.**

Professional and/or Community Activities:

I spend my time and earn my living by preaching the Gospel and planning and promoting events right here in Midland.

Date: 8/31/2013

Phone: (432) 230-7099 (Home)

(432) 230-7099 (Business)

Email: kcockerell@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Pastor / Event Promoter

What is your personal vision for the City?

Midland is a great place live and work and I would like to continue to help promote the best Midland has to offer. As more and more people come here to work, live and do life, it is important that we stay on top of the "business of Midland" so we can continue to have a prosperous and lively community.

Please specify any time constraints you may have.

I am self-employed and have total control over my schedule.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Airport Planning and Development Board

Please tell us why you are interested in serving on this board or commission.

Airports are a crucial component of prosperous cities. As we continue to grow our airports are going to need to grow with us and I would like to help guide and influence them so they can help make Midland more than just an employment destination.

What contribution would you most like to make?

I am plugged in to the entertainment and activities subculture in Midland and can bring insight into what can help make an airport more than just a transit system.

Additional pertinent information or references:

Many on the Midland City Council have first hand experience with me through events I have co-produced and know of my creativity and ingenuity.

(2) Name of Board/Commission:

Midland Football-Soccer and Baseball Complex Development Corporation

What contribution would you most like to make?

As an event planner and promoter I have firsthand knowledge of how important a great venue like the Scharbauer Sports Complex is to the vitality of this community. I would like to help guide the future of the sports complex so it can continue to help make Midland an awesome place to live and play.

Additional pertinent information or references:

Many on the Midland City Council have firsthand experience with me through events I have co-produced and know of my creativity and ingenuity.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Kelly Cockerell

Digitally signed by Kelly Cockerell
DN: cn=Kelly Cockerell, o, ou,
email=kcockerell@gmail.com, c=US
Date: 2013.08.31 09:23:10 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Joe Guerra Jr.
Address: 2506 Candle Tree Cove
 Midland Texas 79705
 (City) (State) (Zip)

Date: 1/17/2013
Phone: 432-686-8445 (Home)
 432-556-0857 (Business)
Email: joe.guerra@att.net

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 28 **years.**

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Drilling/Completion Tech for Energen Resources Cc

Professional and/or Community Activities:

I am currently working with Energen Resources in the Drilling Department, I facilitate there Hydraulic Frac Disclosures and handle pre regulatory/post regulatory issues that come up on the drilling or production side. Prior to Energen, I worked 27 years with the RR in Regulatory, Environmental and Technical. I have extensive knowledge of Oil & Gas regulations. I am currently in Midland 101.

What is your personal vision for the City?

My personal vision for the city is to have a population say that they are proud of there transportation, city services, roads and bridges activities that are enjoyable, clean, etc. I want people that drive through Midland to say, "Yes I remember that city, they are the ones with the tall buildings that are lit up at night in colors." That makes the City stand out.

Please specify any time constraints you may have.

I do not have no time constraints, just some notice any time a meeting will be held.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Oil and Gas Advisory Committee
 Midland Football/Soccer/Baseball Corporation

Please tell us why you are interested in serving on this board or commission.

I want to serve on the Oil/Gas Committee because I feel that I can offer in regards to regulatory issues pertaining to drilling and prod inside the city limits, also currently working for an oil and gas company helps alot.

What contribution would you most like to make?

Offer my expertise on oil and gas regulation and other general issues that came up that might play a part in making decisions pertaining to drilling inside the city limits of Midland.

Additional pertinent information or references:

Midland 101

(2) Name of Board/Commission:

Midland Football/Soccer/Baseball

What contribution would you most like to make?

I am a arbiter of issues, I was an official in college softball for almost 15 years and one of my greatest asset was having to watch, listen and make decisions based on the play. This is what this would be all about.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Michael Harris

Address: PO Box 81046

Midland TX 79708

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 2.5 years.

Professional and/or Community Activities:

My community activities have been fostered through my employer, Concho Resources. We have done multiple trash pick ups and sponsored a habitat for humanity house. I am a CPA and participate in local professional activities sponsored by PASPB.

Date: 8/29/2013

Phone: 432 230 0547 (Home)

432 221 0316 (Business)

Email: mharris@concho.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Accountant - CPA

What is your personal vision for the City?

I believe the current growth in Midland will continue. I envision Midland developing a metropolitan feel (downtown renovation and more large companies headquartered here), however retaining the West Texas friendliness. We have to embrace the changes that come with economic and population growth, but also understand the importance of the core values Midland has long established

Please specify any time constraints you may have.

My job does place some time constraints during quarter ends, however, in general, with planning I am usually have the flexibility to take an hour or two during my lunch or afternoon.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Football-Soccer and Baseball Complex Development Corporation

Please tell us why you are interested in serving on this board or commission.

I think the continued development of the complex shows Midland's commitment to growth. I think there will be a positive look back related to the complex, but its development is crucial to that success.

What contribution would you most like to make?

I would like to contribute my time and expertise to help effectively utilize the proceeds available for the construction of the complex.

Additional pertinent information or references:

(2) Name of Board/Commission:

Parks and Recreation Commission

What contribution would you most like to make?

I think as the young professional population in Midland continues to expand, something this group is looking for are places to take their children. I believe this generation will realize that their children need to be more active and having good facilities is paramount to supporting that goal.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

mharris@conchoresource
s.com

Digitally signed by mharris@conchoresources.com
DN: cn=mharris@conchoresources.com
Date: 2013.09.06 11:06:56 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: JOEL HAWKINS
Address: 8627 Dublin Avenue
Odessa TX 79765
(City) (State) (Zip)

Date: 12-13-13
Phone: 232-5909 (Home)
580-0024 (Business)
Email: jhawkins@kpejtv.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ yes ☒ no

I have lived in Midland _____ years.

Occupation: KPEJ - Sales Team Lead

Professional and/or Community Activities:

- 1) Currently participating in Midland 101
- 2) Midland Chamber Ambassador Chair

What is your personal vision for the City?

To make it a place of enjoyment for all ages, especially the younger families and make Midland a place they are proud to call HOME.

Please specify any time constraints you may have.

NONE

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Football - Soccer And Baseball Complex
Development Corporation

Please tell us why you are interested in serving on this board or commission.

I want to see more activities at all of the sports facilities and help to make what is great even greater

What contribution would you most like to make?

To be involved in the center of all the happenings and
any way I can help build upon what is already a
great thing

Additional pertinent information or references:

Midland Chamber Volunteer of year 2013.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

J. Hawkins

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application

it is necessary to continue to develop this gem to constantly improve the quality of life for existing residences and those to come.

What contribution would you most like to make?

I bring a history of community leadership experience, strategic thinking and financial expertise that can lend to providing new, unique and sometimes unthought of perspectives to initiatives.

Additional pertinent information or references:

Bobby Burns - Midland Chamber of Commerce President

Dr. Steven Thomas - Midland College President

Vicki Jay - Executive Director of Shared Spaces Midland

(2) Name of Board/Commission:

Tax Increment Reinvestment Zone Board

What contribution would you most like to make?

To see that the incremental revenue is being collected and allocated in a manner that is consistent with the future plans of the city.

I would also like to see these tax dollars be redeployed into projects that add value to the citizens of Midland.

Additional pertinent information or references:

Bobby Burns - Midland Chamber of Commerce President

Dr. Steven Thomas - Midland College President

Vicki Jay - Executive Director of Shared Spaces Midland

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: John Trischitti III
Address: 301 W. Missouri
 Midland TX 79701
 (City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ³ years.

Professional and/or Community Activities:

Midland Need to Read Board Member

Salvation Army board Member

Golf Course Road Church of Christ

What is your personal vision for the City?

I feel that Midland can be a trendsetting city not only for West Texas and the Permian Basin but for the state as well. We can continue to grow and evolve and create an environment that is a great place to live and raise a family.

Please specify any time constraints you may have.

With enough advanced notice, any time should be workable

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Football-Soccer and Baseball Complex Development Corporation

Please tell us why you are interested in serving on this board or commission.

I would like to get more involved in the business of Midland and give back to my community in service and time.

Date: 8/20/2013
Phone: 214/934-5442 (Home)
 432/688-4333 (Business)
Email: libadm01@co.midland.tx.us

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Midland County Public Library Director

What contribution would you most like to make?

To help guide the future of this complex and the direction of the revenue that it generates.

Additional pertinent information or references:

County Judge Mike Bradford

Mayor Wes Perry

(2) Name of Board/Commission:

Airport Planning and Development Board

What contribution would you most like to make?

To highlight the importance of this facility for our area and make sure it is receiving the attention and maintenance it deserves.

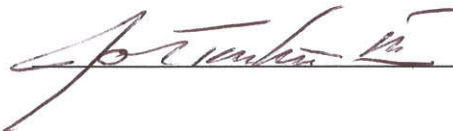
Additional pertinent information or references:

County Judge Mike Bradford

Mayor Wes Perry

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE JAN. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 0)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes-2007			No		*No Meetings
Vacancy	Yes-2007			No		
Vacancy	Yes-2007			No		
Vacancy	Yes-2009			No		
Steve Jones	Yes			No		
Cathy Oestmann	Yes			No		
Curt Kamradt	Yes					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Tom Parks	Only this board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: TOM PARKS

Address: 3508 TRINITY MEADOWS DRIVE
MIDLAND TX 79701
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 11 years.

Professional and/or Community Activities:

I retired this summer after more than 50 years of teaching and administration, mostly in higher education. My Ph.D. is in higher education. I served as associate director of the John Ben Shepperd Institute at UTPB and retired as Associate Dean.

What is your personal vision for the City?

To continue in its solid progress in leadership and service to the good people of Midland, responding to emerging needs in a responsible, deliberative, and conscientious process that is transparent and fiscally accountable.

Please specify any time constraints you may have.

None,

Date: 8/20/13

Phone: 697-6530 (Home)
_____(Business)

Email: tparks9@suddenlink.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: UNIVERSITY ADMINISTRATOR, PROFESSOR

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

MIDLAND HIGHER EDUCATION FACILITIES CORP.

Please tell us why you are interested in serving on this board or commission.

This service reflects my lifelong interest and commitment to higher education and my permanent dedication to the City of MIDLAND.

What contribution would you most like to make?

To provide leadership and service to meet emerging needs of higher education facilities and to offer an experienced voice in terms of short-term and long-range planning.

Additional pertinent information or references:

DR. DAVID WAITS, PRESIDENT, UTPB

MR. BOBBY BURNS, CHAIRMAN, MIDLAND CHAMBER OF COMMERCE

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Tom Parks

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

MIDLAND HOUSING FINANCE CORPORATION
 (Decision Making)
 Membership - 5; Terms - 2 Years expiring 1-2-2)

SPECIAL COMPOSITION REQUIREMENTS: Resident of City.

MEMBER	TERM EXPIRE SEPT 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes			No		NO MEETINGS
Adrienne Valencia	Yes			No		
Melissa Wicker	Yes			No		
Jerry Morales (Liaison Officer)	Yes			No		
Nathan Miller	Yes			Yes		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Paul Culver	One other board	
Paul McCord	Only this board	
Hazel Lamar	Only this board	

2013-021



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Paul Culver
Address: 4603 Pleasant Dr
Midland TX 79703
(City) (State) (Zip)

Date: 8/22/2013
Phone: 432 697-2881 (Home)
432 934-1021 (Business)
Email: paul.culver@yahoo.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁴ years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Realtor

Professional and/or Community Activities:

I have been involved in real estate and mortgage lending for the past twenty five years. Three of those years I worked for the Texas Department of Housing and Community Affairs and have overseen many city projects aiding the low-income and elderly with regards to housing.

What is your personal vision for the City?

I would love to see Midland continue to grow but with housing opportunities for young new professionals as well as low-income and elderly citizens. I have been in Midland for four years but grew up here and think its a great city.

Please specify any time constraints you may have.

None that would interfere with board duties.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Housing Authority Commission

Please tell us why you are interested in serving on this board or commission.

I have experience with the inner working of housing authorities and would love to provide input.

What contribution would you most like to make?

To use my experience in anyway possible to promote housing.

Additional pertinent information or references:

Worked in HUD's HOME program in planning and grant administration.

(2) Name of Board/Commission:

Midland Housing Finance Commission

What contribution would you most like to make?

Again, to use my experience working with cities and their housing authorities to promote housing.

Additional pertinent information or references:

Experience with TDHCA HOME Program.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Digitally signed by Paul Culver

DN: cn=Paul Culver, o, ou, email=paul.culver@yahoo.com, c=US

Date: 2013.08.22 18:46:19 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

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2013-004



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Paul M McCord

Address: 4202 Gleneagles Dr

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 14 **years.**

Professional and/or Community Activities:

Business and Housing Consultant for the Business and Economic Center of Midland College

Date: 4/12/2013

Phone: 432-260-0206 (Home)

432-684-4309 (Business)

Email: pmccord@mccordandassociates.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Business/Housing Consultant

What is your personal vision for the City?

Want to see the city continue to grow as an oil and gas center but also believe it important for the city to find ways to diversity its employer base in order to insure long-term stability. I also believe that finding ways to encourage and create affordable housing is critical to the city's continued expansion and development.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Housing Finance Corporation

Please tell us why you are interested in serving on this board or commission.

I have the opportunity to witness the needs of affordable housing in the community as a business and housing counselor for the BEDC of Midland Collage as I work with and counsel want to be homeowners and small business owners.

What contribution would you most like to make?

At this point I can't give specifics as I don't know what MHFC is concentrating on or where their specific focus is. I do believe that with my extensive business and finance background combined with my past four years working with low to moderate income potential homeowners I have a solid background from which to make meaningful contributions.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Paul McCord

Digitally signed by Paul McCord
DN: cn=Paul McCord, o, ou,
email=pmccord@mccordandassociates.com, c=US
Date: 2013.04.12 12:57:25 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)



**APPLICATION FOR CITY OF MIDLAND
BOARDS/COMMISSIONS/COMMITTEES**

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: HAZEL LAMAR

Address: 700 W. Scharbauer Drive #218
MIDLAND, TX 79705

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 15 years.

Professional and/or Community Activities:

Date: 8-14-2013

Phone: 432-222-1189 (Home)

(Business)

Email: _____

Are you a graduate of Midland High? ☐ yes ☒ no

Occupation: Dis able

What is your personal vision for the City?

To make things better. To find ways
to make things better

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

The Housing Authority of the city of
Midland

Please tell us why you are interested in serving on this board or commission.

I am a resident within the Housing
Authority and it's required.

I would like to do what ever I can to make it better

What contribution would you most like to make?

I would like to do what ever I can to make it better

Additional pertinent information or references:

(2) Name of Board/Commission:

The Housing Authority of the City of Midland

What contribution would you most like to make?

Listen to Ideas and come up with the better best one.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Hazel L. Mason

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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD
(Ad Hoc)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE SEPT 2013?	ATTEN- DANCE %	MEETINGS ATTENDED	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes			N/A		
Richard Hatchett						
W. L. "Scooter" Brown						
Ken Burgess						
Jim Hightower						
Ted H. Jones						
Mitch Malouf						
Christi Newton						
Dan Rush						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD
(Membership - 6; Terms - 2 Years Staggered)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 9)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Willie Barber	Yes	11%	1	No		
Michael Trost	Yes	89%	8	No		
John James	Yes	78%	7	No		
Karen York	Yes	100%	9	No		
Guy McKenzie	Yes	89%	8	Yes		
Rebecca Bell	No 09/14					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

PERMIAN BASIN AIRPORT BOARD
(Advisory)
Membership - 30; Terms - 1 Year)
Ex-Officio Members: City Manager, City Attorney

SPECIAL COMPOSITION REQUIREMENTS: 10 Members of the Airport Planning & Development Board, A Resident of the following Cities: San Angelo, Abilene, Carlsbad, NM, Roswell NM, Artesia, NM, Hobbs NM, Fort Stockton, Seminole, Sweetwater, Pecos, 3 Residents of Odessa, Big Spring, Lamesa, Andrews, Monahans and Snyder.

MEMBER	TERM EXPIRE SEPT. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Larry Gill (Abilene)	No	0%	0	Yes		10/4/13 Received letter from City of Abilene reappointing Larry Gill
Elvin Brownlee III (Andrews)	No	50%	2	Yes		10/3/13 Received letter from City of Andrews reappointing Elvin Brownlee
Jim Little (Big Spring)	No	75%	3	Yes		8/27/13 Received letter from City of Big Spring reappointing Jim Little
David Hardwick (Ft. Stockton)	Yes	0%	0	Yes		
Frankie Rolfe (Kermit)	Yes	0%	0	Yes		
Donald R. Bethel (Lamesa)	No	50%	2	Yes		8/30/13 Received letter from City of Lamesa reappointing Don Bethel
Henry Cutbirth (Monahans)	No	75%	3	Yes		Received letter from City of Monahans reappointing Henry Cutbirth
Willie Taylor (Odessa)	No	50%	2	Yes		8/16/13 Received letter from City of Odessa reappointing Willie Taylor
Gloria Pena (Odessa)	No	75%	3	Yes		8/16/13 Received letter from City of Odessa reappointing Gloria Pena
Barbara Graff (Odessa)	No	75%	3	Yes		8/16/13 Received letter from City of Odessa reappointing Barbara Graff
Isabelle Blanchard (Pecos)	No	50%	2	Yes		8/22/13 Received a letter from City of Pecos reappointing Isabelle Blanchard
Luis E. Elguezabal (San Angelo)	No	0%	0	Yes		Received a letter from City of San Angelo reappointing Luis E. Elguezabal
Lex Hinds (Seminole)	No	0%	0	Yes		9/1/13 Received a letter from City of Seminole reappointing Lex Hinds
John Rogotzke (Snyder)	No	50%	2	Yes		
Glenn Wortham (Sweetwater)	No	0%	0	Yes		8/27/13 Received a letter from City of Sweetwater reappointing Glenn Wortham
Lance Goodrich (Artesia, NM)	No	50%	2	Yes		8/27/13 Received a letter from City of Artesia reappointing Lance Goodrich
Bob Forrest (Carlsbad, NM)	Yes	0%	0	Yes		
Larry Shed (Hobbs, NM)	Yes	0%	0	Yes		
Larry Fry (Roswell, NM)	No	25%	1	Yes		8/29/13 Received a letter from City of Roswell reappointing Larry Fry

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

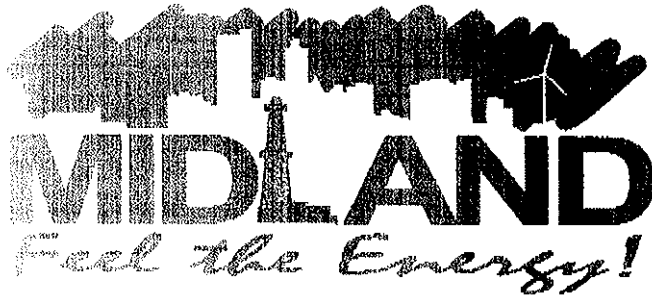
PLANNING AND ZONING COMMISSION
(Advisory & Decision Making)
Membership - 9; Terms - 3 Years expiring 3-4-4)

SPECIAL COMPOSITION REQUIREMENTS: Resident Citizen of City, own real property inside city limits & qualified voter.

MEMBER	TERM EXPIRE SEPT. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 19)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy-Becky Ferguson	Yes					
Jane Wolf	Yes	74%	14	Yes		
Chase Gardaphe	Yes	58%	11	Yes		
Jay Norris	No 09/14	84%	16			
Kevin Wilton	No 09/15	84%	16			
Warren Ivey	No 09/15	63%	12			
Karen York	No 09/15					
Brad Bullock	No 09/15	63%	12			
Joshua Sparks	No 09/14					
<u>ALTERNATE:</u>						
Arthur B. Hobbs						
Reggie Lawrence						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
W. Roger Beebe	Only this board	
Christopher L. Buck	One other board	
Jack Fisher	Only this board	
Janice M. Kapp	Only this board	
R. Shaun Rainey	One other board	
P.Lourcey Sams	Only this board	
Taylor Spalla	One other board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: W. Roger Beebe
Address: 902 Interstate 20 West
Midland TX 79701
(City) (State) (Zip)

Date: Oct. 1, 2012

Phone: 817-291-0753 (Home)

432-683-1111 (Business)

Email: rbeebe@rimhospitality.co

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ yes ☒ no

I have lived in Midland 11 years.

Occupation: Hotel Manager

Professional and/or Community Activities:

Past: City of Duncan Hotel Tax Advisory Board Duncan, OK
Hotel/Motel Assoc. of Baton Rouge, Baton Rouge, LA
Bring Cowboys to Arlington, Arlington CVB, Arlington, TX

What is your personal vision for the City?

To enhance a diverse yet unique culture in
a city committed to creating a hometown
where people are unhindered from their personal and
professional goals.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

To help city leaders create an economic plan that
will take Midland to the next level and help

make Midland an All American City.

What contribution would you most like to make?

I want to contribute my diverse perspectives and time to aid Midland leaders with a new and enthusiastic outlook.

Additional pertinent information or references:

Hotel controller for various hotels from across the country.

(2) Name of Board/Commission:

Planning and Zoning Commission

What contribution would you most like to make?

I want to assist city planners in developing a balanced town with affordable housing and profitable industries.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Roger Brubaker

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: CHRISTOPHER L. BUCK
Address: 5216 QUICKSAND DR.
MIDLAND TX 79707
(City) (State) (Zip)

Date: 9/26/2013
Phone: (432) 413-5929 (Home)
(432) 242-4256 (Business)
Email: chris@ciervoresources.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ²⁵ years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Landman/ Land Broker/ Adjunct Faculty at MC

Professional and/or Community Activities:

American Association of Professional Landmen, Permian Basin Landman's Association, Disabled American Veterans,
Veterans of Foreign Wars, American Legion, Soldiers of Today and Yesterday, West Texas Historical Association, St. Nicholas
Episcopal Church,

What is your personal vision for the City?

I personally see Midland as a city that has the opportunity and potential to develop in ways that many larger, metropolitan, areas may not. I expect to see Midland flourish into a haven for small business. I think the city could empower those small organizations, in such a way, that the city could harness the entrepreneurial spirit ingrained in our community to push us to even farther heights.

Please specify any time constraints you may have.

While I am a professional Landman, and run an Oil and Gas Land Brokerage with approximately 18 people employed there, as well as my lecturing duties at Midland College as Adjunct Faculty in History in the Social and Behavioral Sciences Department, I have the ability, in all of my capacities, to tailor my schedule to meet the demands of any board I were allowed to sit on.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Oil and Gas Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I am interested in serving on the committee because it is directly related to the field of work I am engaged in on a daily basis. I feel that my industry experience could be best utilized in this committee, and I also believe it will provide an unparalleled insight into the

governmental aspects of my industry that cannot be attained through any other means.

What contribution would you most like to make?

I have a Certified Professional Landman certification through the American Association of Professional Landmen, and I have experience on the other side of the table applying for permits, or seeking exceptions, from governmental bodies. I also have experience overcoming the challenge of identifying a location suitable to drill that causes the owner as few problems possible.

Additional pertinent information or references:

William A. Chalfant, CPL - (432) 684-9819

Ralph Lea Jr., CPL - (432) 682-1005

I also wrote my Master's Thesis, through UTPB, on Oil and Gas Leasing since 1945, and have published several articles.

(2) Name of Board/Commission:

Planning and Zoning Commission

What contribution would you most like to make?

I would like to offer my perspective as a 31 year old property owner, who intends to remain in this city the rest of my natural life. It is my opinion that the Planning and Zoning Commission is one of the most important commissions we have as a city. If we do not look to our future needs in our development, then we are literally setting ourselves up for problems down the line.

Additional pertinent information or references:

Ralph Lea Jr., CPL - (432) 682-1005

Jonathan Jordan - (432) 559-8499

Johnie Lee Qualls - (432) 631-3429

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Christopher L. Buck

Digitally signed by Christopher L. Buck
DN: cn=Christopher L. Buck, o, ou,
email=chris@clervoresources.com, c=US
Date: 2013.09.26 23:17:47 -06'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

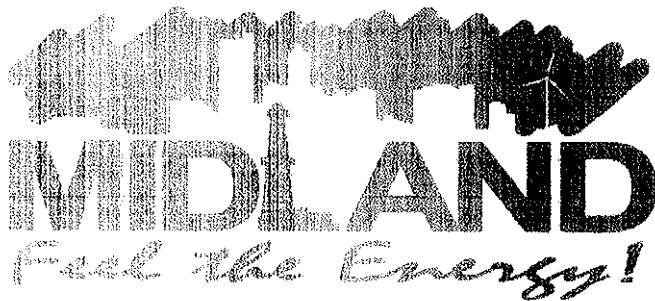
PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Jack Fisher
Address: 2102 Oaklawn Dr
Midland TX 79705
(City) (State) (Zip)

Date: 8-2-2013
Phone: 688-9152 (Home)
697-5831 (Business)
Email: JFisher917@att.net
Cell 804-7678

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 26 years.

Are you a graduate of Midland HS? ☐ yes ☒ no

Occupation: Commercial Sales Rep
McCoy's Building Supply

Professional and/or Community Activities:

Store manager for McCoy's Building Supply 35 yrs.
Permian Basin Builders Assoc. Board of Directors 12 yrs.

What is your personal vision for the City?

Planned growth. Affordable housing. Continue emphasis on watercourse
landscapes. Just because we have new water sources, we need to continue
to conserve as we grow.

Please specify any firm constraints you may have.

None that I know of now.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Planning & Zoning Commission

Please tell us why you are interested in serving on this board or commission.

To be a voice in the planned growth of our city and the
surrounding communities.

What contribution would you most like to make?

I have been in the Retail business for 35 yrs and deal with the public daily. I feel I could listen to both sides of a request and make a decision that is fair to all concerned.

Additional pertinent information or references:

Karen York

Lance Fridley

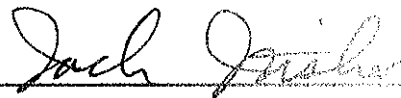
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant



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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433



APPLICATION FOR CITY OF MIDLAND
BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: JANICE M. KAPP

Address: 900 COUNTRY CLUB DR
MIDLAND TX 79701
(City) (State) (Zip)

Date: 9-23-13

Phone: 432-553-5332 (Home)
(Business)

Email: JANICE@JKAPPSOLUTIONS.COM

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 20 years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: AFLA INDEPENDENT AGENT

Professional and/or Community Activities:

20+ yrs experience in managing medical/dental offices

What is your personal vision for the City?

FOR MIDLAND TO BECOME A PLACE PEOPLE WANT TO VISIT DUE TO DIVERSITY OF ACTIVITIES, CULTURE ETC

Please specify any time constraints you may have.

Schedule is pretty flexible

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

PLANNING & ZONING COMMISSION

Please tell us why you are interested in serving on this board or commission.

WOULD LIKE TO HELP THE CITY GROW IN A WAY THAT IS BENEFICIAL TO ALL MEMBERS OF OUR CITY

What contribution would you most like to make?

And we direct the city to ATTRACT BUSINESSES & PEOPLE
to help MIDLAND GROW

Additional pertinent information or references:

JOHN JAMES - REFERENCE

(2) Name of Board/Commission:

PARKS & RECREATION

What contribution would you most like to make?

MAKE PARKS MORE ATTRACTIVE AND EDUCATE PEOPLE ON
RESPECTIVE NATURE & WILDLIFE

Additional pertinent information or references:

JOHN JAMES - REFERENCE

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

James M. Kapp

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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAK: (432) 685-7433





APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: R. Shaun Rainey

Address: 7 Bristol Court

Midland Texas 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 2.5 years.

Professional and/or Community Activities:

President Elect of the Midland County Young Lawyers Association; Member of the State Bar of Texas, State Bar of New Mexico,

Midland County Bar Association, Texas Young Lawyers Association, St. Luke's United Methodist Church

2013 Graduate of Leadership Midland

Date: 9/1/2013

Phone: 254-2203 (Home)

687-8688 (Business)

Email: srainey@cbtd.com

Are you a graduate of Midland 101? ☐ yes ☐ no

Occupation: Attorney, Cotton, Bledsoe, Tighe & Dawson, P.C.

What is your personal vision for the City?

Growing up in West Texas, there is a sense of community and respect which brought me back upon the completion of my law and undergraduate degrees. In order to maximize the ample opportunity and continue to foster West Texas values which make this home Midland must work to structure growth and development to meet the needs of our community both present and future.

Please specify any time constraints you may have.

As an attorney, my schedule affords flexibility unless a hearing or trial is scheduled by the court.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Planning and Zoning Commission

Please tell us why you are interested in serving on this board or commission.

Issues regarding the continued growth and development are of utmost importance in the continued growth of the city. This is vital not just for the expansion of the city, but also the reworking of interior portions of the city to meet changing needs and demographics.

What contribution would you most like to make?

Assist the city with structured growth and to help alleviate potential issues between adjacent and neighboring property owners.

Additional pertinent information or references:

(2) Name of Board/Commission:

City Development Advisory Committee

What contribution would you most like to make?

Provide insight and information into the expenditure of funds for development of the city and infrastructure.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Digitally signed by Shaun Rainey
DN: cn=Shaun Rainey, o, ou, email=srainey@cbtd.com, c=US
Date: 2013.09.03 13:59:50 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: P. Lourcey Sams

Address: P.O. Box 1933

Midland TX 79702

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 50 years.

Date: 1/29/2014

Phone: 432-682-0793 (Home)

432-682-8261 (Business)

Email: lsams@psams.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Oil & Gas -- Self Employed

Professional and/or Community Activities:

COM Parks & Recreation Board (Chairman), COM Managed Competition Committee, AAPG, West Tx Geological Society, FEPA, American Assoc. of Professional Landmen, Midland Chamber of Commerce Government Affairs Committee-past member
Interstate Oil & Gas Commerce Commission-past member, West TX MS Society-Past Member, Midland United Girls Softball

What is your personal vision for the City?

To see the City of Midland continue its expansion of economic growth in the oil and gas base along with continued diversification efforts to enhance long-term stability. Midland has made significant strides with healthcare services, law enforcement, parks and recreation and other social and entertainment services and should be supported in continuation of these endeavors.

Please specify any time constraints you may have.

I am self employed and envision no specific constraints as it applies to this application.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

COM Planning & Zoning Commission

Please tell us why you are interested in serving on this board or commission.

My experience both in community services as well as dealing with municipalities from the private industry prospective, uniquely qualifies me for input to this committee.

What contribution would you most like to make?

Having grown up in Midland, as well as having run my own business in Midland, qualifies me to make imperical input to the commission.

Additional pertinent information or references:

Vast and extensive board experiences both on a municipal and private level qualifies me to make valuable contributions to The Planning and Zoning Commission.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant



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City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
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Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: _____

Address: _____

(City)

(State)

(Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ____ years.

Professional and/or Community Activities:

What is your personal vision for the City?

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Please tell us why you are interested in serving on this board or commission.

Date: _____

Phone: _____ (Home)

_____ (Business)

Email: _____

Are you a graduate of Midland 101? ____yes ____no

Occupation: _____

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

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**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433**

TAX INCREMENT REINVESTMENT ZONE BOARD
(Decision Making)
Membership - 12; Terms - 3 Years)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE MARCH 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 6)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Randy Prude (County)	Yes	67%	4	No		
Judge Mike Bradford (County)	Yes	33%	2	Yes		
Vacant- Michael Blonkvist (City)	Yes					
Brad Barnett	No 03/15					
John Kennedy (City)	No 03/15	67%	4			
Pete Hulder (Hospital)	No 03/16	83%	5			
Link Grimes (City)	No 03/15	67%	4			
Charlene McBride (College)	No 03/16	33%	2			
Steve Castle (College)	No 03/15	33%	2			
Russell Meyer (Hospital)	No 03/16	33%	2			
Ken Burgess (City)	No 03/16					
John James (City)	No 03/15					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Guy McKenzie	Only this board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Guy McKenzie

Address: 2612 Spartan

Midland TX 79705
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 35 **years.**

Professional and/or Community Activities:

Kiwanis Club President, United Way Board, Big Brothers Big Sisters Board, Housing Commission, EZ Rider Board,

Citizen Action Committee for Public Transaction, Keep Midland Beautiful, Challenge Day in Public Schools

Date: 9/2/1013

Phone: 432-520-8903 (Home)

432-770-1990 (Business)

Email: primesourceguy@suddenlink.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Real Estate Manager, Financial Consultant.

What is your personal vision for the City?

Continued diversification of our economy, economic impact analyses, economic adjustment to meet the needs of our bustling city.

Please specify any time constraints you may have.

Minimal

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Tax Increment Reinvestment Zone Board.

Please tell us why you are interested in serving on this board or commission.

Interested in helping to find ways to use these funds for economic development and diversification. I would like to help in the planning and distribution of these funds.

What contribution would you most like to make?

To be an active member and to contribute with ideas and visions that I feel are in the best interest of the City .

Additional pertinent information or references:

Mike Davis - President - Compass Bank 432-210-6445

Chris Kelly - Business Manager - Mid-Cities Community Church

Garth Wright - President - Security Bank -

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

**ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT
(Decision Making)
Membership - 5; Terms - 2 Years expiring 3 odd & 2 even)**

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 5)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Scott Young	Yes	100%	5	Yes		
Carla Repman	Yes	100%	5	Yes		
Todd Byars	No 09/14	100%	5			
Annabel Holguin	No 09/15					
Greg Turner	No 11/13					
<u>ALTERNATES:</u>						
Vacancy	Yes - 2006			No		
Vacancy	Yes - 2007			No		
Lewis Hassler						
John Ory						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES